

WORKING INSIDE THE BOX

By William Domnarski

Our judges here in the Central District of the U.S. District Court insist on a podium rule. That is, whether during argument to the court, examination of a witness, or arguments to the jury, the lawyers from both sides must restrict themselves to standing behind the podium, which is placed front and center in the courtroom. Not all courts insist on the podium rule. But here in the Central District it is the rule. No closing in on the witness Perry Mason style, no roaming around the room when addressing the court Alan Shore style.

Some might say that it is a control issue for the judges, an issue of dominance or power. Maybe yes, maybe no. What matters for the lawyers is determining how to form a relationship with the podium that meets the rules of the court and still gives them the comfortable feeling that they need in order to do their best work. We are not used to being cabined, so the struggle is ongoing.

Relating to the podium is complicated because the lawyer is engaged in so many activities while there. One can prepare for presentation to the court, but after argument (or even during) the court asks questions or challenges the lawyer's argument. How does one relate to the podium while fielding questions? How do you relate when, while you're still at the podium, the court engages opposing counsel at his counsel table? For occasions when the client is with the lawyer at the podium, such as a change of plea or sentencing, how does the lawyer relate to the podium and share space? And what about those times, when the court has to read from a set script, such as when stating the terms of supervised release? There's

a lot that has to go on the record, and the lawyer is listening to the judge, sometimes making notes, but more generally trying to work out a relationship to the podium.

Lawyers use a variety of classic podium moves and poses. The most amusing are the ones who bring hundreds of pages of documents and notes to the podium, spread them out, and then proceed to sprawl. They take a half-step back and throw their arms out on the sides of the podium, as if they are attempting to reach out and bring the judge into their orbit. They then hang their bodies down and look up to the judge, creating an arch effect.

Another version of this pose has the lawyers placing their palms against the front edges of the podium sides and pushing off from there. Others have their version of a thoughtful pose, whereby they rest one elbow on the side of the podium and balance themselves against it while searching for a certain insouciance.

Rare are the lawyers who stand behind the podium and resist the temptation to rest their hands on its sides. Also rare are the lawyers who, having abandoned their poses, argue with great gesticulation, "sawing at the air" as Shakespeare once put it. That they usually come to the podium with their jackets unbuttoned and ties loosened somehow completes the scene. If they were plumbers, their pants would not cover their assets.

I do my best not to touch the podium. I'll bring some papers, in case I get stuck, but since I always try not to use notes and to address the court as if in a conversation, putting the papers on the podium is the closest I allow myself to come to touching it. I make it into a kind of game to see if I can get through an entire appearance without

falling prey to touching the podium, believing that doing so signals weakness, a kind of crutch.

When it is just me engaged in argument, I do my best to just stand there, sometimes putting my hands behind my back, sometimes depositing them in my pockets. It's just too hard to keep your arms at your side the whole time. When I'm not engaged and am standing with my client listening to the opposing counsel or am listening to the court recite from a script, I move to the left of the podium and find minor diversions, moving a step to the left and right, front and back, usually with my hands behind my back.

I've only lately taken to putting my hands in my pockets at times. It is not particularly visible to an observer because my suit jacket covers that part of my trousers, but my stance indicates where my hands are. I used to wonder if this was too casual a pose, if it might be sending the wrong message to the judge. It was a comfortable and natural position to take. And since I tended to do it when I was more an observer to the scene than an active participant, I thought that whatever message it was sending was minimized. But given that I would sometimes keep my hands in my pockets when I was engaging directly with the court, I had to determine whether I was crossing some etiquette boundary. It didn't feel wrong, but as we know, that is not the best test of whether an activity is appropriate.

