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## Dictaphun

Dicta Editorial Board

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## TRIAL JUDGES, CALIFORNIA STYLE

A long time ago Isaac Melman, Esq., of this here bar, called our attention to *People v. Reese*, 29 P. (2d) 450. This appears to be the setting or *dramatis personae* or both:

Place: Los Angeles (pronounced Loze Ahnglaze) court house.

Characters: Supreior Judge\* Charles S. Burnell, presiding; Tracy Chatfield Becker, Deputy District Attorney, for the People; Kirtland I. Perky, Esq., et al., for the defendants.

We quote, freely, from the report of the case as follows:

"On the first day of the trial . . . in giving the required statutory admonition to the jury . . . cautioning them to have nothing to do with the attorneys . . . the judge made the following remarks: 'So just be a little bit careful, please. I don't want you to think that these gentlemen all have leprosy, or smallpox, that you have to get from them, but just kindly figure they have all got the measles, or something you don't want to be exposed to. It is just a little tip, ladies and gentlemen, because I don't want anything talked around such as I have indicated . . .'"

"Referring to objections of counsel . . . to the reading of testimony given . . . on a former trial . . . and to the fact the witness might return . . . the trial judge said: 'If he is (has returned to the State), anyone that wishes can put him on the stand, but the idea is to get the facts before the jury, and not to play a game to see how many points either side can win.'"

". . . Following a recess . . . the judge remarked: 'All right, proceed. Both sides of the show are here. We might just as well go ahead.'"

"It appears that one of the attorneys . . . was looking in a 'bag' which was the property of one of the other attorneys in the case, and the judge said: 'Judge Perky's bag; we want to make sure which judge you are talking about. I only hope it doesn't leak on you, Mr. Lawson.'"

"When a complaining witness had testified that he had paid . . . \$20,000 to one of the defendants in connection with the sale of shares of stock, the attorney for the people asked him: 'Q. Did you get anything for that \$20,000? A. Not a thing.' The judge then interposed the following question: 'You got experience, didn't you?' A. 'Plenty of that.'"

"On another occasion, the court made the following remarks to a witness on the stand: 'Mr. Robinson, you are just a little too eager to answer questions without giving either side a chance to object. If

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\*Ours are District Judges.

you see either of these gentlemen going through gesticulations or motions that indicate that they are about to give birth to an objection, just stop a moment.' "

"During the reading of certain testimony, Mr. Perky and Mr. Kelby took turns in reading from the transcript, and on one occasion, as Mr. Kelby was about to take up the reading, the judge made the following comment: 'All right; we will listen to the reading of the Word from the Reverend Kelby now.' "

"With reference to the proposed reading . . . of several checks which had been introduced as exhibits . . . the judge made this remark: 'There is no heart or sex appeal in reading checks.' "

"It appears that counsel for the people had a book which belonged to Judge Perky . . . and that Judge Perky had made an inquiry for it; whereupon the judge remarked: 'Well, I don't think anyone would want to take a date book away from you, Judge Perky, particularly if it contained any live telephone numbers.' "

"In cross-examination of a witness . . . one of the attorneys for the defendants . . . asked a question which had a tendency to distinguish between two persons who bore the same name. In connection therewith, the judge made the following remark: 'Well, it is assuming facts not in evidence. In the first place, it is assuming that she is particular. We don't know whether she is or not . . . ' "

"During the examination of a witness, reference was made to the kind of work which he was doing, and the court said: 'What was he doing, flagpole sitting?' "

"Referring to another witness, the court said: 'Well, he has made his explanation of why he made a certain remark, indicating a tendency, perhaps, to commit the crime of mayhem.' "

"Referring to the fact that one judge may not agree with another with reference to some question of law, the judge . . . made the following disparaging remark: 'He (Judge White) might have made a different ruling on some question than I might have made. We do not always agree, and that is why we have Supreme Courts, and rubber mats on cuspidors . . . ' "

"Commenting upon certain proposed exhibits in the case, the judge remarked: 'Are you about to introduce the three wise monkeys as an exhibit here?' Whereupon counsel for the prosecution said:

" 'There is only one prosecution counsel.' "

"The Court: 'Gentlemen, it is practically twelve o'clock, and I think that is a happy thought to adjourn with.' "

And so do we. The Appellate Court determined the defendants were not hurt by the judge's conduct, although it confessed that "In cases too numerous to properly admit\* of citation thereof (we don't know why it would have been improper), because of judicial misconduct that was insignificant compared to that which so unmistakably appears in the instant case, the respective judgments were reversed."

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\*Observe that split infinitive!