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WHAT I DID ON SABBATICAL

Returning after 15 years to her old haunts at the Hall of Justice, a law professor finds the underside grown darker

By SUSAN RUTBERG

Most of the first 15 years of my life as a criminal defense lawyer were spent in and around the San Francisco Hall of Justice. In January 1998 — after 10 years of full-time teaching, and about a dozen years away from the San Francisco

criminal courts — I went back for a one-semester sabbatical at the public defender’s office. I was excited about the opportunity to try out some of what I’d been preaching as a teacher.

Yet you need special training to be a trial lawyer. “Lawyering Skills” and “Criminal Litigation” was hardly preparation for the shock of reentry. Like Rip Van Winkle when he first opened his eyes after that long sleep, I often walked around dazed and confused, with a strange sense that things had gotten a lot worse in the years since I left the practice.

In 1973, I absorbed the culture of the Hall of Justice from the perspective of a lowly, inconsequential student — a researcher/aid, last-minute go-fer for the trial lawyers at the Bayview-Hunters Point Community Defender. Everything simultaneously scared and intrigued me in those days, even the Hall itself — that great gray fortress of “Justice” with its dim and flickering fluorescent lights, windowless corridors, ugly adored courtrooms.

And the players — the police, prosecutors and judges (all mostly white) arrayed on one side, and the “Just Us” ex-hippies and poverty lawyers (somewhat less white) lined up with our clients (mostly poor and non-white) on the other side. I identified with the clients because they were mostly young.

Yet they were so unlike me. These young men and women inhabited a world hobbled by poverty and racial stereotypes, where daily survival was a struggle. The lines were drawn: Everything was black and white, us against them.

THAT WAS THEN, THIS IS NOW

Some things are exactly the same. New paint hasn’t camouflaged the grim drabness of the courthouse. And on my first trip to the county jail, I’m almost knocked out by the oh-so-familiar smell — a combination of institutional food, too little air and too many men — the smell of their fear not masked by their overwhelming bravado.

Some things have improved.

There are new alternative sentences or diversion programs, some run by the sheriff, with optimistic names such as “Reeds to Recovery” or “Resolve to Stop the Violence.” Others — such as Drug Court and Mentor Court — are even run with the support of the prosecutor’s office.

Also, there are many more women in the criminal defense bar and the place is not so solidly white, even on the bench. Many of the new DAs are young women; some are openly gay or lesbian; several are of color. On the one hand, this diversification is encouraging. On the other hand, a defendant of color in San Francisco in 1998 is likely to be prosecuted by another person of color. It’s hard to think of this as progress, though it probably is.

But the ranks of the accused are, if anything, less diverse than when I was last here. Twenty-five years ago, disproportionately large numbers of African-American men went being prosecuted. Today, the numbers of defendants of color are off the charts. I’m stunned by the visuals: Young man after young man, almost all of color.

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Tyranny of the Majority Party

The Republican bid to hold Attorney General Janet Reno in contempt of Congress is a contemptible abuse of power

By CHRISTOPHER M. SCHROEDER and NEIL KINKOPF

The House Committee on Government Reform and Oversight crossed a constitutional line on Aug. 6 when it voted, along straight party lines, to hold Attorney General Janet Reno in contempt for refusing to turn over memorandums prepared by Justice Department official Charles LaBella and FBI Director Louis Freeh.

The Burton/Reno impasse thus represents yet another instance of increasingly aggressive efforts by Congress to dictate executive branch decisions through the political pressure of oversight hearings, document requests, demands for interviews with executive branch officials and other methods.

THE POLITICS OF LEGISLATION

No one doubts that Congress is the lawmaking branch. And no one should doubt the indispensable presence of politics in the making of law. Properly understood as the act of governing ourselves, politics is the very essence of legislating.

But the American form of government establishes certain strictures on the channels through which political influence

board of review’s role to the mere power to make recommendations to MWAA. Where MWAA rejected such a recommendation, it could take no further action on the matter for 60 days, but agreements with the board could take effect immediately. The D.C. Circuit U.S. Court of Appeals, in Hecelger v. MWAA, 36 F.3d 97

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Noise Inc., 501 U.S. 252, the court held that

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Sadden's all, so many of the young people in jail are the children — and even grandchildren — of the people I used to represent. What I see in their faces scares me.

or actually met the 45-plus people on calendar for the next day whose case files bore my name.

Because of staffing shortages, the office system is to continue cases to lawyers in trial through the files are actually "handled" by other lawyers until the trial ends — as, in my case, until a new person steps into the rotation.

