



American Board of Criminal Lawyers

THE ROUNDTABLE

HAPPY NEW YEAR

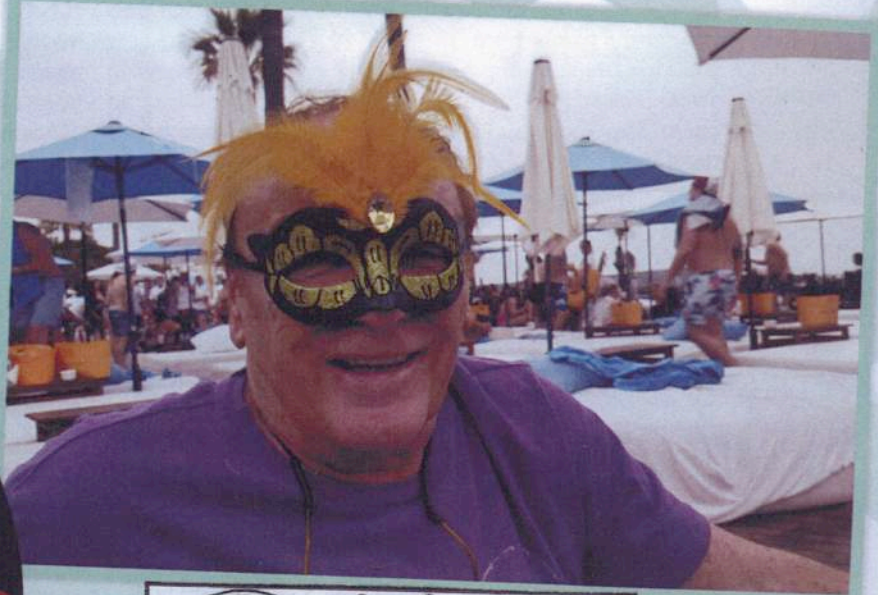
JANUARY

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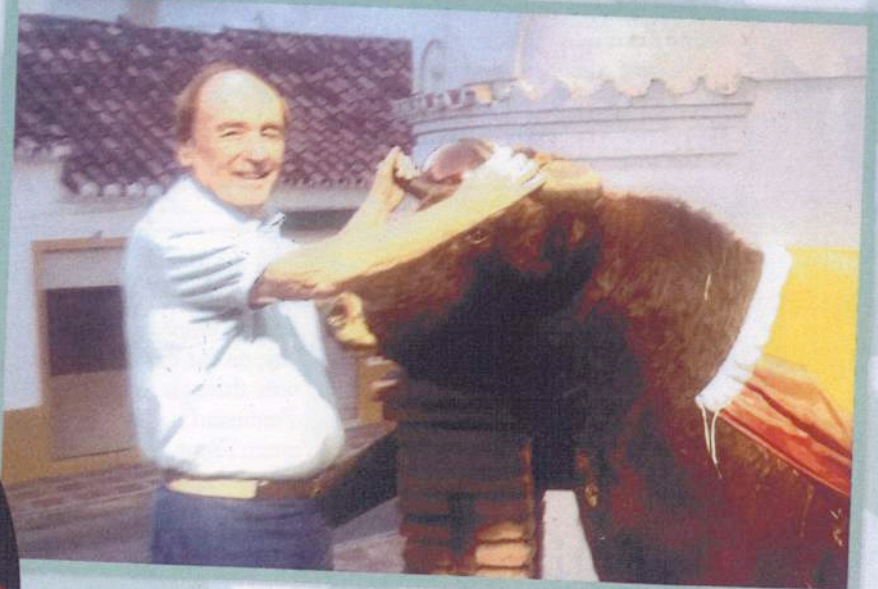
Vol. MMXVI, No. 1

January 2016

HAVE FUN IN
2016
JERRY FROELICH



take the bull by the horns
in 2016
jerry froelich



THE TALK OF THE TOWN

COMMENT
TWO SHIPS

(worth re-reading)

We make the turn toward the new year this January with trepidation. Well, we make the turn toward *every* new year with trepidation, but added to the anticipatory jumps this year are what might be called the retrospective willies. You don't have to have a very enlarged sense of history to remember what happened last time Western Civilization sped around the corner from '13 to '14. Not so good. The year 1913 had been full of rumbling energy and matchless artistic accomplishment—Proust kicking off, the Cubists kicking back, Stravinsky kicking out—and then, within a few months, the Archduke was assassinated in Sarajevo and the troop trains were running and, pretty soon, the whole positive and optimistic and progressive culture was on its way to committing suicide. The Great War left more than ten million Europeans dead and a civilization in ruins (and presaged a still worse war to come). Naturally, a lot of people, staring at this year's tea leaves—at rising new powers and frightened old ones—are searching for parallels between that '14 and this one, and finding them. In the *Times* recently, the historian Margaret MacMillan pointed out a few, clustering around the folly of "toxic nationalisms" that draw big powers into smaller local disputes, with the Russians trying to play a better hand today in Syria than they played in Serbia a century ago.

