More Helpful Advice II

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Published 91 Victorian Bar News 78-85 (Summer 1994)

Abstract: an even further collection of legal anecdotes.

A PLAGUE OF LAWYERS
There are more lawyers just in Washington DC, than in all of Japan.


They’ve got about as many lawyers as we have sumo wrestlers.

Lee Iacocca on the lack of litigation among Japanese businesses

It’s been widely quoted that the US has 70% of the world’s lawyers. Though the figure is almost certainly overblown, legal scholars admit that the ratio of lawyers per capita remains far higher in the US than in other countries. The primary reason America has the lion’s share of the world’s lawyers, according to the American Bar Association, is that other countries have too few.


I don’t have the exact figures, but I am told that the current growth rate in the legal profession is, in relative terms, far greater than the growth in population. Lawyers are being hatched like chickens, and it is only a matter of time before the entire country is overrun. Everywhere will become like those parts of Los Angeles where lawyers outnumber people.


…, according to a recent Harper’s Index, [the US] produces fifty law school graduates for every engineering graduate (as against Japan’s ten-to-one ratio of engineers to lawyers, a figure that explains, among other things, the rank, unchecked corruption of Japanese politicians).


FAMILY LAW
DIVORCE — a process that our lawyer friend describes as working out who gets custody of the money.

Mayle, *Expensive Habits* (1992) 19
BLACK CHANGES FROM WHITE TO BLACK

… Justice Hugo Black, a [Ku Klux] Klansman in his early life, of whom it was said, “In his youth he wore white robes and terrified black people, and in his maturity he wore black robes and terrified whites.”


Three days after the broadcast he [H L Black] donned the robes of associate justice — “he need not buy but merely dye his robes” was a favourite contemporary cocktail quip.


Time wrote that “Hugo won’t have to buy a robe, he can dye his white one black.”


EARLY TO RISE
Ferenc Molnar, the Hungarian playwright and coffeehouse wit in the early part of the century, rarely got out of bed before the afternoon. To his great distress, he was once summoned as a witness, which involved getting to court by nine o’clock. As soon as he left his house, blinking in Budapest's early light, he noticed vast numbers of people hurrying along the street. “Good heavens,” Molnar exclaimed with genuine astonishment, “are they all witnesses, too?”

MAKING YOUR MARK
On January 3, 1932, after the Justices had heard oral arguments, Justice [Oliver Wendell] Holmes casually announced, “I won’t be here tomorrow,” and he submitted his resignation later that day. On that day coincidentally, Earl Warren, then a California district attorney [and later Chief Justice of the United States], had argued his first case before the Court. Warren used to say that his friends accused him of driving Holmes from the bench. They used to tease him — “one look at you and he said, ‘I quit’.”

DISSENT
[Harlan] was certainly one of the great dissenters in Supreme Court history; his frequent challenges to the majority led his colleagues, as he once wrote to Chief Justice Waite, to suggest that he suffered from “dis-sent-ery.”


THE NEW WORLD
Justice Jackson's striking claim — “struggles over power that in Europe call out regiments of troops, in America call out battalions of lawyers.”

Jackson, *The Struggle for Judicial Supremacy* (1941) xi

PLAIN ENGLISH
Another misadventure occurred when Brennan was defending a young man accused of automobile manslaughter. Uncharacteristically, Brennan hadn’t adequately prepared because he thought the case would be a snap. As he later admitted, “I didn’t talk beforehand, as I should have, to a retired policeman who testified as a character witness.” When he got to trial, Brennan asked the officer three separate times about his client’s reputation for “veracity.” Three times came the same reply: “He’s a good automobile driver.” The witness didn’t want to admit that he didn’t know the meaning of the word “veracity.” But Brennan wasn’t sharp enough on his feet to figure that out.

Brennan’s face had turned red with irritation at the third repetitive response when the judge interrupted. “Is this boy in the habit of telling the truth?” the judge snapped impatiently.

“Oh, yes, your honor,” the retired cop said. “I’ve never known him to tell a lie.”

Said the judge, “That’s what Mr Brennan was asking, but he’s a Harvard graduate and doesn’t speak English.”


Angus was out at the law school, speaking at a continuing legal education program, when he made an observation that I wish had been mine:

“The biggest single difficulty you face as persuasive speakers,” he said, “is something we all share — the burden of a legal education. Whether your law school meant to or not, it taught you to sound like a lawyer.”

