

An Address by United States Circuit Judge Frank M. Coffin
to Participants in "Renewing Fealty to the Law:
A Liberal Arts Seminar for Lawyers",
Grinnell College, Iowa, June 9, 1984

Finding Serenity in the Practice of Law

Let me begin with a disclaimer. The assigned title for my remarks suggests that I am about to prescribe Valium or yoga for today's harassed lawyer. This in itself might be a positive contribution but is clearly beyond my reach. I do not mean by serenity the common meaning of tranquility; the lawyer whose practice is placid and secondary to other interests is not my concern. He or she is happy. Nor do I speak to those lawyers, whose name is legion, whose entire lives are wrapped up in their work and whose workaholic joy in unremitting craftsmanship leaves them no time or motive to question their identity or role. They, too, are happy or at least not unhappy.

I hope for lawyers between the placid and the driven, for those who are serious in renewing their fealty to the law and who conceive of the law as both a noble and a humanistic profession. I can think of no more likely audience than people who have signed up for a liberal arts seminar for lawyers. Your being here is mute evidence that you care about your profession and that you are looking for something that seems to be missing.

You are not alone. Sensitive practitioners of the most learned professions are belatedly discovering to their dismay that they are in the very throes of convulsive change with which they must somehow cope. These professions are caught by surprise because they all were largely spared by the industrial revolution, with all its waves of machines, mass production, merchandising, and consumption.

Now we see a new revolution, the first waves of which have been lapping at our feet for a decade or more -- variously described as the cybernetics, information, or communications revolution. This, superimposed on all of the advances of other science and technology, the resulting specialization, the growth of population and cities, and the complexity of government and social life, has affected the professions in a most disturbing way: all face a growing depersonalization.

We all know the superb training and skills of the medical profession today. As Archibald MacLeish wrote, "Young doctors are better and better 'trained' as their specialties become more specialized: so much better that it is now a recommendation in almost any field to say of a young doctor that he is young." But listen to one doctor's voice, reporting in the *New England Journal of Medicine* on The Unfortunate Case of Dr. Z: How to Succeed in Medical Practice in 1984.¹ Dr. Z, it seems, after a hearing, was stripped of his hospital privileges because of "failure to adjust to the new medicine." He failed to submit diagnoses that matched the computer disease codes and, worse, refused to recognize that for every disease there was a prescribed technological treatment. Dr. Z had bizarre ideas. He thought there were many reasons why patients came to see him other than the presence of a specific disease: to get established with a physician in preparation for future need, to allay fear, to seek genetic counseling, or just to talk about troubles. When disease was diagnosed, Dr. Z thought such matters as emotional distress and adjustment difficulties made any predetermined standard treatment unwise. This attitude, of course, marked him as a "dyscodic outlier and heterogenicist, a shameless statistical deviate."

¹ The *New England Journal of Medicine*, March 15, 1984, Vol. 310, No. 11, p. 729.

Dr. Z's treatment approaches were no improvement on his diagnostic approaches. He was less interested in vigorous application of the patient's diagnosis and treatment plan than in, as he put it, "trying to figure out what was wrong with the patient", or giving patients and their families what he quaintly referred to as "peace of mind". But the final straw was that Dr. Z, even after indoctrination sessions, was "never able to think of medicine as an industry and view a hospital as a business". In the reporter's words, Dr. Z had no understanding that "the bottom line is whether the doctor can contribute to the hospital's overall marketing plan."

Does that sound familiar to you lawyers? Here's another example, less satiric but somewhat poignant in its straightness, of an elite professional school recognizing that something has been missing. I speak of Harvard Business School. It has of course done a superb job in training financial analysts and experts in "paper capitalism", who engineer tremendously profitable mergers, leveraged buy-outs, and recombinations of existing productive facilities. Now it has discovered a new object of study and encouragement -- entrepreneurship. Last summer it held a colloquium on the subject, invited thirty of the species of entrepreneur and some academics, and promulgated what it called the "entrepreneur's creed": "Entrepreneurship provides personal renewal and gratification, social benefit, and economic vitality in our society."² Such a definition leads one to wonder if this is a way of saying that other kinds of business careers fail to provide personal renewal, social benefit, and economic vitality.

