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FEATURE

A CENTURY IN THE LIFE OF A LAWYER: REFLECTIONS BY JOSEPH A. BALL

JOSEPH A. BALL AND JUDITH D. FISCHER*

Joseph A. Ball's life spans the Twentieth Century. Born in a small town in Iowa, he studied law at Creighton University, received his law degree from the University of Southern California, and built a prominent law firm.¹ Although he sometimes refers to himself as a "country lawyer," he is known among colleagues for his incisive legal mind and ability to cut to the heart of complex legal problems.² Renowned for his skill in the courtroom,³ he has been called a "legend."⁴

Ball served as president of the California State Bar in 1956-1957 and later as staff counsel to the President's Commission on the Assassination of President Kennedy (the "Warren Commission"). Among his numerous awards are the 1973 Shattuck-Price Award of the Los Angeles County Bar Association, awarded to an individual who "best exemplifies the high standards of the legal profession and the administration of justice,"⁵ the 1981 Learned Hand Award of the American Jewish Committee's Institute of Human Relations,⁵ and the 1983 Litigation Award from the American

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1. See *Prestigious L.B. Law Firm Gets 1st Female Partners*, LONG BEACH PRESS-TELEGRAM, Nov. 24, 1998, at B1 (referring to Ball's firm as "prestigious").

2. See *Profile*, L.A. DAILY J., Nov. 26, 1990, at A1, A2, quoting Judge Manuel Real of the U.S. District Court as saying of Ball, "He has an immediate grasp of issues and it's all done without notes . . . He's truly amazing." *Id.* Law partner James Polish cited Ball's ability to "cut through all the verbiage and go right to the core of an issue." *Id.*

3. See *Ehrlichman's Lib Lawyer*, TIME, Oct. 29, 1973, at 106. American College of Trial Lawyers founder Judge Emil Gumpert lauded Ball's courtroom skills, explaining, "Ball is one of the few lawyers who can try any kind of litigation—criminal, civil, antitrust, patent, anything." *Id.*

4. See Andy Furillo, *A Legend Will Be in John DeLorean's Corner*, L.A. HERALD EXAMINER, Oct. 23, 1982, at A8.

5. See *Joseph A. Ball Named Bar Award Recipient*, L.A. DAILY J., Feb. 14, 1973, at A1.

6. Ball's award plaque reads in part, "He is a voice for understanding and goodwill and encouraging diversity and tolerance among all people."

*College of Trial Lawyers.*⁷ In 1997, the Brennan Center for Justice at New York University instituted the Joseph A. Ball Litigation Achievement Award, to be awarded annually to a lawyer “whose skills as an advocate are unsurpassed.”⁸ In 1999, the State Bar of California awarded Ball its annual Witkin Medal based on his “extraordinary service” and “significant contributions to the quality of justice and legal scholarship” in California.⁹

*Held in genuine affection by his colleagues,*¹⁰ Ball is known not only for his keen mind¹¹ but also for his courage, ethics, professional courtesy, kindness, and sense of humor.¹² In these reflections,¹³ he tells about his development as a trial lawyer, relates stands he took on some of the important issues of the times, and offers views about the changes in the profession over the century.

I. YOUTH AND SCHOOLING: 1902-1927

A. Early Years

I was born in 1902 in Stuart, Iowa, a small town of 900 people. My father was a country doctor. His patients were not always able to pay their bills and sometimes paid with farm products instead. As a child, I remember thinking steak was second-rate because we had it so often; patients often had to pay with it instead of money. Only later did I find out steak is seen as a treat.

Our family library contained a large number of books, many of them gifts from a cousin who operated a publishing house in Chicago. This helped inspire my lifelong love of reading.

When I was in high school, my mother died in the influenza epidemic of 1917, and my father moved us to Council Bluffs. I went to Creighton Pre-

7. The award plaque states, “By your work and example, you have come to exemplify the ideal of the American Trial Lawyer.”

8. Publicity Release from Brennan Center for Justice (on file with the authors).

9. Letter from Jeffrey T. Gersick, Acting Executive Director of the State Bar of California, to Joseph A. Ball (Sept. 24, 1999) (on file with the authors).

10. See Furillo, *supra* note 4, at A8 (quoting Ball’s partner former Governor Edmund G. (“Pat”) Brown as saying, “[t]here’s no person I’ve ever known that I’ve liked better . . . [h]e’s gentle, kind and intelligent . . .”); Janet Wiscombe, *Mr. Lawyer*, LONG BEACH PRESS-TELEGRAM, Jan. 28, 1995, at D1 (quoting former partner Charles Greenberg as saying, “[h]e [Ball] is the last of the great Renaissance lawyers. . . . He is brilliant and kind and doesn’t have a mean bone in his body. He is extraordinary.”).

11. See Anna Marie Stolley, *Aged to Perfection: Joseph Ball Celebrates His 70th Year As Lawyer*, L.A. DAILY J., Oct. 10, 1997, at A3 (quoting former Ball partner Howard Soloway’s assessment that “[T]he dominant thing about Joe is intelligence.”).

12. See Julie Rees, *Attorney Joe Ball Still a Force at 80*, LONG BEACH PRESS-TELEGRAM, Oct. 24, 1983, at A1 (describing Ball as “[f]unny, salty, down-to-earth.”).

13. Ball and Fischer produced this article by taping conversations, which she edited and footnoted with his collaboration.

paratory School every day by taking a street car across the Missouri River to Omaha and then walking two or three miles to Creighton. I finished high school in 1920.

B. College and Law School

I continued going to Creighton for the next two years for college. I had taken four years of Latin in high school and two in college, which gave me six years of Latin, and I took one year of Greek and two of French. I took two years of pre-medical courses, including college algebra and trigonometry, two years of chemistry, one year of physics, and one semester of biology.

After two years, I was eligible for medical school, but I was out of money. So in 1922, I came to California, where my uncle lived. I worked for six months on the docks in San Pedro and realized that I would rather not make my living as a laborer. So I went back to Creighton and graduated with a bachelor's degree in philosophy in 1925.

