

PRESIDENT'S PAGE

BY SONNY FLOWERS



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 confute him. - John Selden, "Table Talk: Equity," 1689 (published in that year, although he had died 35 years before)

I recently was faced with a conundrum. There is a case that is pending its appeal, and it is very public. Many have weighed in on it, and I wanted to do so as well. It's the kind of situation that makes me really miss my mother, her wisdom and her counsel.

Most of you are aware of the case. It involves an area of the law about which I know virtually nothing, adverse possession. It involves lawyers, both active and retired, a retired judge, and decision-making by active judges. It has called lawyers once again into ill repute, and it makes me mad. Not a little mad, but really mad.

Some fine people have had their reputations impugned. A judge who has given his life and career to public service has been demonized. People who claim to be conservative about the modification of the law, who have tilted forever against "activist judges," have demanded that judges ignore evidence and law and rule in favor of perceived fairness.

Our system of justice in Colorado and a far above average judiciary have been accused of corruption, collusion, conspiracy and all the other bad words that connote injustice. The apparent sole reason for this is the fact that some would hide

behind their alleged ignorance of a law that goes back more than 600 years.

I am writing this, not to persuade you of the rightness or wrongness of a position but more simply because I'm mad.

I can't cause anyone to change his or her mind. Not about this. Too many minds are made up. Perhaps they are made up because they are afraid personally for their property rights. Maybe those minds are made up because the first time they heard about the case, viscerally, they reacted by thinking, "That shouldn't happen!"

Whatever the reason, I can't change those minds. I want to. I wanted to the first time I saw commentary on the case. I wanted to say, "Hell no, that's not the reason the judge did what he did." I wanted to tell people they were dumb, short-

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sighted, lacking in perspective or just plain wrong. But I knew that wouldn't work.

I wanted to step up front and say to the world, Lawyers are not bad people and to make the assumption that a lawyer and a judge just made up their minds to steal someone else's property without any evidence of that whatsoever is just plain out of bounds. I wanted to explain the law of adverse possession, its basis, its rationale, its purpose and its goals. I didn't.

I am really concerned about not stepping up. I ask myself whether I have failed the bar, my colleagues, our judiciary, you. Most of all, you. I'm in a leadership position, so I must lead. And I haven't been able to figure out how to lead in this situation. Why not? I even ask myself that question, and I come to the same conclusion over and over. Because it will not matter.

It doesn't do any good, except to me, to say I've known the lawyers who

handled that case, and they are very good lawyers, the kind of lawyers to whom I'd entrust a matter of importance to me. Who would believe me if I said that I've known Judge McLean for a lot of years, not socially but professionally, and have observed his integrity, his morality, his intent to do justice? That I've known his desire to do good, to be good, to work good, and to serve the public. Who would understand that I have watched judges and lawyers since I was little, and here in Boulder County we have the very best?

In a world where I can find a bad lawyer joke without looking, I can discover how badly we are perceived without thinking. To think that anything I say will be perceived as other than self-serving crap is not to think at all.

When we say that a good and good-hearted judge did everything right to try to make a reasoned and fair decision and, because of the evidence and the law, came to a con-

clusion that goes against the public's gut reaction is to go Don Quixote one better. Speaking to be ignored is not only not fun, but it may be self-defeating. For many, even that sentence is too long.

I wonder how many of our membership thought that the outcome of that case was absurd. I wonder how many of us thought that there might be something to the idea that one judge had scratched the back of another. Which ones would I infuriate, and which would I really please?

I've had some time to think about it. I've decided that I probably led by doing nothing. For there was really nothing to be done. The case was tried, the opinion was written and an appeal may or may not be successful, depending on which side you're on and what outcome you want. I know that our judges are excellent and our judicial system is the best. I know that no lawyer tried to improperly influence the outcome of the case, and I know that in our county, had there been such an effort, it would have been appropriately reported, and appropriate sanctions would have been exacted.

So, I just have to have faith that you, my colleagues, understand what has happened in the past couple of months. Our judicial system has absorbed one more blow and hopefully will be the better for it. We have a judge who has been deeply wounded personally, and I hope that we all express how we empathize

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and how we support him in his endeavor to be a superior member of our judiciary. He comes up for retention in less than a year and he should be retained unless someone does more than smear a good person's reputation.

Finally, I hope we have the pride in what we do that we have always had and that we look around at our fellow citizens and say to them that this commotion was much ado about nothing. We are necessary to the smooth existence of society, and our judges have the hardest jobs in the world. We try to do damage control regarding the lives of others, and the judges have to make the decisions about those same lives. That's treacherous duty, and our society is thankful someone is willing to assume it.