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Happy 50th Anniversary, CAAL

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The late 60s and early 70s was a time of discontent and upheaval. Such tumult also spurred the creativity of what we now call “disruptors.”

It's hard to pick up a paper these days without encountering an article about the 50th anniversary of some work now deemed a classic or taken for granted. Yes, there was much to bother and provoke thoughtful Americans during those years – including, apparently, the California appellate system. This year marks the 50th anniversary of the California Academy of Appellate Lawyers. And the recent death of the legendary Ellis Horvitz, one of the Academy's early members, is all the more reason the story should now be told.

Precisely a year ago this column recounted the Glorious History of the [State Bar] Committee on Appellate Courts (DJ May 3, 2021), which began in 1971. But that article did not explore the reasons for that committee's creation nor the context of its genesis. Again, there was something in the air at that moment in time: a deep-seated concern about the functioning of the appellate courts.

Academy lore goes something like this: One day, appellate lawyers Ed Lascher and Gideon Kanner were vigorously kvetching about some grand appellate annoyance at Gideon's office. Gideon's law partner, Jerry Fadem, rushes past them, crying out something to the effect, “you dorks should have a nerd club so you can jabber on about geeky appellate stuff.” (If these names don't sound familiar, then you're too young. Ed was a well-known lawyer who, for 20 years, wrote regular columns (“Lascher at Large”) for the State Bar Journal, the publication of record during that era. His 1991 LA Times obit headline called him “the first Ventura County lawyer to specialize in handling appeals in state and federal courts.” For background on Gideon, see *Tribute to Gideon Kanner* (1991) 24:3 Loy.L.A.Law Rev. 515 et seq.)

Fadem's scornful comment resonated so deeply with Ed that in 1970 he began a letter campaign to gauge interest. (This being the pre-internet age, lawyers communicated by typed letters. And lawyers being lawyers, i.e., obsessive packrats, the Academy still has these letters, and carbon copies of responses, forming a holy appellate archive of foundational documents. Reading them is like eavesdropping on emails between friendly colleagues and adversaries, filled with penetrating insight, outrageous mirth, and an abiding devotion to appellate practice.)

A native of Illinois, Ed knew about the 1968 formation of the Illinois Appellate Lawyers Association (see AppLawyers.org), and he sent inquiry there to learn about the group (which primarily directed its efforts to "perfecting a closer relationship" with appellate courts and law schools, and sponsoring legislation on appellate procedure). Ed also wrote to various appellate court justices noting "increased problems in the functioning of the appellate courts" and seeking thoughts on what could be done and people to be contacted.

Most importantly, Ed wrote to a cadre of lawyers, including Ellis, he thought might be interested, noting the "need" for "some group" to exchange and make known ideas and problems of California lawyers primarily handling appeals. As Ed put it, "Some organization of lawyers" specializing in appeals is "a logical prospect" and is needed because the State Bar "patently lacks both the interest and machinery to accomplish this." (In late 1970, upon learning that Seth Hufstедler would be chairing a newly formed State Bar Committee on Appellate Courts, Ed asserted it was "welcome news" that the "State Bar has bestirred itself (however belatedly) to take at least the beginning of some interest in matters appellate.")

Ed recognized that bar groups for many different practices already existed, but that "nothing of the sort exists ... for those engaged in appellate practice," which is "certainly of great importance to the working of our system." He further realized that "another specialized bar association seem[s] to rank high on the list of things which the world can do without," and so he was "skeptical" it could take off. But he "reluctantly" concluded it is "much the lesser of two evils, the greater being a continued massing of problems for both appellate courts and appellate practitioners without anybody who can even try to do anything about them."

Ed's primary concern was the "overloading of justices" that was "continuing unabated without the slightest prospect of amelioration." His understanding of the crush of work (and lack of court staff) was that justices essentially had to resolve one case per day, which meant that litigants were not getting the "three-judge, deliberative opinion to which they were entitled." Other concerns targeted appellate delay (i.e., it sometimes took a year for fully briefed appeals to be argued) and the system of unpublished decisions. Ed even suggested that counsel be advised in advance (or at argument) as to tentative rulings, similar to how many trial courts operated (and still do).

Justice Otto Kaus was "most enthusiastic" and felt that such an organization was "long overdue and urgently needed" (and he noted the lack of any such group at the State Bar). Kaus lamented the "lack of inventiveness within the appellate courts" towards solving procedural problems and lessening the case load. Also of serious concern was the "gross lack of familiarity" typical lawyers had with appellate practice, amplifying the courts' work. He envisioned appellate experts working (perhaps with CEB) to create resources that would improve appellate practice. Kaus also rued the "almost total lack of dialogue" between the appellate bench and bar. He believed that justices would support such a group, given the obvious benefits to all if a channel of communication could be opened: "Friendly dialogue between bench bar would inure to our mutual benefits."

