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## What I Did on Sabbatical: Returning after 15 years to my old haunts at the Hall of Justice

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# Comment

## 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

### First Person

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 years of teaching "Lawyering Skills" and "Criminal Litigation" was hardly preparation for the shock of re-entry. Like Rip Van Winkle when he first opened his eyes after that long sleep, I often walked around dazed and

*Susan Rutberg teaches trial advocacy and criminal litigation at Golden Gate University School of Law in San Francisco. This feature is adapted from an article she published in Women Defenders, a newsletter for women criminal defense practitioners.*

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/writer, last-minute go-fer for the trial lawyers at the Bayview-Hunters Point Community Defender. Everything simultaneously scared and outraged me in those days, even the Hall itself — that great gray fortress of "Justice" with its dim and flickering fluorescent lights, windowless corridors, ugly unadorned courtrooms.

And the players — the police, prosecutors and judges (all mostly white) arrayed on one side, and the "Just Us" 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 racist

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 dinginess 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 overweening bravado.

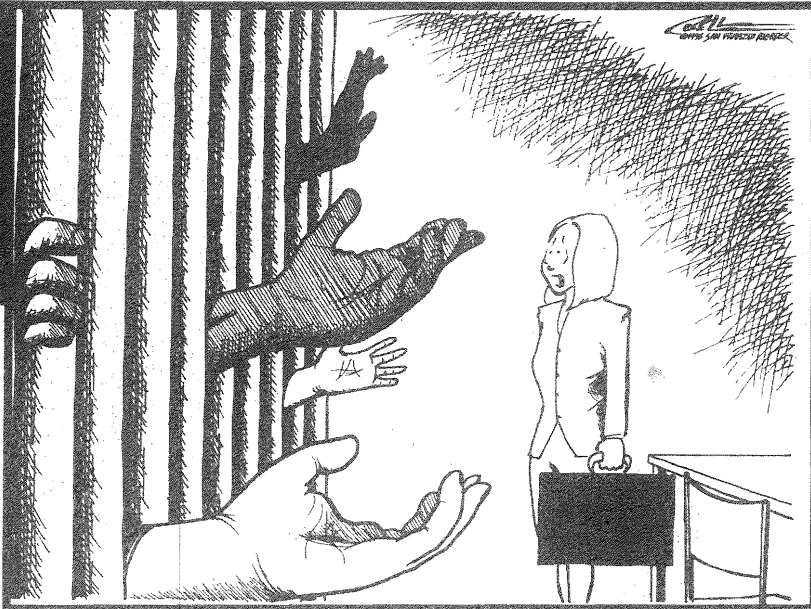
Some things have improved. There are new alternative sentencing or diversion programs, some run by the sheriff, with optimistic names such as "Roads to Recovery" or "Resolve to Stop the Violence." Others — such as Drug Court and Mentor Court — are even run with the support of the prose-

cutor'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 were 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 H. 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.

Classic "prosecutor's memos" of the sort prepared in anticipation of possible indictments, these memorandums summarize and analyze facts gathered by the department's campaign finance task force, which has been investigating irregularities in fund raising by the Democratic National Committee prior to the 1996 elections.

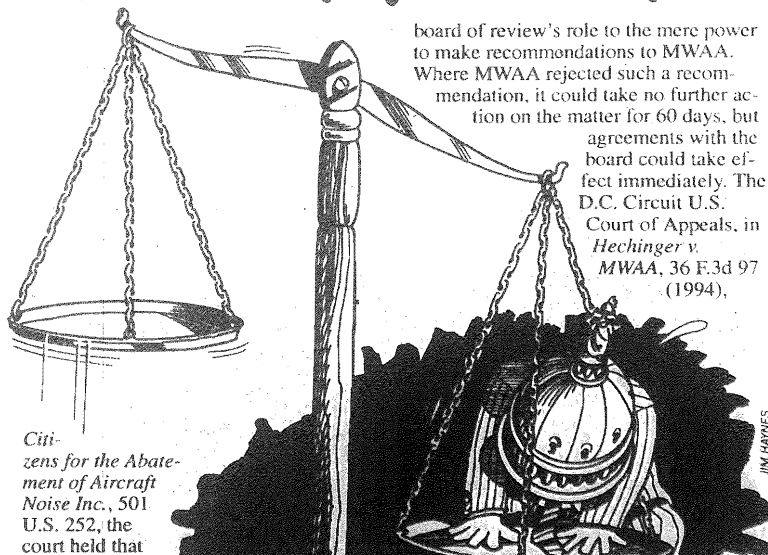
The Burton/Reno impasse thus represents yet another instance of increasingly aggressive efforts by Congress to dictate executive branch decisions through the political pressure of oversight hearings, document requests, demands for interviews with executive branch officials and other methods.

