

Address to New Members of the Maine Bar

Cumberland County Courthouse
Portland, Maine, April 23, 1982

by

Chief Judge Frank M. Coffin
United States Court of Appeals for the First Circuit

Chief Justice McKusick, Reverend Case, Justice Donovan, Judge Gignoux, new members of the Bar of Maine and their families and friends:

I congratulate you. This is a rare ceremonial moment, one in which you have both opportunity and incentive to reflect upon where you have come from and where you want to go - particularly since some of you will still be practicing your profession in 2032.

You have just reached that happy milestone when you can put behind you all the agonies of formal, arbitrary, time limited, grade-related testing. From now on the testing will be informal, on the whole rational, and relevant to real achievement. The brightest, quickest, and most articulate of you will not necessarily have an advantage if you are not motivated, do not invest the time and care, are not sensitive in dealing with people, lack patience or a sense of the practical. So this is a good time for all of you: there are no built-in biases loading the testing of the future.

Just because the life and work-testing ahead of you now changes, this is a good time to reexamine your professional values and assumptions. I would ask you to step back from yourselves for a moment and try to see clearly what you have been exposed to, motivated and judged by.

-- For 19 or more years, three fourths of your entire life, you have been a participant in organized schooling of increasing intensity;

-- During high school much of your life was consciously or unconsciously directed by the looming importance of aptitude scores, recitations, examinations, papers, and grades.

-- Then there was the agonizing effort to find a suitable college or university;

-- The pressures increased with more grades, papers, law school aptitude tests, and the almost frenetic search for a good law school which would welcome you;

-- Then came perhaps the most pressured years of your life so far, when action on all fronts -- grades, membership on a law journal staff or other such organization, doing some respectable legal writing, moot court work, clinical experience, and useful summer employment -- was part of the strategy of getting into position for the plunge into the job market;

-- Now, for many of you, the search for a chance to practice law is the sobering one, but even when this search is over there will be the strenuous six or seven year ascent to a partnership.

All of these activities and pressures place a premium on brightness, toughness, almost feral alertness, competence, articulateness, keeping up with the latest in law, and technology. The portrait I have sketched stresses law as a tool of immense power, if only the steel is case hardened and honed to a fine cutting edge.

It is not surprising to me that the culture of legal education today, among the best and the brightest, leads the young lawyer to answer the question: what kind of law do you want to be in?

with the one word "litigation". The folk hero of the sophisticated is the litigator -- whether it be the solitary gun fighter, such as a Melvin Belli, an F. Lee Bailey, or F. Herald Fahringer, or the crack leader of the IBM defense team that fought the U.S. to a standstill, not so much with inspired cross-examination as with an incredibly complex computer operated "l.s.s." -- or litigation support system.

The very word "litigator", which trips briskly off the tongue with its hard consonants and its stress on a strong bold vowel, suggests the image:

Keen between the ears; a nose for the devious witness; a master of practical psychology; fast on his feet; quick to make decisions;

With zest for the fight, unblinking courage, relishing camaraderie with his courtroom team and the memories of delicious triumphs -- where, unlike most of life, the victories are clear and crisp verdicts for their clients, not fuzzy around the edges.

The triumphs all the more to be savored because of the constant risk of defeat.

But, through victory and defeat, the litigator is conscious of the utmost respect accorded him from his more sedentary colleagues,

Because [quote] that's where the action is [unquote].

Is there anything wrong with this? My answer is: not in itself but in any implication that litigation lays claim to any exclusive superiority in value and satisfaction. The trial of cases is a noble and demanding part of the processes of law and justice. We properly respect those who have mastered the skills and arts of the litigator. And every lawyer has a quiet advantage if he has attained the self confidence that comes of feeling at home before a judge and jury.

But -- I have several "buts", not intended to denigrate litigation but to put it in perspective. My first "but" is that litigation is a very large iceberg and the underwater part of interrogatories, pleadings, motions, investigations, depositions, organizing documents and preparing exhibits is a far cry from the glistening summit of the ice cap. At its worst it can gobble up a huge chunk of your life in just one case.

Second, litigation is but a sub-subset of a larger subset of the lawyer's calling: oral confrontation and presentation in a specially controlled setting. Other settings include listening and talking to clients, to an associate, to opposing lawyers and their clients, to third parties such as banks and creditors, to a wide range of deciders -- town officials, boards, and meetings, city councils, state and federal agencies, legislative committees, and the press and public. The language, tactics, attitudes appropriate to these parts of the lawyer's universe may bear little relationship to those of the "litigator".

Third, the litigator is the lawyer of last resort. In all too many civil cases the fact of a lawsuit is proof of avoidable failure somewhere along the line. In a sense it is already a tragedy. I like to think that the lawyer has a role fully as noble and necessary as that of the litigator if he focuses on being a lawyer of first resort. Here is my image of that kind of lawyer. You might think it a bit old fashioned:

-- in a world of increasing specialties he retains something of the generalist

-- in a world stressing technical competence, he retains something of the broad view that once justified the law in being included among the humanistic professions;

-- in an era of exaltation of adversarial combat, he is able to find ways of

serving his client by seeing the common interests of all concerned, by being, as Brandeis was, lawyer to the situation, by collectively probing the possibilities of collaboration over combat, by making a specialty of preventive law rather than of the law of salvage, and in the process, having the time of his life;

-- in a bizarre epoch of inflation and skyrocketing fees, he is able to make himself available to poor and average income people, at prices within their reach;

-- in a legal community often marked by highly paid but subservient employees, he maintains his independence and does his part to make the lawyer population he knows a real fraternity;

-- and, notwithstanding the escalating demands of his profession, he makes time for his community and, not least, himself as a whole and integrated individual.

For those of you planning to begin your careers here in Maine there are some unsung but very real advantages:

-- a genuine chance to be a lawyer of first resort;

-- to be a life long friend to each new client;

-- since you can survive on less than six figures, to reach a wide range of people and serve them on other than a crisis basis;

-- to be in firms or groups that are not too large for deep fellowship;

-- to be in a state where, whatever your professional and extra-curricular interests, you can make a difference;

-- and to do all this while practising law at just as high a level of quality as the largest firm. For sheer numbers of lawyers and paralegals, batteries of computers, disk drives and databanks, and cadres of keypunchers and programmers do not replace, indeed they sometimes interfere with, the solitary, inquisitive, skeptical, intuitive, persistent individual human mind.

You have all of this ahead of you. I envy you and wish you as much thrill of adventure and solid satisfaction of service as we older members of the Maine bar have been blessed with over the years.