

LASCHER AT LARGE  
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How's this for a novel idea, gang? For my first offering in the new year, I'm going to cast a glance back at some Orwellian aspects of the 1984 lego-judicial scene. It's surprising nobody's done this before, given the riches available.

### Belli and Bhopal

One sure way to get a reaction from a significant and vocal segment of the bar is to question anything about the contingent fee system. Over the years I have developed ever deeper misgivings about it, but I suppose that, on balance, it's arguably more socially utile than hurtful – though I wish some of its defendants would devote more emphasis (though certainly no more volume) to reminding me why.

Given the desirability (however marginal or debatable) of the practice, however, I believe it faces dire threats from a particular quarter: contingent fee lawyers, themselves. The performance of the American bar at Bhopal is merely the most vivid recent example. I thought the Times cornered the Juxtaposition of the Year award for its headline: "Lawyers, Mother Teresa Converge on Stricken City". Conrad's cartoon in the same publication, December 17, showing cigar smoking, bejeweled American lawyers dancing on the corpse of an Indian child, made me ache for the vast majority of our profession who share my horror, but there was no way in good conscience to call the commentary unjustified. Especially not when, later in the same day, I listened to Belli expound to Michael Jackson (the toadying talker, not the performer) on how many different class actions, mass disasters and air crash cases he is currently processing.

The scavengers – and the more prominent the more dangerous – are the worst enemies of a system of effective loss distribution. The public perceives them as representative of all plaintiffs' lawyers, and is disgusted and infuriated – and growingly tempted to stamp out what is understandably viewed as legalized grave robbing. I strongly anticipate a reaction which will be unreasoning but not without reason.

The plaintiffs' bar – ATL, CTLA, LATLA, and the rest of that alphabet stew – has recently enjoyed great cachet with various legislative bodies and highly placed jurists. If those organizations seriously believe what they broadcast, one would expect them to lead effective action to curb excesses and unprofessionalism. Not out of altruism or statesmanship

(though I certainly don't want to denigrate either motivation), but out of self-interest. I don't expect that to occur.

### Man Bites Dog

Anent the last item, this paper's headline writer showed a keen sense of (1) newsworthiness and (2) the legal scene when, a couple days ago, he or she capsulized a hot news item thus: "Vets May Receive Bulk of Settlement of Agent Orange". In case you haven't been following the controversy, that refers to a class action brought by Vietnam veterans for injuries they sustained from exposure to that chemical during that war.

It is unarguable that the fact victims may get most of a settlement defendants are paying is an eye-opening change worthy of headline proclamation, class actions being what they are. Of course, quibblers may wonder whether clients should normally fare less well than their lawyers in class litigation, but such malcontents are always with us and should be totally ignored.

### Inside Story

Last time I mused about the unexpectedly salubrious nature of the current governor's judicial appointments, acknowledging some bafflement over whys and wherefores. Not for the first time in my life, I should have waited; a few days later, in this very newspaper, one Marvin Baxter, appointer general to the regime, explained the process.

Turns out he and the governor meet monthly to pick judicial prospects for evaluation, plus meeting for an hour every Monday to consider possible appointees – which they apparently contradistinguish from the monthly process. Before these conferences, "lengthy questionnaires" from the scads of office seekers are pumped through a computer. (You didn't think any public business could be conducted in the 1980s ex computer, did you?) With a summary of the printouts in hand, "Deukmejian and Baxter screen it and reduce the number of candidates for each position from three to five" (sic). So that's the source of our good luck!

### Magisterial Methodology

Fans of lucid writing, clear thinking and judicious self-restraint may be grateful for an extract from page 9 of the program of the 1984 Annual Meeting of the California Judges' Association, under the heading of "Annual Business Meeting". After advising one and every that the purpose of the business meeting is to consider business, the following sentence(?) is vouchsafed:

"Provided, however, that except as to matters submitted by the Executive Board, courtesy resolutions of thanks and appreciation and incidental motions and resolutions having to do with business otherwise properly before the Association or with conducting the annual meeting, no committee report recommending, or matter involving amendment of the California Constitution, changes in substantive or procedural law, questions of policy respecting the administration or justice, or amendment of the California Code of Judicial Conduct shall be acted upon other than by reference to the Executive Board unless a proposed resolution embodying the same has been filed with the Executive Board through the President at least sixty days before the date of the annual meeting." Wow!