I did not want to leave school, but I still could not afford medical school. Most of my friends were in law school at Creighton, and I found out I could go there for fifty dollars a semester, including books. So I got a job at the Omaha World Herald driving a delivery truck in the afternoons and went to law school in the morning. I belonged to the debating team, the dramatic society, the chess club, and the oratorical society. I had fifteen dollars a week to live on, which was a lot of money for me at that time.

I got a locker and took the textbooks and threw them in the locker, only occasionally looking at them. At exam time I was worried because I had not studied much. I sat up until two o'clock in the morning with a group of students going over all the possible questions. When the grades were announced at the end of the first semester, I was number one in the class. I thought, if the law is this easy, I'd better stay with it.

My father had moved to Los Angeles and had a combination office and residence on West Adams east of Union Avenue, so I decided to come out to live with him and go to school. I took a train from Omaha to Laramie, Wyoming where I got a job as a roustabout at Teapot Dome. In September, I came out to Los Angeles, and I registered at the University of Southern California (USC) Law School. I had enough money from my labors to pay \$150 for the semester.

My friend Bob Patton came out with me. He had been captain of the debating team and president of the student body and a leader of our little gang of fifteen to twenty. Eventually, the group all drifted out to Southern California, one after another. Almost all of them went to law school, and several became judges.

C. *The Bar Examination*

My method of preparing for the bar examination was this. From the time I came to California in 1925 until I took the bar examination in July of 1927, I read the advance sheets until I had read every case published by the California courts in that period of time. When I took the bar examination, there were three days of examination with twenty-four questions and an oral examination. In my answers, I would cite the name of a case that I remembered from the advance sheets as a source of the examination question, and I was able to remember the analyses from those cases. After I was admitted to the Bar, I continued to scan all cases decided by the California Supreme Court and appellate courts until the 1970's.

When I was admitted to the bar in 1927, there were about 8000 lawyers practicing in California. Charles Beardsley, Pat Brown, Grant Cooper, Ray Peters, Herman Selvin, Roger Traynor, and Bernard Witkin were among those who passed the California Bar Exam that year.

Witkin took the bar exam before he started his third year of law school. He made up his own notes in preparation, and for the next three years, he gave a course to help young lawyers prepare to take the bar examination. That became the basis for his *Summary of California Law*.¹⁴

II. DEVELOPMENT AS A TRIAL LAWYER: 1927-1940

A. *Assistant District Attorney*

When I completed school in June of 1927, I had no idea what I would do. I had no prospects for jobs. I learned that there was an examination by the District Attorney to qualify for civil service status. I took the examination and was immediately notified that I had a job and should report to Long Beach on January 2, 1928. On my first day, I rode the Pacific Electric Railway from Los Angeles to Long Beach and reported to the office. The clerk handed me a file and gave me directions to the courtroom, saying, "You are going to try a jury trial today." As of that time, I had never been in a courtroom. I did not even know the door from which the judge entered the court.

I walked into the courtroom and saw two people, a clerk and a bailiff, as it turned out later. I told them I had never been in a courtroom and did not know how to conduct a trial. The bailiff showed me where to sit and explained what to do: "When the judge comes out, you will stand, then be seated. Then the judge will call a case, and you have to be ready for the prosecution." I followed the bailiff's instructions. Two policemen walked in and told me they were my witnesses. I talked to them and learned their stories. With a few short sentences, I developed my examination. When it came

14. The latest incarnation of Witkin's project is a 13-volume Ninth Edition. See BERNARD E. WITKIN, *SUMMARY OF CALIFORNIA LAW* (9th ed. 1987-90).

to arguing to the jury, the bailiff said, "Just wave the flag." I struggled through the argument, and the jury acquitted the defendant. That was my first introduction to the courtroom.

When I first became an assistant district attorney, I was somewhat shy and had to push myself to get up in front of the jury to argue. Then I finally got to the point where I was winning cases. When I realized I could talk and think on my feet, I acquired some self-confidence. I found I could actually think better when I was on my feet than when I was sitting at a desk.

At the end of the year, I resigned to go into private practice. I had had enough of the District Attorney's office.

B. Private Practice

A Long Beach lawyer named John Burke had been successful in oil and gas work, grossing about fifty or sixty thousand dollars a year, which was a lot of money in those days. At that time, a local site, Signal Hill, was one of the largest producers of oil in the world. Oil had been discovered there in 1919, and everybody in Long Beach was making money from oil and gas work.

John heard that I was leaving the District Attorney's office, so he sent for me and offered me an office free and clear if I would assist him in his practice. He would furnish me an office and a secretary, but no salary. I would also have my own practice. I accepted his offer, and for the next five years, I worked for Burke. He was a good lawyer, but he had taken to drinking, so he relied on me to get his work done. He immediately threw to me all the labor of reading the books and drawing briefs and other papers such as oil and gas transfers.

I also took criminal cases. When I left the District Attorney's office, the presiding judge, Walter Desmond, told me that he intended to appoint me to some criminal cases for indigents. I said I would welcome that because I wanted trial experience. Judge Desmond appointed me to cases in which the public defender was in conflict or needed another associate. At that time, there was no pay in working for indigents; you had to donate the time yourself. Because I became known as a lawyer who could try criminal cases, I got references from other lawyers for charges of drunk driving and other minor offenses. I found I enjoyed getting people out of trouble more than I had enjoyed prosecuting them.

It was hard to make a living because Burke paid me no money. Around that time, the Pacific Electric Railroad had quite a bit of legal business. They ran Red Cars to various local cities and had a good many trials in Long Beach concerning grade crossing accidents. The chief counsel for the Pacific Electric was Oscar Collins, who was an excellent trial lawyer. He liked my informal, direct approach with a jury. So he came to me one day in court and said, "Would you consider working for us?" I said, "Not full time. I don't want to work for anybody." He said, "If you sit with me in trials and help me

select the jury, I will pay you seventy-five dollars on each case." We agreed on that, and he began calling me on about three or four cases a year. Once, about five minutes before a closing argument, Collins said to me, "You're going to argue this case." So I did. It was good experience for me to work with him and also with the great W. I. Gilbert, who represented the Southern Pacific Railroad. By association with those first-rate lawyers, I got the knack of trying cases.

