

Trial by Fire - A Lawyers Introduction To the "Law"

By Bruce Bergman

They had a racket in Cortland, New York back in the 1960s, which gives rise to a rather bizarre tale of the law in action and a sage lesson of legal philosophy.

Here is how it happened. The ratio of men to women at Cornell University in the mid-sixties was in excess of three to one, which compelled male Cornell students to seek dates at the exclusively or predominantly female schools in the vicinity. One of the prime choices was Cortland, which was then known to be a teachers college and consequently attracted large numbers of women. So on weekends, Cornell men descended upon the town only a half hour away and flocked to the two or three bars which presented live bands. This was then a magnet for the Cortland ladies so that the gin mills were packed most weekends - which obviously was well known to the local constabulary.

This is where the scheme comes in. One especially bleak and snowy upstate winter Saturday night, five of us headed for the succor of a Cortland bar. When the night ended at 1:00 A.M., we walked down the block to where the car was parked, only to find it gone. A call to the police - elicited by our thought that the car was surely stolen - revealed that the vehicle had been towed to a local garage. We were then told that the police could not help and instead, we would have to retrieve the car ourselves.

We checked the street signs and determined that the car had been legally parked. But this was no time for legal niceties. We trudged through the slush to Vern's filling station to find the car neatly wedged between two others. "What's going on," we inquired of proprietor Vern. "Well, we had to tow your car and if you want it back, the charge is \$25 for towing and \$10 for storage."

That was a very hefty sum for those days. I do not recall if our driver had the money or not, but as a Manhattanite (a breed beloved of course by the local Cortlanders), he was provoked enough to adopt a self help posture. He squeezed into the car and began maneuvering it out. Sharp eyed Vern spotted the escape attempt and with a shout that "they're getting away," raced over to block the Oldsmobile's path. Confronted with the obstacle of Vern's body, our driver hit the brakes. In a split second, Vern twirled around, leaned back on the new halted auto and shouted, "My back! My back!"

The police arrived and charged our hapless driver with attempted vehicular homicide! He was taken to jail and the rest of us were invited, literally, to leave town.

Back at the fraternity house in Ithaca, as the budding future lawyer, I was elected spokesman to solve the problem. A conversation with the Cornell campus patrol fortunately resulted in the driver's immediate release. The jarring episode should have ended there. It did not. Vern instituted suit on some variety of negligence claim.

Although it probably would not happen as quickly today, during that Spring of 1966 we appeared at a trial in the Cortland County Supreme Court. Vern testified at length about the depraved, unwarranted assault by vehicle upon him and produced x-rays of his "injured" back. It turns out that he had a pre-existing back problem. To what extent the new incident exacerbated the injury was a point of contention.

In any event, Vern's lawyer was a vigorous

advocate and adeptly rendered each of us less effective as witnesses than we would have preferred. He concentrated his questions on how much we had to drink on the night in question, implying that our version of the events was clouded by alcohol. While certainly an appropriate tactic, the fact was that our sojourn to Cortland was addressed to feminine pulchritude, not booze. But Vern's neighbors on the jury were impressed with the approach.

In defense, the attorney for the driver's insurance company gave a feckless, lackluster performance which was apparent even to untutored laymen. His ineffectiveness was so obvious that I asked him why he employed such a low key response. "I was vociferous at my last trial and lost, so I thought I would do it differently this time," he replied.

The jury ruled for Vern. Outside the courtroom, my incredulity was apparent and I naively suggested to Vern's attorney that he had persuaded the jury to accept a recitation of events which never occurred. I knew. I was there. An avuncular type, he put his arm around me and with a smile explained that no one - not him, not me, not the jury - could really know what happened. Everybody has to do his best to divine what transpired.

I did not believe that then because I knew as a moral certainty that the verdict was wrong. But I do believe it now. It is true: no one can know with exactitude what the truth is in any case. It becomes an ephemeral, philosophical point with infinite shadings and gradations of reality.

Surely, I thought back then, Vern's lawyer must have known the truth of what took place. He probably did not. A client relates a story. Counsel tries with all diligence to grasp the heart of what is real. Whether he can ever succeed is exquisitely problematic. The client may or may not be telling the whole truth. Indeed, the litigant may believe the accuracy of his rendition. What is, after all, the truth? It may only be a matter of viewpoint.

That truth is ultimately subjective was a lesson well learned. A system without absolutes serves to protect rights rather than deny them - even if on some occasions the result aggrieves someone. The "freedom is slavery" aphorism of an Orwellian world did not happen in 1984 and probably never could here because our legal system at least attempts to pursue all avenues of truth. Lawyers best serve the system - and thereby everyone - in constantly testing the framework. When the vicious murderer goes free or receives a light sentence, it sickens any right thinking person. But putting the law to its proof saves the rest of us from the abuse which would most certainly arise if the system remained unconstrained by zealous lawyers.

I was not pleased with the verdict then and I still do not like it. Nor did I respect Vern's lawyer then - but I do now. I understand. That college winter of 1965 and spring of 1966 has given this lawyer an invaluable perspective.

A past Director and Chairman of the Real Property Law Committee of the Association, Bruce Bergman is a partner with Roach & Bergman in Garden City and is the author of *Bergman on New York Mortgage Foreclosures* to be published by Matthew Bender & Co., Inc.

