

International Society
of
Barristers

Volume 34

Number 2

EXPANDING BORDERS OF LAW ENFORCEMENT IN THE 21ST CENTURY—
THE GROWTH OF INTERNATIONAL CRIME
James K. Robinson

THE SEARCH FOR ATTICUS FINCH
Edward J. Nevin

IRISH LEGAL TRADITIONS: THE STRUGGLE TOWARD FREEDOM AND LAW
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THE BISHOP ESTATE—A BROKEN TRUST
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BLIND MAN'S BLUFF
John Craven

Quarterly

International Society of Barristers Quarterly

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International Society of Barristers Quarterly

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Editorial Office

University of Michigan Law School

Ann Arbor, Michigan 48109-1215

Telephone: (734) 763-0165

Fax: (734) 764-8309

E-mail: reedj@umich.edu

Volume 34
Issue Number 2
April, 1999

The INTERNATIONAL SOCIETY OF BARRISTERS QUARTERLY (USPS 0074-970) (ISSN 0020-8752) is published quarterly by the International Society of Barristers, 3586 East Huron River Drive, Ann Arbor, MI 48104-4238. Periodicals postage is paid at Ann Arbor and additional mailing offices. Subscription rate: \$10 per year. Back issues and volumes available from William S. Hein & Co., Inc., 1285 Main Street, Buffalo, NY 14209-1911. POSTMASTER: Send address changes to the International Society of Barristers, 3586 East Huron River Drive, Ann Arbor, MI 48104-4238.

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AND CIRCULATION
(PS Form 3526)**

1. Title of publication: *International Society of Barristers Quarterly*
2. Publication no. 0074-970
3. Date of filing: September 30, 1999
4. Frequency of issues: Quarterly
5. Number of issues published annually: Four
6. Annual subscription price: \$10.00
7. Mailing address of known office of publication: 3586 East Huron River Drive, Ann Arbor, MI 48104-4238
8. Mailing address of headquarters or general business office of the publisher: 3586 East Huron River Drive, Ann Arbor, MI 48104-4238
9. Names and addresses of publisher, editor, and managing editor:
 Publisher: International Society of Barristers, 3586 East Huron River Drive, Ann Arbor, MI 48104-4238
 Editor: John W. Reed, University of Michigan Law School, Ann Arbor, MI 48109-1215
 Managing Editor: John W. Reed, University of Michigan Law School, Ann Arbor, MI 48109-1215
10. Owner: International Society of Barristers, 3586 East Huron River Drive, Ann Arbor, MI 48104-4238, a nonprofit corporation.
11. Known bondholders, mortgagees, and other security holders owning or holding one percent or more of total amount of bonds, mortgages, or other securities: None
12. The purpose, function, and nonprofit status of this organization and the exempt status for federal income tax purposes have not changed during preceding 12 months.

14. Issue date for circulation data below: January 1999

15. Extent and nature of circulation:

	<i>Average no. copies each issue during preceding 12 months</i>	<i>Actual no. copies of single issue published nearest to filing date</i>
A. Total no. copies printed (net press run)	925	925
B. Paid and/or requested circulation		
1. Paid/requested outside-county mail subscriptions	0	0
2. Paid in-county subscriptions	0	0
3. Sales through dealers and carriers, street vendors, and counter sales	0	0
4. Other classes mailed through USPS	855	852
C. Total paid circulation	855	852
D. Free distribution by mail	27	15
E. Free distribution outside the mail	0	0
F. Total free distribution	27	15
G. Total distribution (sum of C and F)	882	867
H. Copies not distributed	43	58
I. Total (sum of G and H)	925	925
J. Percent paid circulation	97	98

* * *

17. I certify that the statements made by me above are correct and complete.

John W. Reed, *Editor*

**EXPANDING BORDERS OF
LAW ENFORCEMENT IN THE 21st CENTURY—
THE GROWTH OF INTERNATIONAL CRIME†**

James K. Robinson*

Perhaps the title of my speech should be “Jim Robinson Gets Another New Job.” It seems that I come before the Barristers whenever I have a new job to talk about. When I last spoke before this group in 1994, I had recently left the practice of law to succeed my friend and mentor John Reed as the dean at Wayne State University Law School. The title of my remarks then was “Necessity is the Mother of Strange Bedfellows”—the “necessity” being my need for a new challenge after twenty-five years of practicing law, and the “strange bedfellows” referring to the mutual culture shock of a practitioner joining a law faculty as its dean.

