

Remarks of U.S. Circuit Judge Frank M. Coffin  
at a Memorial Service for Judge Charles E. Wyzanski, Jr.,  
Federal Courthouse, Boston, Massachusetts  
June 9, 1987

We are not the first, nor the last, to attempt to encapsulate in words the ever moving, many faceted spirit of our friend and colleague, Charles Wyzanski. But we are twice blessed. First, we can draw on those who have gone before.

Thanks to both Gisela and Paul Freund, there was that remarkable service at the Harvard Chapel on October 31, 1986, and the subsequent collection of essays in the Harvard Law Review. These were the offerings from clergy of all faiths, teachers, University presidents, cabinet officers, judges and columnists: From Rabbi Ben-Zion Gold: Job's description of the righteous judge, with "eyes to the blind/And feet to the lame." From Harvard's President Bok: "An ideal embodiment of the liberally educated human being." From McGeorge Bundy: a writer of "letters of instruction, complaint, affection, and improvement . . . from everywhere." From Edward Levi: "a citizen in the Periclean mode." And from his law school contemporary, Paul Freund: like Whitehead, perhaps his most admired preceptor, a believer "that the essence of education consists in the habitual contemplation of greatness."

From Judge Breyer: "a link to the past because of his phenomenal memory and because of his experience;" and his "belief that the 'noble vision' must motivate even the most humdrum judicial task." From Carl Kaysen, his memory of meeting "a vivid, singular, brilliant young man in 1950 who seemed very much the same at his eightieth birthday party in 1986." From Anthony Lewis: "that rarity, a cultivated man on the bench: one who read everything, old and new, for the pleasure of stretching his mind." And from Elliot Richardson: "lawyer -- judge -- philosopher -- man of letters -- raconteur -- gadfly -- connoisseur of people -- and more. All at once. All together. All the time."

Although we follow these eloquent spokesmen by several months, we have the additional advantage of time. We would all have had much to say last October. But now, in June, we all share the uncanny feeling that this person just won't go away. We pick up many an article that sooner or later says, "As Judge Wyzanski said . . ." There are few conversations held in our brotherhood/sisterhood which at some point don't refer to something "Charlie" once did or said.

Our problem is that there is so much to remember.

There was the young man who was inspired to go to law school by both Justice Holmes and Zachariah Chafee; the new Washington recruit who, on his first day with Labor Secretary Frances Perkins, was hustled off to the White House to be told by FDR, "Have on my desk tomorrow morning a draft of a bill [authorizing a public works program]"; the young Assistant Solicitor General who argued the Social Security case to the Supreme Court, gaining this laurel from the veteran Bar leader John W. Davis, "Never in my palmiest days could I have matched that argument." But perhaps better than triumphs, his stubborn stands -- his bridling at FDR's court-packing plan, his refusal at Ropes and Gray to lend his counsel to attacking a state Norris-LaGuardia Act, his outspoken opposition to an unworthy judicial nominee, his firm if friendly criticism of his admired elder's, Learned Hand's, attitude of judicial passivity in his introduction to the 1974 edition of Hand's Holmes Lectures. Then surely his most scintillating achievement -- working out an ingenious collective guarantee device with Judge Julian Mack, facilitating the admission to this country of European refugees from Hitler, and later conferring citizenship on one of the beneficiaries, his great partner in life, Gisela Warburg.

I came on the First Circuit scene in 1965. I remember, the next spring, Charlie's confiding in me that he was reading Cicero's "De Senectute." He was all of 60 years old. If one thought this to be one last sunset reflection, he was wrong. He had twenty more golden years to live and read and judge and travel and talk. He had great cases to oversee, like Castro v. Beecher. He had great issues, like Vietnam, to spur his indignation. He sat with many courts all through the land -- and frequently with our own court of appeals. It was always an inspiring, if humbling, experience for those who sat with him. For he would go back to first principles. Or he would simply note that the statute we were asked to construe had been upheld by the Supreme Court after he had argued its validity decades ago. But the knowledge he displayed was not impenetrable armor; I recall a number of times when he would confess to his fellow panel members that his approach was wrong, or unnecessarily broad. And always he made you sense the joy and nobility of judging.