Lodged somewhere in our collective memory of that catastrophe is an image, a metaphor of hubris, from just a year or so before: a great four-funnelled ocean liner, the biggest and most luxurious ever built, whose passengers, rich and poor, crowd on board, the whole watched over by a bearded man named Edward John Smith, with the chief designer, Thomas Andrews, along for the maiden voyage, too. Then the ship sets off from Southampton, sure of itself, unsinkable, until it comes to the ice fields of the North Atlantic, off the coast of Newfoundland—and

speeds right on through them to its anchorage, here in New York. Because this ship isn't the Titanic but its nearly identical twin sister, the Olympic, made at the same time, by the same people, to do the same job in the same way. (A single memorable image exists of the two ships in dock together.) The Olympic not only successfully completed its maiden voyage but became known as Old Reliable, serving as a troop carrier in the First World War, and sailing on for twenty years more. (A third, late-released liner in the same class, the Britannic, hit a mine in the Aegean, in 1916, while serving as a hospital ship, and sank, a true casualty of war.)

The story of the two ships is one to keep in mind as we peer ahead into the new year. It reminds us that our imagination of disaster is dangerously more fertile than our imagination of the ordinary. You have certainly heard of the Titanic; you have probably never heard of the Olympic. We have a fatal attraction to fatality. We don't have one movie called "Titanic," starring Leo DiCaprio and Kate Winslet, about a tragic love and a doomed adventure, and another called "Olympic," a musical comedy starring Hugh Jackman and Anne Hathaway, about a happy voyage over. We have only one movie, and remember only one sad tale. If our history

leads us to the First World War, then we imagine that we were always bound on that collision course, and we cannot imagine that, with a bit of luck and another set of contingencies, we might have been on the Olympic, not the Titanic. We search for parallels of disaster, and miss parallels of hope. False positives are the great curse of diagnostics, in historical parallels and prostate screenings alike.

Is it all chance and contingency, though? Do we not know what boat we're on until the iceberg informs us? Leafing through recent books on the last encounter with '14, you find one thing that does seem to have the chill



ILLUSTRATIONS BY TOM BACHTELL

of ice about it. Even open societies, sailing, so to speak, on the open seas of history, are not immune to the appeal to honor and the fear of humiliation. The relentless emphasis on shame and face, on position and credibility, on the dread of being perceived as weak sounds an icy note through the rhetoric of 1914—from the moment Franz Ferdinand is shot to the moment the troops are sent to the Western Front. The prospect of being discredited, "reduced to a second-rate power," was what drove the war forward. The German Kaiser kept saying that he would never again allow himself to be embarrassed by the British. Lloyd George, in London, felt that Britain had to go to war or it would never be "taken seriously" in the councils of Europe. Needless wars are rushed along, it seems, by an overcharge of the language of honor and credibility, when the language of common sense and compromise would be a lot more helpful. When someone

says, "Ram the iceberg! We can't afford to let it make us look weak," it's time to run for the deck. Sanity lurks in sailing around the ice.

