

LASCHER AT LARGE
By Edward L. Lascher
June 1985

Do any other members of the congregation find themselves bothered, bewildered or bewitched by the fact that, in France, the same word means "lawyer" and "avocado"? Frankly, I always likened us more to brussels sprouts or perhaps rutabagas, but c'est la vie.

Deterrence Demeaned

One advantage of living in far off, exotic Ventura is the local press. Not intrinsically, I hasten to subtract, but by virtue of the coincidental fact that our D.A., Iron Mike Bradbury, doubles in brass as Obersturmbahn-fuhrer of the California Professional Court Putting Down and Prosecuting Society. That, plus the noncoincidence that Mike is, to put it delicately, accessible to the press, and one gets an insight into the condemnatory mind otherwise rarely available.

Some may recall my recent bemusement (without amusement) over Mike's protesting that the courts are okay for slam dunk prosecutions, but get picky when guilt is doubtful. He wrote a long letter to this paper, syndicated elsewhere in California, which said a lot without a word of response to the specific matter just mentioned. Be that as it may, just a week or so ago, he struck again.

It seems that one superior court judge had sentenced two teenagers to state prison, one for about 25 years and the other for some 75. The short-timer (at least relatively speaking) had coolly walked into a store and murdered the proprietress announcing to friends waiting outside that "I just killed the bitch", whereas the one who got a for-practical-purposes life sentence had committed several rapes. The current state of the law – especially the faddism which has made rape the quiche of crime – compelled the judge to impose what he, understandably, deemed disproportionate sentences, which he found upsetting. I hasten to add that his Honor is as exempt from charges of being soft on crime as any you could name, having successfully ousted his predecessor in a "get tough" election campaign.

(Which reminds me, our county has gotten short changed, not just recently, but over the decades I've lived here. We always have a short supply of those "soft on criminals" judges the DAs describe as swarming all over the state. Where's our share? Clients have a fairly pressing need for one of those patsies every now and then, but they're not to be found

west of Agoura. But I digress. Or do I?)

Anyway, the judge sagely expressed the concern that, since the Legislature charges three times as much for a rape as a murder nowadays, some rapists might be tempted to do away with their victims in order to take advantage of the discount. Mike has an answer, as you might expect. He says such reasoning is too "facile" because – now pay attention! – criminals never give a thought to what the punishment may be for their offenses, and therefore severity of crime has nothing to do with deterring it. Honest, you could look it up!

Now, let me see, what is it that the DA's club is always saying about reasons for having the death penalty, longer sentences, no probation, no parole, etc., etc., etc.?

Arkansas Travelers

Once upon a time, I spent a year of my life in the State of Arkansas, by invitation of General Hershey. I dreaded going and hated the place – at first. It turned out, however, to be one of the more charming parts of the country in which I have spent any time, Orville Faubus and stuff of that type to the contrary notwithstanding. But that isn't the item.

Has anybody else noticed the number of Arkansas licenses on our highways? By the Happy Tiger Official Survey (than which there is very little officialer), Arkansas plates seem to be the fourth most common hereabouts – after only Oregon, Nevada and Arizona. Now, the thing is, Arkansas's not only a long way off, but also a fairly small and not notably affluent state, so why so many of them around here this particular year? Is there some tax dodge involved or something of the sort? I'm not hinting anything; I really wonder. Any readers know?

Catch 187

As long as the subject of criminal justice has come up, there's something the public isn't being told – because there aren't many people who want the public to know. Truth may be the first casualty of a war against the judiciary, as it is in other forms of warfare.

It takes real luck to find an issue of the paper in which the Duke, Senator Doolittle, Chief Gates, or someone of that ilk isn't decrying the fact there are 150-odd death penalty cases undecided by the Supreme Court. This, to be sure, is a legitimate ground of complaint; among others, the court itself would be the first to decry the fact – and to embrace any source of relief consistent with law and justice.

There is such an avenue of relief. About a quarter of those cases are controlled by an earlier decision and therefore automatically reversible for what insiders call "Carlos error". There's no reason for the Supremes to spend enormous time on such cases merely for the sake of throwing in some "for the guidance of the court on retrial" stuff.

If that bunch could be summarily got rid of, not only would the court's load be lightened twenty-five percent, but also nobody would be "turned loose on the streets" or any of that demagogic scare stuff. Rather, retrials could be started literally years earlier, when witness recollections would be clearer, evidence not lost, and all the rest of the litany we hear could be eased. Seems like a winner for everybody, doesn't it?

