LASCHER AT LARGE
By Edward L. Lascher
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This stanza may become a collector's item, emphasizing as it does things I've liked. (Not necessarily quite all, of course, but mostly.)

One Burger, Well

The first place I find hope and happiness is the unlikeliest: the supremest of the Supremes. And by its unlikeliest increment, at that: the Chief of all Justice. I refer, of course, to the announcement late last month of the near unanimous decision of In re Snyder, which involved the apotheosis of federal judgedom.

In case you missed it, Mr. Snyder was a lawyer in a small North Dakota firm who frequently accepted appointments to represent indigents, among other places in the federal trial courts. (In point of fact, that's putting it mildly; he and his two partners handled 15% of the indigent defense in half of the state, disclosing an uncommon gluttony for punishment.) The chief judge of the circuit, one Donald P. Lay – who oversees trial court payments – decided to haze Snyder over an $1800 fee, sending the bill back repeatedly for "further documentation". The record does not reveal whether or not Snyder was told the check was in the mail, but his Circuitship arbitrarily cut the fee almost in half and still refused to pay it.

Apparently all saints have their limits, and Snyder reached his, taking the absolute and unsettling step of calling the secretary of the district judge (who, after all, was the appointing power), receiving the suggestion: "Why don't you write us a nasty letter?" He obliged, writing said district judge in terms nobody has had the chutzpah to describe as offensive, but saying that the federal courts in the area were being miserly and thus imposing on the rights of both lawyers and their clients. The trial judge, no minor hero himself, was apparently irked at the circuit on his own hook, and sent along the letter to Lord Lay as an example of legitimate grievance. That worthy was equal to the task: He forthwith convened a panel of cronies and figuratively nailed Snyder's arm to the courthouse door.

The lawyer was suspended from practice before the Eighth Circuit (a punishment many would deem the equivalent of expulsion from the Columbia Record Club), producing an enormous outcry by lawyers in the Dakotas and even beyond. (Heroes are plentiful in this saga; I wonder if the California Bar would rise as one person to quite this extent?)

The Supremes took it over and, by an 8-0 vote – if in somewhat insipid fashion – reversed. Warren Burger, of all people, did feel constrained to note that "members of the bar may appropriately express criticism" of injustice and maladministration, even of a federal court. (If you're curious why eight votes, so am I. Justice Blackmun, who is my vice hero on the court, sat it out apparently because he had once been a member of the Eighth. (I find that odd enough to inspire a bit of digression; but not right now.)

Patiently, we have been percipient witnesses to a jurisprudential watershed. Heretofore, it had been universally understood that the fundamental precept of the federal bench was that first articulated by Sir William Gilbert in the landmark Iolanthe case:

> “The Law is the true embodiment
> Of everything that's excellent.
> It has no kind of fault or flaw,
> And I, my Lords, embody the Law."

The State Bar

Another unlikely source of an item for a column about Good Things is our beloved State Bar. Whatever its customary batting average lately, the club has done a couple of good things, a fact which is to be remarked and memorialized.

First, they picked a good person, David Heilbron, as el nuevo Jefe. Not only that, but – nonembarrassment of riches – plucked him out of a whole bunch of good prospects. I'm uneasy about the extent to which San Francisco has dominated State Bar leadership over the last decade or so – not on geographic but attitudinal grounds – but I expect significant accomplishment from David, despite his locus.

It was particularly refreshing to note the emphasis he places on cleaning up the disciplinary fiasco. Of course, one notes that getting excited over discipline has suddenly become chic among our peerage, whereas it has been a concern of the average lawyer far longer. But I digress, given the extent to which the bar's leadership is concerned over the concerns of the members of their concern.

Be that as it may, an onset of reformist zeal over the amount of egg on the California legal profession's collective face regarding lawyer discipline is far better late than never – the latter being an estimate of its time of arrival until now. (Please see infra on the subject of corrected mistakes.) I will be happiest of all if our new leader delivers on this campaign promise, something he can do only with the help of 21

other governors and thousands of lawyers. My hope is springing.

Lame Duckery

A second surprise comes from seeing the bar push legislation to select the president from among board members who are finishing their terms, rather than those only in their second year. Since the chief industry of the Board of Governors is electing a president, the present system embraces all available evils. Governors are no sooner sworn in but what they are in the throes of political infighting, while, at the other end of their terms, passed-over governors – and they outnumber elected ones by at least four to one – could scarcely care less and rarely do anything. Lame ducks are not widely deemed productive. With the new system, we'd get a full three years out of each one we elected and they'd be in there pitching until practically the moment of departure, in order to demonstrate their nonpareil and voteworthy abilities, plus 50% more time to size up the prospects.