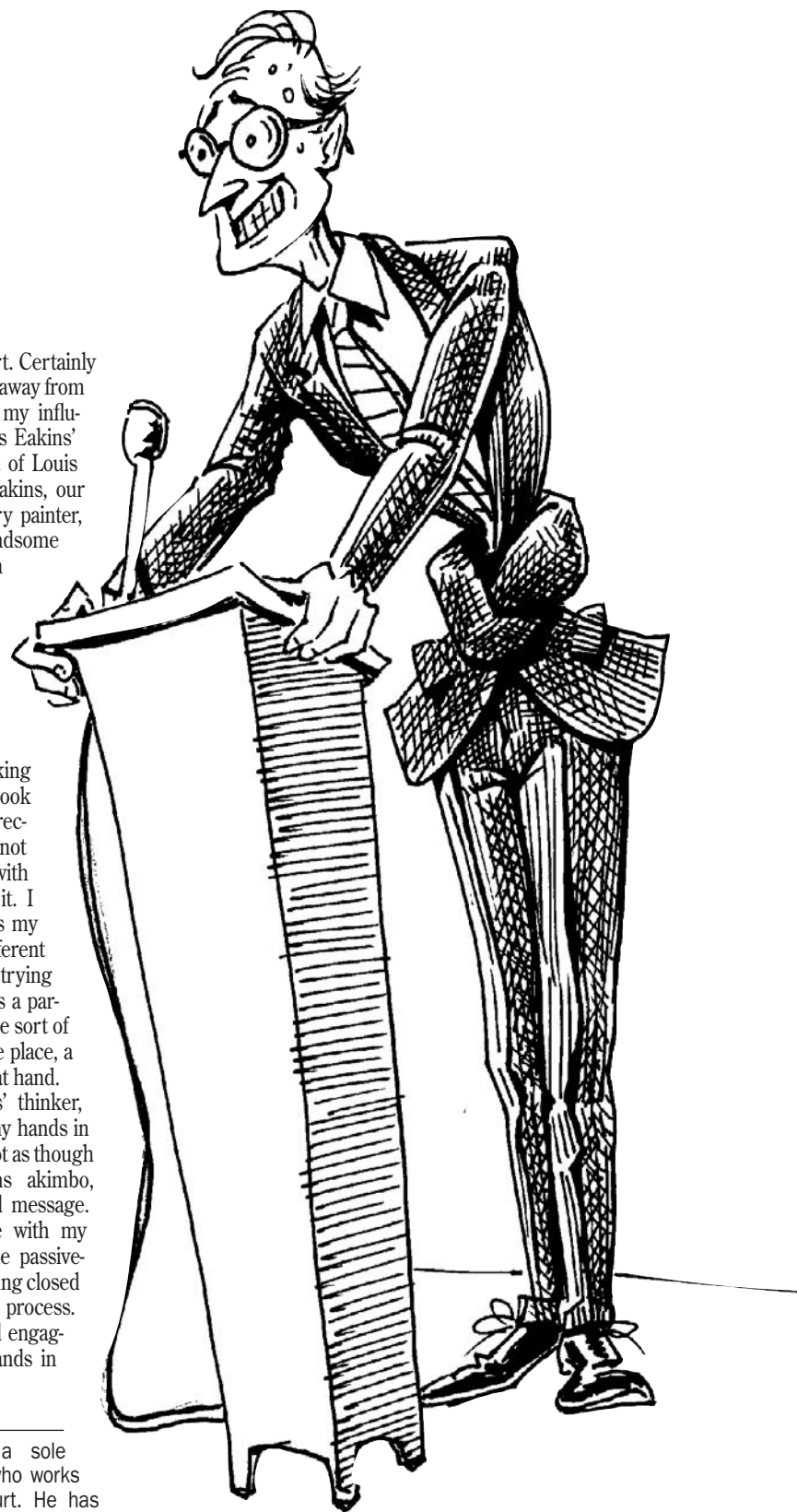
I scouted around for some authority on hands-in-pockets, but didn't have much success. I discovered that it is bad form in Hong Kong or Denmark to converse, hands in pockets, with strangers, but there isn't much on the American rule generally, or court etiquette in particular. And of the sources I did find, they were of the "don't wear

white after Labor Day" sort. Certainly nothing I found turned me away from what I suspect had been my influence in all of this: Thomas Eakins' famous full-length portrait of Louis Kenton, "The Thinker." Eakins, our greatest nineteenth century painter, portrays Kenton in his handsome three-piece suit, head down and ruminating, with his jacket open and hands in pockets. If the jacket were buttoned, it could be me (or at least it could be my image of myself).

