



History Lessons for the West

Recent events suggest that Arizona has been placed in a time machine in which things we hoped were over and done with have returned, sort of like *Bride of Chuck*.

Let's start with picking up a recent *Arizona Republic* and finding out that Fife Symington is planning on running for governor again, this time because he "knows what Arizona needs."

WHAT? Have we forgotten the scandals, indictments, convictions and leave-taking? But perhaps what he has in mind for us is something that reflects his more recent professional undertaking. It's fine with me if he thinks that what the state needs is better catering in the legislature. We'll only know if he's serving us *nouveau cuisine* or politics as usual if he asks: "Do you want fries or lies?"

More *déjà vu* all over again when we realize that we still have not figured out how to fund education in this state so that geography is not the determinative factor in the quality of our schools. When geography is also directly related to race and ethnicity, we end up with a system in which low-income children, and children of color, have shockingly lower per capita school expenditures.

It is true that money isn't the only key to excellent learning environments. Experts point to dedicated teachers, involved administrators (and not too many of them) and energized parent groups as part of the required mix. But manipulating property taxes so that there are not enough textbooks or classrooms or even teachers themselves to go around the less affluent neighborhoods is not just morally disgraceful but also self-defeating. Arizona's collective interests are ill served by marginalizing our young people academically. Doing so virtually guarantees their continued isolation from opportunity and responsibility.

Obviously we would be furious if Arizona actively recruited a population of disaffected adults, but we should be just as outraged when we continue to help create that population. That's just bad retro thinking.

Curiously, while the problem is *déjà vu*, so is the tireless voice seeking answers. Tim Hogan and the Center for Law in the Public Interest have been working through the courts and the legislature for more than a decade to find the fair, effective and, oh yes, LEGAL solutions. How refreshing if this time around the legislators unite to craft an educational system that speaks to all our children's needs. Neglect of our schools is something else we should leave in the past.

And one more thing that should stay buried but just won't: breaking up the Ninth Circuit. As regular as our hundred-year floods (that we know come twice a decade), folks in Washington, DC, decide that the Circuit, *our Circuit*, must be smacked around, because it is:

- Too big
- Way too big
- Too liberal
- Way too liberal

First, and good news for many, size by itself does not matter. Second, it's the West, dummy. We have BIG open

spaces. We needed them for BIG cattle and now for BIG planned retirement communities.

And what is more liberal about the Ninth Circuit's decisions than other circuits? Check the record and see that it just is not true, assuming you can find a workable definition of "liberal court." Sure, the Ninth Circuit includes California, and California has such diversity and volume it raises interesting questions through the courts. But guess what? No matter how you slice and dice our big messy West, there will still be a California, whose cutting-edge issues must still have representation through the federal court system. Anyway, a state that really deserves the "liberal" moniker does not elect the Governor.

This particular Ninth Circuit crusade is the response of Rep. F. James Sensenbrenner, Jr. (not connected to the West) to the Pledge of Allegiance case. No matter how we felt about whether "one nation under God" ties us to a deity we may not personally embrace, most of us were able to move on. Sensenbrenner still wants to get even, and at the expense of Arizona's long and beneficial connection to a powerful and important Western legal institution.

The last time political bias broke up a court involved what used to be the Fifth Circuit. When that Circuit's decisions found segregation unconstitutional, some of Congress decided it was pay-back, and the split followed. But the real lesson of that exercise is that parsing a Court's geographic reach cannot eliminate valid legal issues and answers; they will out.

Con Law 101 taught us that no single branch of our representative democracy is supposed to trump another, lest we all get trumped. The wisdom from the Fifth Circuit experience is that we should avoid gerrymandering court boundaries to satisfy short-term political goals. Now *that* is a piece of history that should be revisited as often as needed.



Roxie Bacon

Roxie Bacon practices with Littler Mendelson Bacon & Dear in Phoenix.