McElhaney, “The Real Message”, *79 ABA Journal* 74 (December 1993)
ENJOYING YOUR BOSS’S SUPPORT
[Assistant Attorney General Nicholas Katzenbach] resourcefully commanded civilian forces during the Ole Miss crisis [the enrolment of James Meredith at the University of Mississippi], …. Ole Miss was a harrowing experience better forgotten. Yet Katzenbach would never forget a quick exchange with Robert Kennedy [the Attorney General] before boarding the plane for Oxford [Mississippi]. Only the passage of time made it amusing.

“Hey, Nick,” Kennedy called out.

“Yeah?” Katzenbach replied.

“Don’t worry … if you get shot,” Bobby laughed, “’cause the President needs a moral issue.”

Clark, The Schoolhouse door; Segregation's last stand at the University of Alabama (1993) 217

UTOPIA
William Howard Taft, the only man who was both President and Chief Justice, once said that the Supreme Court was his notion of what heaven must be like. This led Justice Frankfurter to say that “he had a very different notion of heaven than any I know anything about.”

Schwartz, A history of the Supreme Court (1993) 203

LOYALTY TO THE BOSS
To such an extent was this [Sanford following the lead of the CJ] carried that Sanford died on the same day as Taft.

Schwartz, A history of the Supreme Court (1993) 214

NECESSITY KNOWS NO LAW
When CJ Vinson supported Justice Tom Clark’s appointment, Washington wags said it was because he wanted someone on his Court who knew less law than he did.

Rodell, Nine Men

BRIEF EXPERIENCED COUNSEL
Sir Frank Lockwood, a well-known British barrister in the late nineteenth century, usually undertook to defend cases where he could honestly assume the prisoner’s innocence. After one such case, when he had gained an acquittal for his client by pleading an alibi, he met the judge, who congratulated him.

“Well, Lockwood, that was a very good alibi.”
“Yes, my Lord. I had three suggested to me, and I think I selected the best one.”

HERE COMES JUDGE SANDRA DAY O’CONNOR
As rumours of a female appointment gained ground, the Justices joked, first to Justice Rehnquist and then to the new junior Justice, Stevens, that when a woman came to the Court, he should be a gentleman and continue to answer the door.


JUDICIAL FELICITY
Stewart was prompted to tell Frankfurter “that he held forth for exactly fifty minutes, the length of a law school class period at Harvard.”

Murphy, *The Brandeis/Frankfurter connection* (1992) 300

…, recalled Brennan, Douglas “would rise from his seat, approach the CJ and say ‘When Felix finishes, Chief, I’ll be back,’ and leave the conference.”

Murphy, *The Brandeis/Frankfurter connection* (1992) 300

RESPECT FOR THE BENCH
It was in Maine, where judges are appointed and within the memory of living men followed the English fashion of headdress, that a lawyer said after losing a case, “I know how his wig stays on his head; it’s nailed on.”

Mayer, *The Lawyers* (1967)

KNOW YOUR JURY
“Tom” O’Mara recognized this art in a sheep-stealing case at a country town. Four prisoners were jointly indicted, and their right of challenge was used to its full extent for the purpose of getting the desired jurors in the box. The policy so far succeeded that Tom was able to begin his address for the defence by saying, “Well, gentlemen, it will not be necessary for me to address you at any length, because I am sure that you all know a great deal more about sheep-stealing than I do.”

Blacket, *May it please Your Honour* (1927) 13

CROSS-EXAMINATION
James T Brady, a prominent American lawyer of the nineteenth century, was of Irish origin. He was once examining an unwilling witness who persistently called him Mr O’Brady. At length, the attorney’s good nature became ruffled, and he said to the witness somewhat brusquely:
“You need not call me Mr O’Brady. I’ve mended my name since I came here and dropped the O.”

“Have ye now? ’Pon my sowl it’s a pity ye didn’t mend yer manners at the same time.”

BE FRANK WITH YOUR OPPONENT
A barrister entered one of the four courts with his wig placed on his head in a very affected and whimsical manner, which soon attracted attention, and caused much laughter. Seeing Curran, among others, smiling, he, in the most dignified manner, turned upon him, and requested to know whether he saw anything in his wig that moved his laughter.

“No, my dear Sir, nothing,” replied Curran, “nothing but your head.”