Ellis was initially "pessimistic" about a "small, splinter bar group," and thought that forming within a larger existing bar association was the way to go. Another lawyer from San Francisco recounted to Ed that the idea of an appellate association was raised in the late 60s with a few Bay Area attorneys, who had a couple dinner meetings, but then "nothing came of it, primarily because we did not know of enough appellate specialists to make it worthwhile." Ed and Gideon pushed on, undeterred at being considered upstarts. The lawyers they contacted endorsed the idea of a statewide association, some cautiously, some enthusiastically. By the end of 1970, the idea was firmly entrenched and Gideon volunteered to take the laboring oar of attempting some form of administration.

In January 1971, a dinner meeting was convened in a private room at La Scala restaurant in Beverly Hills. In June, the group met again in the Garden Room at Trader Vic's in Beverly Hills, with no agenda, "only amiable conversation concerning the appeals and tribulations of appellate practice." Gideon

jocularly titled it a gathering of the Appellate Lawyers Informal Eating and Drinking Association (ALI-EDA, a take-off on the American Law Institute/American Bar Association's ALI-ABA). As reflected in that moniker, social engagement was a key component; the group did not want to take itself too seriously.

ALI-EDA being a bit too whimsical, other names were bandied about: The Appeal & Writ Lawyers Club (A&W), California (or College of) Appellate Lawyers (acronyming to CAL), or the California Appellate Lawyers Association of Professional Practitioners (CAL APP).

By mid-1971, the gang had pulled together “a completely status-less, unofficial and, to tell the truth, amorphous group of practitioners” comprising about 20 California appellate specialists. Another idea to be pursued was additional judicial outreach, including to Ninth Circuit judges, who at that time were thought to be so disconnected from the bar that one rascal called them, “the court that knows nobody and that nobody knows.”

Concurrent with the 1971 State Bar Convention, the group hosted a cocktail party and was able to corral a number of sitting justices. The justices “gave unanimous and unambiguous instructions” that the gang should proceed with creating the nascent organization. That required leadership and a time-commitment that even dedicated members were hesitant to invest. As core member Hillel Chodos quipped: “Someone will have to be president. If nominated, I will not run; if elected, I will not serve.” Another early member, Burton Marks, “hardily favored some organization,” but noted that “since nobody wants to run it ... we might form an oligarchy and leave it at that.”

That would not do, of course, so in January 1972 in Trader Vic's Garden Room, a gathering of the Appellate Lawyers Organization (generic placeholder-name) was convened and a committee was formed. It consisted of Gideon, Ellis and a few others who recommended a name, created bylaws, established membership criteria and stressed experience in quality appellate work. Gideon was tasked with administrative duties, including collecting dues.

Much early discussion addressed membership. The founding fathers (and yes, they were all men at this time) wanted to ensure that it would be “a statewide group of lawyers who actually participate regularly and principally in appellate matters.” The envisioned group would be kept small, to

encourage frequent and easy communication, and it would take a realistic, activist, but constructive interest in matters pertaining to appellate courts and appellate lawyers. The group should not be limited to lobbying, but should exchange information and be nonpartisan (e.g., including lawyers from the plaintiff and defense bars, and from private and government practice). Discussion about encompassing both civil and criminal practice ultimately led to the decision to include both, because as far as “the problems” with the appellate courts were concerned, they were “interrelated.”

In the Summer of 1972, after numerous drafts (of course), a constitution was finally ratified, and the California Academy of Appellate Lawyers was officially born. And just in time, because by that point, the State Bar Committee had finalized and circulated some highly controversial ideas that cried out for a response by the broader appellate bar. See, e.g., *The Court of Review: A New Court for California* (1972) 47 Cal. St. B.J. 28. The battle had been joined. But that’s a tale for another day.

Epilogue. Having dutifully performed the grunt-administrative work to establish the Academy, Gideon had the first presidency thrust upon him. He was followed by Ed, Cyril Viadro, Ellis, Robert Seligson, Paul Selvin, Reed Hunter and Mike Berger. And the list of luminaries carries on to this day.

Prologue. In the wake of the Academy’s and State Bar Committee’s founding, the Los Angeles County Bar’s Appellate Courts Committee was formally founded, too, in 1976. Further, in 1990, drawing heavily on the successful example of the Cal Academy, a group of appellate specialists in Florida founded the American Academy of Appellate Lawyers. But again, those are adventurous appellate sagas for another day.

This has been an excerpt from the forthcoming “*Unsung History of Appellate Bar Organizations*, volume I.” Just kidding! Turns out that interest in this topic tops out at about a hundred readers. If you’re one of them, and have read this far, thanks!