



# MondayMonday

## Life On A Small Planet

February 16, 2015

The tyranny of Valentine's Day has passed. For those of us who equate St. Valentine with Torquemada, we can stand down now. Gone are the demands of florists, greeting card makers, chocolatiers, restaurateurs and those who have devised a means for making silk underwear scratchy and uncomfortable.

Admittedly, we view this from a male standpoint. There is no scratchy and uncomfortable male underwear. We wouldn't stand for it. It's cotton or nothing and damn the torpedos. Boxer, yes; brief, perhaps, and thus ends the analysis. This speaks volumes. For the male, saying "I love you" means saying "I am comfortable loving you." For the female, however, it is the tension of love, the very game of it, that fuels passion.

We spent a portion of the evening of Valentine's Day at a Manhattan speakeasy; a place where a certain amount of surreptitiousness mingles with artisan cocktails involving obscure ingredients. We shared a little curtained booth with two young ladies who were very much in love. They teased with each and toyed with each other's emotions. The dance was marvelous and resurrected our belief that love was eternal, gender-neutral and a damned lot of fun. Even She Who Must Be Obeyed was inspired and we never lost sight of her fantastic curls for the rest of the evening.

So, yes, women invented Valentine's Day. For themselves. We men are just players and, under cer-



tain circumstances, can easily be replaced. If you love, you play, and it matters little what the nature of that love is. It's just a game. The flowers, the cocktails, the chocolates are merely props. At the end of the evening, as at the end of life itself, it is the comfort of being loved that reigns supreme. Besides, what's a little scratchy silk underwear between friends?

As lawyers, we live on a small planet; a moon, in reality, that circles the warmth and life of the humans which inhabit the surface below. We are charged to be cold, and tough, and in many ways, unforgiving in our representation of those humans, garnering for them whatever it is that they, or we, call "justice. However, that necessity has nothing to do with how we treat each other. We have never seen anyone gain a tactical advantage through discourtesy.

The court system is not immune from this corollary of law practice either. After all, it is directed by lawyers, who make themselves available to lawyers, so that each can, well, lawyer. What possible benefit could a court create for itself by treating the lawyers who practice in front of it poorly? Yet, there is not one among us who has not been treated like a wayward child by a judge or an administrator for no apparent reason. Seeking justice for a client, they know we are powerless to complain, which is, perhaps, why it oc-

curs in the first place. So, we grovel as we must, for our clients.

In *Guttilla v. Peppino's Food, Inc.*, 2005 NY Slip Op 00845 (2d Dep't 2/4/15), the AppDiv faced the difficult task of deciding whether an attorney who duly notified the court that he was ill on the Friday before a Monday jury trial was scheduled to pick, needed anything more than an affidavit of those facts, a copy of his prescription for medication and a note from his physician to secure a 3-week adjournment. The Supreme Court justice who was faced with this difficult decision thought that more was required (though he never said what that was— perhaps a note from counsel's mother as well) and when counsel failed to appear for jury selection on the next Monday morning, dismissed plaintiff's action under 22 NYCRR 202.27. The AppDiv, while noting that 202.27 permitted a court to dismiss an action when counsel was unprepared to proceed at the call, held that it could not do so where non-appearing counsel had a reasonable excuse for the default and a potentially meritorious cause of action, reversing and reinstating.

The dismissal had been *sua sponte*, so the source of the discourtesy is clear. It is the same person who plainly believed a colleague lied in an affidavit and the same person who, when given the opportunity to later vacate the order of dismissal, refused to do so. It is also the same person who had no dog in the hunt, no ox to be gored, nothing to lose or gain. In other words, the one person in the courtroom who could have made life on our small planet that much more pleasant, but chose not to. How sad.

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