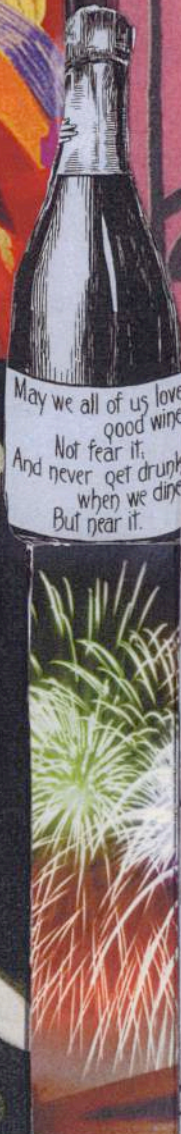
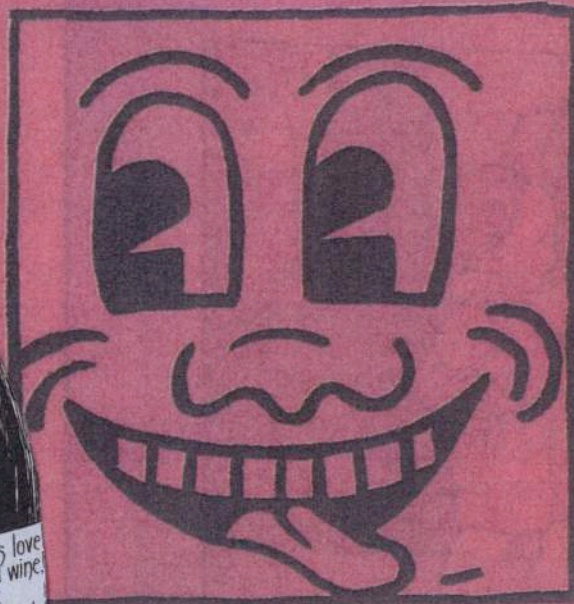
But, then, sanity doesn't necessarily guarantee safe passage. Two boats set sail in those prewar years a century ago: the boat that sailed on and the boat that sank. Olympic or Titanic? Which is ours? It is, perhaps, essential to life to think that we know where we're going when we set out—our politics and plans alike depend on the illusion that *someone* knows where we're going. The cold-water truth that the past provides, though, may be that we can't. To be a passenger in history is to be unsure until we get to port—or the lifeboats—and, looking back at the prow of our ship, discover the name, invisible to our deck-bound eyes, that it possessed all along.

—Adam Gopnik

The New Yorker, January 6, 2014

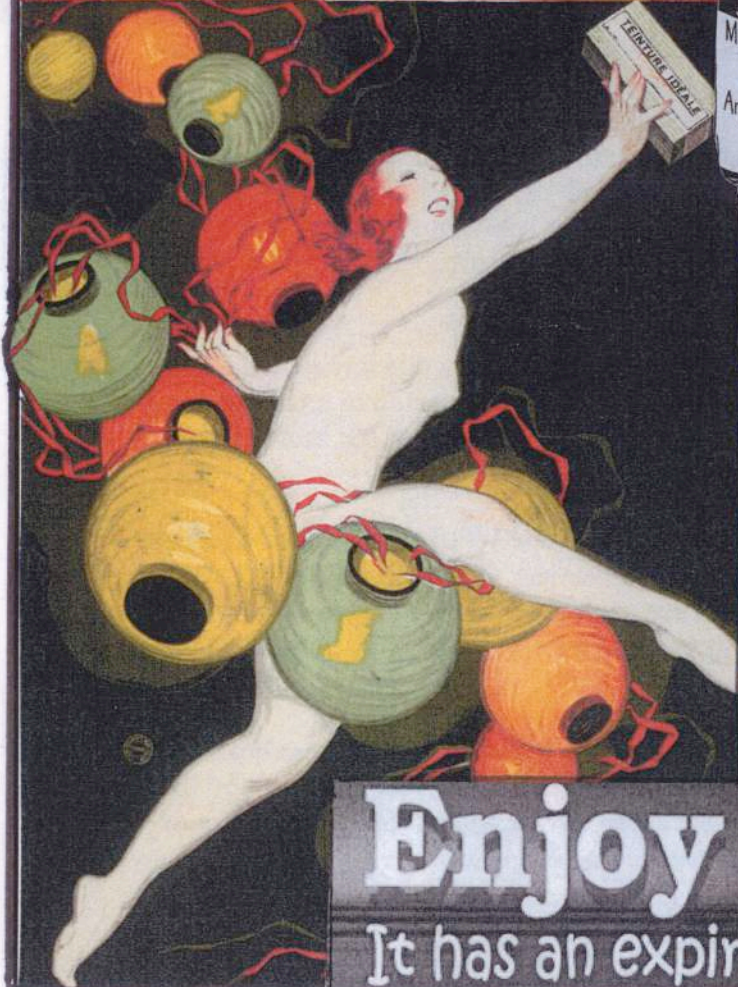
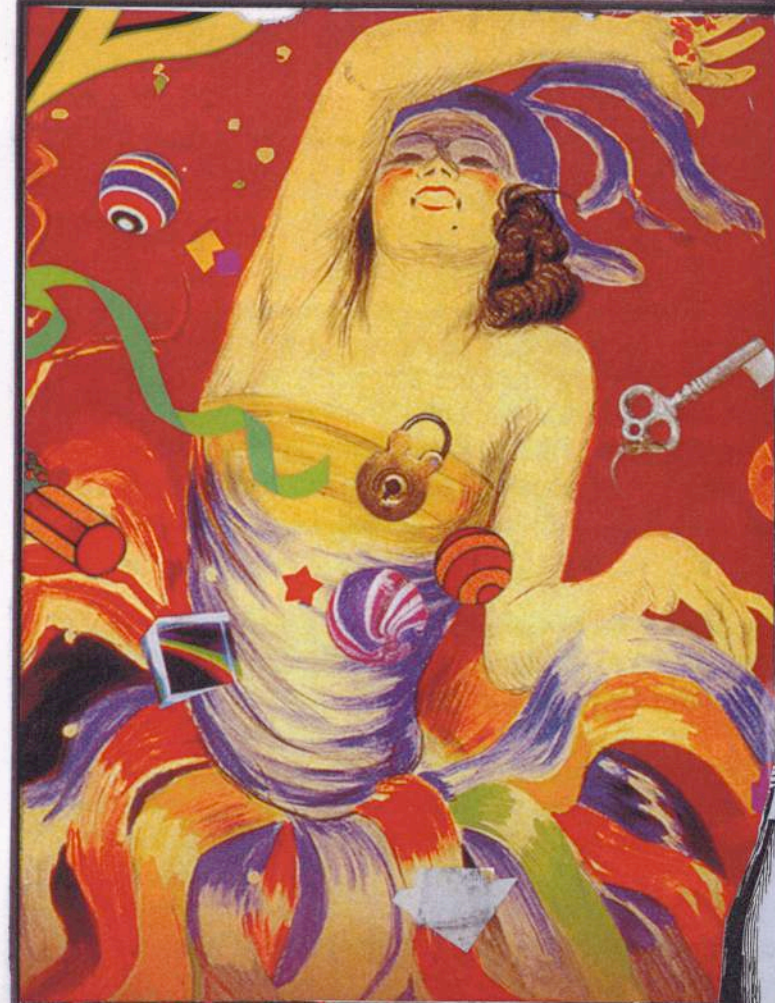
New Year's Resolutions

