

LASCHER AT LARGE
By Edward L. Lascher
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Pocket Constitutionality

The matter of a pocket copy of the Constitution got the most attention. My favorite came from Mack Flem, erstwhile of the L.A. Court of Appeal and now a practicing lawyer, whose reaction deserves verbatim reproduction:

"In reference to your plea for an unannotated copy of the California Constitution, Rip Van Winkle, move over.

"For at least twenty years the California Legislature has published, either annually or biennially, the text of the California Constitution in paperback. As a bonus the volume includes the United States Constitution, the Declaration of Independence, the Mayflower Compact, and Magna Carta. You can obtain it from the state printer or the Chief Clerk of the California Assembly or Senate, at no east or at nominal cost.

"Armed with this compendium of historic documents which is small enough to slip into your jacket pocket, you can, next time you go to court, bandy words with the justices, knowing that you possess the identical texts which they themselves have and confident you are quicker on the draw than any California justice since David S. Terry."

On the other hand, Warren Jessup, the indefatigable viewer-with and patent lawyer from Hidden Valley and Academe, was moved in a somewhat different direction:

"As to your suggestion for an unannotated California Constitution, either hard back or soft cover, the current rate of change would make it better to have a large loose-leaf notebook with monthly replacement sheets. Also, without annotations, how could one interpret the document? With decisions regularly translating black as white and vice versa, one really needs current Supreme Court citations to form a lexicon. Today the dictionary is certainly inadequate."

And somebody from Orange County sent me an anonymous postcard (What is it down there?) telling me how to get the document. On reflection, perhaps anyone who aids and abets constitutions in that part of the world ought to remain anonymous, for the protection of loves ones.

Bell Chimes Again

Speaking of constitutions, welcome voices and the like, there was a Grand Reassurance for all of us lately. Art Bell tolls again! In the May 25th issue of this very medium, the sage of Woodland Hills returned with his Courtroom Compendium Poop-sheet. Just like old times, too, as when he places tongue firmly in cheek and describes a Walter Ely decision as "quiche eating", opines that even Mr. Gann can't quite overrule the United States Supreme Court, and indulges in similar subversive activities. The lives of a lot of us have been perceptibly dimmer since Art's periodic animadversions disappeared from the public press, and the prospect of being renourished with his particular brand of humor coated-lux et veritas may be almost enough to inspire one to cling to sanity and hope. Actually, in the same issue of the paper, there was more good news, and from an even more surprising source: viz, and to wit, the State Bar Board of Governors. I had come to regard them as the bod from whom no blessings flow, but they actually turned in a bravura performance not only by electing Tony Murray – who I predict will be one of the finest State Bar presidents in contemporary memory – but also by doing so in polite and gracious fashion. The latter fact is reassuring because the other two candidates for the office, Tom Eres and Lee Selna, were both outstanding folk, too. For a long time, it had become the practice of the Govs, when faced with a choice of promising candidates, to

grind each into nothingness, inflict maximum wounds in the process, pick some turkey (but see below), and then complain about having done so ad nauseum. This time they broke the mold, selected a primus inter pares of whom our profession can be justly proud, and did it like a bunch of lawyers and public-spirited citizens working for the common good. Whaddya think they mean by that?

Well Played, Sam

For that matter, this seems a good time to observe the first sign of change, in the person of Sam Williams and his administration. The air – and substance – of dignity, perspective and decency which the State Bar has begun to display this past year has to reflect in great measure Sam's approach and character. With people like Sam, Tony, Tom, Lee and the rest of those who are participating in this turn-around of our club's behavior, one can almost be conned into wondering if there's hope for the State Bar yet.

With all that sweetness and light, may I be forgiven one xenophobic observation? Approximately 38-1/2% of California's lawyers have their offices in Los Angeles County, but that enormous chunk of the membership went without a State Bar president for seven years before Messrs. Williams and Murray came along. The numbers don't even tell the whole story; there is a difference in kind between the viewpoint of the Bay Area, which has dominated the Bar for almost a decade, and that of the Los Angeles legal community. The change in tone since these two leaders appeared may not be entirely coincidental.

