

LASCHER AT LARGE  
By Edward L. Lascher  
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The election of bar officers does not strike me as the most profitable, or most enjoyable, of all human activities or even lawyers' undertakings. However, the current contest over who shall head the estimable Los Angeles County Bar Association is something of an exception.

In the first place, there is an issue, firmly drawn and clearly established as the stake of the campaign. Moreover, there is a lot to be said, both for the establishmentarian view that the debate nationally over the pros and cons of abortion on demand involves matters which are within the special expertise of the organized bar, and for the insurgents' thesis that, substantive merits aside, the controversy lies beyond the purview of a lawyers' professional organization. Rarely have I seen an issue so well defined and presenting so much reason to support both sides.

Even more attention-arresting is the matter of the personalities involved. Andrea Ordin is one of the brightest, most principled and gracious lawyers I have encountered in 37 years at the bar, and her service as president of LACBA would be an ornament to all of us who are members of that club. Problem is, all the same could be said about the insurgents' standard bearer, Thomas Workman. In nine-tenths of the elections on which I am called on to make a choice, I would choose either one of these for whatever the office. I am used to puzzling over which candidate is likely to do less harm, and the effort of trying to choose which of two spectacularly qualified candidates I should pick is one concerning which my talents have long since rusted. What wouldn't I give to face such a quandary in any local, state or national election!

#### Reformation or Deformation?

Let's think about the Judicial Nominees Evaluation Commission. It's currently under fire, or at least the object of drastic reconstruction proposals originating in the state Senate. How should we react? Before I give my view, truth in opinionating dictates that I disclose my own involvement in the evaluation process.

On one hand, I probably have a record of more participation in the process of screening candidates for judicial office than anybody else around. My three years on the State Bar's Board of Governors were the last during which the Board itself performed the evaluation function. That was an arrangement which worked well, but it soon became apparent

that the process was impossibly time-consuming, either cutting into the Board's ability to perform its roles as secretariat of a state bar whose numbers were running into the six digits, or else short changing the evaluation job itself.

Neither of these being acceptable alternatives, the Board decided to spin the function off to a Commission. I chaired the Board committee which implemented that decision by creating the Commission, and then chaired the Commission itself for the first year and a half of its existence. I therefore have a certain amount of parental orientation toward the body.

But not entirely. At one juncture, sometime after the involvement just described, I got bitten by that highly contagious bug and toyed with the idea of judicial service, myself. Rumors had it that the Commission (almost entirely reconstituted in membership) gave me some kicking around in the process and I didn't like that at all, either the fact that it happened, if the rumors were true, or the fact that there were rumors in the first place, that being totally inconsistent with the whole idea of the process, which is to advise the Governor confidentially, not to whisper evaluations.

Let the record show, as we lawyers say, that my displeasure was not over the substantive aspect, if indeed that existed. I had then some reservations about the judicial life for myself, and have even more reservations today, and one thing that always motivated me when I was in the evaluating business was the concept that the public interest required that evaluators never take a chance, that ties always went against the runner.

All of this is merely introductory, to establish not that I have biases, but rather that my biases sort of cancel each other out. Nonetheless, I'd like it to be known that I believe the proposals of change in the Commission's functioning currently circulating are mostly unwise, a few downright destructive, and almost all unnecessary.

The first and worst proposed alterations involve the confidentiality of the Commission's functioning, in two equally counterproductive ways. First, the State Senate's proposals would end the principle that everything disclosed to the commission must remain undisclosed to outsiders. Instead, the potential judge would be entitled to know who said what about him or her. That would merely make it impossible for any such evaluating body to function at all. I don't know how many lawyers have the courage to go on record about someone who may be ruling on their clients' cases a month or two hence, but their courage doesn't matter. Their obligations to their clients are such that they have no right to jeopardize welfare in that fashion. Thus, removal of confidentiality would amount to total poisoning of the well of information.

Some may wonder if it wouldn't suffice to get information just from other judges. The answer is no, judges know astonishingly little about the characteristics and activities of their colleagues: an evaluation informed only by other judges would only tell you what the candidate's skills and attitudes are in the judges' dining room of the courthouse or the lounge where they play Aggravation. Important though such qualities are, they don't quite meet the need. It was hard enough to get full disclosure with this confidentiality; without it, the Commission might as well disband.

