

LASCHER AT LARGE
By Edward L. Lascher
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Okay, this month I want to do my kind of column. Not the kind Gordon Ownby wants (he's the editor, so I have to drop his name now and then; it would be in the contract if there were a contract). Not the kind Dave Eagleson wants, despite my terror of PJs. Not the kind you want, even. Instead, just a lot of unrelated brainsscatterings.

A Grateful Acknowledgment

As those who follow this column (if that's a permissible description) are aware, I've been pretty well tied up full time for a year in a criminal trial. It has furnished a decade's worth of column material, but with one problem: It's still going on, and apparently will be until a time to which memory of man runneth not, so I can't write anything directly.

One important exception I can make, though, concerns the extraordinary camaraderie and professionalism I've discovered in what might be called the heavy-case sector of the criminal defense bar, the men and women who handle the biggies. Our firm has turned to a few in desperation and found there's almost literally nothing those lawyers won't do to help. Drop everything and brainstorm about your problem, send copies of their motions and memos, pass you along to another expert on a sub problem – just name it.

It's an informal, underground-telegraph type thing, but incredibly effective – far more so, for example, than the more formalized and elaborate structures of the CTLA or the insurance defense counsel organizations. Notably, none of it is done for the purpose of drumming up future referral business, either, since most of these folks are public defenders and others who need 9-day weeks and 36-hour days, not more work.

And they all seem surprised at my surprise over the generosity and intellectual communication! I'd thank some of the individuals publicly but for two things: (1) I'd forget some, and (2) they've got enough of this already without some dilettante helping them ease their losses by upping their volume. I do know that, if I ever forget this generosity enough to lose a fervent desire to reciprocate, I'll be a diminished person in my own eyes. Thanks.

Teaching Ethics???

Followers of this column (see above) may also have noted that my enthusiasm for contemporary legal education knows bounds. Particularly as it involves – or, more accurately, fails to involve – the traditions, mores and esprit of our profession. In that vein, I give you the following explanatory item identifying the author of a new book entitled "How to Stand Up For, Your Rights and Win!"

"Roy M. Cohn, a partner in the New York law firm of (no free advertising from me) teaches (are you ready for this?) ethics at NYU Law School. He lives in New York City."

And I guess he wouldn't rather be in Colorado. Presumably, he holds the Benedict Arnold chair of American Studies. One assumes that an accomplished fox is probably teaching hen houseguarding somewhere in the neighborhood.

I can envision a whole new game growing up around this. The Jimmy Carter Institute of Political Magnetism. Al Haig's 12-volume classic on plain speaking. H. L. Richardson's studies in compassion. Jesse James as a professor of banking law and practice. "The Meaning of Truth" by Josef Goebbels. Daryl Gates giving guest lectures on tact at the Signal Hill Academy of Police Science. The A. Andrew Hauk School of Jurisprudence. The FLee Bailey Driving School (San Francisco branch). "My Modest Successes" by M. M. Belli.

Books and Bottles

Speaking of books: Look, folks, don't exhaust my patience! There is a limit to how long with how much I will up put. Last month I told you to rush out and buy Liebling Abroad and there's still a few copies on the shelves. Actually, Judge Tom Kongsgaard of Napa wrote to say he had discovered the book just before going on vacation and consumed it instanter but, honored as I am to share that fine jurist's tastes, the awful truth is that he bought it on his own motion (so to speak) and not my recommendation.

But, easy-going old soul that I be, I'll give you one more chance. In the person of Uncivil Liberties by Calvin Trillin (of "Alice, Let's Eat", "American Fried" and New Yorker fame). It's a collection of humorous essays from The Nation (No, I didn't know it carried humor, either) and, unlike most purportedly humorous columns (and you may forever hold your peace), it is unflinchingly biting, and funny. For instance: "One reason I never took up bridge is that I knew I'd resent the people who kept track of the cards that had been played while I allowed my attention to wander in the direction of speculations on what the hostess might be planning by way of an after-game snack".

Or, on the subject of voting on issues rather than candidates: "Having pored over the opposing position papers, I would cast my ballot as an informed citizen – and the country would continue to be run by fools and thieves and even an occasional poltroon. Finally, I got smart. As voting on the issues was doing the country no good at all, I figured, I might as well have the pleasure of treating political candidates as applicants for a club that had a single opening and maintained an admissions committee of one – me." And the dialogue with his kid which began: "Daddy, I don't undertand what it means that we have finally recognized China. Was it wearing a disguise or something?"

