

NOVEMBER 1985
LASCHER AT LARGE
By Edward L. Lascher

In the past, I have issued stringent warnings about the dangers judges tend to encounter when they expose themselves to polysyllabic words. Such as the judge who, a little while ago, denounced an accused as representing the "penultimate in depravity". That's small potatoes, though, compared to the risks involved in trying to use foreign words; a fortiori problem, one might say.

Exemplia gratia: A judicial profilee in this publication was recently quoted: "He describes his job as 'the coup de grace of community service', and adds that his debt to the community is large." He seems to have opted for a rather unorthodox, and uncomfortable, method of discharging that debt. But, then, I suppose he knows best.

CRISIS AVERTED

Gosh, the way I always go on about judges worries me sometimes. After all, some of my best friends are judges: I have even been known to take one to lunch. I shouldn't just report their foibles, but should herald their triumphs.

For example, that of my much admired friend Bill Burleigh, of Monterey and also of many forthright, provocative and entertaining written observations on the scene.

Seems he recently invalidated the 55 mile speed limit. That's not the news; what is worthy of note was his ratio decidendi (something not often encountered in muni courts). Bill held it unconstitutional, as enacted under duress imposed by the federal government on the state legislature. When you think about it, he's got a point. And, what the heck, if the feds didn't like it, they could always have had Burger and bunch apply a little duress to Salinas.

But, alas, all that glisters and so forth. A panel of the East Carmel Appellate Department reversed him. Some judges just don't have a very high duress threshold. Anyway, better a short-lived triumph than no triumph at all.

THE DURFEE VIEW

There is one thing I encountered in law school which I still ponder. Only one, of course, but after all that was a long time ago. (So long ago, gang, that there were no personal computers, or little yellow tabs you could stick on and off pages, or Xerox machines, or videotape recorders, or Lexis, or lawyer ads, or Master Charge, or competing phone companies, or Federal Express, or . . . well, you get the picture and I digress.) Anyway, there was a guru there, who had just retired but who was still considered the fount of all wisdom. His name was Edgar Durfee and he had all the answers on every subject.

For instance, in some disputed tort area, you'd find that 49 and a half out of every

hundred law professors thought the plaintiff should win every time and 49 and a half thought the defendant should invariably win. Then there was The Durfee View, that the plaintiff should win sometimes and the defendant should win sometimes. In equity, you'd learn that almost half of the published scholarship would favor specifically enforcing a particular type of contract, while an exactly equal number would espouse relegating the offended party to the remedy at law. Durfee: It all depends: sometimes you get specific relief, sometimes not. Supply your own example.

Callow youth that I was, I regarded the veneration this approach won for the old gentleman as somewhat overstated. After all, it seemed little more than non-doctrinaire and somewhat self-doubting common sense.

Things do not appear to me now as they appear to have appeared to me then. I now yield to no man, woman or Canine Corps member in my fervor for The Durfee View. Though not much for crusade, the motto "It all depends" still brings chills to my spine. The downside is that I sometimes worry that I am the only living Durfeeist. Ah, well, better to light one little candle. . .

JETTING WOUNDED

1985, bad scene. I figured once we'd broken through the Orwell Barrier, the path would run downhill, but the eventuality has eventuated about as differently as one could imagine. This is the year when the practice of law blind-sided me. I don't mean disappointments and disillusiones, although they do proliferate. Neither can I complain about economics, for once, though of course I'll be glad to give it a try.

No, my thirty-second year at the Bar has been The Year of the Dread Overload. Never have so many crises asked so much in so few seconds, quite so stridently and unexpectedly. As one who immodestly regards himself the unchallengeable master of the heart rending time-extension application, I find that this year unadorned fact will suffice to send stony hearted judges scurrying after their Kleeneces.

One upshot is yet another travelogue. In deepest legal battle shock, we boarded Air France 004 one dark and stormy Saturday night, bound for five days of R and R in rural France, followed by a like number expended on actual but interesting work in England's Green and Pleasant Land and one in Our Lady of the Snows. We returned at least quasi-human – which constituted a major improvement, according to family, friends and fellow workers.