Under the new system, if the Legislature passes it, the persons who get the nod would serve an extra year, but that serves 'em right. That's what you get for the privilege of eating the elected parts of 40,000 banquet chickens and shaking ten times that many hands. The game, which would not seem to be, must be worth the candle, given the number of entrants.

Troubled Focus

Unaccountably, I was invited recently to speak at a retreat the State Bar officialdom held for the announced (and apparently genuine) purpose of examining its own shortcomings, a topic on which several of us were only too happy to expound. The motivations of such an event are, to be sure, praiseworthy, notwithstanding the bleakness of prospects for tangible result.

I don't know if the honchos came away changed (but see glimmering below), but I got to witness a very impressive performance by Robert Maynard, the editor/publisher of the Oakland Tribune. Mr. Maynard is a nonlawyer, which is a lucky thing for you and me; he made one of the most passionate and still intellectually persuasive speeches I have ever heard.

His thesis was that the legal profession ought to confront the destructive effects of massive litigation, even when the victim prevails; using the Sharon and Westmoreland cases, he pointed out the absolutely staggering expenses of the discovery, other preparation and trial, noting that these would be crippling to a defendant of lesser resources than CBS or the Washington Post Corporation. A vividly presented exception was

that of the Alton (Ill.) Telegraph which was wiped out by a libel judgment over a statement only debatably untrue or defamatory. The obvious impact on ability to continue in business under those circumstances hardly needs elaboration.

Mr. Maynard's proposal was simple and sounded effective: shifting the real cost of litigation (attorneys' fees, actual expenditures, etc.) to the losing party – in cases involving news media. Oops. Up to there, I was cheering him on, but why the tunnel vision? Does anyone seriously believe that cost of litigation, in this era of the capital-letter Litigator, is any greater on someone or some organization in the news distributing business than it is in other walks of life? Maynard was right; we have created a litigational monster. What we need to do is confront it, not just restrict its diet. More to come on this another day.

Praise Due

Some months back, I wrote a piece critical of the State Bar's performance on legislation and got an answer back from my very own representative, Terry Anderlini, of mysterious, inscrutable San Mateo. Terry took a lot of issue and, I thought, got a little shirty bout it. This was shortly before the just-mentioned retreat. A few days after it, a second letter, explaining that Terry was very impressed by what he'd heard, had been thinking it over, and wanted me to forget everything he'd written before (not substantively, but the how-dare-you part).

All of a sudden, I've got somebody on the Board of Governors I like seeing there. So many of us make so ruddy many mistakes (present company especially included) that there are few things more desperately needed than the ability to see and acknowledge that such has occurred. It has been well said that wisdom so seldom comes at all that we should never complain over the fact it may be a little late.

Potpourri

Fascinating headline in this paper's appellate reports a few months back: "DUPLICITOUS COUNTS RENDER SECOND CONVICTION ERRONEOUS." As well they might. . . . The L.A. Times, whose coverage of the war on the Supreme Court has not always seemed up to its high standards, can come home now; all is forgiven. Its editorial of June 13, responding to the hysteria over the four murder case reversals, was simply the best thing ever to appear in the general press on the subject.
It put the whole process not only in perspective, but in the right channels, and did so without any of the maudlin knee-jerkism which I think diminishes the credibility of most of the Supreme Court's "spokespersons". . . .
Were I given the power, I'd make the use of the word "agenda" as a tran-

sitive verb a felony punishable by a year's banishment to Blythe. . . . Has anyone seen an accounting of how many donations Mr. DeLorean got to help pay off his attorneys? . . . While in an inquiring mood, I wonder what the proponents of the idea think about "meet and confer" rules now? . . . Why don't we follow the lead of Vermont and the British magistrates' courts and have a lot of cases decided by three-member panels, one a judge and two laymen? . . . Sometime back, a Punch columnist published a New Year's list of things that he would never do in the following 12 months. Included were: "Omit to note, in any legal document, that for every semicolon there is a loophole", and another is: "Reject the second rate; second rate is very good, since 90% of everything is rubbish", and a final one (for now) is: "Make an appointment for an event I do not wish to attend because the 15th of September will never come."

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