As for us lawyers and judges, we also are suffering the first shock of realization that our profession has already moved far and fast in directions which have been dictated by forces outside of ourselves. In his study of the legal profession in Connecticut, Professor Quintin Johnstone wrote: "That the status of the profession may be slipping was indicated by remarks of several of our informants that they no longer had much pride in being lawyers and that they found growing market place practices to be disreputable and demeaning."³ A judge friend of mine, alumnus of one of New York's hottest law firms, is proud of that firm's continuing ascendancy. But when I asked him if life was happy there, he shook his head at the astonishing level of alcoholism and marital breakups. In the Maine county where I began practice, I circulated a little questionnaire asking how lawyers saw their chances for future satisfaction. One lawyer referred to increasing costs, fees, and impersonality and concluded, "I expect the level of dissatisfaction among solo-practitioners and 'small' firms to grow." Finally, a recent issue of the American Bar Association Journal reported that only a third of the nation's lawyers under age 30 were "totally happy" in their work; even at age 50 less than half of them were "totally happy".⁴

What are the conditions of our profession that instill these attitudes?

-- Size: 300 to 500 person firms; 10 to 20 branches in a firm; growth of "national" firms as smaller ones are absorbed;

-- Costs: \$45,000 to \$50,000 beginning salaries of associates; city space at \$57.50 a square foot; minicomputers, copiers, electronic mail, generations of hardware and software;

-- Fees and billable hours: fees now up to \$525 an hour for a consulting Harvard Law

² Harvard Business School Bulletin, February 1984, Entrepreneurship: A Process of Creating Value, p. 47, 50.

³ Johnstone, The Future of the Legal Profession in Connecticut, Vol. 55, No. 4, Connecticut Bar Journal, August 1981, p.298.

⁴ ABA Journal, February 1984, A Profile of Lawyer Lifestyles, p. 50, 54

Professor;⁵ billable hours on occasion reaching 4000 hours a year, or a 50 week year of 80 billable hour weeks;

-- Hustling: For clients, for experts, for rainmakers. With advertisements, dinners, "presentations". Item: In 1983 20 law firms paid \$13 million for advertising.⁶ Item: A course given by a major law school in "Marketing and Selling of Legal Services" featuring such subjects as developing your self-image and positioning your firm, building client dependency, acquiring and retaining clients, and developing selling strategies for prospects.

-- Finally, management: Systems, costs, equipment, personnel management, monitoring client billing; goal-setting sessions, advertising, public relations, merchandising; all these and more are entrusted to the new managerial class, the new elite in law firms.

Although this is the general skyline of the law, we should discriminate between the two legal- communities included in that skyline. One is the gigantic, high tech, fast track, large law firm with corporate and institutional clients in superurban Megalawpolis. The other is the community of surviving solo practitioners, small and middle sized firms, serving individuals and small companies in little and middle-sized America, in Minilawpolis. The first is more exciting, more entrenched, more resistant to human efforts to change, more demanding of its human fodder. The second is less intractable and crystallized, more open to human leadership and experimentation.

If this is the lunar lawscape in which we find ourselves, what is our opportunity, what is our mission? First let us go back to our theme, serenity. I have said that it is not mere tranquility; nor is it completely absorption in work. For our purposes I define "serenity" as an inner calm built of three components: (1) regaining a sense of control of work and life style; (2) repositioning the individual at the center of the stage, whether we focus on the lawyer or the client; and (3) restoring a sense of framework, of perspective, of being aware of where we have come from, who we are, how to carry on a noble tradition. These three components add up, in my mind, to the call of what has been in the past a humanistic profession.

