

## As Time Goes By – Judges Dinner Keynotes of Note - Re-dux

Canadian David Mulligan played golf at the Country Club of Montreal back in the 1920s. One day after hitting a poor tee shot, he is said to have re-teed and hit again, calling it a “correction shot.” His friends named the shot after him. Coincidentally, he later became manager at the Waldorf=Astoria.

Another Mulligan was also associated with the Waldorf; this one as keynote speaker at our Association’s Judges Dinner – not once, not twice, but thrice. However, the second and third keynotes were not “correction shots,” since Judge William Mulligan of the U.S. Court of Appeals for the Second Circuit never laid an egg when it came to public speaking.

Judge Mulligan’s first address before our Association resulted from a dilemma concerning the Judges Dinner that Past President William Conner (later Judge Conner) faced when he took the helm of the Association’s ship-of-state in 1972. His concern was that, because in prior years so few judges were in attendance, the name “Judges Dinner” might need to be changed if the trend continued.

President Conner concluded that the key to success was choosing a keynote speaker from the judiciary who was highly respected among peers and a superb speaker to boot. Judge Mulligan fit the bill to a tee.

When he took the podium at the 1973 Judges Dinner, Judge Mulligan talked about judicial opinions and their underlying authority. He pointed out that “[s]ometimes, indeed, also there is no authority at all and one must resort to reason, a somewhat tricky and dangerous alternative.”<sup>1</sup>

He then discussed a case posing what he called “an intriguing and novel fact pattern arising in the sophisticated and busy Second Circuit.”<sup>2</sup> The case related to a *pro se* plaintiff alleging that the-then Secretary of Defense, Melvin Laird, had in some way unknown to the plaintiff succeeded in putting his (Laird’s) head into the plaintiff’s mouth. The alleged result was serious injury to plaintiff’s teeth and gums.

In a Watergate allusion, Judge Mulligan observed:

Although the Nixon Cabinet has since been accused of many trespasses, this was the first occasion as far as my law clerks could discover that any cabinet member had been accused of putting his head into the mouth of any ordinary citizen. The pleadings did not indicate whether the plaintiff was a Democrat or a Republican, which might



have been helpful if intent were to be an element of this tort. We had all heard of unofficial reports of cabinet members of various administrations putting their foot in their mouths, but, after a

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conference, we found the cases quite distinguishable. We also found cases of animal trainers or visitors to the zoo who had playfully put their heads into the mouths of lions or tigers but, oddly enough, no case of a suit brought by a lion or even his guardian for injury to the molars. On the other hand, we did find suits by lion-tamers or, more properly, next-of-kin seeking damages against negligent or deliberate lion tort feasers. I only cite this as typical of the perplexing questions of first impression brought into our court. We affirmed the dismissal of the complaint here without an opinion. I wanted to write on this subject, but my colleagues persuaded me not to lest we encourage this disgusting practice which might spread even to lesser federal or even state officials.<sup>3</sup>

Judge Mulligan’s 1973 keynote was a big hit, and attendance among the judges at the Judges Dinner was up. His second keynote appearance, at our 1978 Judges Dinner, at which he told amusing anecdotes about the various types of lawyers who paraded before the Second Circuit, was another big hit.

After his time of service on the bench, Judge Mulligan was back at the podium for our 1985 Judges Dinner. He opened thusly:

It is indeed an honor and a privilege to once again be invited to address the Patent Law Bar Association [sic, NYIPLA] at your annual dinner. When I was on the bench, invitations to this dinner were always accepted with alacrity. Perhaps some of my colleagues came because of the opulent pre-prandial refreshments and vintage wines at a fine dinner. But I came only because it gave me the opportunity to discuss file wrapper estoppel, the latest advances in microbiology, and nuclear mathematics and physics with those of you who, like me, were scientifically trained and au courant with star wars and other fascinating developments. The only one I could discuss these problems with sensibly in the courthouse lunchroom was Judge Conner. I do admit that after several jars at this party some of my other colleagues displayed a remarkable eloquence in these esoteric matters.<sup>4</sup>

For those of you who’ve not had the opportunity to hear Judge Mulligan speak, suffice it to say that it was a memorable experience. A current-day likeness of that quality of speaking talent was found in Judge John Gleeson’s address at the 2011 Judges Dinner.<sup>5</sup>

The role of judicial keynote speaker continued with a fine presentation at the 2012 Judges Dinner by Judge Colleen McMahon. May the trend long continue!

With kind regards,  
 Dale Carlson

**(Endnotes)**

<sup>1</sup> *Mulligan’s Law: The Wit and Wisdom of William Hughes Mulligan* 69, 70 (William Hughes Mulligan, Jr. ed. 1997).

<sup>2</sup> *Id.* at 70.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.* at 184.

<sup>5</sup> See Judge John Gleeson’s Keynote Address at the 2011 Judges Dinner, NYIPLA Bulletin, April-May 2011, at 1, 3-9.