NEW-FANGLED TECHNOLOGY
Monday, November 22, 1965
Had lunch with Eleanor Bumgardner [a secretary at the US Supreme Court]. When I think of “Lady” Bumgardner I remember the priceless faux pax she made when she substituted for me when I was Hugo’s secretary. Hugo dictated on the machine — something about “a case which we summarily dismissed.” Lady typed it “which we so merrily dismissed.”

- from the diary of Elizabeth Black

_Mr Justice and Mrs Black; the memoirs of Hugo L Black and Elizabeth Black_ (1986) 127

RELATIONS WITH THE CONSTABULARY
One night late — it might be early in the morning — I was in Piccadilly, and attracted by a gathering of people, I came upon a policeman struggling with a powerful drunken woman. She had either fallen down, or been thrown down, and he had fallen on her. There were expressions of indignation being uttered by the persons around, and a row seemed imminent. “Why do you not spring your rattle? You will hurt the woman.” He jumped up, and seizing me by the collar, said, “I take you into custody for obstructing me in the execution of my duty!” I remained perfectly passive, and in the meantime another constable had come up, and had seized the woman, whom he was handling very roughly. At this moment, Sir Alexander Cockburn, the Attorney-General, who was returning from the House of Commons, appeared upon the scene, and seeing a woman, as he thought, ill-used, remonstrated in indignant language with the officer, upon which the constable who had hold of me stretched out his other arm,
and said, “I arrest you also.” “Arrest me!” exclaimed the astonished Attorney-General, “what for?” “Oh,” said my captor, “for many things. You are well known to the police.”

attributed to Ballantine in Willock, *Legal Facetiae* (1887) 58

[The legendary Houston lawyer Richard “Racehorse”] Haynes’s own life-style befits his flamboyant reputation — a lavish house in Houston’s exclusive River Oaks section, a forty-foot yacht, a Cessna, a $40,000 Porsche Turbo Carrera, a replica of the classic Excalibur motorcar, and enough motorcycles to kill himself eight times over. There wasn’t anything in Racehorse Haynes’s life that wasn’t a challenge, or the fruits of a challenge. He was a skydiver and a motorcycle racer and a champion of the hopeless cause. When he’d had a drop too much Scotch, he’d been known to race his motorcycle through motel lobbies. A man whose ego seemed to be on a permanent collision course with his courage, Haynes was absolutely convinced that with enough time and money he could win any lawsuit anywhere. … He once talked his way out of a drunk driving ticket by performing a back flip off the bumper of his Porsche.

Cartwright, *Blood will tell: the murder trials of T Cullen Davis* (1979) 115

**POLITICS CAN BE FUN**
During the course of his career, [Thurman Arnold] won a seat in the state legislature, where he delighted his colleagues by once nominating himself for Speaker, filibustering for three days on his own behalf, and then dramatically announcing that he would not accept the nomination.

Murphy, *Fortas: the rise and ruin of a Supreme Court Justice* (1988) 75

**SWORN TO UPHOLD THE CONSTITUTION (INCLUDING THE EIGHTEENTH AMENDMENT)**
Felix Frankfurter was having lunch with Oliver Wendell Holmes on the occasion of the recently retired justice's ninety-second birthday:

Frankfurter joked with Holmes about, in those Prohibition days, the two of them having had sauterne and champagne for lunch. Frankfurter recalled that Holmes looked at him with simulated sternness and said: “Young fellow, I don’t want you to misunderstand things. I do not deal with bootleggers but I am open to corruption.”


**REDHEADS HAVE MORE FUN**
Besides defences under the *Poor Prisoners’ Defence Act*, Birkett had more than his fair share of “dock briefs.” By long established custom, a prisoner who has been
charged and is in the dock may pick out any barrister who happens to be in court and
robed at the time to defend him, and by the etiquette of the Bar the barrister must
accept the brief for the fee of £1 3s 6d, which sum must be paid in cash upon the spot.
The feature of Birkett which prompted a prisoner to point to him was the colour of his
hair, which appeared conspicuously from under his wig. “I’ll ’ave the bloke with the
red ‘air,” the man in the dock would say more often than not when Birkett was in
court. Thus the feature, which Birkett always felt to be a hindrance at school, turned
out to his advantage. “When I was a lad,” he once admitted, “I worried and was
absolutely ashamed because of the colour of my hair. … Well, I have found that it has
added to my success, for work has come my way because I have red hair.”