Before we go any farther we should not be afraid to face the question: "What good is this kind of serenity?" We cannot be sure that we shall be any "happier" than either the workaholic on the fast track or the placid fellow on the slow track. Nor can we look forward with assurance to a more useful life and work; humanism is not immediately utilitarian. By the same token we cannot be sure of being better lawyers. But -- and life is always a gamble -- perhaps we shall have a better chance of remaining sane, of avoiding burnout, and of retaining our motivation and momentum.

Perhaps also, we shall, with some serenity, be better counselors and advisors, better lawyers in the grand tradition. President Giamatti of Yale University has captured the essence:

"The law is not simply a set of forensic or procedural skills. It is a vast body of knowledge, compounded of historical material, modes of textual analysis and various philosophical concerns It is a humanistic study Its larger purpose is to contain and continue our common life, or civilization, and to mediate or

⁵ The Wall Street Journal, March 1, 1984, p. 1.

⁶ The National Law Journal, March 5, 1984, p. 24.

negotiate between our anarchic energies and civilized hopes."⁷

Or, as Professor Edward Dauer of Yale Law School has put it, "Law will never be a single coherent discipline; it is of practical necessity an umbrella that shelters many ... [It is] the flexible currency of political and social process."⁸

But whether or not we are helped as lawyers, we are helped as civilized human beings in our search for serenity. Once upon a time, after a talk I gave along these lines had been published in the Massachusetts Lawyers Weekly, a solo practitioner in a small town wrote: "I for one was glad, past midnight tonight, to substitute moments of reflection on your article for another portion of a billable hour." He gave me this perfectly pertinent quotation from Joseph Henry, the first secretary of the Smithsonian Institution:

"Narrow minds think nothing of importance but their own favorite pursuit, but liberal views exclude no branch of science or literature, for they all contribute to sweeten, to adorn, and to embellish life . . ."

A more recent formulation is from one of the nation's most serene individuals, Lady Bird Johnson. Last year, at the University of Texas, she told students that studies in the arts and humanities create "a greater capacity to enjoy the world." "Knowledge", she said, "is a celebration of man's humanity -- an enticement to travel and enjoy new intellectual avenues -- and it is yours for a lifetime."⁹ It has been put most succinctly by that venerated professor of philosophy, Paul Weiss: "[A] free life needs many anchors."¹⁰ If we share a sense of the nobility of the law as a humanistic profession, and if we share a feeling of suppressed desperation about the emerging contours of law practice, big and small, we must ask ourselves what, if anything, we can do about it.

The first and biggest decision is to decide that this is worth doing something about, worth taking risks for. This is a pretty radical statement. I suspect that one thing most -- not all, but most -- well-trained lawyers in this country have not faced, ever, is a long, uphill fight to change the ways things are done. The Ralph Naders are few and far between. At least since the mid-nineteenth century the legal profession has had everything going its way. Maybe now is the time to recall the state of mind of those who came from England to the new world to make a better life and those who made the long cross-country trek through the Cumberland Gap and over the western plains and mountains. Taking risks, giving up security, making do with fewer comforts -- all were prices willingly paid for the privilege of making a better future.

These were feisty people subscribing to an outmoded proposition which was most succinctly worded by the most farseeing of the world's recent creative builders, the father of the European Economic Community -- and some day, perhaps, of the United States of Europe -- Jean Monnet, who said, "You can change history, you know." So the first question is whether we want to change history; in other words, do we want to insert our own value systems and wills to influence the forces of technology, economics, and management in the practice of law?

If we do, I think there are three levels on which we can work to achieve a more serene, that is to say a more humanistic, individual-centered, culturally enriched and inspired life in law. The first is to strive to humanize the office. Lawyers whose fate is inextricably

⁷ Yale Law Report, Fall 1983, The Law and the Public, p. 10.

⁸ Yale Law Report, Winter 1980-81, Law and the Life of the Mind, p. 13, 20.

⁹ Christian Science Monitor, April 11, 1984, p. 48.

