LASCHER AT LARGE
By Edward L. Lascher
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My compliments to the Supreme Court on its new proposed rules for reviewing State Bar proceedings. The gist is that they will review decisions after the appellate panel of the State Bar Court has acted in a disciplinary matter, just as they apply discretionary review to every other panel's decisions, except only death penalty cases.

There is a loss in the new proposal, but it is only a sentimental one. It was kinda nice to think of the legal profession as being so much an "arm" of the Supreme Court that the high court would hear every lawyer's disciplinary matter. However, horse sense seems about to prevail over sentiment.

There is no principled reason of which I can think why our profession should be entitled to such special treatment, and the energies consumed on self-made-mandatory handling of State Bar matters, while not a major loss, is philosophically unjustifiable when the court’s and its staff’s time and effort are so sorely beset. After all, a doctor who loses his license or a guy who goes off to Folsom for life without possibility of parole wasn’t entitled to automatic review, so there has been something of an imbalance. The new procedures seem calculated to right that imbalance and, with a gulp, I favor their adoption.

Next Step?

Look, the Supreme Court is still in trouble. The death penalty cases aren't decreasing in number. But the storm of public tooth-grinding which engulfed the legal press a few months back has totally ebbed and everybody’s making believe the problem has gone away. Anything but.

It seems to me time we didn't just talk about it, but did something. The only sane "something" is Gerry Uelmen's proposal to have death appeals go first to the Courts of Appeal and then be reviewed by the Supreme Court on a somewhat more penetrating basis than is followed in weighing need for discretionary review of other kinds of appeals.

I realize the Courts of Appeal aren't exactly hunting for things to grasp their attention. But it only stands to reason that 70-some judges would feel less shock of doing the initial work on death penalty cases than seven feel. Busy as they may be, the justices of the Court of Appeal represent a pool of trained and able appellate jurists, so who could better

contribute? I think it would make life more difficult for the CAs, but not as much as it would make life more tolerable for our highest court – and therefore life for all of us who depend on the Supremes for a definitive and well-considered last word on disputatious areas of litigation.

Nobody has come up with a really good reason why that plan is bad. It simply isn't enough to say it's bad because it isn't the way we do things now. We can look and see whether the present practice is benign or otherwise. If we have to have a death penalty – and we're constantly told we do have to – then we have to find a way to cope with it. It's time to do so, not just as abstract theory, but as meaningful action.

Misguided Lines

The federal sentencing guidelines have been getting a bad name and bad press lately, what with Judge Irving's resignation in protest and a number of blasts at the system on the part of still-sitting judges. Both bad reputation and bad name are abundantly deserved: the guideline system is an unprincipled anomaly, and an ugly one at that.

Any practice by which the sentencing of a convicted miscreant is determined by counting beans and the presiding judge's role reduced to that of doing the counting is offensive on principle. We need to have equitable and unarbitrary punishments meted out, true, but we also need the operation of judicial discretion. If we are to cut the latter out, we might as well hire accountants from H & R Block to process criminal litigation in the federal courts and let the judges concentrate on civil cases only, where they do play a dynamic part in reaching a just result.

The extent to which the judges have been willing to go out on limbs in opposition to the guideline system is one of the pleasantest surprises to come along the pike in a long time, and my admiration goes out to each one. I have not completely given up on the possibility that sense will return to the state and national judicial system and I hope that this kind of crying in the wilderness may soon be heard.

The legal profession's utter silence on the subject has been all too unsurprising, worse luck. How about it, gang?

How They Do It

Department of We Don't Have It So Bad. No. 1 Son, new to the Kennedy School faculty, sends along a special project by the Boston Sunday Globe considering the half-days – and less – put in by a lot of judges in the Boston area. One spends every afternoon playing cards at a country club, another gets home by 1:15, a third spends 20 minutes on

the bench, and lots are out of the courthouse before mid-afternoon. They are named and some photographed, so you can bet the data to be well founded. More confirmation comes from the fact that, a few weeks later, the presiding justice of the state's legal system exercised a power he has to dock some of them of their otherwise available vacation time. I should think so.

This is a marked contrast to the often man- and woman-killing hours that Southern California's judges put in. Especially those in the fast track program, the debilitating effect of which on pressure-plagued lives constitutes a big explanations for a lot of the erratic and often draconian behavior fast track judges display. On the whole, I think judges should work a full day for a full day's pay, but, conversely, I think overworking a judge is counterproductive of the welfare of all of us. And I am afraid we are beginning to indulge in far too many practices which produce that particular kind of mischief.

Losing Propositions

It doesn't really matter, from my standpoint, how the individual ballot propositions came out yesterday (this was written almost a week before election day), but the cafeteria of direct democracy served up this year was an eloquent reminder of just how great a practical joke it was that Hiram Johnson foisted on California in the guise of the initiative, referendum (Howcum there's never been one of those?), and recall.

I have been a lawyer for 37 years – a calling not exactly a stranger to the project of deciphering the indecipherable – but I could hardly penetrate some of the things on this year's ballot. I got all the way to the first one, dealing with something hospitals should or should not be able to do, before I completely struck out on where I stood. Mostly because I didn't stand anywhere and couldn't figure out how to get to a standing position. Some of the other initiatives were just that little bit harder to decide, notably ones which cancel others out if both pass. Maybe. If I understand.

Lawmaking is not exactly the easiest of human undertakings, at least not good lawmaking. It takes an ability to see beyond the immediate scene, to contemplate consequences both desired and undesired, to evaluate, balance and reconcile competing considerations; it even requires some high degree of technical language skills in drafting. Without those skills, lawmaking is quite tantamount to solving a jigsaw puzzle by putting each piece on the table without a glimpse of the others. Doesn't work so hot.

The mass of the electorate (certainly including your humble correspondent) has neither the time nor the talents for carrying out such a task. So it turns its judgment over to the well-financed special interests, and to those "political consultants" whose skills at manipulating the advertising process have given us so many monuments to the importance of contemporary opinion making.

The legislature is, to be sure, a flawed vessel. I know I have never lived through an era in which the populace has become as aggrieved at its selected representatives and I doubt that I have lived through a time when that feeling was more well deserved. But as an institution, worldwide, it appears that legislatures are the best means of law creation which man has been able to evolve. The legislatures (both state and national) should be feeling the effects of public discontent, not, as in California, by being gradually reduced to impotence by the signature gatherers' wiles.

Is it too impermissibly old-fashioned of me to suggest that what we need from the citizenry is a better job of voting for representatives, rather than a takeover of the representative functions?

Pleasant Interlude

Last month I had the pleasure of addressing a meeting of the South Bay Bar Association. I have always thought that if it were necessary to live and work in Los Angeles County, that would be an area deserving close attention. Everything I encountered made me think I was right, not only in terms of residence, but also in those of working among such a thoughtful, conscientious, relaxed and professional segment of the bar.

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