I found what I was looking for in an English manners book of the 18th century. The directive is that a person ought not stand before a superior with hands in pockets. That's it. I don't think of the judge as my superior. We have our different roles, but we are all there trying to get some work done. As a participant, I have at least some sort of right to seek a comfortable place, a place facilitating the work at hand.

Sometimes, like Eakins' thinker, that place for me is with my hands in my pockets. After all, it's not as though I'm standing there, arms akimbo, sending some sort of odd message. Nor am I standing there with my arms crossed, sending the passive-aggressive message of having closed off my engagement in the process. I'm just there thinking and engaging ... sometimes with hands in pockets.

William Domnarski is a sole practitioner in Riverside who works exclusively in federal court. He has written two books on the federal court system and its judges. His e-mail is domnarski@sbcglobal.net.



New Meaning for 'Sicko': Universal Health Care Is a Prescription for Disaster

By Gen LaGreca

Michael Moore says he made the film "Sicko" to "ignite a fire for free, universal health care." How absurd is it for someone seeking proper health care to take an odyssey to Communist Cuba?

People like Moore believe capitalism is the disease and government takeover the cure for our health care ills. They think people have a right to free health care simply because they need it.

If so, why stop at medicine? Couldn't we claim the same right to other necessities? Take food, for instance. What if the government seized control of the food industry and fed us for free with a new entitlement, Foodcare?

Initially, Foodcare will empty the horn of plenty into your lap. With your appetite and wallet parting company, the lobster you ate only on your birthday will become regular fare, as will your favorite Belgian chocolates and filet mignon.

Because the same idea occurs to 300 million others, costs skyrocket, and a Foodcare crisis develops. Big Brother no longer can foot the bill for your busy mouth, so he must limit your mastication. This requires new agencies, new bureaucrats and a 100,000-page rule book.

You visit your favorite restaurant to find it changed. Gone are the tablecloths, flowers and cheerful hostesses to greet you. The Department of Restaurants eliminated them as frivolous indulgences of the people's resources.