Blatancy Revisited

Meanwhile, Charlie checked in with the last act in his drama involving the Great Purported Misrepresentation, the Gracious Colleague, and other happenstances. The appellate court modified its opinion, with the author writing Charlie:

"Speaking only for myself, I am delighted you promptly brought these matters to our attention. I believe both error and misunderstandings should be acknowledged and corrected sooner, rather than later. Having subscribed to this view for so long, my sack cloth and ashes attire has worn thin. If I am fortunate enough to continue in my present role, constant use will require it to be refurbished.

"Since my staff attorney is entirely too competent and professional to have included a phrase such as 'blatant misrepresentation' in any opinion, I must confess that is my language. It reflected my concern that the point went to a different provision of the Astrological Code, rather than the true issue dispatched in Smith v. Jones. Because the unfortunate phrase is so easily subject to misinterpretation, however, I should have avoided it and, it is not even warranted in the context I intended.

"Finally, I agree vigorous advocacy is a client's due and the hallmark of an effective lawyer. Please be assured that I do not rely on staff for decisional faux pas; I am quite capable of committing my own."

So, Charlie gets a warm glow out of the case concerning the bench as well as his opponent. Not a bad way to lose, if you've gotta.

Silver (If Tarnished) Lining

Sometime close to the day this column sees light of print, some x-thousand neophytes who just passed the Spring Bar will be joining up. Welcome, gang, to a profession whose most all-overriding problem was overpopulation before either 1) you got

here, or 2) the Great Depression of '82 got into high gear! Consequently, most of you face grim, grim prospects for the near term; you will reap the hurricane sown by those who, a few years ago, were so enamored of the concepts of more and more lawyers with fewer and fewer prospects and less and less education.

Paradoxically, if painfully, however, there is a silver lining – however dimly seen and however deferred. I strongly suspect that, of those of our new colleagues who survive the next five years or so, virtually all will be far better lawyers during the rest of their careers than those who slid in at a time of lawyer shortages and greased skids. It seems to turn out that a silver spoon is not necessarily the best stimulus for achievement or the best builder of character, and the class of '82 aren't going to be choking much on that kind of utensil.

The spoiled brats who find themselves courted relentlessly by the law factories, and then write secretly to the American Lawyer complaining about the amount of entertainment during their summer clerkships or the quality of paté in the associates' snacking room are, by all empiric data, their own worst enemies, not to mention hazards to navigation for the rest of us. Most of them, ten years later, become the souls of flabbiness, intellectually, ethically and even economically (in any realistic sense) – however firm their muscle tone may be from tennis camps and backyard spas. They are chiefly responsible for turning the major law firms into the dinosaurs that they have become, and if you don't believe that's happening, just look at the facts and figures on how many major corporations are turning to in-house counsel because of the cost and ineffectiveness of their outside general attorneys.

The Well-Tempered Survivors

Those who come through the next decade as private practitioners or in small offices will have learned many things unlearnable otherwise: the value of a buck, the bitterness of losing when a lot rides on it, the absolute imperative of doing everything proper to minimize the odds loss will occur, tough mindedness in all of its forms. In whatever branch of law they wind up, they will be formidable adversaries and admirable advocates – for their clients and society as well as themselves. Heat-treating still works.

Oddly, I predict they will be more ethical and responsible lawyers, as well. (I refer to those who survive; the economics of today guarantee that a lot will turn to sharp practice and outright illegality, but they won't last.) Somebody who struggles for a responsible niche in his or her profession, and earns it, understandably values and honors that profession, its obligations and its traditions, more than someone who is handed material success like a ticket book for Disneyland. So, I guess I do mean welcome to the profession, kids! It will be a hell of a fight, but worth winning.