There were also three or four insurance companies that hired me to defend their cases. I tried their cases and began making fairly good money from Farmer's Insurance Group and Pacific Indemnity Company. I also got a good many plaintiffs' cases referred by other lawyers. I was able to do both plaintiff's and defense work because I refused to tie myself up with any one company. It was easier to obtain trial experience in those days. Cases were shorter and got to trial faster, and a lawyer would try maybe thirty cases a year. Few lawyers can say they try that many cases now.

By 1931, the Depression had set in and money was tight. Burke decided that he would run for Congress and was elected in 1932. He went to Washington and left me alone with this big practice. In 1935, I left Burke and went with Cree and Brooks, who were chief counsel for Hancock Oil. They did exclusively oil and gas practice. This suited me because I was doing a pretty fair oil and gas practice myself.

As I was trying to handle all this business myself, taking depositions, trying lawsuits, things of that sort, I needed help. My father and I drove back to Iowa around 1935 or 1936 to tend to personal business. We came by Schuyler, Nebraska, where I saw Frank Charvat, a close friend of mine from college and law school, where we were in the debating and oratorical societies together. This was the height of the Depression. The farmers had no money at all. The day we came in, Frank showed me a deed he had just drawn up for a farmer. His fee was a dozen eggs. I said, "Frank, I need help. Give up this practice here. Come out and work with me." He did. He worked for me as an associate until 1944, when he went to the City Attorney's Office in Long Beach. Frank was later appointed a Superior Court judge.

I soon separated from Cree and Brooks but remained on the same floor. From 1935 on, I was very successful trying cases and doing oil and gas defense work. About that time, engineers had become proficient in the directional drilling of wells, and dishonest people would direct the course of a well, so as to penetrate oil and gas owned by adjoining landowner. I acted as counsel on several of those cases.

C. Development of Trial Techniques

As a young lawyer, I was fortunate to view the trial work of three famous jury lawyers, Max Stever from New York and W.I. Gilbert and Joe Ford of Los Angeles. In the late 1920s, these three lawyers defended a criminal case in which the wife of the owner of the Pantages vaudeville cir-

cuit was accused of homicide while driving under the influence of alcohol. Later, her husband, Alexander Pantages, was accused of statutory rape. Again Gilbert was on the defense team along with Jerry Geisler, who also became a renowned lawyer.¹⁵ In order to develop my trial skills, I would go up to the Los Angeles Court and watch these trials every day.

I sought another lawyer's help when I was appointed to my first death penalty case. I heard that Ed Hervey, a young criminal lawyer from San Diego, had never had a client receive the death penalty. I went to see him, and he offered to show me his approach. Ed made a mock speech to the jury on the death penalty in which he sketched the details of execution by hanging. He described how the warden hustles the poor defendant out of the death cell and drags him to the death chamber. Then they drag him up to the steps to the scaffold and put the noose around his neck and blindfold him. Then they get ready to spring the trap. They do spring the trap, and he dangles there for ten minutes, and he dies. Ed did it very effectively. I was impressed and went back and practiced in front of the mirror. At the trial, I gave Ed's death penalty argument, and the jury came back with second degree murder. The *Long Beach Press-Telegram* gave me front page publicity. Every time I was appointed to a death penalty case, I made the same argument. No client of mine ever received the death penalty.

Then I got a first-degree murder case in front of Judge Fricke. He called the lawyers into his chambers and said to me, "Are you going to make that same argument you have been making around here about the death penalty?" And I said, "Yes." He said, "Not in my court, you're not. You can only argue matters of record." I said, "I can argue matters of common knowledge. Everybody knows hanging occurs in San Quentin." He said, "Have you ever seen a hanging in San Quentin?" I said, "No." He asked the district attorney, "Have you ever seen one?" He said, "No, I haven't either." Fricke said, "Objection sustained." So that was the end of my death penalty argument.

Another lawyer gave me the idea of memorizing the potential jurors' names on voir dire examination. In 1935, I tried a case against Red Betts, and he got up in front of the jury box and remembered all the names. I was especially impressed by this, so I tried it, and I found I could do it. I would concentrate on the names when the clerk called them out. Sometimes I would associate a name with something about the person. I would also write them down, and after that, they were in my memory for the voir dire examination. When I questioned potential jurors, I would not take notes with me. I might start in the middle of the group and say, "Mr. Johnson," and ask a question. Then I would jump around to others to show the jurors that I really remembered their names. When I excused them, I would call them by name. I found out that this impressed jurors, so I continued to do that.

I developed cross-examination techniques through practice. In one of my first cases, I was appointed to defend a man accused of child molesta-

15. See *People v. Pantages*, 297 P. 890, 892 (Cal. 1931).

tion. The girl was about nine or ten years old. At that time, I knew nothing about defending child molestation cases. I had never prosecuted or defended one. I went on the general assumption that a child like that had no motive to lie. But I was soon disillusioned.

The story told by the little girl was that her mother went out one evening to a party and left her boyfriend there to babysit. At about nine o'clock the mother told her good night and turned off the light and left. Very soon after that, about 9:15 or 9:20, the man came back and molested the girl.

I had no idea how to cross-examine her. I was blindly thinking of questions. So I asked how she knew the time. She said, "Well, I looked at the clock." I asked, "Wasn't it dark? How could you see the clock?" She said there was a street light right outside her window. I did not know what to ask, so in desperation, I looked up at the clock on the courtroom wall and asked her what time it was. She said, "Three o'clock." I then showed her my wristwatch and asked, "What time is it?" She said, "Six o'clock." The little girl could not tell time. The jury acquitted the defendant, and although I will never know whether he was guilty or innocent, there certainly was a reasonable doubt created with the examination of the little girl.

I had another molestation case that was rather revealing to me. I was appointed to defend a petty officer who, together with his wife, regularly babysat for an admiral's two daughters, who were about nine and ten years old. When the petty officer and his wife babysat, they would put the two girls to bed in an alcove with a curtain across it. Outside and beyond the curtain sat the chief petty officer who usually read a paper or slept. Well, these two children both testified in the preliminary examination that the chief petty officer had come into the alcove and molested them.