Hyde, Norman Birkett: the life of Lord Birkett of Ulverston (1964) 72

AND YOU THOUGHT MELBOURNE WAS SNOOTY ABOUT MONASH
The US Senate was considering President Truman’s nomination of William Hastie
(LL B, magna cum laude Harvard 1930, JSD Harvard 1933) for the post as Governor
of the Virgin Islands. The narrator, Louis Lautier, wondered which senators would
challenge the nomination: Certainly not Eastland. Senator James O Eastland of
Mississippi had “attended” three Southern universities and had “studied” law
somewhere, sometime, somehow. By Harvard standards, he is virtually an illiterate.

Ware, William Hastie, Grace under Pressure (1984) 193

The real tradition of the [Solicitor General’s] office was a clubby sense of self-
importance — what one ex-assistant called a “collective smugness.” Some of the
SG’s aides from Columbia, Harvard, and other elite law schools looked down their
noses at political officials like Bradford Reynolds, Charles Cooper, and Carolyn Kuhl,
as if where the three studied law (Vanderbilt, Alabama, and Duke) were enough to
explain why they failed to defer to the wisdom of the office’s career lawyers. “They
don’t know any better because they didn’t go to the right schools,” one of the SG’s
lawyers explained seriously.

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As the Court’s master manipulator, Frankfurter did not intend to leave Brennan’s
voting record to mere chance. His approach was cynical and calculating. In the past,
with weak Truman appointees such as Minton, Clark, and Burton, flattery had been a
totally successful manoeuvre. He would flood the justices with notes of false praise
and encouragement. If that failed, Frankfurter would resort to brow-beating and intimidation. His efforts to influence fellow justices through their clerks was legend, especially when those top law school graduates were Harvard men. Any Harvard graduate, regardless in whose chambers he worked, was considered by Frankfurter to be his own. They were invited to dine and lunch with him. They let him know what the other justices were thinking. Frankfurter let them know what their bosses should be thinking. The justice from Harvard was so brilliant and confident that he was quickly able to dominate anyone of weaker intellect. Conversely, anyone not from Harvard was considered by Frankfurter to be not worth talking to.


**CHOOSING YOUR LAW SCHOOL**

“And you thought Melbourne was snooty about Monash revisited”, *97 Vic Bar News* 52 (Winter 1996)]

“When I went to take the law school admissions test, I went with a friend of mine from Wellesley,” she [Hillary Clinton] recalls. “We had to go into Harvard to take the test, and we were in a huge room, and there were very few women there, and we sat at these desks waiting for the proctors or whoever to come and all the young men around us started to harass us. They started to say, ‘What do you think you’re doing? If you get into law school, you’re going to take my position. You’ve no right to do this. Why don’t you go home and get married?’” She sits up very straight. “I got into Harvard and I got into Yale, and actually I went to a cocktail reception at the Harvard Law School with a young man who was, I think, a second-year Harvard law student. And he introduced me to one of the legendary Harvard Law professors by saying, ‘Professor So-and-So, this is Hillary Rodham. She’s trying to decide between us and our nearest competitor’. And this man, with his three-piece suit and his bow-tie, looked at me and said, ‘First of all, we have no nearest competitor, and, secondly, we don’t need any more women’. And that’s how I decided to go to Yale.”


**DUTY**

[Robert] Bork was not eager to take the job [as a justice on the District of Columbia Court of Appeals]. He could scarcely afford the cut in salary. Further, the heavy load in administrative law at the DC Circuit didn’t much appeal to him. As he said two
years into the judgeship to reporters, “You remember those last lines in The Heart of Darkness, ‘The horror, the horror’? I kid friends that my last words will be ‘The trivia, the trivia’.”

But if there was the stick, there was also the carrot. Bork was sent a clear signal: If he wanted to join the Supreme Court, he would have to go on the appeals court. He took the job and went into debt.

Bronner, Battle for Justice: how the Bork nomination shook America (1989) 88

**TIMIDITY**

One nervous old barrister named Lamb, who usually prefaced his pleadings with an apology, said to Erskine one day that he felt more timid as he grew older. “No wonder,” replied Erskine, “the older the lamb the more sheepish he grows.”

**INSPIRING YOUNGER PRACTITIONERS**

[Justice William] Douglas said he first met [Richard] Nixon when Nixon was a law student at Duke University: “I had gone there to give a lecture to the law school. I talked about predatory practices in finance. … Some years later Nixon told me that I had been an inspiration to him, that my lecture had affected his life. I did not ask in what way, for the uneasy thought crossed my mind that predatory practices had inspired him.”


