

Slouching Toward the Middle

As liberal ideologues inexorably push their agenda from the bench, and feckless ‘moderates’ strike fashionable poses, the left triumphs.

M A R K S . P U L L I A M

ON OCTOBER 5, 1999, a jurisprudential giant in California passed away at age 85. Frank K. Richardson was appointed to the California Supreme Court in 1974 by Governor Ronald Reagan, and served with distinction until his retirement in 1983. He authored nearly 600 opinions during his nine-year tenure on the high court, including landmark decisions upholding Propositions 13 and 8 (the “Victim’s Bill of Rights”). But it is easy to do the right thing when it is popular. The ultimate test comes when doing right means opposing prevailing intellectual fashions. In Richardson’s era, the Supreme Court was packed with judicial liberals. Richardson neither went along nor remained silent.

Richardson’s greatness, like that of his former colleague, William Clark, is measured by his thoughtful, eloquent dissents. He and Clark were the conscience of the Rose Bird Court. He consistently exposed the majority’s illegitimate judicial lawmaking. Frank Richardson was a meticulous scholar whose personal and intellectual rectitude earned him the nickname “Deacon.” Even now, Richardson’s legacy of cogent dissenting opinions shines like a beacon, providing guidance — and direction — to future students, judges, and lawyers who read them in *California Reports*.

Alas, Richardson’s passing is a symbolic loss as well, because the example he set — as the archetypal Republican judge — no longer exists in California’s judiciary. I do not mean to diminish the contribution of stalwart jurists such as California Supreme Court Associate Justice Janice Brown (and, to a lesser extent, Justice Marvin Baxter), but to recognize that they are the exception rather than the rule on a court dominated by “moderate” Republican appointees. Consider the August 2 decision of the California Supreme Court in *Aguilar v. Avis Rent A Car System, Inc.*, in which Chief

Justice Ron George (who, in contrast to Richardson, *always* votes with the majority) wrote a plurality opinion affirming an injunction (or, in First Amendment litigation parlance, “prior restraint”) against a particular form of expression. In *Aguilar*, a group of Latino employees sued their employer and 10 co-workers to recover for the “emotional distress” caused by “national origin harassment” consisting of “verbal abuse” at work. None of the plaintiffs had been fired or demoted. It is not unusual these days for plaintiffs to seek, or for juries to award, damages for past conduct or statements in such cases. But *Aguilar* raised an issue of first impression: can courts enjoin *future* speech?

The U.S. Supreme Court has long considered prior restraints on speech to be impermissible except to avoid a “clear and present danger” to public health or safety — the classic example being falsely yelling “fire” in a crowded movie theater. From what “clear and present danger” was Ron George protecting the Republic in *Aguilar*? The publication of national defense secrets in a newspaper? The burning of an American flag in public? A Nazi march through a predominantly Jewish community? A seditious speech full of libel and invective? A KKK rally, complete with white hoods and burning crosses? The display of a vulgar slogan in a courthouse? No. The U.S. Supreme Court, often at the behest of the ACLU, has overturned prior restraints against all these things because of our near-absolute devotion to the First Amendment and freedom of speech.

NO, THE threat to civil society enjoined by Ron George and his Republican-appointed colleagues Marvin Baxter, Ming Chin, and Kathryn Werdegar was the use of “racial or ethnic epithets” by employees against one another in the workplace. You see, verbal “harassment” consisting of derogatory names (such as “wetback”), profanity, and other “demeaning” statements is considered to be more offensive, and entitled

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COMMENTARY

“Dutch”

Peter Hannaford

In a recent letter to the editor of the *Washington Post*, Edmund Morris says that he is not greatly interested in the story of Reagan's 1980 presidential campaign, “which is already well-documented in the works of Lou Cannon and others.” Had he applied the same standard to Reagan's pre-politics years, he could have spared us the first 300 pages of *Dutch* (*A Memoir of Ronald Reagan* by Edmund Morris, Random House, 1999, \$35, cloth), for those years were well-documented in Anne Edwards' 1987 biography, *Early Reagan*.

This contradiction is symptomatic of the author's ambivalent attitude about his project, the first biography authorized by a sitting president. In television and magazine interviews, Morris has lauded his subject as “great,” “the bravest,” “incorrupt,” but it is hard to find such conclusions in *Dutch*. Indeed, there is a lot of condescension, as in his off-handed treatment of Reagan's years as president of the Screen Actors' Guild, a pivotal period in Reagan's transition from liberal to conservative.

Peter Hannaford was closely associated with Ronald Reagan for many years. The latest of his four books about the 40th president is The Quotable Ronald Reagan.

Morris had been chosen by the Reagans, with the enthusiastic support of key staff members, to document the 40th president's life. Their choice was made on the basis of Morris's only previous book, the widely-acclaimed *The Rise of Theodore Roosevelt*. Fourteen years later he produced *Dutch*. In mid-course he apparently suffered a writer's block. In 1992, he told scholars at the University of Virginia's Miller Center



that Reagan was an enigma, a complete mystery to him. Despite Morris's unprecedented access to Reagan while the latter was in office, he seems unable to sort out the significant from the less significant.

For example, he describes the Reagan visit to a cemetery in Bitburg, Germany, where, as it turned out, some German troops were buried, as the “crisis of his career.” On the other hand, he treats the Reykjavik, Iceland, summit as if it were a public relations exercise when, in fact, it was the climactic event of the Cold War, when Rea-

gan trumped Gorbachev once and for all.

Morris gets some things right, such as the succession of events in the 1976 Reagan presidential campaign, but — for all the years spent on the project — he gets his proportions wrong on many aspects of Reagan's life.

A biographer has an obligation to present all the aspects of his subject's life as objectively as he or she can. Granted, no one is completely objective, but the historian must strive for detachment. With this book, Morris goes in the opposite direction. In his never-ending search for some deep psychological secret to Reagan's character, he finds it necessary to insert fictional characters: himself, as if born 28 years before he actually was; a son he never had; and a gossipy columnist schoolmate. Imaginary people have imaginary conversations, write imaginary letters and poems, and participate in imaginary events.

The only hint the reader has that something is up is a coy reference on the dust jacket to what Morris calls “a new biographical style.” If he set out to confuse some readers, he has doubtless succeeded, for the index lists citations of the fictional characters right along with the real ones, with no distinction made. Morris did a prodigious amount of re-

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