Lighten up



Enjoy Life.

It has an expiration date.





A Book Review by Thomas F. Liotti*
of

The Sociopath Next Door, The Ruthless Versus the Rest of Us,
by Martha Stout, Ph.D (Harmony Books, 2006, New York,
241 pages, paperback, \$14.95 U.S.

Lawyers are clinicians but we view ourselves as problem solvers. We are forensic scientists in that we must uncover the core of the problem and then find a solution that is not merely legal but may also include a diagnosis, prognosis and cure. We do learn that for some there is no known cure. They are sociopaths; those lacking in a conscience or moral compass. Four percent, or one in twenty-five people, are sociopaths. They are among us each and every day, yet we do not recognize them until it is too late. They may have tricked us or others. Sometimes they get caught and we must defend them. But how and why?

If they are incurable, by extricating them we are enabling them to victimize others. We take pride in showing that the government has not been able to prove its case. We rationalize that as a higher good, but at the same time recycling the vehicle for the creation of more problems for society as a whole.

In a population of three hundred million, there are twelve million sociopaths, a statistically significant number. But the actions of sociopaths are not always criminal. They often go undetected, plied one on one and personal. The victims that are taken advantage of by sociopaths may be too embarrassed to tell their stories of how they were fooled or manipulated.

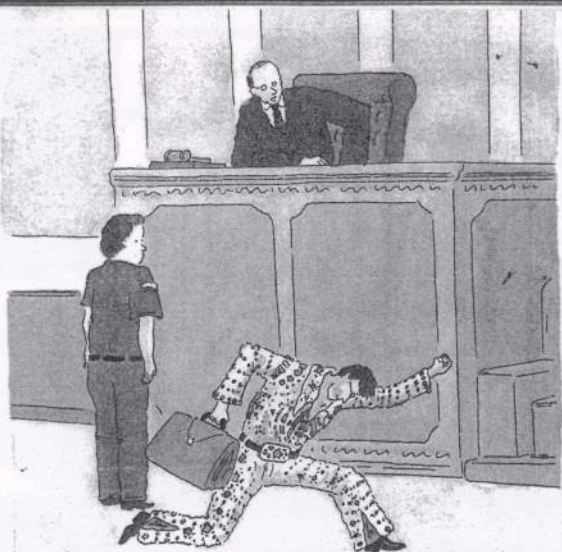
Martha Stout, a clinical psychologist taught in the Department of Psychiatry at the Harvard Medical School for twenty-five years. She has given everyone an invaluable guide by making us more aware of the existence of sociopaths, and by providing concrete examples for recognizing them, and what to do to remove ourselves from the clutches of these individuals, not only emotionally and financially, but also from their criminal acts particularly if they have implicated their lawyers or others in them.