When I left the large-law-firm world of billable hours and business development, my friends in the profession told me that they were envious of my new academic life; they pictured me strolling the tree-lined campus, thinking great thoughts, passing on wisdom to a new generation of lawyers. The reality, of course, was somewhat different. As a dean I worked harder than ever before; I came to appreciate why the average tenure of a law school dean is about three years.

Nevertheless, my five years as dean were very rewarding, and I am proud to report that the law school made wonderful progress on my watch. I participated in the recruitment of outstanding faculty members—about one third of the current faculty. We worked hard, and with some success, to bridge the gap between the academic experience of law school and the real world of practice. Private giving to the school increased dramatically, thanks in part to the generosity of many members of the Barristers who supported the creation of the John Reed Scholarship at the school. The graduates of the school have placed first on the Michigan bar exam for the past five examinations in a row. As an added bonus, I was able to teach and write in the evidence field, an area of academic and professional interest to me for nearly thirty years.

Now I find myself in another new job, this time as Assistant Attorney General for the Criminal Division at the U.S. Department of Justice. Once again my friends are telling me they envy my new life, and, once again, I find my-

† Address delivered at the Annual Convention of the International Society of Barristers, Four Seasons Resort Hualalai, Kailua-Kona, Hawaii, March 1, 1999.

* Assistant Attorney General for the Criminal Division, United States Department of Justice.

self working even harder than ever. This time, in addition, I am struggling to acclimate myself to the bureaucratic ways of the federal government as one of fewer than fifty “covered” persons under Independent Counsel Act.

SOME THINGS CHANGE AND SOME THINGS DON'T

Perhaps the title of this speech should have been “Some Things Change and Some Things Don't.” When I was interviewing for the deanship, I thought nothing could be as difficult as convincing a group of academics that a practicing attorney could lead their school. I thought I would never again go through such a rigorous selection process with such a skeptical audience. This past summer, I realized I had been wrong. I discovered that it was even more challenging to convince a Republican-controlled Senate that a lifelong Democrat, a former member of the A.C.L.U., a lawyer who had devoted a fair amount of time to white collar criminal defense work, and a Clinton appointee should be confirmed to run the Criminal Division of the Department of Justice.

It helped, of course, that I had been the United States Attorney in Detroit during the Carter Administration and that I had been out of criminal defense work for five years while serving as a law school dean. In the end, however, it was bipartisanship that won the day. I enjoyed the support of both of the Michigan Senators—Carl Levin, a liberal Democrat, and Spencer Abraham, a conservative Republican—and I remain grateful to them. When both spoke on my behalf at my swearing-in ceremony last September, Attorney General Janet Reno noted that it was rare to have both parties represented at such an event.

It was a bit daunting for me, a lawyer who had spent his entire life in Michigan, to wander inside the Beltway and assume one of the most important positions in the United States criminal justice system. Washington, D.C., is truly the land of the acronym. Some are well-known: F.B.I., D.E.A., I.R.S., C.I.A., A.T.F., even D.O.J. But there are many less-familiar ones, such as these: ICITAP (International Criminal Investigative Training & Assistance Program); OPDAT (Office of Overseas Prosecutorial Development, Assistance and Training); CCIPS (Computer Crime & Intellectual Property Section); OCDETF (Organized Crime Drug Enforcement Task Force); TVCS (Terrorism and Violent Crime Section). During my first few weeks I thought had entered a foreign country. Fortunately, some government publications come with a list of key acronyms, and I am making progress, although I still have a long way to go in mastering the acronyms.

Another puzzling “inside the Beltway” practice involves the “place at the table” ritual. Rank always dictates where one sits at a meeting. The most sen-

ior official, of course, sits at the head, and everyone else is arrayed from the most senior to least in the title chain. Staffers usually sit along the wall. When you are the “new kid,” finding your seat can be a challenge, especially because it changes from meeting to meeting as the participants change.

There are other interesting meeting variations. Some meetings are designated “for principals only” and some are “principals plus one.” (The “plus one” is to assure the presence of someone who really knows something about the subject of the meeting.) Depending on your title, some meetings are above your rank, and some are below. I recently commented on this interesting quasi-military pecking order in discussing whether it was necessary for me to attend a particular meeting. I was told, with amusement, that my presence was required because I was a “GWT.” “What,” I asked, “is a ‘GWT’?” The answer, of course, was “guy with title.”

WHAT DOES THE “AAG CRIM” DO?

