

LASCHER AT LARGE  
By Edward L. Lascher  
January 1990

It is appropriate to say something about the departure of 1989, even though for a lot of us there may be little good to be said. (The discerning reader – and I have no other kind – will note that I do not refer to the expiration of the decade, which doesn't expire until the end of 1990.)

The year was not, obviously, without its good points. It is hard to recall a time during which I have lived when there was so much hopeful excitement generated on the international scene. That the thrilling acts of Tienanmen Square ended in horror and brutality is a fact we all must mourn. But even that has its other side: The prelude to the tanks occurred and things like that have a way of failing to stay stamped out.

This is illustrated by what's been happening, utterly incredibly, in Eastern Europe in country after country. We are, it appears, in one of those times in which the world is bullish on hope for the future.

At home, particularly in the legal world, there is less about which to feel cheered. The scene appears to have reached its apogee in terms of profit motive, contempt for traditional professionalism and loss of esprit de corps which had always seemed essential to setting us apart. One despairs over the continued viability of a specially trusted profession if that profession continues to display so many characteristics which are the antithesis of a repository of special trust.

For myself, I have lost bitterly. More friends at the bench and bar have left us poorer on the globe and others have been forced from the arena of judging or advocacy by the subtle machinations of insidious human disease made more so because they were encountered at a too-early age (although I am at a loss to explain what age is right).

1989 is the year I lost my father-in-law, Judge John Cole, a fitting model for anyone in virtually any way, but none more so than in terms of courage in the face of terrible adversity. In early January, I lost half of my own stomach and had a few other parts juggled around to the satisfaction of teams of worthy physicians. Somewhat worse, I lost over seven months to daily radiation treatments and intervals of daily chemotherapy.

In my own case – and it's different for all – neither was quite the horror that urban legend has them to be, but they were bad enough, more in the prolonged systemic effect than by the immediate tangibilities.

Lengthy periods of feeling mysteriously debilitated and out of control of one's own destiny can be astonishingly destructive of the psychological cocoon of invulnerability with which we all surround ourselves, knowingly or otherwise.

Obviously, the degree to which I could ply my trade was curtailed for a while. Less obviously, ability to do so didn't go away in its entirety, not by a long shot. If I have written this before, it's worth writing again. There was a time in the hospital while everything was wrong, that I woke up about three in the morning and started thinking about how I was going to argue Jones and Smith after I got out of "all this". It was an epiphany. I suddenly realized that I was a part of the legal world still and even more clearly realized just how important that was to me. It has never stopped being important and, if anything, the bleak year increased my love for the profession and for the good lawyers within it (a category which embraces a dazzlingly huge proportion of those licensed).

### The Far Better Side

An even better reason to look back is to mention a few of those who have meant so much. And the key word there is "few", not that they weren't numerically abundant, but there are just so many for whom there is space. I want to acknowledge them as surrogates for the scores of others who demonstrated beyond reasonable doubt what a noble brotherhood, sisterhood, personhood, whatever you will, the legal profession still is at heart.

There were Raoul Kennedy of Oakland and Encino's Ellis Horvitz who did everything but send the marshal to grab off all my tough cases and see what they could do to keep them out of trouble. There was Hillel Chodos who always seemed to know the exact time when the load was getting too heavy (in intangible ways) for me and, more importantly, for Wendy. Most of all, there was Wendy, that partner who coped with me, a law firm, the personal disaster in her own family, plus three kids and an eccentric dog.

There was Gideon Kanner who proved, to no surprise, that there is no inconsistency between a law professorship and deep human concern, and Jerry Uelmen who did the same for law deans. There was, and is, Hilda who has suffered with me for 31 years and never more than the 31st. There were all the notes and calls from readers, associated lawyers and, yes, opponents.

There were the judges, so many of whom called, many too unjustifiably diffident to interrupt, but just wanting to leave a message. Every message was heard and every one a deeply felt tonic. There was retired

judge Earl Riley who briefed me on the best way to lay out a walking course in the hospital before I even gained my freedom. There were touching notes from the highest offices.

Let's not forget that there is an interdisciplinary aspect to all this, too. Lawyers and doctors may be at each others' throats now and then, but you'll never convince me that family doctor Jon Overholt, nonpareil surgeon Jim Calvin, and internal care maestro and winekenner Joel Brill weren't going just an extra fraction of a mile, as were radiologist Tom Fogel and oncologist Evan Slater. (Before this, I didn't even know there was such a thing as an oncologist. I do now.)