This time I was able to study the evidence and carefully prepare my cross-examination in advance. I decided not to ask the little girl the obvious question, "Why did you not cry out?" If I asked that, I knew I would get a prepared answer. She would say, "Because I was scared," and then the jury might believe her. So I decided to make the jury cross-examine her. I began with all kinds of questions about how long the children had known the petty officer and his wife to develop that the children trusted them and had great affection for the woman.

As a result, there arose in the minds of the jurors the question, "Why doesn't he ask why they didn't call out?" I could see the jurors' unease. I then rested my case. The jury came back with a not guilty verdict. The foreman came up to me and said, "Mr. Ball, you almost lost that case by not asking why the girl did not call out." I said, "You asked it yourself, didn't you?" He said, "Yes, I did." I had made the jury my cross-examiner.

I had another interesting opportunity for cross-examination when I defended a doctor charged with drunk driving. In those days, when they brought a driver suspected of drunk driving into the police station, they called the police surgeon. He came down and gave an examination that I had heard him describe a hundred times. At trial, I led him through a description

of the test, and he related how my client had failed because his pupils were dilated. I asked, "Did you give both eyes the same test?" "Yes," he replied. "And both eyes tested the same way?" "Yes."

My first defense witness was the accused doctor, who pulled out a glass eye. He was acquitted.

D. Development of Style for Briefs and Oral Arguments

From the beginning I was an advocate of plain English in the law. I admire trial lawyers who have a facility for clear expression, which is a sign of precise reflection.

In developing my writing style, I came under the influence of some good writers like Frank Belcher and Herman Selvin, who was at Loeb and Loeb. After I got acquainted with Selvin, I often went to his office and listened while he dictated briefs, or he would show me what he had written, and I would admire his style. I actually attempted to copy his style, but I found I could not copy Selvin because his style was somewhat ornate. He could make a long, one-sentence paragraph sound good, but when I tried an ornate style, it sounded terrible. So I adopted my own style, which was plain, simple, unadorned English, with short sentences.¹⁶

I also saw that in every lawsuit there are one or two essential facts or factual issues. The good trial lawyer must have the judgment to appreciate what is a major issue and what is a minor issue and to eliminate the nonessentials.

When I wrote briefs, I always wrote them out in longhand. I could not write a brief by dictating. I always sat down and cornered myself in a room, in the library or in my office, and wrote all my ideas down on paper. When the draft came back from my secretary, I re-did it. Then I would go off by myself to read it. I never filed a brief that I did not write at least two or three times. Of course, I wrote most of my briefs before we had computers, and new drafts had to be completely retyped.

When it came to arguing to the jury, I presented a logical approach to the factual problem. I had the facility to speak in consecutive sentences and to argue out the facts and pursue the logic of my ideas while I was on my feet. So, I had two approaches. I wrote briefs and important letters in longhand. But when it came to jury work, I specialized in speaking without notes. I actually prepared an orderly cross-examination, but the notes were left back at the office. A lawyer should never be confined to the written word in the trial of a lawsuit. He should always be able to ask questions prompted by the witness's responses.

16. Ball's facility with the English language was widely recognized. *See* *People v. Callahan*, 214 Cal. Rptr. 294, 295 (Cal. Ct. App. 1985) (review denied and ordered not to be officially published, Aug. 1, 1985). In *Callahan*, then presiding appellate Justice Gerald Brown classified Ball with renowned orators, saying, "Not everyone can be a Daniel Webster, a William Jennings Bryan or a Joseph A. Ball." *Id.*

E. Service: The Formation of the Barristers

In the spring of 1928, the Los Angeles County Bar Association, of which I was a member, invited me and about ten other young lawyers who had just been admitted to the bar, to a breakfast at the Bar headquarters at 12th and Broadway in Los Angeles. We had breakfast while the president, Hubert Morrow, sketched out a plan to organize a junior committee of young lawyers. We organized the committee, and Charles Beardsley was elected its chairman. We started soliciting membership among all the lawyers of Los Angeles County who had been admitted to the bar less than five years. Each month we had a meeting, most of which was for social pleasure rather than anything serious. By that means, I got acquainted with various other young lawyers. The group later became known as the Barristers.

F. Personal Life

In April of 1931, I married Elinor Thon. I was making about \$1000 a month, so we rented a place on the Belmont Shore Peninsula, facing the bay, and I bought myself a Packard automobile. This success was short-lived. Within a year of my marriage, the depression struck the Long Beach area, and I was forced to replace the Packard with a Plymouth.

After the 1933 Long Beach earthquake, we were told not to go back into our apartment, so we spread blankets on the beach and slept out there that night. The beach was crowded with people. Some people went up to the top of Signal Hill, because they were afraid of a tidal wave. Elinor and I went to Los Angeles the next day and stayed in my father's home.

My daughter Patsy was born in 1936, and Jo Ellen in 1940. By then, I had accumulated enough money to be able to build a new house and furnish and landscape it.

III. FURTHER DEVELOPMENT AS A LAWYER: 1940-1952

A. Law Practice

I took my next associate in the law practice in 1945. I knew Clarence Hunt from USC, where he ranked number one in our law school class, and from the local district attorney's office. He had gone in the Navy during the war. In 1945, he came to see me to talk about his job prospects. I told him I had enough work for both of us, so he came to work for me. He became a partner in 1948, and he was with me from that time on.

The war was over, my practice was booming, and I was making good money. Soon, Clarence said we needed help and suggested a young fellow named George Hart. We hired him, and soon added Clark Heggeness, who did oil and gas work, and Mel Kambel, who is an accountant as well as a lawyer. In the 1950s, we continued adding lawyers, including Joseph

Mullender.

B. Further Development as a Trial Lawyer

As I continued to refine my trial techniques, I developed a practice of reading Shakespeare or the Bible the night before I gave a closing argument. I did not do it in order to quote them, because that is a little pretentious. I did it to get the cadence of good language in my mind.