**GOOFING OFF**

[Justice Thurgood] Marshall moved in a painful waddle. He gasped for breath after walking a few steps. His eyesight has deteriorated, too. He could only read greatly enlarged type, but Marshall joked about his sad condition and persevered, determined to “serve out my term,” as he put it. His clerks joked, too, that they had been given the best opportunity in the building to goof off on the job without being detected because “we can hear the boss’s wheezing from fifty feet away.”

Savage, Turning Right: the making of the Rehnquist Supreme Court (1992) 345

**AMUSE THE CHIEF**

[William] Rehnquist also enjoyed playing practical jokes. Unlike his colleagues, Rehnquist never spoke ill of [Warren] Burger, but he had been well aware of the chief justice’s concern for the dignity of his office. On April Fool’s Day in 1985, he asked
Burger for a ride to work. As the long black limousine passed in front of the Court, they noted a street photographer holding a life-sized photo of Burger, with a sign that read: “Have your picture taken with the chief justice, $1.” Burger was plainly irritated. He might have been even more so had he known that the photographer had been sent there by Associate Justice William Rehnquist.


**SUCH INSOUCIANCE**

[Bob Bork] was remembered fondly by his colleagues from those years [as US Solicitor General] for beginning his days sitting on a couch in his office, smoking, drinking coffee, and filling in a crossword puzzle while briefs and legal papers were piled up all around him. Such insouciance had its drawbacks. The *Los Angeles Times* reported that Chief Justice Warren Burger once complained to Bork about his frequent lateness in filing briefs.


**FRAMING AN EFFECTIVE ARGUMENT**

The distinctive qualities that Robinson admired in Hastie were evident. Among them was “the skill in dialectic” that another distinguished jurist considers “a useful tool” of appellate lawyers. Those who possess it often display their special sparkle in response to questions from the bench. This jurist remembers United States Attorney George Z Medalie’s reaction to his suggestion that Medalie include a point in his opening argument. “No,” said Medalie. “The point is so vital that they are bound to ask it. It will be more effective if I give our position in answer to a question.”

Ware, *William Hastie: Grace under pressure* (1984) 189

**TORTOGENS AND LITOGENS**

Unfortunate indeed is the man who works for a company covered by insurance, for even his slightest injury may result in cancer.

Crane, “The relationship of a single act of trauma to subsequent malignancy”, in *Trauma and Disease* (eds Moritz and Helbery, 1959) 147

It is not an experience that anyone in the pharmaceutical industry cares to repeat. “We wouldn’t bring Bendectin back,” a Merrell spokesman declared, “even if we won every lawsuit.” No other US pharmaceutical company is ever going to expose itself to such legal risks either, so private research in pregnancy-related drugs has virtually
stopped. “If you’re suffering from morning sickness,” runs one bitter joke in the industry, “go see your lawyer.”

Huber, *Galileo's Revenge: junk science in the courtroom* (1991) 128

**FAMILY LAW**
The only time some fellows are ever seen with their wives is after they’ve been indicted.

Kin Hubbard

**LITIGATION IS FUN**
I have now turned fifty and am going through menopause and I enjoy a little litigation. It’s costly, perhaps, but salutary, and considerably less expensive than keeping racehorses or getting married.

Gore Vidal

**READ YOUR BRIEF**
It is told of Mr Justice Hawkins that a heavily marked brief in a compensation case was once delivered to his chambers, and that after six weeks had elapsed, and the hearing of the case was approaching, his clerk wrote to the solicitor suggesting that a cheque for the fee was not only feasible, but was in accordance with the usual practice of the profession. To this the solicitor replied: “If Mr Hawkins had taken the trouble to open the brief he would have found the cheque inside.”

Fountain, *The wit of the wig* (1968) 21

**CANDOR BEFORE THE COURT**
The Solicitor General [William Mitchell] was out for a stroll in Washington, and he met Justice Holmes on the street. “Mr Solicitor General,” the Justice said, “I admire your candor before our Court.” As Mitchell drew himself up proudly, Holmes quickly added, “I have always thought that candor is the best form of deception.”