And let me not forget Ventura County real estate mogul Don Carlton who came and sat with Wendy in the waiting room through that longest day – even through the fire alarm in the OR area of which I was happily oblivious. (Which reminds me, did anyone else who ever went through such a procedure spend the surgical prep time thinking about everything that could go wrong? By that, I don't mean what could happen to me. Instead, I worked out all kinds of scenarios by which the hospital would run out of anesthesia, the power would fail, my temperature would be too high, it would be against some doctor's religious scruples to operate on the 9th of January, the scalpels would all need sharpening, or something of the sort that would produce a reprieve. None worked.)

I guess on balance, 1989 wasn't so bad. The events may have been awful, but the people who made them bearable, named or not (even remembered or not), might never have been discovered in all their value. For what it's worth, all my own indications look good. There are no guarantees, but some maturity comes with such an experience, and I realize there weren't any guarantees the day before anybody heard of the tumor, either. I hate to sound like Jimmy Stewart, but it can be a wonderful life.

### Painful Illustration

What I am about to say seems like an abrupt, almost impermissible change in mood. It isn't. It is a story I can tell because I lived it. I owe it to a dear profession to use it in hopes of helping with one of our major problems. That problem is the one most politely called incivility, but most often termed by those of us of a certain age as a form of cheapening savagery among certain members of the younger professional generation. It is the most often talked-about subject of professional interest I encounter among my contemporaries and needs attention that goes far beyond some sort of acronymed project of the State Bar. It needs professional soul searching. As what I have just said indicates, the soul is there: it must be brought to the fore.

My illness was discovered by happenstance and it required almost split second reaction. I had a case on appeal which was likely to be argued in February or March. It had been dawdling along at snail's pace for well over a year due to problems with the reporter, with which we couldn't cope and in our efforts to do which the respondent was totally in-souciant.

I wrote the court and explained I was about to enter life-threatening surgery with an obviously extended period of recuperation to follow immediately, so would the court please defer argument for a couple of months. This provoked, by return mail, a letter from an associate in one of the major and most respected downtown Los Angeles law firms (it may still be major, but not all that respected in these quarters now) demanding that the case be argued within weeks of the surgery because the reporter had taken a long time to transcribe the record and why should Mr. Lascher's illness be taken into account.

We did not readdress the court; no lawyer in his right mind would think it necessary. To my absolute incredulity, the court responded that it was unwilling to delay argument on this already long-delayed civil matter, notwithstanding counsel's dire medical condition. The receipt of that order represented the nadir of my legal year – nay, in my relations with the California judiciary overall. It did not come from a court with which I had ever felt myself to be feuding (there have been one or two over the years, but none recently), but rather from a presiding justice widely believed to be a thoughtful and gracious one. Everyone who has heard of the occurrence is astonished and it will remain a mystery for many years and one not likely to slip far from mind.

The case was argued on Valentine's Day, several weeks before I was allowed to leave my home, and I attended and participated against all kinds of medical advice and well equipped with machinery and medicine, just in case. The argument didn't establish much and I don't think the case made it possible to do so but, by damn, I showed the flag.

In the hallway after the argument, the lawyer who was the founder of the feast took a moment off from trundling about his trolleys full of document cases to offer his hand. My weakened condition showed; I took it and said something like "uh". Wendy – who, after all, had to give some thought to my four children, two stepchildren, a law partner and herself as wife, all placed at risk – was somewhat less willing to abide by the form, and said so. She was promptly berated by one of Mr. X's half-dozen associates for being mean to Mr. X because, after all, "the poor man has been in trial for two weeks". Oh.

Apparently, that firm belongs to a different legal profession than

most of us do. Personally, they are welcome to each other. I have my quarrels with the Los Angeles megalawfirms in many respects, but I find it impossible to picture an O'Melveny & Myers, a Gibson, Dunn, a Latham, a Hufstedler, or an Irell or virtually any others behaving as I just recounted. Those involved (and others in the case) know who they are, an item of knowledge with which I'd hate to live.

It was a lesson that teaches how far some of us have come in some directions. I would find it much harder to speak about, were it not for the ten times ten times even more who obviously did not choose such tricks in 1989 and are incapable of doing so in the future.

Mother Nature will have to answer for herself. But to those whom made such a terrible year bearable, I will never be able to express my thanks, nor will I ever quit trying. Happy New Year.

© Edward L. Lascher 1990