

The Wasp Stings the Courts

BY KYLE GRAHAM*

THE WASP was a satirical illustrated periodical of a century ago. Its scalding coverage of the justice system took to heart the adage that good news doesn't sell newspapers.

A West Coast counterpart to the better-known *Puck* and *Judge*, the *Wasp* delivered its sting through pungent commentary and cartoons concerning national, state, and local issues of the day. The San Francisco publication, in business from 1876 through 1941, "began as a staunch partisan of radical change, supporting the Democratic Party. It then passed through a period of political independence. After that it was Republican by default, then Republican at all costs, then Republican when it felt like it, then again Republican at all costs, before settling down into a long period of quiet conservatism."¹ From 1881 to 1886, *The Wasp* also provided a forum for writer Ambrose Bierce, who wrote the "Prattle" column under the pseudonym "B."²

Bound volumes of *The Wasp* have been scanned into a digital format and are now available online through the *Internet Archive* website.³ These collections provide a unique, though occasionally repugnant, perspective regarding California politics, society, and life in the late 1800s and early 1900s. Leafing through one of these editions, a modern reader is likely to be struck by the pervasive and horrifically virulent anti-Chinese-immigrant content of *The Wasp's* editorials and illustrations, particularly during the 1880s and 1890s. This viewpoint was certainly not atypical of the California popular press of that era. But today these articles and cartoons, along with the publication's similarly benighted views regarding other matters of race, religion, sex, and ethnicity, provide an object lesson regarding the tragedies of racism, sexism, anti-Semitism, and nativism.

This article principally concerns another of *The Wasp's* recurring topics of discussion — the law — although as will be seen, the publication's coverage of this subject was tintured by its views on matters of race, gender, and ethnicity. Then, as now, judicial proceedings made for good



The Wasp cover, August 25, 1888.

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copy, and *The Wasp* offered candid commentary on the cases and courtroom personalities of its day. This content ran the gamut from rapid-fire puns and quips, to profiles of leading judges and attorneys, to critiques of recent decisions by trial and appellate courts, to editorials that pressed for changes to various aspects of the justice system.

A complete discussion of *The Wasp's* coverage of the bench, bar, and litigants would consume several volumes of this publication. Hence, only a sampling is provided here; interested readers can explore online issues on their own.

It did not take long for the publication to adopt an attitude of weary cynicism toward the administration of justice in the local courts. A short article published in *The Wasp's* first year in print, "The Shyster's Paradise," gave a hint at what

would come. It began, "San Francisco is proverbially the 'shyster's' paradise. In this city, as the rule goes in our courts, the 'shyster' is given full and free license to not only insult respectable people when placed upon the witness-stand, but too frequently to act the thief himself."⁴ After registering additional complaints, the article concluded, "If there be anything in the world to bring disgrace upon the dignity of the law, it is an unprincipled sot, calling himself a lawyer. To our idea, all lawyers should first be gentlemen, and lawyers after."⁵

The next year, *The Wasp* expanded its coverage and critiques of the judicial system. Though the topics varied, the prose was invariably purple in hue. The editors caviled against the prevailing system of judicial elections, opining,

The system, then, of electing the Judiciary for a term of years, may be classed among the most pernicious of systems known in a republican country — for by it the majesty of the law is humbled, the greatest criminals in the land, provided they be wealthy or men of political influence, are permitted to escape justice through some technicality, or other judicial error, not unfrequently made with the object in view of thwarting the punishment and in the end defeating the law, and making the very name of justice a mockery.⁶

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The publication also pressed for higher admission standards for attorneys, recommending,

A law should be passed by the next Legislature making it compulsory upon every man now practicing, and in the future about to practice law, to undergo an examination before the Supreme Court Judges of this State.

With such a law in force, shysterism would be virtually killed, and the name “attorney,” or “lawyer,” would then be restored to the dignified position in which it is held in Europe.⁷

And yet another edition fretted about the future of the bar:

Gradually, but surely, the old California lawyers are dropping off one by one to swell the grand army of luminaries on the other side of Jordan. The question is, who will take their places this side of the river when they depart? All our eminent jurists are getting old and worn out.⁸

The Wasp would harp on similar themes over the years that followed: a supposed surplus of unqualified attorneys, the inconsistent quality of members of the bench, the frustration of justice through legal “technicalities,” and the perceived tendency of attorneys (and other professions; *The Wasp* also was quick to call out “quack” doctors and incompetent architects) to enrich themselves at their clients’ expense. The first of these topics represented an especially rich wellspring for editorial ink. In 1878, for example, an editorial lamented,