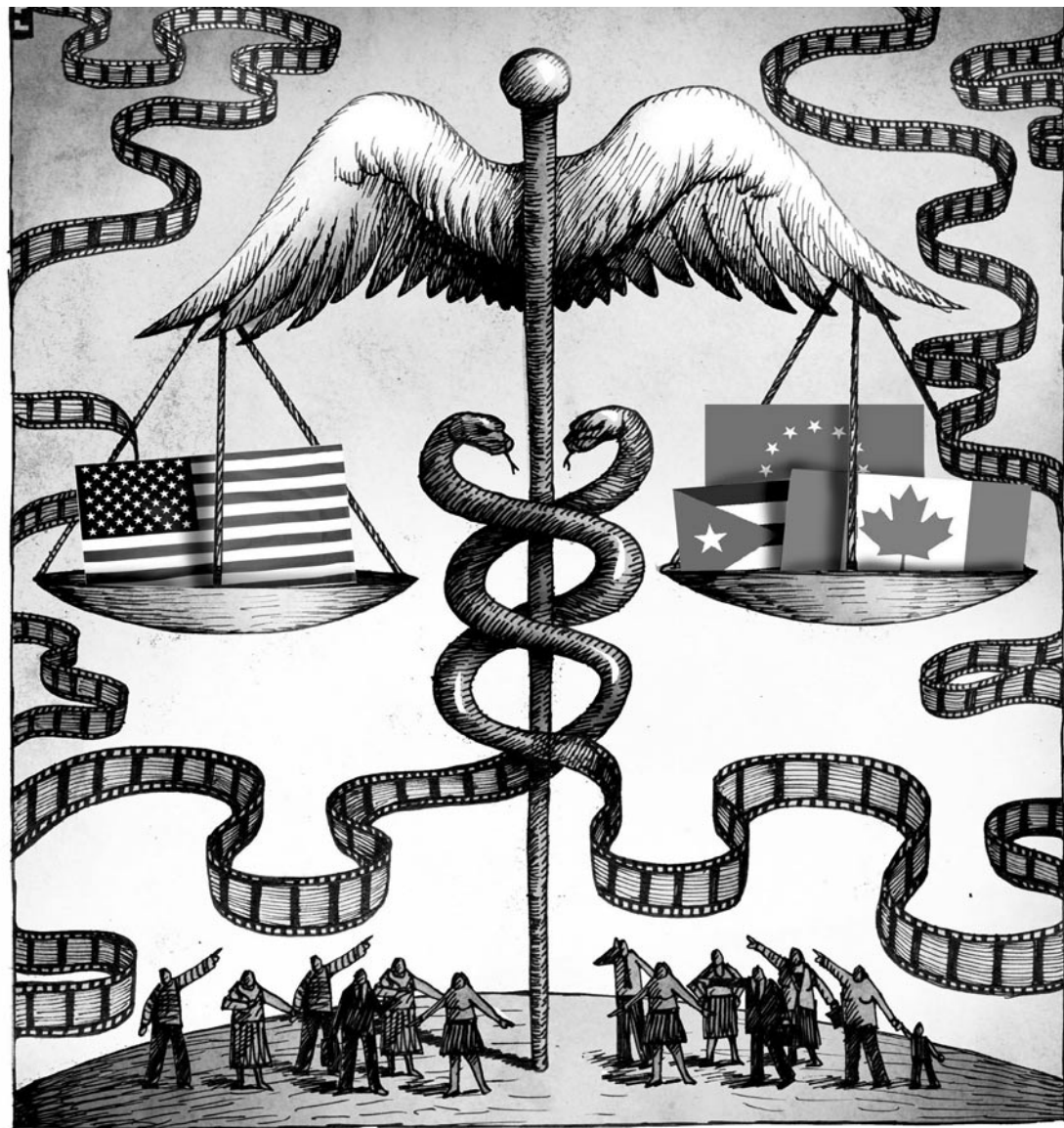
The menu is reduced to a few modest offerings. Missing are the savory specials of the talented chef, whose last creation took 40 pounds — of paperwork, not ingredients — to gain approval from the New Recipe Administration.

You want salmon, but getting it requires that the chef call a central office to obtain pre-authorization. You notice your neighbor eating steak. You remember when he was laid off and you bought him dinner. Back then, he thanked you and quickly got another job. But now that he has a right to food, he has stopped working and is eating courtesy of your tax dollars.

You barely recognize the frazzled chef buried in paperwork. The once-happy figure dotting over your every need slaves for a new master, one that denies his fee for serving Cognac, second-guesses his decision to make cheesecake and requires a Certificate of Need to buy an oven. You know that, under Foodcare, he's merely biding time until retirement. When he goes, you doubt he'll be replaced, because enrollment in chef's schools has dropped as the number of bureaucrats hounding them has risen.

As time passes, everyone forgets how it started, but the crisis worsens. Michael Moore makes a pilgrimage to North Korea to find adequate food.

The amount you pay into Foodcare exceeds what you had paid when you bought your own food and didn't obtain it free. Then you didn't pay for bureaucrats and inspectors to tell you what to eat, or for those, like your neighbor, who are milking the system. Besides emptying your wallet, Foodcare has drained all the pleasure you once derived from eating.



Politicians blame their scapegoat, the capitalists — grocers, chefs, food manufacturers — and pass laws to prevent any of them from owning a Mercedes while someone goes to bed hungry in America. They tell us profit is evil and free food for all is a moral ideal.

