

LASCHER AT LARGE
By Edward L. Lascher
December 1983

The degree to which someone regards the words "friend" and "acquaintance" as synonymous tells a lot about him or her. People said to be wise believe we really have only a few friends in a lifetime, a proposition I can accept. (There should, however, be a noun describing a relationship somewhere between the two.) That being so, I've been very lucky in five and a half decades. Funny, isn't it, how many of us think that? The person who doesn't is, I fear, in really bad shape.

Droppable Name

But there aren't too many of us who have a friend who confers bragging rights. The last nine or ten years, I've been in too many intense and contentious – sometimes nasty – political, social, philosophical and legal confrontations, in most of which there seemed to be no deities whose invocation worked at all. With one exception: I wish I had a buck for every time I scored points by tossing off "Well, Art Bell says", "I was talking to Art Bell the other day and he . . .". That was usually good for a couple of votes and sometimes even an awed "You get to talk to him?" Seemed to work better than "As Oliver used to say" or "According to Learned".

Thus, I was pleased to see Art's profile – no, not his physical profile! Be serious – in this publication a couple of weeks ago. Art and I go back a long way. To when he practiced law. Would you believe, even to the time I gave him sound, avuncular advice not to waste valuable time on something that looked like a recipe index that he – can you believe this? – was going to call "Courtroom Compendiums"? (Not even good Latin, I continue to maintain.) Told him and told him, but he lacked the deference to listen. Now he's probably traded on the big board.

On the other hand, there's his book Peter Charlie, about his experiences in turning the Axis tide. It is vintage Bell: confusing, oddly organized, raffish, obscure – until you get to the end, when you realize you have been made to understand and feel something. It obviously won't be the commercial success that Arthur's Adventures in Searchland have proved, but I'm glad it was written.

Fearsome Foursome

Okay, that's enough panegyric for a pudgy publisher. But I was intrigued at another thing in the biog: the firm he helped start. It was called Finch, Bell, Duitsman and Jekel (which is an unworkable enough name), and was ahead of its time in having a main office and a branch: home base Inglewood, and branch in Woodland Hills – which may not sound like it now, but was pretty antic in the early 50s, when neither of those places existed.

But give another thought to the lawyers' names. Seems to me that Finch fellow was heard from a time or two; may even have had some truck with the government. Bell, we've already covered. Jekel, it turns out, markets a pretty tasty Chardonnay under the name of Jekel Vineyards (yes, the same guy). And, of course, there's Duitsman who, of all things, is a quite successful lawyer over in the Culver City area. (He puts this column to a difficult choice between saying "You can't win 'em all" and "lose 'em all".) Anyway, that's quite some record.

Shorted Circuitry

Speaking of which, even the Ninthmost Federal Circuit can't win 'em all in this tribunal. The notion that the Bill of Rights was adopted, among other reasons, to secure suitcases circling a baggage carousel against sniffing German Shepherds is just a little beyond even my still unabashedly libertarian ken. (Some would probably cite a certain bias toward that particular breed of dog, the world's finest – a notion which has a germ of truth – but I think there are other reasons this time.)

There's a clear and present danger of sacrificing the good and the reality of the concepts evolved in Philadelphia in over-exquisite pursuit of the trivial. This is not a law and order plaint – the current Governor would not be amused – but a matter of priorities. Many of the same courts which are drafting subdivision maps for the heads of pins are simultaneously winking at doors being kicked down, arrestees choked to death, patent and cynical police lying, and a panoply of other real invasions of human rights – which everybody ignores, because those outrages don't violate the etiquette books. The issue, I submit, is not state versus individual, but form versus substance.

On the other hand, they can't lose 'em all, either. The circuit was deadbang right in saying that a district judge couldn't issue an advance injunction against running the DeLorean tapes. In a few quarters, it seems to have been forgotten that freedom of speech and press are protected against all branches of government, not just the executive and legislative. Of course, the motives of the lawyers and judges who would apply prior

restraints to what we may know – more accurately, what we may be told – are of the purest. The problem is that, once it becomes established that judges may apply thought control, some people whose motives are quite different probably will get the message and decide to do the deed, too, through agents of a quite different stripe.

In my not at all humble opinion, there is no room for a little pregnancy in the First Amendment.

Columbia B. S.

On the other hand, CBS took a bath in shame by running that tape after they won the right to do so. Every right does not need to be exercised every time. Among other things, the attitude that one should say everything one can say, involves the risk of trivializing free speech (please compare observations above).

That tape did not assist the public in knowing how the law is being enforced, enable us to monitor the workings of the justice system any better, or enlighten on any matter on which we, individually or as the collective public, needed enlightening. Freedom of speech and press exists and deserves constant protection for a reason. Because we need it, to exercise every other right and to order our lives.

It does not exist to pander, sensationalize or line pockets. (And let me draw an important distinction: even if matter panders, sensationalizes and lines pockets, it must be protected. But there is no "must" that it be broadcast.)

CBS should be proud of vindicating a First Amendment right. It should be ashamed at its apparent belief that since it could, it should air the product. It should also be frightened that it is just this kind of cynicism which can lead to widespread public disillusionment with the First Amendment. Compare, e.g., Grenada, and the public non-outcry.

Not the Worst Idea

Maybe I've been in the LTO (Litigation Theater of Operations) too long; some of the court reform proposals are starting to look good. Mack Fleming proposed on these pages recently some methods of speeding up the criminal appellate process that made good sense. They boiled down to assigning justices to do nothing but criminal appeals for a year or so, and then rotate them back into the civil fields, and sending the death penalty cases through the Court of Appeal – or a special, lottery-chosen statewide panel of CA justices – subject to eventual review by the Supremes after the intermediate level had done the spadework.

The other idea that rung my bell was something I read about the Vermont system of "assistant judges", two of whom sit for a limited spell each year with a regular judge, hearing almost everything save a few civil and criminal exceptions. It's like the English do in their lowest court level, except that the Vermonters have much broader scope and there are no all-lay panels as in Blighty.

Over the years, I grow increasingly edgy about allowing one person to decide a case. (And that includes one justice who actually does the deciding for a group of three, I hasten to add.) My worries are twofold: too much idiosyncrasy and not enough sifting the matter through other people's impressions and recollections. Simultaneously, I'm losing the talismanic faith in the infallibility of juries about which so many breasts are thumped so hard. Empiric fact palpably demonstrates how chemerical that grail really is, not to mention the hypocrisy of that dogma.

The idea of combining expert and lay minds – blending the functions – has some instinctive attraction. I wonder if, upon peeling away a lot of the unreasoning cant shrouding the question of who should decide, we might not find this approach closer to the substance of what we are really (supposedly?) trying to achieve. Maybe not, but it's a haunting concept.

Apologia

There are very few things in which I pride myself. (I wish there were more, but I can't fool me.) One is answering correspondence, particularly about this column. For the first time, I have failed miserably in the past year. The slings and arrows of outrageous law practice have been bigger, sharper, and more numerous than ever before. That they produced that particular result is deeply saddening. If I have offended or disappointed any readers-correspondents, I apologize, since I'm as hurt as they. Like the Dodgers, I'll try and do better next year.