He saw those years as something of a sea change. In a most perceptive letter to his old friend, Exeter teacher Henry Bragdon, from Aspen in September, 1977, he first commented on how much of his life and career revealed "a constant process of incorporation into the institutions and high places of the Establishment." Then he wrote this marvellous passage (which Henry, before his death, marked FINE in capital letters, underlined twice):

But on the other side, I have, through the years, become increasingly individualistic, independent, non-conformist, and perhaps eccentric, if not ornery. Look at the way I dress! Consider my judicial opinion in U.S. v. Sisson! More subtly -- and under the influence of Gisela -- I have abandoned an earlier belief in the fundamental approach of the assimilationist, symbolized by the melting pot; and I have accepted a more pluralistic outlook, in which value is recognized on the basis of what each group, each race, each religious body, each cultural unit, indeed, and most important, each individual has to contribute to the common wealth. This "rainbow" or "fruit salad" approach creates in each person an awareness of "the rock whence he is hewn," and it emphasizes the inherent value in personality, in the dignity of the person, in his potentiality, in his creativity, and in his spiritual worth.

Now we have not had enough, but enough for now. The problem is how to stop. At last October's Memorial Service, the Reverend Peter Gomes put his finger on the answer. He said, "All of us who know and loved Charles Wyzanski know how impossible it was to have the last word with him. There was always one more resource on which he could call, one more apposite saying, one further citation, anecdote, or aphorism with which he sealed one conversation and began the next. He might be interrupted, but you could never conclude before he did."

Harkening to this wisdom, I recalled a memorable celebration which we judges of the circuit and district courts had on January 26, 1982, the 40th anniversary of Charlie's induction as a judge. This was the inspiration of Rya Zobel, aided by David Mazzone. I had the foresight to tape record all the proceedings. Although the recording has an aggravating tic, Charlie's voice comes through as vibrant, emphatic, and impelling as ever. Just to listen made my nerve ends tingle. I can think of no better way to close this than to let him have the last -- and the best -- word:

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He ended twenty minutes of vintage Wyzanski by addressing his remarks to us, his most permanent and intimate community of peers. He talked of the need, despite numbers, to be

cohesive. Then he added, "I have absolutely no doubt that the judges now sitting are a higher level than the judges when I began, or in my opinion, at any other period in the history of the court."

Then he continued: "We have, all of us, a great chance with great materials and we have a great job. Many of you have heard me quote Chief Justice Taft who said, not to me but to Judge Augustus Hand, that of all the jobs that he had in his life, including those, of course, of a state court judge, a federal trial judge and a federal appellate judge and the governor of the Philippines and the secretary of war and the Chief Justice of the United States and before that President, the best job he had in his whole life was the job of being a United States trial judge. I don't think there is any doubt that it is one of the greatest jobs in the world. . . .

"We have become an extraordinarily important group of people in connection with the development of public policy. When I was law clerk first for A.M. Hand and later for Learned Hand, I speak literally, there was not a single case involving a constitutional issue which came before those judges of the Second Circuit in the two years that I was there. Not one case. Think of the vast array of public questions, constitutional, administrative and otherwise that come before the court today. . . .

"A large part of what we do is trying to discern what it is that are the interests of people and what they value and we try to appraise them and without immodesty we can also say that to some extent we shape the pattern and morality of our society. Who can doubt that what goes on in connection with civil rights and civil liberties and other issues in the fore makes the most dramatic difference in the daily lives of people not living in our court.

"And now in conclusion I cannot help referring to a letter that many of you have seen in my chambers, which all of you have seen. And most of you have heard me quote it before. Fifty-four years ago and a little more, on September 9, 1927, in longhand one of the heroes to whom I just referred, Mr. Justice Holmes, wrote what I have so inadequately have tried to say.

[W]e rank men partly at least by the nature of their dominant interests and we think more highly of those who are conscious of ulterior ends, to see the universal in the particular or the sympathetic wish to help their kind. For your sake, I hope that when your work seems to present only mean details you may realize that every detail has the mystery of the universe behind it and may keep up your heart with an undying faith.

You kept that faith and help us keep ours.

Thank you, Charles.