Chastened by the teachings of that work, I must confront a problem of my own. As you may have noticed, I like good books and good wine. All the time, I tout you on good books, but never on good wines. Why is that? Well you might ask.

There are damn few good books being published these days. (Take a look at the

fall catalogs before you challenge that statement.) But whenever one does appear, you can buy all the copies you want. On the other hand, when a good wine comes out – particularly a good Napa or Sonoma white, and even more particularly one that somebody who works for a living can afford – what happens?

Tuesday: "Hi, Ed, I've been wanting you to try this nice little Chardonnay; just came in and it's under ten bucks" (\$9.95, to be exact), says the wine merchant.
Wednesday: "Hi, wine merchant" says I. "That new Chardonnay was great. Put a case in the trunk of the car, would you?" "A case! We've been out of that wine for 23 hours and 18 minutes. I can let you have the bottle I opened for dinner last night and didn't finish."

So I can afford to tout literature, but not the grape. While I may be troubled by the morality, conscience quakes in the face of practicality, and I'll go on keeping the nice little bottle tips to myself. Tells you something about the times, though, doesn't it? Good books go begging and good wines go out of sight.

Meanwhile, it turns out that up in Santa Barbara, a quaint little village I have mentioned before, the liquor stores close on Mondays! Just like barbers and fancy Fench restaurants! Now that's class, or something.

Fancy Footwork

Neat bit of forensic footwork observed in one of the Courts of Appeal lately. Two lawyers had been arguing, with a level of skill to which I am not accustomed (but would like to be), for about 20 minutes over whether some arcane point of tort law should have been decided by summary judgment, the plaintiff claiming of course that it should have gone to the jury and the defendant that there was no submissible case. Two judges seemed to find it a pretty interesting issue, but the third (a pro tem, I hasten to add) seemed to be reminiscing over all of the good steaks he had enjoyed through a long and nourishing life.

Suddenly, however, that particular honor was bestirred to ask: "Isn't the point really whether the issue should have been decided as a matter of law or of fact, counsel?" There was a certain amount of indrawn-breath in the audience, in light of the fact that such was precisely all they had been talking about. I tried to figure out what I would have said if I had been in the guy's shoes – assuming, of course, that I didn't want a five-day rest in the county calaboose.

Then, after a moment's thought, plaintiff's counsel came out with the most beautiful line I've heard for such a situation: "I wish I could have put it as succinctly, your Honor." Whereupon, he went right back to arguing what he had been saying all along. Simply marvelous. If you don't think I've got that one filed away for some future time, you certainly don't understand the merits of imitation.

To balance that how-to-do-it advice on oral argument, let me point out a recent vintage example of how not to. Counsel was halfway through his obviously prepared speech when one of the justices showed an uncharacteristically lively interest and loosed a bunch of probing questions (which, predictably, were not all that well fielded). Upon a pause for breath, the lawyer (who I once would have said was old enough to know better, though I now realize that age is no guarantor of wisdom) observed: "Now, to get back to my train of thought before you interrupted me . . .". It was as smooth and persuasive as a fingernail on a blackboard.

However, having put the court in a fine mood with that sally, this advocate topped himself a moment later by saying: "Now, I am going to describe the case so that you can understand it . . .". He didn't need to say "even you"; that was unmistakable. By the way, although he was talking down to the court, he didn't talk down far enough to reach me or any of the other lawyers around, none of whom had the foggiest about his "explanation".

The sum and substance, kids, is please don't do either of those. Unless you're on the other side of one of any cases, in which event be my guest.

Up Home

Lately, of course, it's been graduation, bar admission, honorary degree and such-like season. Of course, you big city folks get most of the glory, but there was an item in the Ventura County Star-Free Press the other day that shows no grass grows under our feet, either. It was a profile of an outstanding high school grad, with the normal encomia regarding versatility, virtue and vision. But what caught my attention was the fact that he was described as a "straight A student" who finished 73rd in his class. Query: What were the other 72? I presume they graduated ultra-cum laude.

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