There can possibly be no greater calamity befall a country than to have it over-run with half-educated lawyers. And that is one of the great troubles which this nation is suffering from now. Look into every court in the land and you find men struggling — painfully and fruitlessly — with complex propositions which require for their adjustment the application of an intricate and philosophical science to some of the ordinary events of life. . . . You find them indolently lounging, spitting tobacco juice, idly conversing, and generally assuming an air of insolent superiority, in that place which of all others, in a self-governed country, should be sacredly decorous, the Chamber of Justice. And all this simply because these so-called lawyers are ignorant boorish pettifoggers who under a proper system would never have gained admission to the profession.⁹

At times, *The Wasp* seemed to take pity on its prey. In 1893, it would observe of a new crop of would-be attorneys,

The Supreme Court began its session last week, and the first day thereof was devoted, as usual, to the task of examining ambitious youthful applicants for admission to the bar — spacious-browed

and empty-pursed young men, who, deluded by visions of wealth and honor, seek entrance to a profession from which most of them will ere long be glad to escape with a beer check and a forlorn hope of securing admittance to the Alms House.¹⁰

Judges and juries, too, often found themselves at the pointed end of *The Wasp’s* sharp wit. One anecdote from 1893 related,

Some years ago one of the noted Superior Judges of San Francisco had the misfortune, or good fortune, to be reversed by the Supreme Court so many times that the subject became a matter of remark and jest among the members of the bar. One facetious attorney appealed a case that had been decided by this judge to the Supreme Court, and introduced the matter to the attention of that tribunal as follows: ‘If it please the court, this case was decided against my client by Judge; but this is not the only point upon which I base this appeal.’¹¹

A January 1886 entry in an occasional series, “The Devil’s Dictionary,” provided: “Jury, n. A number of persons appointed by a court to assist the attorneys in preventing law from degenerating into justice.”¹² Later that year, in describing a recent trial, *The Wasp* offered a more specific critique of juror expertise. “[W]e have the jury on a San Francisco murder trial judicially sniffing at the vital organs removed from the corpus delicti, and trying to distinguish the odor of garlic from the odor of a diseased liver;” it reported. “The defense for this exhibition is that the smell of the liver is a question of fact for the jury, while the logical inference that the garlic odor is due to phosphorus poisoning is one for expert testimony. But surely an expert pathologist is a better judge of a morbid odor than any twelve laymen.”¹³

The Wasp was not shy in expressing its approval of or disdain for specific judicial decisions, including those of the California Supreme Court. The editors apparently agreed with the result in *Hatch v. Stoneman*,¹⁴ writing of that 1885 decision that “the Supreme Court has decided that no power exists to compel the Governor to call a special election. No one but an infatuated idiot could have expected any other result of the absurd attempt to force a Governor by a writ of mandamus to approve an act of a Legislature.”¹⁵ *The Wasp’s* caustic criticism of the outcome in *People v. Cheong Foon Ark*, meanwhile, incorporated a gratuitous manifestation of the writer’s underlying bias:

The Supreme Court has reversed the judgment of the Superior Court, in which a prisoner was convicted, on the ground that in the indictment the word ‘felonious’ was omitted before the word ‘larceny.’ A larceny, it appears, is not naughty unless it is described as ‘felonious.’ What makes this technical hair-splitting peculiarly provoking is the circumstance that the man turned loose is a Chinaman.¹⁶

Racial bias also insinuated itself into *The Wasp's* commentary when Hong Yen Chang, an immigrant from China, was denied admission to the California bar in 1890.¹⁷ In describing this denial — recognized as a “grievous wrong” by the California Supreme Court in a 2015 decision that posthumously granted admission to Chang¹⁸ — *The Wasp* wrote,

The State Supreme Court has declined to admit Hong Yen Chang to the ranks of the legal profession of California. Mr. Hong was naturalized in New York, and his moral character is said to be good enough to make him lonesome in the company of most San Francisco lawyers, but the Court holds that a Chinaman cannot legally become an American citizen. Of course, this decision is correct, but it is a pity that the law does not permit the enrollment of a few Chinese attorneys to handle the Chinese business in the courts. They would probably be more scrupulous than the white practitioners for one thing, and then they would prevent the gradual Mongolization of the San Francisco bar.¹⁹

Notwithstanding *The Wasp's* generally abhorrent views on matters of race and ethnicity, at times its editors defied popular sentiment to defend a principle. In 1887, the publication condemned a recent lynching of a Chinese American who had been convicted of murder and sentenced to life in prison, but then dragged to his death by a mob in Colusa. “The hanging of Hong Di by a mob was a disgrace to our boasted civilization,” the editors wrote.