In the P.D.'s office, responsibility for "running" calendar in each of the four preliminary hearing courts rotates among the lawyers assigned. With our numbers, that means that every eight days one public defender represents virtually all the defendants, both in and out of custody, on that court's arraignment calendar. All told, this is between five and 30 defendants. And that's not all: That same public defender also represents most of the people on the continued calendar, sometimes as many as 40 to 50 defendants. Of course, in some of these cases conflicts are declared and private counsel appointed. And then there is the occasional client with retained counsel. But typically a prelim day feels like an all-day, one-woman show, with no real intermission, and way too few laugh lines.

That night I stay up late reading all the files. Some of my new cases had been worked on up for years and years, and are the terrible "strange fruit" — as Billie Holiday once put it of our time. In many ways, these things seem better now: The Hall of Justice functions more like a community. In 25 years, the culture of the professionals in the criminal justice system has changed significantly. There is tangible diversity. The mix of backgrounds, cultures, viewpoints, makes the Hall a vibrant, exciting place to be.

For the rising tide of poor, young people filling the prisons as fast as we can build them, the culture has not improved.

THE STRANGE FRUIT OF OUR TIME

But my client's absent parenting is only part of the reason his son is in jail. All these young men of color, locked up for years and years, are the terrible "strange fruit" — as Billie Holiday once put it of our time. In many ways, these things seem better now: The Hall of Justice functions more like a community. In 25 years, the culture of the professionals in the criminal justice system has changed significantly. There is tangible diversity. The mix of backgrounds, cultures, viewpoints, makes the Hall a vibrant, exciting place to be. But for the rising tide of poor, young people filling the prisons as fast as we can build them, the culture has not improved. What used to be a gap between poverty and justice is now a chasm. I come back to teaching with a renewed sense of the importance of indigent criminal defense. Working to keep young people of color out of prison to mitigate the time they spend away from their community won't fix the deep-rooted problems involving race and class in American society. But from this Rip Van Winkle's perspective, it is definitely a necessary part of the solution.

DIGGS: All For One

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der's eight men who have survived the landing at Omaha Beach to undertake a suicide mission. They must locate Private James Ryan (Matt Damon). A paratrooper downed in occupied Normandy, and send him home. The assignment foregrounds an examination of what the nation owes its individuals — and of what the citizen, in turn owes his community.

The patrol's trip across enemy territory offers uninterupted variations on the combat film's balancing of interests. The outspoken New Yorker (Edward Burns) demands that their eight lives be weighed against Ryan's time. "Explains the math to me?" The Teesennep sharp-shooter (Harry Potter) wants to consider life against life. "This entire mission is a serious misallocation of resources," he argues. "I am a finely tuned instrument of warfare."

The film's protagonist outsider, the inexperienced Corporal Upham (Jeremy Davies), naively believes that a society emerges from swapping addresses with his comrades. But Upham remains a party of one. His crucial inability to separate himself from his orders eventually compounds disaster. When Upham finally kills, he is not acting as a soldier, but as an individual who has been personally wounded.

Like the protagonist of every other combat film, Miller is responsible for the ultimate weighing of private against public. So carefully conceals his own history to avoid the loss of personal connection with his men that would make his task unendurable. But the effort fails. He must choose finally between his men's survival and Ryan's safety, a decision that conventionally sacrifices men to the mission. "But this time," Miller's adjutant (Tom Sizemore) observes, "the mission is a man."

That plot device allows Spielberg to modify the combat genre's traditional outcome to provide a new perspective on America's current priorities. His point is a sharp one, but it isn't subtle. Our social system depends upon the individual's placing himself in service to the group. And upon the group's then placing itself in service to the individual. Our future demands that somebody get home.

LINES OF OBLIGATION

Flag debate on amendment reports are drafted over what they believe is a disintegrating society. But this has the chronology wrong. This respect [for the flag is] the genesis of hate. Citizens Flag Alliance Chairman Pat Brady told the Senate. It promotes the division of our unity. What the flag wavers have failed to note is that a 20 year shearing of the lines of obligations flowing between citizen and society have precluded — not dismantled — a 21st century American community.

Amendment sponsors have argued that laws against flag desecration will communicate to young people. But so would health care, job programs and a meaningful assault on global warming. Potemkin patriots hog us remember the vcs, but they refuse to provide adequate funding to the public schools where the men like Ryan's John Miller worked before the war. Spielberg goes beyond this to the notion that the dead want our gratitude. They don't. What they demand is — quite literally — our lives. We are

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