The second area of confidentiality involves disclosure by the Commission. But for leaks (actual or reported, see above), there is currently only one circumstance in which the Commission may disclose its ultimate evaluation: If it rates a candidate not qualified and the Governor seeks to appoint the candidate nonetheless. The proposals floating now would eliminate that exception; in other words, the Commission could evaluate until it's blue in the face and the Governor could do whatever he or she pleased notwithstanding. I think the final choice has to lie in the Governor, who should have the power to override the Commission's advice, to be sure. But if the Governor appoints someone rated unqualified and that someone turns out to be bloody well unqualified, the public should know, just as they should know any other time a Governor makes a bad decision, particularly a headstrong one against expert advice. Frankly, I don't think that will happen very often, but without it why bother to have a Commission, since its ultimate product would be completely without sanction?

These are the principal shortcomings of the currently bruited-about changes. There's another one that I don't like: the proposal to have all of the Commissioners apportioned among certain special categories. There would be five nonlawyers, three deputy district attorneys, two law enforcement officers (Cops? How many lawyer peace officers do we have?), one deputy attorney general, three deputy public defenders, one lawyer in private criminal defense practice, one retired judge, five private civil practitioners and a partridge in a pear tree.

It is true that the Commission's roster should reflect many different talents and sources of experience, but it is extravagantly untrue that this could effectively be achieved by quite such ham-handed categorizations. Pigeonholes which are somewhat lacking in value. For example, why aren't civil practitioners divided into plaintiffs' advocates, defense counsel, family law lawyers, eminent domainers and (dare I say it?) appellate advocates – all that only beginning to scratch the surface. And does anybody notice that the one most invaluable qualification – geography – is totally ignored in that formulation? I have this picture of a deputy DA from Los Angeles, a retired San Francisco judge, and a San Diego bond lawyer trying to get an opinion from the Humboldt County Bar on the qualifica-

tions of one of their number to go on the muni court.

If they have to have categories, which I doubt, they should reflect the existence or nonexistence of experience with the court involved; I used to get awfully frustrated at some of the discussions of the qualities desirable in a state appellate justice carried on by people who didn't know the name of the appellate court in this state. But I think these concerns should be addressed to the Board of Governors, not to legislative pigeon-holing.

The work of the Commission is frustrating, demanding, overwhelming in its volume, and certainly unsung. It has made mistakes, sure, but it has prevented many more mistakes. It would be a harm to the public to see its work undercut and essentially invalidated by Rube Goldberg legislative constructs. Like all human endeavors, especially those in the legal realm, the Commission has proved imperfect, clearly so, but also proved itself better than nothing. And what is proposed would reduce it to nothingness. An idea whose time has not come.

### Second Thoughts

There has been some fairly widespread unhappiness with the current Governor's preoccupation with former deputy district attorneys and deputy attorneys general. Never having been one of either category, I understand the objectors' thesis, but only up to a point. There is the inescapable fact that our judicial system is being converted significantly into the Courts of Criminal Cases and, given that sad reality, there is something to be said for heavy emphasis on expertise in that direction. Moreover, I find it impossible to regard such publicly employed lawyers as any less endowed with legal skills and integrity than any other type of colleague.

We saw that demonstrated quite recently when District Attorney Reiner decided he'd like to have a little off-the-cuff discussion of the Buckey case with the judge presiding over the retrial. No doubt it crossed some minds that the judge involved happened to be a former DA. Indeed. And indeed, the judge had the fortitude and moxie to turn his back on the entire misadventure with a public statement to the effect that he couldn't imagine what made Reiner think he could do any such thing. The judge handled it precisely right, neither going along with the gag nor making a big show about refusing to do so. It was a refreshing episode.

### Joe's Dilemma

You just never know about columns. Last month I recalled, in somewhat privacy-guarding detail, an episode of my friend Joe, who had

missed a filing date and gutted it out by carrying on an appeal anyway. (Friend Charlie, of whom I write from time to time, has problems, too, but of a much different sort than those which afflicted Joe so strongly that he and I both recall the episode vividly despite the passage of almost two decades.) This one generated, not a large volume of correspondence, but some of the most exhaustively developed and thought-out responses I ever get. I couldn't choose sides between them, in part because whatever I read seemed pretty persuasive and in part because I remember the actuality.

But the volume and lawyerlike nature of the responses – which, after all, were just addressing some rumination by a columnist – seems to be vivid evidence of the sensitivity and extent of thought which lawyers put into ethical questions. It is good food for the professional fondness I feel for the bar.

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