You wonder, Is there something wrong with this picture? The ideal isn't the private system, with happy chefs and grocers earning a good living in return for their talent and entrepreneurial risk and satisfied customers enjoying a Shangri La of affordable food. The ideal isn't a spectacular abundance, with everyone's standard of eating (including the poor) raised dramatically and without government force, without fleecing taxpayers and

robbing consumers and suppliers of their freedom to make their own personal choices and interact voluntarily. Instead, the ideal is transforming free, self-determining individuals into state-controlled puppets.

The Foodcare scenario is occurring in health care. Once the gold standard of the world, American medicine has fallen to its knees because of decades of crippling regulation. Universal health care is about to provide the final blow.

To stop this despotism, we must repudiate the notion that health care is a right. No one has a right to demand free the goods and services produced by others. We have the freedom to take action to further our own lives — to work, earn money and

pay for the things we need — while respecting the same rights of others. We don't have any right to enact laws to seize people's money, control their activities and force them to provide services on terms dictated by Big Brother.

No good can result when the means used to achieve it are plunder and coercion. Universal health care merits the label "sicko" — or, more accurately, "tyranny."

Gen LaGreca is a former pharmaceutical chemist and health care writer, whose work has appeared in *Front-Page Magazine*. She is the author of *Noble Vision*, a novel about the health care industry.

Daily Journal

<p>Charles T. Munger Chairman of the Board</p> <p>J. P. Guerin Vice Chairman of the Board</p>	<p>Gerald L. Salzman Publisher / Editor-in-Chief</p> <p>Robert E. Work Publisher (1950-1986)</p>	
Martin Berg Editor		
<p>David Houston Los Angeles Editor</p>	<p>Troy Senik Legal Editor</p>	<p>Peter Blumberg San Francisco Editor</p>
<p>Jennifer Hamm Los Angeles City Editor</p>	<p>Keith Bowers San Francisco City Editor</p>	<p>Jim Adamek Regional Editor</p> <p>Dan Schechner Business Editor</p>
Aris Davoudian, Heidi Fikstand, Lacey Garcia, Meagan Yellott, Designers Cynthia Goldstein, Hannah Naughton, Copy Editors		
Los Angeles Staff Writers Pat Alston, Rebecca Beyer, Rebecca Cho, Max Follmer, Gabe Friedman, Daniel Heimpel, Sandra Hernandez, Alexa Hyland, Robert Iafolla, Peter B. Matuszak, Susan McRae, Maya Meinert, Ryan Oliver, Anat Rubin, Anne Marie Ruff, Jason Song		
San Francisco Staff Writers Craig Anderson, Donna Domino, Laura Ernde, Amelia Hansen, Tim Hay, William-Arthur Haynes, Dennis Opatry, Dennis Pfaff, John Roemer, Amy Yarbrough		
Robert Levins, S. Todd Rogers, Photographers Sarah McClure, Editorial Assistant		
Bureau Staff Writers Craig Anderson, San Jose, Lawrence Hurlley, Brent Kendall, Washington D.C., Linda Rappattoni, Gary Scott Sacramento, Don J. DeBenedictis, Santa Ana, Jason W. Armstrong Riverside		
Rulings Service Cynthia Prado, Rulings Editor Sherri Okamoto, Lesley Sacayanan, Serena Siew, Legal Writers Mia Kim, Verdicts and Settlements		
Advertising Audrey L. Miller, Corporate Display Advertising Director Monica Smith, Maria Ramirez, Sheila Sadaghiani Los Angeles Account Managers Leonard Auletto, Michelle Kenyon, Vanessa Ouellett, San Francisco Account Managers Stephen Maitland-Lewis, Director of Marketing Jesse Rios, Lisa Fotenakes, Display Advertising Coordinators Megan Kinney, San Francisco Administrative Coordinator		
Art Department Kathy Cullen Art Director Mel M. Reyes Graphic Artist		
The Daily Journal is a member of the Newspaper Association of America, California Newspaper Publishers Association, National Newspaper Association and Associated Press		