

OCTOBER 1985
LASCHER AT LARGE
By Edward L. Lascher

Writing a column of this sort may be a job for young lawyers. It seems that more and more often the need is arising to become elegiac, and it hurts. The passing of Dick Oliver and Joe Spray within a few days of each other brought that home.

Dick was not just a crackerjack lawyer, but the very model of an elegant gentleman in a profession where elegance and gentlemanliness are both regrettably rare. His was always a class performance.

Nobody was likely to call Joe elegant – at all ages, there was too much of the Norman Rockwell character about him – but he was equally a gentleman. An especially cherished friend, as I strongly suspect many readers are saying with me. He was an incredibly good and effective lawyer (literally the only deposition I ever enjoyed attending was one of his) and dedicated to his clients -- too much so, which is probably a factor in the need for these words.

We needed both of them a little longer.

NOT RIGHT NOW

I'm renegeing temporarily on my recent promise (threat?) to elaborate on the observations crystalized and ignited by *People v. Roehler* regarding the processes of criminal adjudication in California. The problem lies in what's occurred since.

One would think that, once the Supreme Court refuses a case, the state's power to twist knives would at least be suspended. But, no, there was room for yet another application of the macabre Murphy's Law which governed Roehler from beginning to end and past.

Readers may recall that one source of my shock was the fact not one justice had voted to review, despite a cornucopia of indicators of review-worthiness. Three weeks after the denial, we opened a letter from the Supreme Court and found:

“Due to clerical error, the order filed August 19, 1985, in the above entitled matter, is hereby amended, nunc pro tunc, to include the following language: Bird, C.J., Mosk, J. and Kaus, J., are of the opinion the petition should be granted.”

We don't know whether to smile or cry. Thank goodness that in one way, at least, it wasn't as bad as I thought. My deepest respect to the three J.s, who were already awfully hard not to respect. (That's what made the initial report of total non-interest so shocking.) But I'm too reshock to talk about the subject at the moment.

BAR LIMELIGHT

Well, I see the State Bar has finally hit the publicity jackpot. After years of complaining the media didn't pay enough attention, the Legislature's decision to cut 'em off without a sou turned the spotlight on our peerless leaders, but good. Everybody's learned how to spell Critchfield, et al.

There is a tendency to sit back and chuckle at all this, not to mention one to use that horrendous phrase about tolding somebody so. Also, their proposal of turning instead, to the Supreme Court and asking it simply to issue a ukase You vill tithe to the lords of Franklin-McAllistern – is an intriguing picture, particularly considering the high court's current state of undisturbed strength and serenity.

But it really isn't funny. Something's gotta be done and all of us have to help. The State Bar is an unimaginably flawed vessel but, like the crooked crap game, it's the only one we've got. I note the widespread comment to the effect that the bar ought to be run by a public agency, just like everything else is, but I are not amused. How independently do you think our clients are going to be represented if we've got the spiritual kin of BMQA and the Coastal Commission rummaging through our files? Now is the time for all good lawyers to come to the aid.

However, we should get some quid for our quo. The two most obvious things are, first, to require the Board of Governors to recognize that the Legislature and press are right The State Bar is (1) doing an execrable job on discipline and (2) wasting time and money on errant do-goodism. Second, we should exact a promise of steps to get the disciplinary process out of its Edsel production line state and return the attention of the organization to matters upon which lawyers have some special contribution to make, and/or some particular involvement not available elsewhere, instead of serving as a surrogate Legislative and Executive. No, promises aren't enough: that's been done. We need action and ironclad guarantee. Let's help 'em, but let's housebreak 'em first.

STATE BAR NOT BAR

I have one small but related quarrel with all the coverage of the foregoing. The press seems almost universally unable to distinguish between the State Bar and the bar of this state. (The capacity of our elected representatives to distinguish much of anything lies far beyond my poor powers of exposition.) Thus, we are told that the current woes represent a tide of antagonism toward lawyers which lawyers have brought on themselves. The first part may be true, but the second couldn't be more inaccurate. The corporation called the State Bar of California is the culprit, not the lawyers of the Golden State.

As a matter of fact, lawyers in the ranks have been yelling about the disciplinary fiasco for years, joined also by most local, voluntary bar associations -- at least the ones undominated by limousine liberalism. It is the guy who has to sit through 216 motions to decide on the propriety of 42,209 interrogatories who has long been yelling for action on

discovery abuse instead of the formulation of State Bar position papers on the trade deficit and apartheid. (Don't get me wrong, I'm no fan of either: I just think there are agencies better qualified to cope than the staff and governors of our club.) The problem has been the minimal interest the State Bar has shown in the bar of this state for a decade.