Not that he did not deserve death, but the manner in which it was brought about is a total subversion of the cornerstone of government. . . . Hong Di may have been the most deserving of death of all the scoundrels who have tempted the patience of a long-suffering people. But that is not the question now at issue. The point is that he was under the protection of law — that same law which purports to shield the highest as well as the lowest in the land. And there will be an end of all government and a return to anarchy if such un-civilized barbarities shall go unpunished as characterized the saturnalian butchery of Hong Di.²⁰

On the lighter side, *The Wasp* frequently tweaked prevailing sentiments regarding the administration of justice. After discussing some recent litigation in his “Prattle” column in 1882, Bierce bemoaned,

We all bewail the “miscarriage of justice”; we uproll the offended eye and agitate the deprecating tongue; we execute yawps and shouts of protestation. We shrill. The miserable insincerity of it all! The swindler that the Court has acquitted we take by the hand; the known but unindicted thief has his knees under our table and shakes a leg in our parlors with his arm about our wives and daughters. Is he black-

ballled at our clubs? Is his invitation to drink a glass of wine declined? Do you, good reader, know a man who turns his back when an eminently respectable thief offers his hand? Do you do so yourself? No? Then you have not earned the right to rail at our juggling judges and our maudlin jurors. You would better hold your tongue. I shall wag mine, all the same.²¹

It can be difficult to read *The Wasp* today without flinching. The publication's casual juxtaposition of tame jests with stridently xenophobic and racist views now seems repulsive in its minimization of the gravity and harm of the principles its writers, editors, and cartoonists accepted, and sometimes espoused. Yet the existence of these views, however regrettable, is itself a historical fact, and to a critical reader *The Wasp* can provide useful insights into the environment and attitudes that surrounded the judges, juries, and attorneys of the late 1800s and early 1900s. ☆

ENDNOTES

1. Richard Samuel West, *The San Francisco Wasp: An Illustrated History*. Northampton, MA: Periodyssey Press 2004, 2.
2. *Ibid.*, 48, 101-102.
3. *Internet Archive*, www.archive.org.
4. “The ‘Shyster’s’ Paradise,” *The Wasp*, Nov. 25, 1876, 150.
5. *Ibid.*
6. “The Judiciary — State and Federal,” *The Wasp*, Jan. 13, 1877, 228.
7. “Shysterism and Quackery,” *The Wasp*, Mar. 17, 1877, 343.
8. “Eminent Blackstonians,” *The Wasp*, May 5, 1877, 425.
9. “Our Greatness in Crookedness: Legal Frauds,” *The Wasp*, Aug. 17, 1878, 34.
10. “Wasp on the Wing,” *The Wasp*, Jan. 21, 1893, 3.
11. “Personalities,” *The Wasp*, May 20, 1893, 4.
12. “The Devil’s Dictionary,” *The Wasp*, Jan. 9, 1886, 3.
13. “Jurors as Experts,” *The Wasp*, Mar. 27, 1886, 6.
14. *Hatch v. Stoneman* (1885) 66 Cal. 632.
15. “Editorial,” *The Wasp*, May 2, 1885, 4.
16. *The Wasp*, Oct. 14, 1882, 652; see *People v. Cheong Foon Ark* (1882) 61 Cal. 527.
17. *In re Hong Yen Chang* (1890) 84 Cal. 163, abrogated by *In re Hong Yen Chang* (2015) 60 Cal.4th 1169. For more on Hong Yen Chang, see Jeffrey L. Bleich, Benjamin J. Horwich & Joshua S. Meltzer, “Righting a Historic Wrong. The Posthumous Admission of Hong Yen Chang to the California Bar,” *CSCHS Newsletter*, Spring/Summer 2015, 2-4, <http://www.cschs.org/wp-content/uploads/2014/05/2015-Newsletter-Spring-Summer.pdf>.
18. *In re Hong Yen Chang*, *supra*, 60 Cal.4th, 1175.
19. “Phonographia,” *The Wasp*, May 31, 1890, 5.
20. *The Wasp*, July 16, 1887, 4. Hong Di was seized from jail and lynched by a mob in Colusa, California, after a jury sentenced him to life in prison for the murder of Julia Billiou. Christopher Waldrep, ed., *Lynching in America: A History in Documents*. New York: NYU Press, 2006, 163-165.
21. “Prattle,” *The Wasp*, July 15, 1882, 437.