

Remarks of Senior Circuit Judge Frank M. Coffin
on the occasion of the first Coffin Lecture on Law and Social Policy:
Lecture by Joseph L. Rauh, Jr., presented by Mrs. Olie Rauh.
Portland High School, October 13, 1992.

Justice and Mrs. Brennan, Olie and Michael Rauh, Dean Zillman, and honored guests and friends. To respond to such an honor with both candor and grace is a challenge. What helps me in this predicament is that this is not an honor that begins and ends in memorializing a person. Unlike a portrait, statue, plaque, or award, this is functional -- an honor serving as a beginning, a catalyst for a periodic event invested with high hopes. Because of my own aspirations for this lecture series, I gratefully lend it my name, knowing very well that there are not a few in this room and in this state whose name could appropriately adorn this program.

Let me say a few words about the theme of this lecture series, Law and Public Service. In large part this concept sprang from the tension that has always existed in the legal profession between its sense of noblesse oblige, its feeling of social obligation stemming from its unique access to the justice system, and its instinct for material gain. I suppose it is a fact that the profession was never as elevated and pure as we like to imagine it.

Today's malaise, however, cannot be dismissed as just another example of *deja vu*. We see a widespread distrust of institutions and their leaders, a bitter recognition of the gap between what we profess and what we do, and increasing frustration on the part of growing numbers of people in their efforts to share in the American dream. All this has led to a distancing of many from the idea of service as a citizen, a threat to the whole idea of community, and, particularly, a loss of faith in the practice and processes of the law.

Lawyers themselves are conscious of a very sharp and hostile focus on their profession. Much of the criticism overlooks the selfless service of many, particularly in the smaller communities; much of it is directed at the gigantic firms serving the huge corporations, where fees seem linked not to quality of service but billable hours, driven in turn by escalating costs and increasingly hard ball competition. In such precincts, but also closer to home, public service is often squeezed out by the pressures of a focus on the bottom line.

To keep alive the old ideal of service is, then, one reason for our theme. Another is much less solemn. It is that the ingredient of joyful satisfaction, of pure fun - as both Justice Brennan and Joseph Rauh so well exemplify - is realized in its perfect state when a lawyer finds his energies directed to the public good. There is a fellowship in such an enterprise that makes even an exhilarating victory for a client pall in comparison. This kind of lectureship fits this school like a glove. Though small, its faculty and often its students have long demonstrated a consciousness of the primacy of public service in a lawyer's life. I cannot begin to list the areas of law and government where dedicated professors have given critical help to governors, legislators, the state court, public commissions, and to the clarification and development of state law and where both faculty and students have competently served individuals in need. This program, therefore, is not so much carrying coals to Newcastle as helping Newcastle to distribute yet more widely its glowing coals.

The scope of this series could not be better outlined than by the two men we honor tonight. They are the Alpha and Omega of Law and Public Service. In Justice Brennan we have a man whose service has been rendered as a public official, a judge of his state's superior and supreme courts, and, for over a third of a century, an Associate Justice of the United States Supreme Court. In Joseph Rauh we have a private citizen, a solo practitioner, whose impact on

the development of our law respecting the constitutional rights of individuals is unsurpassed.

First, Justice Brennan. Son of an immigrant coal heaver, he never forgot the harsh realities of life facing so many of our people. Blessed with abundant energy, a keen intellect, and a warm love for his fellow humans, including most especially his colleagues, he wrote or influenced the writing of more currently significant Supreme Court opinions than any other Justice who has ever served the Court. One man, one vote; libel claims and public officials; civil rights liability for federal officials; gender discrimination; school desegregation; procedural due process; free speech; and between 1961 and 1969, no fewer than nine specific rights in the Bill of Rights "incorporated" in the 14th Amendment and made applicable to the states. And so much more.

