

Lascher at Large
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Some Litigious Musings

I am reminded of a time I dropped in on a murder trial at the Old Bailey. It was jolly good sport on both sides but, when they took a recess, our group of American lawyers asked the prosecuting QC what, exactly, was happening. He explained that they were having a "trial within a trial" to determine the validity of a confession – what amounted to a 1538.5 hearing in mid-trial – adding: "If his Lordship throws the confession out, I think our case goes out the window."

A lot of Yankee jaws dropped. Can you imagine a California DA admitting his case was hopeless no matter *what* happened to it? John Van de Kamp did it once and caught 10 kinds of hell for it; so did Evelle Younger some years back. In both instances, it was deemed headline news.

Then the barrister put a capper on it: "And if that happens, so be it. The defendant seems quite a decent chap." In the current *Kristallnacht* mood of our populace – not to mention our profession – I assume that any California deputy who said that in court would be (1) disbarred, (2) tarred, (3) feathered, (4) banished.

Oddly enough, our British cousins get more convictions quicker with trial lawyers who defend one day and prosecute the next. Of course, it's possible they send felons to the glasshouse *in spite* of this ability to perceive both sides, but I can't help suspecting the results occur *because* of it.

Matter of fact, if I were accused of a felony, I actually think I'd prefer being prosecuted by a tunnel-visioned, doctrinaire zealot. And the odds are darned good I'd get the chance. (Not as good as they used to be though. All those types are being elected to the bench nowadays.)