Justice Arthur D. Spatt To be Honored

Associate Justice of the Appellate Division Second Department, Arthur D. Spatt will be honored on Wednesday evening, October 25, 1989 by The Nassau Lawyers' Association of Long Island, Inc. at their forty-second annual dinner-dance to be held at Crest Hollow Country Club, in Woodbury, New York.

Justice Spatt has been chosen as recipient of the *Nassau Lawyer's Man of the Year* based upon his dedication and conscientious work as a Supreme Court Justice, Associate Justice and as the Administrative Judge of Nassau County.

Introduction and remarks will be made by the Hon. Frank X. Altimari, Judge, U.S. Court of Appeals for the Second Circuit, his long-standing friend and colleague, after which Justice Spatt will be presented with his award by Theodore W. Robinson, President of the Nassau Lawyers.

A cocktail reception will begin at 7:00 P.M. followed by a Prime Rib Dinner at 8:00 P.M. with music by a 17 piece orchestra and refreshments throughout the entire evening. Black tie is optional. Tables seat ten. Attempts will be made to satisfy seating re-



quests. Anyone interested in attending the celebration should contact Gerald J. Ba Esq., 3000 Marcus Avenue, Suite 1W9, L Success, N.Y. 11042 or call (516) 488-3 for further information.

When a Lawyer Needs a Friend

By Leland Stuart Beck

Help for the troubled attorney... a comprehensive program to provide professional help for the lawyer in need. This is the goal of your Association's newest committee: The Committee for the Lawyer in Need.

Our profession is not immune from the illnesses and disabilities which are suffered by members of all other professions and the community at large. New York's former Commissioner of Health, Dr. David Axelrod, has estimated that over ten percent of the medical profession is disabled at one time or another by reason of alcohol or drug addiction or physical or emotional illness. It is believed that addictive disease affects at least ten percent of the population at large. The pressure of practice subjects the legal profession to all of the stress-related impairments, including addictive conditions, emotional or mental disease and physical disability.

A rising number of disciplinary problems and complaints related to these stress-related disorders has alarmed the leaders of the Bar. (See Nassau Lawyer, Sept. 1989, Page 14). The American Bar Association as well as most state bar associations have recently begun to adopt programs to help the addicted lawyer.

Action Taken By Directors

Our Board of Directors, aware of the growing problem in our own community, began a study in 1987. At that time, a subgroup of the Lawyer Counselling Committee canvassed every bar association in the state, as well as representative groups of other professions. It was discovered that several associations had adopted limited alcohol and drug programs. However, there seemed to be no overall program to deal with the broad range of stress-related problems which would disable a practicing attorney.

The following year the Board of Directors continued this study by authorizing an *ad hoc* committee to be called the "Lawyer in Need Committee." This Committee undertook to continue the earlier study and to recommend to the Executive Board a program which would meet the needs of our Association. On January 10, 1989, the Board of Directors established a permanent committee entitled: "Committee for the Lawyer in Need." The Committee was charged with the duty of suggesting the nature, composition and operation of a professional counselling service to be available to our members who face personal, physical, emotional, mental, addictive, financial or practice problems, which, if neglected, could have serious consequences to both the lawyer and his or her clients.

Employee's Assistance Model

The work of the Committee soon focused on the industrial model of an Employee's

Assistance Program. Large industrial corporations have adopted programs which make professional help available to employees with addictive or emotional problems which affect their on-the-job performance. Through the use of these programs, employees who might otherwise lose their jobs can be helped to overcome addictive emotional disease and remain valuable and productive workers.

It was discovered that some of the largest law firms had adopted the employee assistance program model for their employees of their firms. In the spring of 1989, a study group consisting of interested leaders from various professions met at Domus to review the problems and some of the solutions. A program adopted by the Erie County Bar Association was explained by its chairmen at a meeting of the Board of Directors in June of 1989.

The importance of the problem has been recognized by the Nassau County Bar Association in creating a permanent committee to help the lawyer in need. That Committee held a meeting in August of 1989 and is in the process of drafting a program to present to the Board of Directors for adoption. The proposal will include the following specific programs:

1. A professional counselling service for members and their families. This service will provide initial counselling for addictive and emotional problems with referral to proper treatment centers where indicated.
2. Practice coverage for lawyers with temporary physical or mental disability. The Bar Association, through its committee, will endeavor to provide competent coverage to prevent the disruption of a legal practice or damage to a client's interest.
3. Transitional services to protect the practices and clients of deceased or permanently impaired attorneys.
4. Supervision of attorneys who may face disciplinary problems as an alternative to suspension or disbarment with the approval of the court.

Of course, this extensive program is not without cost. It is anticipated that the financial obligation of the Association will be no less than \$25,000.00 per year. This sum might be a budget item or the subject of a separate fund raising effort.

The problems to be solved are apparent. The threat is to the profession, its lawyers, and the clients served. We have recognized that the lawyer in need is a reality - and we are here to help.

Ed Note: Attorneys interested in this program may contact Mr. Beck directly at Cooperstein Beck & Rubin, P.C. 600 Old Country Road, Garden City, New York 11530.

Wanted: Good News

The Nassau Lawyer is establishing a regular feature announcing activities and achievements of our members, and publicizing their involvement in organizational and other events. If you have any knowledge of commendable activities engaged in, or honors recognition earned, by any of our members, and you believe it deserves to be recognized, please send pertinent information to the Editor, at the Bar Association.