

AUGUST 1985  
LASCHER AT LARGE  
By Edward L. Lascher

Notes upon returning from the reunion of the Maine Township (Illinois) High School Class of '45. Most thought provoking. Not just that there were a lot of Old People in attendance, although I did find it remarkable how many years some class mates had apparently put in. It was bittersweet, more troubling in many ways than I expected, but more worthwhile, too.

One very certain discovery is that there's a watershed difference between having a midwestern background and being a mid westerner. The 31 years I've lived here are significantly more than the aggregate I spent everywhere else, and the fact was evident. We Californians are different, and I was proud of the fact. Not that I didn't treasure the friendships and comradeship – how could one not do so, given a class that assembled three months before Pearl Harbor and scattered during that strange interlude between VE and VJ Days? – but, whatever the origins, I realize I'm a Californian and have been for a long time.

There was another reminder. We had to take shop in our freshman year, and after a week or so the teacher decided three of us were so awkward, uncoordinated and mistheaded that we created a clear, present and unreasonable danger to ourselves and the persons and property of others. He assigned us to the tool room for the duration, where we happily bull sessioned except when we had to reach a consensus on whether some device was a long-nosed plier or a claw hammer. Norm Olson, one of the three, was there; he practices law in Northbrook, Illinois. So was George McLaughlin, a corporate lawyer in Connecticut. And your humble correspondent. There's a moral, or something, to that story.

#### ULTRA SOME VIRES?

As nobody knows, and fewer care (yes, I know, I just said fewer than none; that's what I meant), I spent the second half of the 70s much involved with the organized legal profession of California. In the process, I encountered and even got to know a lot of very able, likeable and impressive men and women. To stand out in that group was no mean feat, but I can think of at least two who were primi inter pares, to coin a Latin phrase: Tony Murray and Bob Raven. Why, then, does some perverse stage manager push them simultaneously into positions I deem needful of some critical note?

Let's take Bob first. It was reported in this paper (July 11) that he's mounting an all out campaign to become the next president-elect of the ABA. (To replace, by the bye, somebody whose name, William Falsgraf, made him a shoo-in, if not a shove-on.) So far so good, wonderful even; assuming arguendo that the world needs an ABA president, I can't think of anyone better to serve as such.

Nor was I distressed to learn Bob was running a high profile, high cost, champagne and caviar campaign. If an office is worth seeking (see above), it's worth doing whatever is legal and ethical to gain it, and it would appear that goat cheese, Blue Points and Schramsberg are the paving stones of the ABA interstate. So what's the problem?

Well, it happens that a substantial chunk of the wining and dining was sponsored, and apparently financed, by our own State Bar. The Journal reported estimates running into five figures, but neither Bob nor the State Bar leadership would confirm or deny. (Please see BAJI 2.26 regarding admissions implied from silence or evasion).

Now, I don't happen to be of the hair shirt persuasion when it comes to State Bar expenditures. I thought one of the silliest things to come along recently was a brouhaha over the Board of Governors staying at the Cliff when they meet in S.F. Those sessions are grueling and costly enough to Board members that I think it is fool's economy to deny them good rest or comfort. (Ostentation, and the enforced conviviality that used to characterize the Board were other things, to be sure, but pretty much part of the past.) I think it is money well spent when we give our leadership, both volunteer and full time, the necessary equipment to do a decent job, and that includes some of the subtle forms of equipage.

But, hard as it is for anything the State Bar does to shock me, using dough raised by compulsory dues to finance the partisan aspirations of an individual lawyer does the trick. (What the heck, the mayor of Ventura is a lawyer. Why doesn't the Bar pony up a fund to reelect him? Or oust him, as the case may be?)

You members of the Board may not realize it, but those are trust funds. You have a lot of discretion over them and (as I suggest above) are entitled to the benefit of some doubt. But, like hard core pornography, there are expenditures which are so far beyond the pale that any person exercising reasonable judgment would recognize them as such. The offense is

just that much compounded by the zestful stonewalling indulged when this scam came to light.

As in the case of Shoeless Joe Jackson and the Black Sox, maybe there's an explanation. Maybe it ain't so. I'd sure like to hear, as, I suspect, would a lot of others – before their next dues bill comes. I suspect further that there will be those in the California Legislature who have just been handed block-buster ammunition for their next demagogic game of twisting the Bar's tail. Does anybody think about things like that?