Once I read Portia's speech about mercy from *The Merchant of Venice* before a closing argument. I was defending a doctor who was sixty-five years old and had a passion for curing narcotics addicts. He would try to cure them by giving them smaller doses of narcotics, but of course, that does not work, and he had to give them larger and larger doses. He was not trying to make money and would charge the patients a nominal fee if anything. The District Attorney filed against him for violation of the narcotics laws. It was obvious to the jury and everybody else that he was sincere. But he was in violation of the law. As a defense, he told me he planned to tell the jury that he was trying to cure the addicts. I said, "Doctor, if you tell that story to the jury, your own mother would convict you." He insisted, and the case seemed desperate.

But the jury came in with an acquittal. As I was walking out, a juror came up and asked if I had been quoting Shakespeare in my argument. I said, "Not consciously. But sometimes I read Shakespeare so that I will have some good language coming through my voice. Last night, I did read *The Merchant of Venice*." "Oh," she said, "I knew I recognized the language." She added, "We acquitted your client, but please tell that old man never to do that again."

At that time, like most other law offices, our office was open on Saturday mornings. I went up to Los Angeles to try a murder case. I stayed at the Biltmore for five days a week trying the case and went home on weekends. I never had a case that seemed more impossible. The prosecutors said that U.S. Royal tires were on the murderer's car, and they showed that my client had paid for two U.S. Royals just a week or two before the killing. Two witnesses testified that they had conspired with my client. But I noticed that the prosecutor had failed to blow up the pictures of the crime scene as he usually did. I had them blown up and discovered that the car had General tires, not U.S. Royals. I showed six-foot blown-up photographs to the jury and got an acquittal after three months of trial.

Meanwhile, I had not gone near the office. When I came back, I found out that the practice was getting along fine. But without consulting me, the lawyers and staff had begun closing the office on Saturdays. So that was the end of that tradition.

C. Service

In 1940, I was an alternate delegate to the Democratic National Convention in Chicago. On the Democratic Special, a special train from California to the convention, I sat by a young lawyer named Pat Brown. Both he and I were alternate delegates, and from that point forward we became friends.

D. Positions on Social Issues

1. Prejudice Against Blacks

I was a member of the Board of Trustees of the Los Angeles County Bar Association in 1946 and 1947. In 1946, a certain black lawyer who was a deputy district attorney applied for membership in the bar. The president said we should give him the usual reply. I said, "What usual reply are you talking about? I know him. He is a very fine young lawyer and does a good job in the district attorney's office." The president replied that we had never admitted a black member to the Los Angeles County Bar. Some of us insisted on an election on a resolution that the Association would not deny persons membership because of their race, creed, or color. There were 3500 members in the county bar at that time, and about 3000 of them voted. We lost by 200 votes. I announced to the board that I was going to resign over the matter, and they said, "We voted the same way you did. You cannot be effective if you resign from the bar. Stay in and fight." So I did. A couple of years later, we brought up the issue again, and the by-law allowing black members was adopted.¹⁷

2. Women

In my graduating class at USC, there were only two women out of 80 students. When I was admitted to the bar, there were very few women lawyers. In the 1930s, I urged the organized bar to start recruiting women members.

In my practice, I always treated women the same as men in this regard: if they did good work. I respected them for it. Over the years, both male and female associates second-chaired cases with me, and I worked with some very capable women, some of whom eventually became partners in the firm.

17. In 1987, Ball received the Long Beach Torch of Liberty Award by the Anti-Defamation League of B'nai B'rith "for his legal service in countering bigotry and advancing the cause of human rights." See *People*, L.A. TIMES, June 4, 1987, at 2.

IV. ACQUIRING A STATE-WIDE AND NATIONAL REPUTATION: 1952-1963

A. Law Practice

As time went on, when a major criminal case would break in Los Angeles County, I would be one of the three or four who would first be considered for the job. As a result, every year I would be offered a top criminal case that paid well. I also accepted various kinds of civil cases, including oil and gas and antitrust work.

One of the cases I am proudest of concerned the Fifth Amendment. A California statute at that time permitted the district attorney to comment on a defendant's failure to testify.¹⁸ A criminal defendant named Snyder was convicted based on an instruction that the jury could consider his refusal to answer questions in a related case.¹⁹ I agreed to take his appeal because I thought that this particular statute nullified the privilege against self-incrimination which is a part of the California and United States Constitutions. The California Supreme Court agreed and held that using a defendant's assertion of the privilege as an indication of guilt is contrary to the purpose of the constitutional provisions.²⁰ This changed the law in California.

Some of my most important civil cases involved the drilling of oil wells. In one, I represented two independent oil producers who were accused of trespassing on the Richfield Oil Corporation's lands in drilling a well. I argued that when an old survey referred to "due North," it meant astronomical North, not just plain North. We did calculations showing that this meant my client was not trespassing. The plaintiff's expert made fun of our due North theory, but he had written a book in which he said the phrase "due North" could be interpreted as astronomical North. So I showed him the book, and he said, "Yes, I know, but I wrote that when I was very young." We won in the trial court and on appeal.²¹

In another oil case, I had an opportunity to use my college trigonometry in cross-examination. My client was accused of trespassing in drilling an oil well. We invited some of the best engineers in the state to see if we were trespassing. Applying principles of trigonometry, they all showed that we were not. At trial, the first witness for the plaintiff was an engineer who surprised us by testifying that we were 800 feet into trespass. All at once it occurred to me what had happened. On the trigonometric tables, for certain angles you read up, and for others, you read down. I asked her, "For this calculation, did you read up or down?" And she said, "I read up." I asked for a recess and had a group of engineers plot out all of the witness's readings.

18. See former CAL. PENAL CODE § 1323, *quoted in* People v. Bonelli, 324 P.2d 1, 5 (Cal. 1958).

19. See Bonelli, 324 P.2d at 5.

20. See *id.* at 6.

21. See Richfield Oil Corp. v. Crawford, 249 P.2d 600 (1952).

We saw that she should have read down on the trigonometric table. When the trial resumed, I provided copies of our calculations for each juror. The engineer finally admitted her calculations were wrong because she had misapplied the tables.