As Assistant Attorney General I supervise the Criminal Division with the help of five Deputy Assistant Attorneys General. I serve as counsel to the Attorney General, through the Deputy Attorney General, on criminal matters within the jurisdiction of the Division. Numerous sensitive law enforcement actions require the prior approval of the Assistant Attorney General for the Criminal Division.

The Criminal Division employs 450 attorneys; it has almost 800 employees in all. Together with the 93 United States Attorneys throughout the country and a few sections of other divisions that have criminal prosecution jurisdiction, we are responsible for enforcing over 900 federal criminal statutes. The Division’s annual budget exceeds \$100 million. While the U.S. Attorneys’ Offices institute the vast number of federal criminal cases, Criminal Division attorneys often assist them, coordinate prosecutions that cross district lines, and step in when a U.S. Attorney’s Office recuses itself. In certain areas, Division prosecutors institute prosecutions, and the Division provides an important national perspective on matters of federal criminal law enforcement policy.

The Division encompasses fifteen sections and offices, designated by subject matter. For example, the Organized Crime and Racketeering Section, self-evidently, is responsible for organized crime cases. The Office of International Affairs negotiates treaties and international law enforcement agreements as well as individual matters such as extradition and international prisoner transfers. The Office of Enforcement Operations, among other things, runs the federal witness protection program and screens requests for electronic surveillance. Other sections include Public Integrity, Fraud, Computer

Crime and Intellectual Property, Narcotic and Dangerous Drugs, Asset Forfeiture and Money Laundering, and Terrorism and Violent Crime.

One of the benefits of serving as an Assistant Attorney General in this administration has been the opportunity to work closely with Attorney General Janet Reno. She is the hardest working, most dedicated person with whom I have ever been associated. She has an unmatched passion for fairness. We often joke that there must be three of her, because she seems to be ahead of the curve on everything we are doing as well as everything associated with the rest of the Department's considerable agenda.

HOW SOME THINGS HAVE CHANGED

This is a fascinating time to be in Washington and an exciting time to be working at the Department of Justice. For six and a half years, the crime rate has been falling. The violent crime rate has dropped more than twenty percent since 1993. The murder rate has fallen to its lowest level in thirty years.

While we can take some comfort from the fact that the violent street crime rate has been falling, we cannot necessarily say the same about white collar crime, and we certainly cannot say the same about international crime. Upon my return to the Department of Justice after eighteen years, I have been most surprised at the amount of my day that is occupied by international matters. When I served as United States Attorney in the late '70s, United States law enforcement rarely needed to concern itself with events beyond U.S. borders. That is no longer the case. I estimate that nearly half of the work of the Criminal Division involves international crime. Today, international criminals are attacking our citizens abroad, smuggling contraband across our borders, and using computers to harm our economic and institutional interests from afar.

International crime has grown exponentially, and the reasons for its growth are many. When a government collapses, the resulting power vacuum is too often filled by organized crime. When a government is functioning but weak, it typically lacks the resources or leadership for effective law enforcement. Emerging economic markets provide opportunity for criminals as well as for business, and new governments are ill equipped to deal with the influx of crime that follows the expansion of trade in their countries.

These problems are not limited to countries incapable of enforcing the law. They extend also to those unwilling to enforce it. Across the globe, corrupt governments tolerate, and too often even directly support, criminal activities. For instance, many governments participate in economic espionage, trying to steal secrets from U.S. companies to assist their domestic industries. Last month, F.B.I. Director Louis Freeh reminded us that U.S. companies are

under such attack from twenty-three countries and described this as the most severe threat to national security since the Cold War. These practices cost U.S. companies about \$2 billion every month.¹

Advances in technology have made location a non-issue for all of us, criminals included, and have provided other benefits as well. Computers allow access to centralized information, financial institutions, and our infrastructure. The growth of the Internet and of net-based transactions means that there are literally millions of dollars there for the taking. Wireless communications provide criminals with ease of movement that makes locating them difficult. The ease of international travel, due to low cost and wide availability, and the reality that some countries allow criminals to avoid extradition enable criminals to stay far away from our borders.

International crime has grown not just because there are new types of crime and technological advances, but also because traditionally domestic crimes have gone international. For example, about 200,000 of the cars stolen in the United States each year, worth over one billion dollars, are taken abroad and sold. The Department's role in international crime has grown as domestic crime has gone international. In response, Congress has expanded our jurisdiction and authorized us to investigate crimes beyond U.S. borders.