#### INSTEAD OF TALK

The concept of the impact of actions on the public brings me to my other admiree, Tony Murray, who, as you know, has been spokesperson general for the Chief Justice since relinquishing the State Bar presidency. (Who did the appointing has never been entirely clear.) Whenever some new weirdo blast is unleashed at the Supremes – which means abundantly often – the press picks up the phone and calls Tony. Who always takes the call. And delivers the same blast at anyone who questions judicial independence.

Substantively, I think this jerk at the patella can be overdone. (The federal judiciary is wonderfully independent; it is not necessarily the perfect embodiment, though.) If, by "independence," one means freedom from partisan politics and the clamor of the moment, that's fine. Unfortunately, however, there are those who translate "independence" as immunity to criticism and impriviosness to restraint by legal principle, as distinct from personal philosophy. Try to find that distinction drawn, however, in the current mud wrestling.

Okay, Lascher, you claim to want the court preserved against Know-Nothing assaults, and you don't like the way that's being done presently, but do you have any suggestions? Thought you'd never ask.

First of all, the bench ought to go on the offensive a little. So the Rednecks are complaining about the time it takes to get cases decided and all that, dreaming up Rube Goldberg devices to transform the Supreme Court, not into a court of criminal appeals, but of murder appeals, only. Then get some word out as to what being a Supreme Court justice entails today.

The court goes out and hires senior law students and lawyers still blotting their diplomas to help get the work done, so why not look in a few other places for help? Invite the ranking lawyer members of the judiciary and criminal law committees to sit in for a couple of weeks as externs to help process the 20-odd petitions for review each justice must analyze and summarized between every Thursday morning and the next Tuesday. Get a few topnotch writers, too; Fred Graham, Anthony Lewis, Jonathan Kirsch. Let the voters know what a person-killing job it is. It might not change their minds on the attacks, but at least they'd be working with more of the picture.

Speaking of the whole picture, the court's weekly report should include the bottom of the iceberg: a report on the 8. cases the court declines to review. "During the week of such- and-such, the Court declined to review 26 Court of Appeal affirmances of homicide convictions, 41 rape convictions, 63 burglary sentences, etc." That's not hype; it's reality. A few lawyers know it, but the rest of the world should.

I can also tell the court how to find a bunch of extra judge-days per year to cut into that embarrassing backlog and the vulnerability-producing delay in decision. Each week let one or two (not more) justices appoint a surrogate to participate in the To Hear or Not To Hear process, then a different one or two the next week, and so on. Note that I propose that the justice who will be sitting it out does the choosing; that's at the heart of the matter. Surely every member of the court can identify at least one or two CA justices who are philosophical soulmates to whom the task can be passed once in a while without fiddling the results perceptibly. Meanwhile, each member gets every fourth Wednesday off to write opinions, to say nothing of 9. the hours he or she would spend leading up to each conference. Maybe it isn't perfect. Maybe it's worth a try. Maybe something else along this line would be better. But there is no maybe about the fact that something of the sort should be tried.

How about opinion writing? The court already is enormously dependent on a lot of people who never were elected or appointed. Phrased bluntly, and like it or not, it couldn't operate without its permanent clerks, elbow clerks and externs. But why restrict it to those sources of help?. Why not get some "clerking" from the faculties of the congregation of outstanding law schools located nearby? It may be that some law professors may even know more law than do the kids they're teaching.

I've got a lot of other ideas like this, but the point is the court should be trying some new and very visible steps, both to tell the public what it's doing and to go about doing it faster. It's got an awesome product to sell and it should do so. 10.

#### PARADIGMATIC PRECISION

One of the national legal papers went through its annual routine of realizing that there still are members of the legal profession who practice in aggregations of less than 100. They profiled three small firms around the country, one in a "medium sized city", to wit: Oxnard. That's not the joke, however. What entertained me most was the fact that our neighboring city was described as having a lawyer populace of "approximately 146 lawyers". How approximate can you get?

Actually, the secret is out: The lawyer population of romantic, bewitching Oxnard does have to be approximated, because it varies. Some days there are 145.63 lawyers practicing there and once in a while it goes clear up to 147.21. Something in the water, I suppose. Speaking of which, there is a man-made lagoon (if that's quite the right word) in Oxnard called Mandalay Bay, whose population is comprised 83% of Los Angeles lawyers with second homes there. I don't understand the mutual attraction and, to be fair about it, I don't think I want to.

Edward L. Lascher ® 1985