Pervasive crimes of fraud in the financial industry that caused the collapse of the world economy beginning in 2007 are analyzed purely from financial and legal perspectives, but behind it all are corporate executives who can trick the government into bailouts and pay themselves enormous bonuses with taxpayer money while lower level employees are being laid off or fired. That is no conscience. That is evidence of sociopathy.

It may also be true of a police officer or private citizen who shoots to kill while having legal authority to do so, but where it is unnecessary. It may involve those who feign illness or depression to engender sympathy from others while they prey on these people for financial support. They can be violent but more often they are white collar.

How do we find them before they strike? The "Psychopathic Deviate" (Pd) scale of the Minnesota Multiphasic Personality Inventory (MMPI) is a test geared to early detection. There are others but awareness is the key. As the New York Subway Commercial reads: "If you see something, do something," more programs and seminars for parents, school officials, employers, employees, lawyers and judges will help focus on early detection.

If bullying is the by-product of sociopathy, then every school needs to have a program about it. Our teaching and learning on this subject must be constant lest the neighbor next door strikes against you or your family. While Dr. Stout tells us that most of us live by an honor system with Jiminy Cricket standing on our shoulder everyday, some of us have the devil perched there instead.



Shanahan

"A unique and stirring plea, counsellor."



C. Brown

"Don't get cute with me, counsellor."



Hunsicker

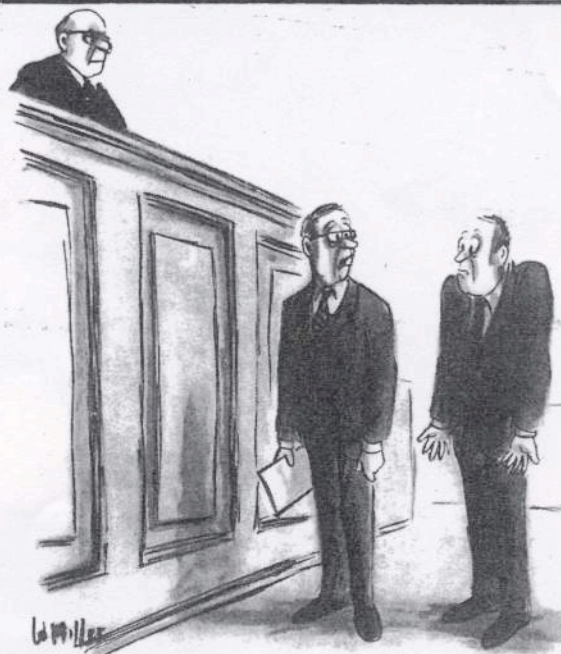
"Let me tell you, folks—I've been around long enough to develop an instinct for these things, and my client is innocent or I'm very much mistaken."

NIGHT OF THE LIVING WILL



Richter

"Walter J. Hartley! Well, how do you like that for a coincidence? He was my lawyer, too."



W. Miller

"'Ignorance of the law is no excuse.' Golly! I never heard that one! Did you ever hear that one?"

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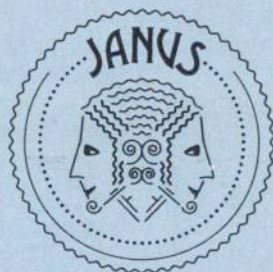
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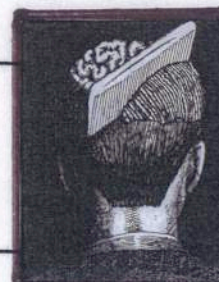
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The RoundTable

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Future Meetings

Feb. 11-15, 2016: Havana, Cuba

May 26-31, 2016: Rome, Italy

October ? - ?, 2016: Austin, Texas