Perhaps some will like to know their Honors state that the only procedure for "amendment of the California Constitution" is by reference to the Executive Board. (By the by, can anyone define a "substantive or procedural law question of policy"?) In the same vein, I'm impressed that judges enjoy one more option than most of us do when they vote on something. Yea, nay, or refer to the Executive Board.

### Equality in Action

The prestigious American Judicature Society is currently touting two new directories allegedly prepared "in response to a long felt public need". They are: "The National Roster of Black Judicial Officers" and "The National Roster of Women Judges".

As has happened before, I wonder if it is in the interest of equality of opportunity and treatment to emblazon apartheid. I wonder, too, if the organization would similarly spend funds on, and give free advertising to, a "Roster of Anglo-Saxon Male Judges"? That, of course, is just another example of my unenlightened misapprehension that things deemed "equal" should be treated in the same way, a misconception I share with a couple of brothers named Webster.

### Hillcrest Noblesse

Closer to home, I took great inspiration from the profile in this very newspaper of one of our Los Angeles judges, who announced he had read the Code of Hammurabi as a lad of ten. If he was going to tell us that, seems to me he should have disclosed the language in which he read it. Just think, somewhere in this great land, there may be a ten-year-old kid reading the full text of Coke on Littleton in hopes of being a great judge in 2033. Keep it in mind when you read the Daily Journal thenabouts.

The same guy announced he got appointed by hanging around the Hillcrest Country Club (I suspect there's more truth than poetry there), which he describes as "a famous club; all the outstanding people in the community belong". However, before you start thinking about people who recommend cake, bear in mind that he also used to represent caddies as "a question of noblesse oblige". He also announced that running for re-election was no trick because people at Hillcrest are "enormously wealthy" and force campaign money on him. He didn't think much of Jerry Brown, though. Wonder why?

### Catch 22 Redux

My friend Charlie would lead a lot happier life if he could resist occasional forays into my appellate bailiwick. Better the devil you don't know, and all that.

He recently got into an appeal because a friend couldn't figure out why he'd lost and wanted a new perspective. Nothing newsworthy there, but what set him off was a nice Catch 22 promulgated by the LA Super Court and its Clerk.

Seems that one crucial issue involved testimony produced in the form of a videotape deposition. Since the reporter's transcript showed it had been edited before the jury saw it, Charlie wanted to see it, too, being one of those funny lawyers who believe knowing what the evidence was to be their responsibility. Easier said than done, it turns out.

The tape was, an exhibit, so he tried viewing it with a videotape machine. No dice; the county won't let you plug one in to their electricity. (Good thinking, County! With what you save on a couple thousand evidence viewings, you can cover the cost of one employee's coffee breaks for a day.) Next notion: Try a portable machine. No cigar. The deposition was produced on tape which doesn't work in any portables.

Charlie, however, is short on daunt, so he sent in an application to the trial judge to release the exhibit for a couple of hours to be taken to be duplicated by a well established organization. Charlie's such an optimist; back came a minute order, saying Charlie couldn't look at it unless the other side stipulates.

Seriously, folks, there is law in this state to the effect that "it is the duty of the superior court to make such orders as will aid the perfection of the record – not orders which will deny the right to have a record on appeal". You could look it up, in Sullivan v. Superior Court (1954) 128 Cal.App.2d 476, 479. And if you believe many courts pay any attention thereto, you're naiver than Charlie.

Most trial judges – for reasons that elude me – believe they have a vested, proprietary interest in every decision they make or (still more bafflingly) their juries make. They guard judgments entered in their courtroom like so many ocelots protecting their kittens. There must be some rule we don't know about by which every superior court judge forfeits a fixed percentage of salary for every reversal. Only explanation I can think of.

Oh, by the way, want to know what happened? Charlie had to rent a portable generator, and practically get the Edison Company to string a half-mile of line, to get a print of a twenty minute part of a trial. Wonder why people get mad at the courts? Wonder if Charlie's going to do a hell of a lot of campaigning to retain the judges in the next election?

This episode isn't funny. It has two points, and just to make sure, I'm going to spell them out. First, there seems to be some judicio-clerkal forgetfulness about what and who the courts are there for. And, second, this kind of thing is a classically vivid example of how many wounds our judicial system inflicts on itself.

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