¹⁰ New York Times, Jan. 1, 1970, Age is Not a Number.

intertwined with Megalawpolis have no alternative. It is unrealistic to expect them to move elsewhere. Enrichment and serenity must somehow be made part of their legal emporia scraping the skies. It is wise to recognize that bigness is not necessarily inhuman. Bigness makes being human difficult but not impossible. In many interstitial ways big firms can build in nooks and crannies of quiet, of civilized conversation, of enriching exchange. Some of the possibilities are firm lunches in which various specialties take turns in sharing their experience and insights with the entire membership; enlisting the recollections of retired partners not for case solutions but for general wisdom; "storytelling" -- recreating in laymen's terms accounts of legal problem solving . . . for the enhancement of lawyers' self image and the education of lay people; firm end-of-day or end-of-week get togethers not on legal business; seeking exemplars, collecting oral histories, making videotapes; organizing seminars on counseling; sabbaticals; providing lawyers in residence for law schools and hosting academics and judges in residence at firms; conducting retreats and seminars . . . such as this one at Grinnell.

A second level of history-changing activity, and probably a more significant one, is the profession itself. Nothing is more conservative, passive, or "laid back" than the legal profession. It is used to being the butt of jokes, the everyman's dart board. But this is because its basic way of life was thought to be beyond the reach of innovation. Only in the last thirty years have we seen the old tenets undermined -- continuity of tradition, lifelong fealty of clients, individuality of counseling, absence of self promotion. We are just beginning to see state bar associations conducting studies of the future of the profession. My own state of Maine has launched a long-term, in-depth inquiry directed to obtaining answers to such questions as: What is necessary if solo law practice is to survive? What bundle of skills can a small group of lawyers practicing together hope to provide at top quality but at minimum cost? How can big firms back up and support solo practitioners and small firms -- especially in rural areas? How can law schools best help in the continuing education of the bar, in the launching of young lawyers, in helping rural and smaller firms with specialized problems? What kinds of groupings should be encouraged to assure access to courts by lower and middle income persons?

What seems a clear priority for our thought and action is no less than a reshaping of the delivery system for law and justice. By the year 2000 we shall have a million lawyers, one for every 250 persons. Is this too many? Not if the price of legal service is lowered and lawyer groupings are arranged so that people of modest income can enjoy the luxury of the rich, that is, to have the benefit of preventive almost routine and anticipatory legal advice. We need new forms of client association, new and smaller gatherings of lawyers, and lawyers who are excited about serving people in all of their critical decisions for modest fees. Should this not happen, I see a bifurcation of this country into megacorporations and their megalaw firms on the one hand and the rest of the populace served only in crises by court-appointed or poverty lawyers ... or lawyers scraping the margins for a living. But to the extent the delivery system changes to provide quality legal service to the average individual, I foresee the possibility of a new breed of lawyers who will know more about serenity in the practice of law than their more monied predecessors.

Finally, in addition to changes in the law office and changes in the legal profession, there is the vast realm of self-enrichment. I look on this as one used to look on prospecting. Only seldom does one strike it rich, but there is always the possibility. That is what makes the quest intrinsically exciting. And there is such a universe: novels, poetry, biography, history; the sciences -- including computers; the arts, both to appreciate and to create.

Learned Hand, I think, stretched it a bit -- and made self respect that much more difficult

for us judges -- when he said:

"[I]t is as important to a judge called upon to pass on a question of constitutional law, to have at least a bowing acquaintance with Acton and Maitland, with Thucydides, Gibbon and Carlyle, with Homer, Dante, Shakespeare and Milton, with Machiavelli, Montaigne and Rabelais, with Plato, Bacon, Hume and Kant, as with the books which have been specifically written on the subject."¹¹

I can't pretend to have made more than a nodding acquaintance with most of his list, but I have my own gallery of friends. They are, most of them, not heroes. What they have in common is their humanism, their placing man and his predicament in the center, and their civilized discourse about him. They are all reasoning, peaceable, compromising, civilizing people, understanding both that men are fallible and that any question of importance has at least two sides. In a word, my gallery consists of people with whom one who aspires to be a good counselor feels comfortable.