ECHOES OF PROHIBITION

Although the emergence of international crime has brought new challenges to law enforcement, many of the issues we face have been present since the beginning of the Criminal Division's existence. When the Criminal Division was created in the late 1920s, its first challenge was enforcement of the newly enacted prohibition laws. Alcohol remained legal in Canada, and our massive border with Canada provided many points of entry for smugglers. In my hometown of Detroit, the border between Canada and the United States is formed by the Detroit River. The name "Detroit" in fact came from a French word meaning "the narrows," and this narrow waterway between Lake St. Clair and Lake Erie became a frequent crossing-point for bootleg liquor.

Philip P. Mason, a distinguished professor of history at Wayne State University, has written a fascinating book, *Rumrunning and the Roaring Twenties*. I would like to share with you some of his research, which shows that the rumrunning provides an interesting parallel to the drug smuggling of today.

Speedboats were the most obvious smuggling tool. In those days smugglers carried shotguns in case the authorities got too close; if there was a dan-

¹ Jones, *FBI: Spies Cost U.S. firms \$2B a month*, USA Today, Feb. 10, 1999, at 2b. See Larson, *Information Warfare: A New Threat to Society*, 32 INTERNATIONAL SOCIETY OF BARRISTERS QUARTERLY 399, at n. 1 (1997).

ger of being caught, the smuggler would shoot a hole in the bottom of the boat, to sink it along with the evidence. In the winter, when the river froze, smugglers raced across the ice in cars. They removed the car doors so that if the ice broke they might have a chance to jump out before the car sank into the freezing water. Some enterprising smugglers stretched a steel cable across the river and dragged barrels of whiskey back through the water. At one point, police found a pipeline through which whiskey flowed from a Canadian distillery to a Detroit bottling plant.

Everyday citizens got into the act as well. They traveled back and forth on ferries with hot water bottles sewn into the lining of their clothes. At one point during prohibition, there was a massive increase in the number of eggs being brought in from Canada. When one poor soul dropped his carton of eggs, police learned of a new smuggling method: Eggs were being hollowed out and refilled with booze.

Although today we have a rather romantic view of prohibition, it caused massive police corruption, and the government took drastic measures to curb smuggling that set off cries by civil libertarians. One commentator of the day described the measures that would have been necessary to stop rumrunning at the Detroit border this way:

“The United States government would have to employ an inspector to every man and woman and child who crosses the ferry from Windsor to Detroit. It would have to line the shore for thirty miles with armed guards to hold up and search every craft that tries to land and then it would not begin to make serious inroads on the operation of the rumrunners.”²

Today, that commentary rings eerily true as a description of our southern border. In a 1996 column, George Will wrote the following about San Ysidro, California:

At this, the world’s busiest land border crossing (40 million people a year; think of screening the population of Spain in a traffic jam, every year), about 130 cars per hour per lane pass into the United States. . . .

. . . .

. . . . A \$3.5 million X-ray machine for vehicles can spot a brick of cocaine secreted among thousands of regular bricks on a flatbed truck. . . .

. . . .

. . . [O]n the U.S. side, officers watch the northbound pedestrians, looking for those walking awkwardly. The hollowed-out soles of Nikes can carry enough heroin to buy a Mercedes to drive back to Mexico.³

² P. MASON, RUMRUNNING IN THE ROARING TWENTIES: PROHIBITION ON THE MICHIGAN-ONTARIO WATERWAY 46 (1995) (quoting an article in the *New York Times* on June 28, 1927).

³ Will, *Drug Demand: Blame Americans First*, Wash. Post, Sept. 22, 1996, at C7.

Today's criminals are as crafty as those during prohibition. A few years ago, agents discovered a fourteen-hundred foot tunnel under the border between Mexico and Texas, used to smuggle cocaine into the United States. The entrance at one end of the tunnel was hidden by a house that could be raised on hydraulic jacks to let the smugglers through. In January of this year, border patrol agents discovered two more tunnels.

Around Valentine's Day this year, customs officials discovered heroin and cocaine in the stems and buds of fresh flowers sent from Columbia. In some cases the smugglers hollowed out the flower stems and filled them with drugs. In other cases, they put fingertip-sized pellets filled with drugs into the buds of flowers. One search revealed 100 pounds of cocaine packaged in 26,000 pellets, with each pellet matching the color of the flower in which it was implanted.