**PERQUISITES OF OFFICE**
On retiring from the NZ Supreme Court in 1921, Mr Justice Edwards created his final temporal controversies by announcing that he had resumed practice as a barrister and by retaining in invitos a Justice Department typewriter. After a correspondence marked by his usual vigour the Department internally acknowledged defeat, writing off the machine as “irrecoverable.”

RESPECT YOUR OPPONENT
During argument in Provincial Court, Crown Attorney Ken Rae QC, of Owen Sound, Ontario, took a verbal swipe at his opponent:
“Your Honour, my friend’s ignorance of the law surprises me.”
“Surely you can rephrase that,” said the judge.
“All right,” Rae replied. “My friend’s ignorance of the law doesn’t surprise me.”

McDonald, Court Jesters (1985) 83

KNOWING WHICH SIDE YOUR BREAD IS BUTTERED
Steven Kumble’s unique attitude towards the practice of law can be summed up by another of his favourite sayings: “Praise the adversary. He is the catalyst by which you bill your client. Damn the client. He is your true enemy.”

Eisler, Shark tank: greed, politics, and the collapse of Finley Kumble, one of America’s largest law firms (1990) 32

CHOOSING YOUR TABLE COMPANIONS
One day I’m sitting with Tom when Roy [Cohn] pops his head in the room and says, “Tom, do you want to go to lunch with so-and-so?” a well-known person associated, I guess, with the criminal elements. Tom said, “No, Roy, I’m busy ….” When he left, Tom looked at me and said, “I don’t want to go to lunch with ’em. These guys are always getting shot in restaurants.”


CONSERVATION LAWS: TIME
[In the not too distant past, murder was a capital offence.]
…, after the Seddon trial, Marshall Hall turned to me and remarked wearily: “I don’t think I’ll ever take on another murder case. The strain is too great. It takes too much out of one.”
A similar remark was made by Norman Birkett after the conclusion of the Hearn trial, when, flinging his wig on to the table he remarked to his junior, Mr Dingle Foot: “These sort of cases take years off a man’s life.” To which his junior replied sagely: “Maybe — but they add years to his client’s.”

Bowker, Behind the Bar (1947) 238

IF YOU DON’T KNOW THE ANSWER, DON’T ASK THE QUESTION
In an April 1992 deposition in a civil case, [convicted Wall Street inside trader Ivan] Boesky refused to say where he lived or reveal his net worth. But when asked by an
opposing lawyer if he had a chauffeur for his car, he paused and then said, “No. Do you want the job?”

Stewart, *Den of Thieves* (1992) 532

“But, madam,” said Sir John Coleridge [in cross-examination] to Mrs Starr, “was not that rather an unnecessary fuss to make about a few strawberries?”

“Sir John,” replied the witness, “you may remember that on one occasion a good deal of fuss was made about an apple.”

Mathew, *For Lawyers and Others* (1938) 167-8

This is an old Supreme Court story: Justice Holmes, once during oral arguments, curious about the legal manoeuvrings that had brought a case before the bench, asked a nervous lawyer, “How did you get here?” Replied the flustered lawyer: “By the Santa Fe Railroad.”

Felix Frankfurter told a similar story of his first day on the bench, January 30, 1939. The case being argued involved a direct appeal from an action by a federal district court. “I was puzzled to know why the case was here,” Frankfurter recalled — that is, what jurisdiction the Supreme Court had over a case which had not gone through the Court of Appeals route. He leaned over to ask Justice Black, sitting next to him, but Black could not offer any help. Frankfurter suggested that Black ask the lawyer, arguing before them, about jurisdiction. “For one reason or another he was not willing to do so,” said Frankfurter. “I then struggled with my soul to consider the great problem of when a new justice could ask a question from the bench. … I summoned my daring.” The question Frankfurter asked was “Why are you here?” The lawyer’s answer was “Because the Court assigned me as counsel in this case.” From that moment on, Frankfurter framed his questions more carefully.


**APPROACH YOUR CASE REFRESHED**

… he was in Leeds for an important case, lunching with his clients and their lawyers, and at the end of the meal, which had naturally been accompanied by wine, ordered port. When a glass was brought, F E looked at it contemptuously and said he meant a bottle, not a glass, and proceeded to demolish a bottle; after which he returned to court and demolished the opposition.

EARNING HIS 5%
In 1976 a senior clerk described his tasks: “a barristers’ clerk does everything for his governor, even sewing on his fly-buttons, because the typist couldn’t do it, as there was no time to take his trousers off.”

