PRONOUNCEMENTS FROM THE BENCH

Bill Mortlock*

It was early evening on a warm spring day and I was sauntering through the Temple after a late conference when I noticed him sitting on the bench outside Garden Court, scowling at the old men playing bowls. It was some time since we’d met and I went over and sat down beside him.

Tennyman-Tagge glanced at me irritably. “Oh,” he said, “it’s you, is it? Well, I’d better warn you, boy, I’ve just about had my fill of lawyers.”

I’d just about had my fill of clients. I’d spent the day on the telephone and, as a result, although my desk was littered with files, I’d done no real work at all. I’d been putting off going back to face the debris, trying to get out of my ear all those endless complaining, demanding, informing and instructing voices which, cumulatively, tended to remove from me a necessary sense of myself. But I knew better than to complain to Tennyman-Tagge. No sympathy was to be expected from that quarter since he firmly believed and frequently declared that while the telephone might be an instrument for footmen or emergency, it was not for the professional life. “Why? What’s the matter with them?”

“Howard wrote that a friend of his called Guaverra, another trial lawyer turned academic, was coming over here from America and asked me to show him round. He asked you, too,” he added grumblingly, “but you were away.”

“When he arrived,” Tennyman-Tagge continued, “it turned out that what he wanted to be shown round was the profession. It seemed a curious choice but, anyway, I introduced him to lawyers of every degree and he spent a couple of weeks in the court as well. He went home yesterday and, I must tell you, boy, I’m tired of lawyers and everything to do with them.”

“Then what are you doing here?”

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“I’ve been thinking over the last conversation I had with Guaverra, boy,” he replied. “He was summing up his ideas and they rather reminded me of that talk we had with Howard.”

“You mean about judges,” I said.

He nodded. “Guaverra said he’d watched judges trying cases for a good many years and still found himself wondering how they could bear to do it. As he explained, the prisoner’s only tried once, but the judge permits himself to be tried every day he sits on the bench.”

“All that’s a bit old hat, isn’t it?” I said. “de Sade made that point.”

He glared at me. “Kindly spare me your erudition, if you want me to go on.”

“Sorry,” I said.

“In fact,” he resumed loudly, “it’s been a problem ever since rulers, willingly or otherwise, ceased personally to exercise the function and other people were rewarded with it.” He frowned. “You’ll find more enlightenment on the subject, if that’s what you’re seeking,” he added, “from Maine or even Matthew than you’ll get from de Sade.”

He seemed to expect a rejoinder but when none came, he went on quietly, apparently mollified: “Actually, boy,” he said, “Guaverra was more interested in examining the dislike and distrust which lawyers seem to inspire in the lay public. He said, for example, that the courts employ canons of their own which they apply to the life situations exposed to them, although those canons have no necessary connection with living as ordinary men and women understand it. His argument was that lawyers adopt an approach comparable to that of the physical scientists who deny that two material objects in the same plane can occupy the same place at the same time. The lawyers similarly deny that there can be two orders of truth about the same thing at the same time, both seeking to occupy the same place. For the lawyer, a thing is either the truth or not the truth and yet, he maintained, everybody knows this isn’t so in everyday life where a thing can be both true and not true at the same time and one man’s truth may be different from another man’s. His point was that the lawyer’s truth is indivisible while the layman’s is fragmented which is why each has so little understanding of the other.”

“Well,” I began cautiously.

“My reply,” he interrupted, “was that lawyers aren’t as much interested in establishing truth as in discovering facts, although Houghton explained that facts are to truth what dates are to history, no more than a record of events.”

“Guaverra agreed,” he added complacently, “but he provided what I
thought was rather a striking analogy, boy. He suggested that this worship of facts, to which lawyers are given, parallels precisely the position of the the religious believer. In both cases, belief is so insistent because unconscious doubts are so strong.” And he burst into laughter.

I shifted on the hard seat and Tennyman-Tagge stopped laughing. “What do you think, boy?” he said.

Before I could reply, he was away again. “Guaverra also put forward the view,” he said, “that facts are not generally apprehended merely intellectually but emotionally as well so that, before they can receive acceptance, they are subjected to the deflection, if not the outright distortion, of the emotional prism through which they must pass. He even indicated that there might be circumstances where facts are no more than emotional responses to the given situation. Now all this, he said, is well enough known and he thought it surprising that the lawyers, in framing their rules, seemed to take no account of any of it.”

“No doubt,” I said, “you explained why you didn’t find it surprising.”

“That’s right,” he agreed, momentarily taken aback. “I did what I could to defend the profession.”

“I hope the profession doesn’t find out,” I said. “I should think it might prefer to be defended by a killer whale.”

Affronted, he rose to his feet, silent, like Count Moltke, in seven languages. I tried to put it right. “Some of these things you attribute to Guaverra,” I said in a friendly way, “sound remarkably like ideas I heard from you long before I ever heard of him.”

He shrugged. “Well you know, boy,” he said, “I only argue with people who agree with me.”