So, for that matter, have the two houses of the Legislature, the Governor's office and the fourth estate ignored lawyers (as distinct from bar bureaucrats). Look, folks, we're teed off, too -- and we may be the primary victims.

JUDICIOCRIMINOLOGY

I have frequently grouched over the insipid nature of judicial crime in California. (No, I don't mean the kind inherent in decisions: that's a different story which will have to wait for another time.) When our boys and girls go wrong, they fix a few traffic tickets, maybe. Other places have a far more robust, redblooded tradition. When I was in England last, the papers were full of a judge of their equivalent of the muni court who stabbed his girlfriend's new boyfriend right smack in the parking lot. Later on, a judge in Wisconsin got defeated for reelection and took ingenious and judicially typical vengeance by bumping off the law partner of the guy who ousted him.

The best one these days, though, is working down in Arkansas. Supreme Court Justice Purtle there has been charged with arson. A wonderful, wonderful crime for a jurist. In reading about this, however, it was brought home to me how the grass sometimes really is greener elsewhere. It seems the justice can stay on the court until he's convicted, the governor being able to replace him only in the latter event. But, wait a minute, that's not the news item! It's true the legislature could impeach his lordship, but, the press reports, "the legislature is not scheduled to meet again until 1987". Wow! They already legislated once this decade, I guess. How would you sleep tonight if you knew that nothing would be going on in old Golden Dome up in Sacto for two years? If you could count on 24 months with no Congress? Ah, they shouldn't tell me about things like that: stirs up my envy glands.

EPITHETICAL ERRATUM

Mike Berger, Santa Monica's eminent eminent domain appellate advocate, was good enough to share the following news release which was slid under his door in a plain brown envelope recently. For those not privy (a carefully chosen word) to the etiology of this rule-making, the inspiration appears to be found in People v. Callahan (1985) 168 Ca1.App.3d 631: depublished by Supreme Court order: republished by Supreme Court order, as annotated by Milt Policzer's column of September 5.

The latter source discloses that it was the author of Callahan who singlehandedly managed the case's return to polite society (if that's quite the term). Seems the justice involved wrote the Supreme Court that: "I had been looking for an opportunity to honor Joseph A. Ball, a great trial lawyer and public speaker, in his lifetime. Also, the opinion gave the opportunity to write highly of Louis L'Amour, whose straightforward writing style ought to be required

reading for all budding lawyers." (The connection between Western fiction and horticulturally inclined barristers eludes me, but then maybe I need another bromide.)

That parenthetically said, I present, without further ado, Mike's contribution:

"FROM: OFFICE OF CALLAHAN EPITHETS "

'The Office of Callahan Epithets announced today an amendment to Rule 976(b), dealing with standards for publication of Court of Appeal opinions. New subdivision (5) provides for publication of opinions containing either pre-mortem eulogies of lawyers, praise of the writing style of cowboy novelists, or general comic relief. "The new rule was adopted without prior circulation because of a belief that the law was being taken too seriously by the courts, that Rule 976(b) was inhibiting the natural flair for humor possessed by appellate justices, and that courts ought to be encouraged to say nice things about lawyers. CalTech seismographs reported detecting a massive groan apparently emanating from the hut of the Chief Justice of American Samoa."

Readers who simply can't get enough of nonpublication of opinions may want to consider -- in addition to the obvious items -- footnote 5 of the Callahan case and that to which it refers. What the hell, it's good to know the justices are having fun.

UNCLASSIFIABLE

The classified ads in this publication have been of interest lately. The Journal obviously has a highly sophisticated and knowledgeable advertising clientele. For instance, one Carl Gabriel of Bismarck, North Dakota (really!) is flogging his 1964 Olds F85 Jet Fire with 75,000 miles and picture available, for only three grand. Of course, the auto ads are replete with Mercedeses whose lease contracts are available for takeover, but a 21-year-old Olds? On the other hand, there are daily specials on stun guns. People obviously know things about our profession that I don't.

On that subject, I couldn't help being drawn to an ad headlined "VENTURA COUNTY LAW FIRM FOR SALE". Moreover, it purported to be grossing a million and a quarter. They didn't say per what, however. If that is annual, they're asking for too much suspension of disbelief. I don't think all the law firms in the county put together gross that. No, wait a minute! Maybe Mike Bradbury's selling the DA's office. Then I read further. It's offered for sale by a post office box in North Hollywood. Send cash in small, unmarked bills.