Flood, Barristers’ Clerks - the law’s middlemen (1983) 11

PASS OUT YOUR CARD WITH CAUTION
A story about Justice Sir William Grantham of the King’s Bench Division was that, after protesting vainly to a man who was smoking in a non-smoking carriage, he sought to impress the offender by handing him his card, with a threat to have the man arrested at the next station. But the man left the compartment quickly when the train stopped, and took a seat in another compartment. Justice Grantham sent the guard to get the man’s name and address so that he could be prosecuted. When the guard returned he said, “I wouldn’t have him arrested, Sir. I asked his name and he gave me his card. You see, he is Mr Justice Grantham, Sir.”

from the Green Bag magazine

WHICH WAY IS UP?
The idea of invalidating “the monkey law” seemed to tickle him [Fortas]. Dean Louis Pollak of Yale Law School called on Fortas during that time and found the justice working on the case. The justice’s portrait, which his former partners had commissioned as a gift for the law school, sat in a corner. Fortas was dubious about the painting, which was impressionistic He told Pollak that while he worked on Epperson [v Arkansas, 393 US 97 (1968)] he looked at the painting occasionally and tried to decide whether it indicated mankind “ascended from or descended from apes.”

Kalman, Abe Fortas: a biography (1990) 275

SAGE CLIENT
Russell Sage’s lawyer was delighted by the case his client had brought to him. “It’s an ironclad case,” he exclaimed with confidence. “We can’t possibly lose!”

“Then we won’t sue,” said Sage. “That was my opponent’s side of the case I gave you.”

STATUTORY INTERPRETATION
I intended to lie as low as possible, but within the hour an opportunity occurred that I could not resist. The next step in the disciplinary process was to overawe me with the Official Secrets Act. I was shown the laboratory copy of the Act and asked to sign a
certificate to the effect that I had read the *Official Secrets* Act (1911) and understood it. I could not resist adding a postscript to my signature: “The 1920 Act is also worth reading.”


**LAW AND TECHNOLOGY**

A nation’s values and problems are mirrored in the ways in which it uses its ablest people. In Japan, a country only half our size, 30 percent more engineers graduate each year than in all the United States. But Japan boasts a total of less than 15,000 lawyers, while American universities graduate 35,000 every year. It would be hard to claim that these differences have no practical consequences. As the Japanese put it, “Engineers make the pie grow larger; lawyers only decide how to carve it up.”

Bok, *Annual Report to the Board of Overseers*, Harvard University (1983)

Lawyers should tread humbly outside their own strictly legal business. As they are often reminded, their experience is limited mainly to dissecting the mistakes of others with the advantage of hindsight, and no legal argument has ever put one brick on top of another.


**LITIGATION IS FUN**

To allow claimants such as the plaintiff to continue to pursue claims that have been fully remedied during the administrative process would frustrate the congressional policy favouring administrative resolution of complaints for no discernible reason. Continued pursuit of such claims consumes judicial and other resources, resulting in a deadweight social loss except for giving satisfaction to litigants who prefer court proceedings to administrative relief. However, litigation is not a sport in which the hunter may release a trapped quarry for the thrill of further chase.


People who have never sued anyone or been sued have missed a narcissistic pleasure that is not quite like any other.


Litigation takes the place of sex at middle age.

Gore Vidal
COUNSEL’S DREAM
The ideal client is the very wealthy man in very great trouble.


Justice Fortas reminisced: “… there are few things in a lawyer’s life more rewarding than a substantial corporation whose officers are threatened with criminal prosecution. Here we have an ideal combination — a long purse, moral indignation, a protracted trial and a reasonable amount of fear.”

Shogan, A Question of Judgment (1972) 120

IGNORANCE OF THE LAW
The fact is that there is not and never has been a presumption that everyone knows the law. There is a rule that ignorance of the law does not excuse, a maxim of very different scope and application.

per Lord Atkin, Evans v. Bartlam [1937] AC 473

Ignorance of the law excuses no man; not that all men know the law, but because ’tis an excuse every man will plead, and no man can tell how to refute him.

Selden, Table Talk: Law (1689)

Everybody is presumed to know the law except His Majesty’s judges who have a Court of Appeal set over them to put them right.

Maule J
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Title:
More helpful advice II

Date:
1994

Citation:

Publication Status:
Published

Persistent Link:
http://hdl.handle.net/11343/35033

File Description:
More helpful advice II

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