



Lessons learned from a judge and a great trial lawyer



BY DAN KELLY

The light finally goes on

"If you tell the truth, you don't have to remember anything."

– Mark Twain

Judge Joseph Karesh was unique because he was also a rabbi. He was on the bench in San Francisco for 18 years and continued to preside over many major criminal trials on assignment after his retirement.

I was assigned to trial in his department on a modest case. My client, who worked for the telephone company, was injured on the job when she slipped on oil that remained on the floor after a fumigation of mice performed by an outside company. The case against the fumigation company was bolstered by the fact that a co-worker also slipped at the same time and place of my client's fall.

Because this was an on-the-job accident, my client received roughly \$5,000 in workers' compensation benefits, thus giving the telephone company a lien on the case. Counsel for the telephone company was a young lawyer from the then-largest US law firm, Pillsbury, Madison & Sutro ("PM&S") of San Francisco.

Judge Karesh quickly turned our trial assignment into a settlement conference. He made good progress with me and defense counsel but realized the compensation lien needed to be reduced to \$2,000 to get the case resolved. He instructed the young lawyer from PM&S to get on the phone and get the lien cut to \$2,000 and told the lawyer to go into the adjacent court reporter's office to make the call.

After about 5-10 minutes the PM&S lawyer returned to tell all of us that the telephone company would not budge and wanted the entire \$5,000 lien paid from the settlement. Judge Karesh asked if the lawyer used the court reporter's phone to place the call and was told he did so. Judge Karesh then advised the PM&S lawyer that when the court reporter's phone is used, a light goes on the judge's phone and the judge never saw that line light up on his phone.

Then the judicial hammer quietly fell when Judge Karesh said the following: "Young man, I am good friends with your senior partner, Jack Sutro. I'm of a mind to call him and tell him one of his lawyers just lied to me. Or, you can go back out,

phone your client and two things had better happen – I see the phone light go on, and you come back authorized to take \$2,000 to satisfy the lien."

Predictably, the light went on, the lien was compromised, and the case settled.

One of Judge Karesh's memorable lines was, "A judge holds all the cards in his courtroom." He certainly displayed that on my case.

Of interest, in future dealings I had with him, Judge Karesh always remembered my case, not for the lien episode, but rather for the fumigation aspect of the case. He loved to tell the joke of the synagogue that had a mouse infestation problem that couldn't be solved. It was here in telling the joke that Judge Karesh became the rabbi of the synagogue who came up with a foolproof plan to get rid of the mice: "I'll give them all Bar Mitzvahs and we'll never see them again."

So, I remember Judge Karesh as someone who could be both a stern judge as well as a forgiving rabbi. Whether he was dispensing justice or rabbinical advice, he did so with a delightful Southern accent that even added more to his uniqueness.

Finders keepers, losers weepers

"An expert is one who knows more and more about less and less."

– Nicholas Murray Butler

As a young lawyer I had the good fortune to try some cases with Bruce Walkup. To say he was a good trial lawyer is like saying Seabiscuit was a good horse. Let's put it this way, they both knew how to get to the finish line.

One trial we had together was in Bakersfield. The plaintiffs' decedent, a 40-year-old housewife and mother, was killed in a head-on collision by a car that crossed over the center line and into her lane. The driver was a wealthy farmer who had more than adequate insurance. However, he claimed the steering went out on his Cadillac, thus causing the swerve into oncoming traffic.

Before we became involved, the referring attorney sued the driver and General Motors (GM). The referring attorney and both defense counsel agreed that the steering mechanism would be removed and sent to GM for analysis. Unfortunately, by the time we became associate counsel for trial, GM reported that the steering mechanism had been lost.

The case proceeded to trial with us knowing we were going to get a verdict against one or both defendants.



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At trial, counsel for GM called a witness from Detroit who was in charge of the shipping department that processed all the incoming and outgoing mail and deliveries for the company. It became obvious his mission was to try to explain the missing evidence as well as how such a thing could “easily” happen. The following colloquy took place:

GM’s defense counsel: “Sir, isn’t it true that your department at GM receives an average of 2,500 mailings or deliveries a day?” Answer: “Yes.” “And isn’t it also true that GM sends out over 2,000 mailings or deliveries a day through your department?”

Bruce Walkup: “Your honor, I object. These are all leading questions.”

GM’s defense counsel: “Your honor, Mr. Walkup knows full well that leading questions can be asked of an expert witness and this man is an expert.”

Bruce Walkup: “What is he an expert at, losing things?”

The jury rendered a sizable award which was summarized in the Journal of the then American Trial Lawyers Association (ATLA). The article included reference to GM’s losing the parts. After publication of the trial summary by ATLA we were contacted by at least ten ATLA members who stated they too shipped items to GM which were also lost.

Maybe the guy from Detroit truly was an expert at selectively losing things.

Daniel J. Kelly is a retired partner from the San Francisco firm of Walkup, Melodia, Kelly & Schoenberger where he specialized in representing plaintiffs in personal injury litigation and the mediation of personal injury cases. Mr. Kelly is a past president of the San Francisco Trial Lawyers Association and a member of the American College of Trial Lawyers, the American Board of Trial Advocates, the International Academy of Trial Lawyers and in 2003 was President of the International Society of Barristers. For years he co-authored the Rutter Group’s three volume Personal Injury Practice Guide.