This attracted the attention of the Richfield Oil Corporation, and I began to handle some of their trials. We won a major victory in 1960, when we established that Richfield was not a public utility.²² Clark Heggeness and I represented Richfield in its merger with Atlantic Refining Company in 1965, and we continued doing work for the merged corporation, Arco.

B. Politics and the Bench

I remained interested in politics. I was a member of Governor Goodwin Knight's 1954 election committee in Southern California. When he was elected, I had just one request: that he put Frank Charvat on the Superior Court. He did so. Then I became Pat Brown's campaign manager for Southern California for the 1958 gubernatorial election. After he was elected, he often consulted with me about judicial appointments.

Pat offered to appoint me to the California Supreme Court four times.²³ The first was in 1959. I asked for time to think it over, and went back and talked to my partners. My firm was doing pretty well at that time. But we were a young firm, and I felt a responsibility not to leave my partners because I was bringing in most of the firm's business. Also, I had two daughters in college. So I called up Pat and told him I could not take it.

Pat was to repeat the offer three times before his term expired. Each time I refused the appointment with some reluctance. I was enjoying the practice of law too much to accept.

C. Service

1. Bar Activities

a. Local and County Bar Involvement

In the 1950s, I continued my involvement in bar activities. I was president of the Long Beach Bar Association in 1951, and I served in the House of Delegates of the American Bar Association from 1956-1959 and again from 1962-1965. Governor Knight also appointed me to the California Law Revision Commission in 1955; I was reappointed by Pat Brown and served until 1967. An important contribution of this Commission was the California Evidence Code.

22. See *Richfield Oil Corp. v. Public Utilities Comm.*, 354 P.2d 4 (Cal. 1960).

23. See *Profile*, L.A. DAILY J., Nov. 26, 1990, at A1 (quoting Brown as believing Ball was an ideal candidate for the court because "[h]e was superior in character, ability and judgment . . .").

b. State Bar Presidency and McCarthyism

In 1956, I was elected President of the State Bar. At that time there were 25,000 licensed lawyers practicing in California. Among the Bar's accomplishments that year was lobbying through the legislature a bill providing for the payment of attorneys' fees for indigents accused of crimes. We also took a stand against McCarthyism.

I objected to the loyalty oaths required during the McCarthy era. My first reason was that they are useless. A Communist who was against the government would lie and say he had never been a Communist. Secondly, the oath is an assault upon the individual because it implicitly accuses him of something without proof. Under the presumption of innocence, we live in peace and quiet with our neighbor because we do not accuse him of a crime. The loyalty oath is contrary to our way of life.

So I made speeches to various groups. At one talk I said, "Let me give you an example. Suppose a couple is married for forty years, and at a banquet to celebrate their wedding anniversary, the husband says, 'Now I want to make a toast to my wife, good sweet Mary. Now, Mary, I want you to get up and attest to the fact that you have been faithful all through our married life.' She would slap his face."

In February of 1957, the FBI came to California and conducted a hearing into alleged Communist organizations. A complaint came to me as president of the State Bar that the House Un-American Activities Committee was depriving witnesses of the right to counsel. I went to the federal courthouse to see what was happening.

At the hearings, a House Un-American Activities lawyer would ask a witness, "What is your name?" And the witness would give his name. The lawyer would say, "Are you a Communist?" The witness's lawyer would advise him not to answer on the ground that it might incriminate him. Then the government lawyer would say, "Mr. So and So, you know your lawyer's a Communist." His lawyer would protest, and the government lawyer would say, "Commie, be quiet or we will throw you out." The lawyer would object to that as being against the right to counsel, and they would throw him out. They did that several times.

At the next meeting of the State Bar Board of Governors, CBS offered to show the films of the hearings. Herman Selvin, a board member and a brilliant lawyer, drew a resolution condemning these actions, saying the Committee could not come into California and do this. The resolution came out in March under my name in the *Los Angeles Times*, the *New York Times*, and the *Washington Post*.

I found out later that as a result, Selvin and I were put on the black list.

c. Federal Criminal Rules Committee

I met Earl Warren at a bar association meeting when he was Attorney

General of California, and we became friends. He was one of the finest men I ever knew—he was strong physically, morally, and mentally, and had a great soul. In 1960, when he was Chief Justice of the United States Supreme Court, he appointed a committee to revise the Federal Rules of Criminal Procedure and asked me to be a member. The committee consisted of six judges and five lawyers. The most important change we suggested was the rule which would permit discovery in criminal cases. The proposal was first defeated, but in a few years, the committee approved Rule 16.²⁴

D. Teaching

From 1956 to 1972, I taught a course in criminal procedure at USC Law School every second year. The Warren Court was regularly issuing important decisions, so I would give the class a loose-leaf collection of the cases for the previous week or two. We would discuss the issues for the first hour, and then I would lecture for the second. We followed as the Court held that the Fourteenth Amendment protected most of the rights enumerated in the Bill of Rights.

V. INCREASINGLY SOPHISTICATED PRACTICE AND NATIONAL INVOLVEMENT: 1964-EARLY 1970S

A. Law Practice

The law firm continued to grow. In 1966, Pat Brown was defeated by Ronald Reagan. He called and said he wanted to come to Southern California, and I invited him to practice with us. He asked what we would call the firm. I said, "Ball, Hunt, Hart, and Brown." He said, "I am the Governor of the state, I've got to be first." I said, "I have got the law practice; I've got to be first." So we agreed on that, and Brown joined our Beverly Hills office.

Brown was with us for about three or four months when we took in another partner, Herb Baerwitz. He brought in work from the entertainment industry. Thus the firm became Ball, Hunt, Hart, Brown and Baerwitz. Former Stanford professor John McDonough, whom I had met on the Law Revision Commission, joined the Beverly Hills office shortly after that.

One of my most difficult cases of that period involved the indictment of three Los Angeles harbor commissioners for accepting bribes from a real-estate developer, Keith Smith. I defended Smith. All the defense lawyers moved to quash evidence, and my motions were granted. The District Attorney severed and took an appeal; I lost and the case came back for trial.²⁵ In the meantime, the harbor commissioners had been found guilty of receiving bribes from Smith.