All it takes is for the Attorney General to confess the Carlos error. His office doesn't dispute that they are reversible, and he knows the pluses and minuses far better than I do; he is an accomplished attorney with an excellent staff, and himself a nonpareil public servant. He is also, however, an elected official with understandable interests in his future. An Attorney General whose subordinates confessed error in 40-odd murder cases would, in his next elective outing, make Mondale look like a juggernaut, even if he were running for the Culver City library commission. If John Van de Kamp were to do the right thing, the electorate would inexorably do the wrong thing and he would be through, probably a pariah.

I don't know the answer, and maybe there is none now, but there should be. Maybe, while Messrs. Jarvis, Gann and Briggs are busy re-writing the constitution in every other way, they could think about taking the Attorney General out of the elective process and making him a cabinet officer. Maybe, and maybe not, but with a symptom that bad, there's sure a disease, and we ought to be looking for the cure.

Legal Literature Note

Unless any of my readers are benighted clods – which, by definition, none are – they will of course be well aware of the current issue of the Southern California Law Review, which is devoted entirely to an "Interpretation Symposium". That, to be sure, is interesting enough. But how do we all feel about the fact that, of the 275 symposing pages, 34 are devoted to "Interpreting the Symposium", while the remaining 88% of the review focuses on the subject of hermeneutics?

Since the management is plainly unaware of the lexicographical pinnacles which you and I have attained, they thoughtfully include a footnote the first time they use that word. I will share it; indeed, I transfer, convey, set over and quitclaim it to you.

We are advised that "hermeneutics" is used in "one of the four quite

different senses that characterize the term's current usage." (I hate to say so, but there are actually some households – even law firms – in Southern California in which the term isn't currently used in any sense.) Okay, with that taken care of, we learn: "Sometimes hermeneutics is regarded as the metatheory of understanding or interpretation. Thus, hermeneutics is to interpretation as metaethics is to normative ethics. This is the broadest meaning of hermeneutics, and it is roughly the sense in which I use the term in this article." And that, I wot, is rough in the extreme.

However, we are warned to be cautious of "the impact of Heidegger and Gadamer", not to mention "the heirs of Wilhelm Dilthey", a much needed warning in view of the frequency with which their impact slips my mind. From there on, I must admit the thing gets slightly arcane, but it certainly strikes me as a metaparadigm of the pedagogue that bedevils and bemuses sophisticated legal pectoriloquy. Not to mention its parameters, pals.

Bitterberg

Faithful readers may recall my early spring trip to Europe with the kids. I was granted a one-day pass to explore the Battle of the Bulge sites of Belgium, Holland and Germany, in the process of which I came to one junction with the choice of Malmedy to the right and Bitberg to the left. I'd never heard of Bitberg, so I headed for Malmedy and, at Baugez crossroads, suddenly encountered, in the mist and cold, the monument to the slaughter of surrendered GIs. (It's called the "Malmedy Massacre", but it isn't in Malmedy, and it didn't happen where the monument is, either, but that's The Army Way.) Every bend in the road around there whacks you in the solar plexus if you've studied that time or have any memory of it.

No, I don't care to dilate on my reaction to the events that put Bitberg on the map. Others have done so far beyond my poor powers – and in this instance, I neither speak facetiously nor digress.

There is one fallout of that fiasco, however, upon which I have seen no comment. The media, both in its professional outpourings and letters columns, have unleashed an absolute flood of information about the Bulge, the SS, the last six months of World War II, the Wehrmacht, the U.S. Army, etc. Ninety-nine and forty-four one-hundredths of it utterly, incredibly wrong. Not concept, philosophy, import, image – just fact. If you have any curiosity about the Winter of 1944/45, a good rule of thumb is to mistrust anything which appeared in print after March 31, 1985. With the present exception.

However, and since we're on this militaro-nostalgic kick, I can't re-

sist acquainting my younger readers with one of the unsung phenomena of WW II: the distribution of the armed population. We had some twelve million men and women under arms, divided into literally countless ships, planes, units, bases, etc. Notwithstanding which, every single outfit was perceived as having the same minimum components. As a minimum, one each from: Brooklyn, Texas, an Iowa farm, New England, the Deep South, the Rockies (or Montana) and a town which either mined coal or had a steel mill. (Some of the artier fiction included Californians, but most of the rest of us didn't find them authentic.) All others were spear carriers. Except in the Air Force, where everybody was an officer, these were all enlisted men. Officers came from Wisconsin or Ohio, because people from there have no characteristics, and so are fungible.

This was tough enough on personnel officers, but consider that, given such a geographic array, each component also needed one each: Italian, Pole, Jew and Scandanavian – plus a profusion of Irishmen. Then, to make it worse, there had to be one sissy, one bully, one whose wife was pregnant (preferably by him), one intellectual and one offsetting illiterate, plus one whose father either (1) was killed in the first World War or (2) was a general. A few of these could be combined, but it was tough.

Makes you wonder how we ever won.

© Edward L. Lascher 1985