I begin with that fount of practical wisdom, Confucius in the 6th Century B.C. Over two hundred years later there come a pair of surprisingly wise and generous Indian rulers, Chandragupta and his grandson Asoka, whose Rock Edicts still speak the language of tolerance and moderation. Far to the west, Thales of Miletus whose lasting advice was "know thyself" began a tradition of civilized inquiry and service. That included Pericles and his sparkling, liberated second wife, Aspasia, Socrates, Plato, perhaps Aristotle, the spokesman for the golden mean, and last and perhaps least, but still impressive, the gentle Menander, who wrote the famous "No man is alien to me".

Rome gives us the thoughtful Seneca, and the splendid, introspective Marcus Aurelius. Skipping the Dark Ages, we emerge to confront another scholarly and wise king in Louis, the IXth of France and, see the procession of the first modern men, Abelard, Dante, Boccaccio, Petrarch (despite his reason for not becoming a lawyer: "It went against my bent painfully to acquire an art that I would not practice dishonestly, and could hardly hope to practice otherwise."),¹² the greatest of the humanists, Erasmus, and that irrepressible Pantagruelist, Rabelais. Then comes that complicated man, Leonardo de Vinci, not the greatest achiever but "the fullest man of the Renaissance".¹³

By and large those men were not the stuff of which martyrs are made. They were, as one writer put it, not meant to burn. Erasmus, for example, did not share the combativeness of his contemporaries Martin Luther and Thomas More. The former broke with the Church and the latter dipped his pen in venom against all such protesters. It was Erasmus's style to try to close the schism. In this he failed but set an example of long suffering reasonableness.

The gallery continues with the wide-ranging Francis Bacon, the persecuted Galileo, that chronicler of man, Montaigne, and the supreme rationalist, Voltaire. In more recent times England has given us models of statesmen in Pitt, Burke, and Disraeli. In our own country I nominate Franklin, Madison, and the gentle Emerson. And in our own century there are Gandhi and Schweitzer.

This is not a list, except for Lincoln, Socrates, and Pericles, of people we would ordinarily put on our list of the most courageous leaders. Nor are there many discoverers of

¹¹ Hand, *The Spirit of Liberty*, 1952, p. 81.

¹² Quoted in Durant, *The Renaissance*, Simon and Schuster, N.Y.; 1953, p.5.

¹³ *Id.*, p.227.

knowledge, beginners of movements or standard bearers of causes. Nevertheless, I submit, this is a goodly company of people who stood for the principle that problems faced by men should best be approached through the most patient and tolerant processes of listening and reasoning. Not a bad circle of friends for a counselor at law.

I dare not list favorites in our own times. I suspect that many exist who will never, in our instamatic age, achieve even momentary national fame. Indeed it is probable that in every age the great majority of truly cultivated, sensitive humanists are to be found among the unheralded good rather than among the trumpeted great. That's why we can aspire to enter this domain without apology.

I cannot cap this thought better than with a final word from another humanist, the one-time lawyer, poet, bureaucrat, Librarian of Congress, playwright, Archibald MacLeish:

"[T]he educated man, the man capable, not of providing specialized answers but of asking the great and liberating questions by which humanity makes its way through time, is not more frequently encountered than he was two hundred years ago. On the contrary, he is rarely discovered in public life at all."

MacLeish then calls on us to abandon our submissive posture toward science and technology and "begin instead to ask how we can manage them 'so that they can help us get where we want to go.'" He adds, "There is no quarrel between the humanities and the sciences. There is only a need, common to them both, to put the idea of man back where it once stood, at the focus of our lives; to make the end of education the preparation of men to be men, and so to restore to mankind -- a conception of humanity with which humanity can live."¹⁴

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This seminar is dedicated to renewing our fealty to the law. We have talked tonight about pursuing a serenity stemming from a renewed sense of control over our life in law. To the extent we succeed, we shall be helping to keep the law a humanistic profession worthy of our fealty.

¹⁴ Riders of the Earth.