24. FED. R. CRIM. P. 16.

25. See *People v. Smith*, 449 P.2d 230 (Cal. 1969).

Of course, the case had received extensive publicity, and the *Los Angeles Times* gave it full front page attention. So when the Smith case was set for trial, I moved for a change of venue because of the potential prejudice to my client. When the motion was denied I took it to the Court of Appeal, which ordered a change of venue, and the Chief Justice chose San Francisco.²⁶ Doug Dalton from our office and I went to San Francisco to try the case.

In my argument to the jury, I thanked them for the attention they had given me and my client, and I reminded them that I was not from their city, but was just a country lawyer from Long Beach. When the jury came in, much to everybody's surprise, Smith was found not guilty of bribing the commissioners. The *Times* ran the story on the front page the next day. After that, lawyers often joked with me about being a country lawyer from Long Beach.

In one case, I was able to bluff the other side into believing that I knew Greek. The case was a will contest in which my client, who spoke only Greek, had been left a large bequest by his uncle. I joked with the will contestants about my Greek studies in college. On the witness stand, my client was asked through an interpreter what the uncle thought about his relatives. The interpreter related the uncle's words as, "I am afraid they will kill me." This supported the contestants' argument that the uncle was paranoid. I asked the interpreter, "What word did you interpret as 'kill'?" When he answered, although I did not know the word, I asked, "That word has two meanings, doesn't it?" He said, "Yes." I then asked what meaning the witness intended, and fortunately the answer came back, "I am afraid my relations will bear me ill will."²⁷ The contestants then agreed to settle the case.

Another matter resulted in an interesting trip to Samoa. I became an attorney for the Van Kamp Seafood Company, a tuna packer headquartered in San Pedro, and represented them in establishing packing plants in various locations. At that time, the Government was paying about \$20,000 per person for the support of American Samoans. The Department of the Interior was seeking a way for the Samoans to become more self-supporting. So the company agreed to establish a fish packing plant in American Samoa, and a Van Kamp officer and I went there to set it up.

While there, we were entertained with cocktail parties at the Governor's house, and one of the Samoan chiefs gave a big party on the beach. We were dressed in the traditional cloth skirts down almost to the ankles. A table was loaded with food and drinks. It started to rain, but that did not bother the Samoans, or us either; it was a nice light, soft rain. So, we drank and sang Samoan songs and ate their food. And the Samoans gave me the title of "talking chief."

26. See *Smith v. Superior Court*, 80 Cal. Rptr. 693 (Ct. App. 1969) (ordering change of venue for Ball's client).

27. See *Ehrlichman's Lib Lawyer*, *supra* note 3, at 106. The judge told this story to *Time* when Ball took the Ehrlichman case. See *id.*

B. Service

1. Bar Activities

The American College of Trial Lawyers, which was organized in 1950, is an organization of lawyers who have at least fifteen years of experience trying cases and are chosen for membership on merit. I was president of the organization from 1967 to 1968. During that period, I also served on then-Governor Reagan's committee to draft a merit plan system for the selection of judges.

C. Warren Commission

In about the middle of December of 1963, I got a call from Chief Justice Warren asking me to serve as a member of the staff of the Warren Commission to Investigate the Death of President Kennedy. He suggested that it would be necessary for me to stay in Washington. It so happened at that time that I had just finished a criminal antitrust case that was scheduled for six months but had finished in two. My calendar was free and I readily accepted the appointment. On January 2, 1964, I appeared for duty in Washington.

At the outset, I was told that the Commission had divided the investigation into five parts, one of which was to determine the identity of the assassin. I had been assigned to that particular job along with staff lawyers David Belin and Arlen Specter. We worked on that issue together as a team over the next nine months.

The Chief Justice came to the commission office every morning about eight o'clock, when most of us were already there, and talked to members of the staff. If the Court was in session, he would leave and go robe up and take his place in the Court. He always came back at five o'clock to see what we had done.

In our investigation, we started by reading the reports of the CIA, the Police Department, the Dallas Sheriff's Department, the FBI, and investigative agencies. Belin established an extensive card index system so that we would not have to read everything twice. We found out there were many contradictions between different investigators' reports. So we wrote a complete report to the Commission in which we outlined the direction of our proposed investigation. The Commission approved our outline, and we made plans to go to Dallas. The Dallas District Attorney requested that we stay out of Dallas during the trial of Jack Ruby, and we agreed to do so. The Ruby verdict was delivered in February, and we went to Dallas on the following Sunday.

When we first arrived in Dallas, I went to the office of Barefoot Sanders, the U.S. Attorney, and asked for an automobile and a driver to aid in conducting our investigation. Sanders told us to come back later because he

would have to call Washington. When we came back, he said, “Hoover²⁸ won’t give you any help. He says you don’t need to make an investigation. The FBI has made one. If you want any additional information, call us and we’ll send a man out to investigate.” I said, “No, that is not our plan. Our plan is for us to be the investigators.” We called the Secret Service, and they gave us a car and a driver. They drove us around Dallas and were of great aid in locating witnesses.

Critics have said that we followed the FBI’s lead. But we did not just take the written word of the FBI. We were investigators ourselves. We handled the case just like a lawyer handles a big murder case. Wherever there was evidence to show that FBI reports were not correct, we called witnesses to testify. We found there were many good witnesses who had never been examined. The FBI was very helpful in serving witnesses with subpoenas but was not involved in examining them.

If we thought witnesses were important, we took them back to Washington and had them examined before the Commission. If there were discrepancies between the testimony of one witness and the others, we cross-examined them. We retraced routes using a stopwatch to confirm the timing of Oswald’s activities on the day of the assassination. For witnesses that we regarded as less important, we took depositions at the U.S. Attorney’s office in Dallas. When we brought the depositions back, Warren would spend the entire weekend reading them. All the testimony was summarized in the Commission’s report. The original transcripts are in the archives.