### THE POLITICS OF LEGISLATION

No one doubts that Congress is the law-making branch. And no one should doubt the indispensable presence of politics in the making of laws. 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 *Hechinger v. MWAA*, 36 F.3d 97 (1994),



Citizens for the Abatement of Aircraft Noise Inc., 501 U.S. 252, the court held that

# Comment

## RUTBERG: On Sabbatical

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mostly African-American, wear the jail jumpsuits, garish spots of orange among the dark suits in superior court.

### PRELIM DAY: A ONE-WOMAN SHOW

Nor has life has gotten easier for those of us who are responsible for providing counsel to these disadvantaged defendants.

On my first day in the office I learn that my first prelim day is — tomorrow! I also learn that I have inherited a caseload that had been assigned — in name only — to someone who was just finishing up a four-month-long murder trial. Because he was in trial, he had nev-

Saddest of 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.

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

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

In the PD'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 very 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 up, but many others had fallen through the cracks. Several clients had been in jail for weeks, meeting a different public defender at every court appearance. Some had never been interviewed. I try to prepare the cases set for prelim the next day, not knowing whether continuances will be granted. There's no time for any of the steps I teach my students: go to the scene; interview witnesses; research the law; brainstorm a theory of the case; think through evidence questions.

### PAIN FROM THE NAKED CITY

Panic sets in. In the morning, I dread the holding cell, afraid the clients will take out their

anger on me — their latest brand-new public defender. Instead I find the people in jail, for the most part, are not nearly as pissed off as they have every right to be. They are just glad to finally meet someone who will be their permanent lawyer. I wonder if this is because as poor people they have such low expectations for decent treatment from any government agency, especially "public pretenders."

Somehow I get through the day — and all the prelim days, motions to revoke and pretrial motions that follow. In the meantime, I become a sponge that absorbs a million painful stories from the naked city.

During my five-month stint I represent many longtime addicts, lots of them tired and ready to quit. But even in Willie Brown's San Francisco — with its liberal DA, progressive sheriff and compassionate judges — drug treatment programs are hard to come by. On the day before I leave, two men who've been given one last chance to avoid state prison, and have been waiting in county jail for months, are both accepted into a treatment program. I find out later that neither made it through the first week.

Saddest of 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: an absence of affect, a sense of hopelessness. Raised by parents not really present because of drugs, alcohol and/or incarceration, many of these kids learned early on to cope by getting high. I'm reminded of Jim Goldberg's photography show about homeless young addicts, "Raised by Wolves," and start to think about my young clients as cubs.

In the jail, I run into a former client, a guy I barely remembered from 20 years ago. He tells me that his son — whom he hadn't seen in a long time — is also in the jail and he is glad for the opportunity to re-connect.

"What is he charged with?" I ask.

"Oh, nothing too serious, just spousal abuse." He laughs at the look on my face: "Hey, don't blame me! I didn't raise him."

"I'm leaving now," I say, getting up from the interview room. "and you just keep on saying that over and over, until you hear yourself."

### 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 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, even 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 or to mitigate the time they spend away from the 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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ders 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 unlimited 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 one: "Explain the math to me!" The Tennessee sharpshooter (Barry Pepper) 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 requisite 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 isn't acting as a soldier, but as an individual who has been personally wronged.

Like the protagonist of every other combat film, Miller is responsible for the ultimate weighing of private against platoon. So he carefully conceals his own history to avoid the sort 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 sergeant (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 desecration amendment proponents are distraught over what they believe is a disintegrating society. But they have the chronology wrong. "Disrespect [for the flag] is the genesis of hate," Citizens Flag Alliance Chairman

Pat Brady told the Senate. "It provokes the dissolution of our unity." What the flag-wavers have failed to note is that a 20-year shearing of the lines of obligation 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 positive ideas to young people. But so would health care, job programs and a meaningful assault on global warming. Potomac patriots bid us remember the vets, but they refuse to provide adequate funding to the public schools where the men like Ryan's John Miller worked before the war.

Spielberg gives short shrift to the notion that the dead want our gratitude. They don't. What they demand instead is — quite literally — our lives. We are

Like every combat movie ever made, *Ryan* is an attempt to harmonize man's status as an individual with man's equally essential role as the member of a larger society.

obligated to act for them, to be what they cannot be, to do what they would have wanted done. "Earn this," Miller says.

It is a lifetime commitment that binds even those of us born long after the battle at Rommel Bridge — as is clearly the import of *Ryan's* epilogue. "Every day I think about what you said to me that day on the bridge," Ryan says to Miller. "And I have tried to live my life the best that I could. I hope I have earned what you did for me."

*Ryan* argues that our love of country is measured by whom we serve, not by what we salute; by our acts for the living, not by our adoration of the inanimate; by our products, not our pageantry; and by our re-examination of each day's labor to ensure it was the best we could do. In the end, we can only hope it has been enough. ■



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