First thing worth reporting, it seems to me, is the following list of advisories nailed to the inside of a hotel- room door in Bordeaux, illustrating that neither norms of behavior nor skills of translation are necessarily universal, even among nonjudges.

"SAFETY. Smokers will never forget to put out their favorite brand. This advice has already saved lives around the world.

"DOGS. General, as well-behaved as their masters, they are accepted, of course, since they will remain under the table. In your room, they will be accepted to rest in the bathroom, on their own blanket. In case of damage, you never know, any repair would be negotiated between both our Insurance Company and yours.

"IF FIRE BREAKS OUT IN YOUR ROOM AND YOU CANNOT MASTER IT: Leave your room and shut the door. Follow the special signs and warn the reception desk.

"BREAKFAST. We serve continental and comfortable breakfasts. We leave on the tray the news printed every day.

"CALM. You are in charge of the pleasant atmosphere of "LA RESERVE". Thus, all of us tend to dim the loudspeakers of the radio sets, and in general, everybody keeps smilingly quiet."

Crossing to England, we encountered less calm, though plenty of smiling quiet. A thrill was visiting the floor of Lloyd's. They really do keep a book which records all the ships that sink and, incredibly, one or two seem to do so daily. No ringing of the bell, though -- short of news as bad or as good as the Falklands conflict, whichever that was deemed to be.

ANOTHER BLITZ

We also discovered a London which was trying to put itself together after the ABA Convention. The horror tales were rampant and wracking, not the least being the fact that the lawyers didn't spend as much as expected. No surprise to me, considering that most of it wouldn't be on any expense account, even if deductible. Somehow, the figure of speech in spending like a drunken lawyer" never caught on.

It was heartwarming, though, to learn of one solicitor's experience, which he related in awed terms at a dinner party. Seems he attended a banquet calculated to foster hands across the sea understanding at which he was due to be seated next to one of our very own Southern California's most ink attracting advocates. She arrived a half-hour or so late and forthwith disrupted the proceedings by passing out reprints of the ABA Journal article about herself to all and sundry, and then berated our informant for the rest of the evening as an insensitive sexist who couldn't understand women's careers. (He acknowledged the whole thing as high good fun -- especially so since he is married to one of England's most prominent child psychiatrists.)

UNFINISHED SENSITIVITY

Despite the opportunistic zealots who give feminism a bad name, as they do many other worthy endeavors, a single mail delivery recently confirmed the fact that there is much yet to be done. One letter was from another lawyer associated in a case, congratulating me on the signal victory I had won on appeal. Now, don't get me wrong, I like congratulations almost as much as I like signal victories. (Heck; I even like them when

they are unsignal.) The trouble was, it was Wendy's case.

The same delivery supplied a letter from one of the truly fine judges in another corner of the state, thanking me for sharing our research on a problem he'd mentioned in cocktail party chatter. You can guess what comes next: It was Wendy's research, forwarded by a letter from her. I agonized a lot about mentioning this, because of my respect and affection for the judge involved, but decided to do so on the theory that if guys of that caliber can stumble thus, the reeducation process still has a way to go.

BYTING BACK

It's obvious I'm too old for life in the megabyte age. Recently, I've started observing vans parked in no parking zones with cards in the windshield like doctors had (when they'd still call on patients), reading: "XEROX SERVICEMAN ON EMERGENCY CALL". What could more appropriately suspend the traffic laws nowadays?

Our firm has entered the cybernetic age and we get some interesting mail as a result. (I know, because I make it an inflexible rule to read every 5000th item.) A recent issue of "Auto-Cite Update" (the fact such a publication exists doesn't help my wintry discontent, by the way) contained a tip from a Richmond, Virginia, law firm:

"Many thanks for the 'Auto-Cite Verified' rubberstamp. We use it regularly on our briefs, memoranda or similar materials, adding the date and initialing on the line provided. I must say it's not only utilitarian, but psychologically it seems to add perceptible 'legal weight' to our small firm and its documents. I don't think I'm imagining this."

Nor does mere stamping exhaust the possibilities. "We find that clients are most impressed. our paralegal receptionist runs the cites in the waiting room area and clients and others visiting us find it fascinating to watch. There's still a lot of magic and mystique in seeing computer generated legal research happen live before your eyes." The New World is not just brave.

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