I stand by the report of the Warren Commission²⁹ today.³⁰ In 1978, a House Committee was appointed to investigate the assassination and they agreed with our conclusion that a single bullet had hit both Kennedy and John Connally.³¹ Concerning conspiracy theories, I simply ask what facts there are to support them.

D. Speeches about the Vietnam War

During the Vietnam War, I made a speech in Miami and to the Beverly Hills Bar Association. I said, “It takes more courage for a man to refuse to

28. J. Edgar Hoover was the director of the Federal Bureau of Investigation at the time the Warren Commission was preparing its report. See Kurt A. Schmutz, *J. Edgar Hoover: The Man and the Secrets*, 90 MICH. L. REV. 1812, 1816 (1992) (book review).

29. See President’s Commission on the Assassination of President Kennedy, Report of the President’s Commission on the Assassination of President John F. Kennedy (1964) (the Warren Commission’s report).

30. Ball’s friends and colleagues find his integrity unimpeachable. See David Shaw, *Joe Ball No Politician—He Shoots from the Lip*, LONG BEACH INDEPENDENT, July 28, 1968, at B5 (quoting Ball’s partner George Hart as saying Ball “wouldn’t go back on his principles if you offered him a seat on the United States Supreme Court.”).

31. See *Could the Bullet Be Pristine?*, U.S. NEWS & WORLD REPORT, Aug. 17, 1992, at 30 (recounting the House committee’s use of new technology to confirm that a single bullet had struck both men).

go to war on principle than to actually go to war.” I respected the first people who refused to go to Vietnam on the ground that it was an unholy and unworthy war and stood by that argument. Under the Ghandi principle, if you wish to exercise civil disobedience, you must stand up and oppose the war, and then take the consequences—go to prison. People who do that I regard as heroes, not traitors. This is quite different from the coward who is just looking for an excuse not to go to war, who cannot claim he exercised civil disobedience.

VI. CONTINUING PROFESSIONAL INVOLVEMENT: EARLY 1970S TO PRESENT

A. Law Practice

1. Growth of the Firm

Through the seventies and eighties, the law firm continued to grow to a total of about seventy-five lawyers in three offices: Long Beach, Beverly Hills, and downtown Los Angeles. During this period, another of our partners, Anthony Murray, became President of the California Bar. I continued to represent corporate clients and to take on criminal cases, including that of Nixon aide, John Ehrlichman.³² Some people were surprised that I would represent a Nixon aide, but our system depends on giving everyone the right to a defense.

We had a good law firm and turned out a high quality of work. There was loyalty between the lawyers and the firm. When our lawyers had physical or other problems, we would continue to pay them, in one instance for more than a year, while they recovered or decided what to do. That was the way we did things.

2. Merger

In 1990, we decided to merge with Hawaii’s oldest firm, Carlsmith, Wichman, Case, Mukai & Ichiki.³³ The merged firm, now called Carlsmith Ball, has offices in downtown Los Angeles and other locations throughout the Pacific Rim.

B. Service

From 1978 to 1983, I was chairman of the American Bar Association Special Committee on Abuse of Discovery.³⁴ We developed a series of rules to try to alleviate discovery problems and attain more civility among law-

32. See *Ehrlichman’s Lib Lawyer*, *supra* note 3, at 106.

33. See Gail Diane Cox, *Hawaii Merger Talks*, *NAT’L L.J.*, June 4, 1990, at 2, col. 1.

34. See *Special Committee on Abuse of Discovery, Report to the Bench and Bar*, 92 F.R.D. 137 at 153-54 (1977).

yers. Just before that, I had a case in which I had received approximately 1500 interrogatories. Each one of them had something like five sub-parts. Our Committee proposed a limitation on the number of interrogatories, but the Advisory Commission on Civil Rules never did adopt it. However, we appeared before the various circuit conferences and explained the changes that we wanted, in particular the limitation on interrogatories. We won with judges, many of whom adopted limitations.

In the early 1980s, I was also a member of the Ninth Circuit Judicial Conference Advisory Board. During this period, I taught trial advocacy at Loyola Law School in Los Angeles. I also taught in National Institute of Trial Advocacy programs at several locations, including Boalt Hall, Hastings, and Oxford University in England.

C. Personal Life

My wife died in 1971, and two years later I married my second wife, Sybil. My daughter Patsy went to law school at Southwestern, was admitted to the bar and worked with me in my practice. After my eyesight worsened in the early 1980s, we would read cases together and discuss them. After Sybil died in 1994, my daughter JoEllen and her daughter Kelly and my two great-grandchildren moved nearby; my grandson Kevin also visits. Patsy died in 1997, and that was a great loss to me. JoEllen now lives with me.

By 1996, of my friends from Creighton, there were two left: Judge Frank Charvat and I. He died three years ago. So I am the last one.

VII. CHANGES IN THE PROFESSION

The practice of law has changed since I was admitted to the bar. I never took a deposition without calling up my opponent to ask if a certain date was convenient for his client's deposition. Lawyers would call one another to ask for continuances of depositions or trials. Being in the profession, we weren't trying to take unfair advantage of one other. We were trying to get the case tried and justice done. In the 1980s, the practice became more of a business. Professional courtesy declined.

There are still more civil lawyers than uncivil ones, but when you increase the number of lawyers, you increase the number of rascals who get into the profession. I think discovery is somewhat to blame for the difference. It has made a boxing match of the fight between two lawyers. For example, I went into a deposition one time with a lawyer who had a particularly nasty temperament. I asked to borrow his phone to call my office. He said, "No, down the hall, there's a pay phone." That's not the kind of person I wanted to associate with. And yet, if he called me afterwards and asked for a favor, I would have given it to him.

Of course, any time you're in a lawsuit, you want to win. Somebody asked me what my attitude is when I go into court and whether I am afraid. I

said, "I'm concerned." He asked, "What do you think about your chances of winning?" I said, "I always expect to win." I never expected to lose. But I went on the merits. That was the way I was supposed to win, by persuasion.

Ball observed the seventieth anniversary of his admittance to the Bar on October the 11th, 1997. Twice a week, he still goes into his firm's Los Angeles office, where his partners continue to value his ideas about pending cases.