Just two stories about the Justice. As a student at Harvard Law School, one of his mentors was Professor Felix Frankfurter, who took great pride in drumming into his charges the importance of thinking for themselves. Some years later, when young Justice Brennan had cast his first vote for a decision, older Justice Frankfurter stormed into the former's chambers, saying, "You can't do that." To which the neophyte answered, "But I did." Look magazine later reported Justice Frankfurter as saying, "I wanted my students to think for themselves, but Brennan goes too far."

Finally, when, after an exhaustive confirmation hearing in which he was badgered by Joe McCarthy, he was confirmed by a vote in which McCarthy shouted the only "No," Justice Brennan said he felt like a "mule entered in the Kentucky Derby -- I don't expect to distinguish myself, but I do expect to benefit from the association." Well, we know who distinguished himself, and, more important, who benefitted from the association. As Professor Norman Dorsen put it, but for Justice Brennan we would today be living under a very different Constitution. Mr. Justice, we are deeply honored by your presence this evening.

Joe Rauh. In a time when we seem to have more celebrities than heroes, the name of Joe Rauh may be unfamiliar to some. But, a little over two weeks ago, as Ruth and I sat in a packed University of D.C. Auditorium along with over 900 others at his memorial service, it seemed that the whole world mourned.

In fact, along with Martin Luther King, Clarence Mitchell, A. Philip Randolph, he was one of a handful of private citizens who dominated the development of the law in the field of civil rights in the last half of this century. He, like Justice Brennan, was the son of an immigrant. One year after starting his own law practice, he found himself writing the original civil rights plank in the Democratic Party platform . . . and he went on to fight for every subsequent step forward in civil rights legislation. As it was said of Justice Brennan, so is it said of Joe Rauh: without him, we would have had a very different Constitution.

Of all of his affiliations, he was perhaps proudest of his 41 year tenure as General Counsel of the Leadership Conference on Civil Rights, embracing virtually all major organizations enlisted in the cause of civil liberties and civil rights. A year ago last March, at age 80, he tendered his letter of resignation, writing:

The Leadership Conference led a legal revolution which turned the law upside down. Where the law once supported discrimination and segregation, it stands today as the bastion of equality. . . . [W]hat started as a legal revolution in the case of the Blacks has expanded to Hispanics and other minorities, women, ethnics, the disabled, and the aged and, to a degree, Gays and Lesbians. What was once a fight for Blacks has made our Nation a better place to live for all.

He ended by calling for "the bigger and more difficult effort to use the legal revolution to

build a fairer and more egalitarian nation in all respects." And, characteristically, he signed off, saying, "And don't say it hasn't been fun!!!"

As for the theme of these lectures, he has put it into words that sing:

The legal profession should be one that places public interest above private gain, that puts the use of legal tools for progress and equality above the defense of the status quo, that treats legal services for the have nots on a par with those for the haves, that utilizes law as an instrument for helping the powerless and not for protecting the powerful, and above all that makes the law a vehicle for righting social wrongs and not perpetuating them.

For me there could be no greater honor than knowing that Joe was not only willing to give this lecture but that he gave his whole heart to it in what was to prove his last message on an important public issue. And well qualified he was, for he has been a deeply concerned, vastly knowledgeable, and articulate watcher of the Supreme Court as twenty new Justices marched under the marble portico to take their seats on the high bench.

When I received the news of Joe's death on September 3, I told Dean Zillman that I had lost all heart in trying to open this lecture series this year. Then something like a miracle happened. On Labor Day, Olie Rauh called and said that Joe had in fact finished working on his lecture, that it was being retyped, and that, if we were interested, she would be willing to present it, to carry his last message to the public. Of course all of us here at the Law School were deeply moved by this gracious and courageous offer.

In retrospect, this should not have come as a surprise. For, as speaker after speaker made clear at the Memorial Service, this was a couple deeply devoted to each other for 57 years. Olie always complemented Joe's energy, passion, and optimism with her stability and serenity. This was a true partnership in matters familial, political, and societal. And that partnership is still operative. It is my great honor to present Mrs. Joseph L. Rauh, Jr., better known as Olie.