INTERNATIONAL CRIME ISSUES

While the comparison between prohibition and drug smuggling is interesting, there is a lot more to international crime than the drug problem at our borders. For example, there are law enforcement problems associated with investigating crime overseas. Stanford Law Professor Lawrence M. Friedman, in his book *Crime and Punishment in American History*, made the following observations about the problems of trying to improve law enforcement at the national level in the United States:

[A]lthough presidents have routinely thundered against crime and promised to attack it through their office, criminal justice was and is highly local; not much can be done about it on the level of the whole society.

There is, therefore, a major structural contradiction. The causes of crime, the reach of crime, the reality of crime—all these are national in scale and scope. Criminal justice, on the other hand, is as local as local gets. Indeed, the criminal justice "system" is not a system at all. . . . [It is like] a jigsaw puzzle with a thousand tiny pieces.⁴

International crime intensifies these problems on a global scale. Today, the causes of crime, the reach of crime, and the reality of crime are not just national but *international* in scale and scope. If Professor Friedman is correct that criminal justice is "as local as local gets," what does it mean for criminal justice if "local" means Bogota or Mexico City or Dar es Salaam?

To some extent, no matter where you are, law enforcement is the same: Prosecutors work with enforcement agencies to find the criminals, bring

⁴ L. FRIEDMAN, *CRIME AND PUNISHMENT IN AMERICAN HISTORY* 461 (1993) (citation omitted).

them to court, and gather and present sufficient evidence to convict them. But all of this becomes more complicated in the international arena. In my view the Criminal Division of the Department of Justice will be the point of engagement on behalf of the United States with the forces of international crime. For the final two years of this administration, the Attorney General has launched a major review of all of the Department's law enforcement strategies, and she has asked that I chair the Department's International Strategies Committee. The committee will be addressing a number of challenging issues.

One major aspect of our effort to combat international crime is to reduce the number of places in the world where fugitives can hide. Interpol, a worldwide network of police agencies linking 177 countries, is one important tool in this effort. When a listed fugitive is picked up by the police in any of the participating countries, he can be held until arrangements can be made to send him to face the music in the country where he is wanted.

The notion of "no safe haven" is essential to our efforts. "No safe haven" is part of a larger administration policy on international crime, outlined in detail in the International Crime Control Strategy. Through this plan, the United States encourages countries to outlaw criminal behavior and to deny safe haven for fugitives. The Division's Office of International Affairs, which I mentioned earlier, actively negotiates mutual legal assistance treaties and extradition treaties that enable us to obtain evidence and fugitives. During its last session, the Senate approved nineteen MLATs, sixteen full extradition treaties, and one prisoner transfer treaty.

The increase in international crime gives rise to an increase in extraditions. Extraditions raise several interesting issues. Exercising jurisdiction over foreign citizens typically involves delicate negotiations. Many governments are reluctant to allow their citizens to be removed to another country for punishment, so international cases often present prosecutors with difficult choices. They can choose to extradite criminals in return for agreements that they won't seek the death penalty, or they can allow the criminals to be tried in their own countries. The latter is often no option at all. Foreign governments may decline to prosecute for reasons of nationalism, or they may not have laws on the books forbidding what the person did. To solve this problem, we are working hard to encourage foreign governments either to allow extradition or to toughen their own laws and prosecute.

At the same time, we face similar issues in extraditing criminals found here. For example, a citizen may commit a crime in another country, but concerns about human rights may make extradition problematic. Or we might catch a terrorist who is wanted in his own country but fears that he will be tortured if we send him home. Conversely, if we bring a terrorist back to the U.S.

for prosecution, we might put our citizens at risk of retaliation all over the world. These concerns are unique to the international arena.

To bolster international investigation the Justice Department is engaged in a massive training effort, involving the placement of agents and prosecutors abroad to offer our international partners cutting-edge information on the latest methods of criminals. The United States has established permanent International Law Enforcement Academies (ILEAs) in Hungary and Thailand, with several more in the planning stages. The Criminal Division offers assistance to countries throughout the world by providing police and prosecutor training through the International Criminal Investigative Training Assistance Program (ICITAP) and the Office of Overseas Prosecutorial Development, Assistance and Training (OPDAT).

International cases and overseas investigations raise complicated issues in gathering evidence and getting it admitted into U.S. courts. The constitution and laws of a foreign nation may permit methods of evidence gathering that are not permitted in the United States. Alternatively, foreign laws may be unduly restrictive and may inhibit the effective investigation of crimes. Even when evidence is gathered, there is no guarantee that a foreign government will allow us to use it, in the absence of a mutual legal assistance treaty.

As I indicated earlier, computers are another reason for the huge increase in international crime. They, too, complicate law enforcement. There are complex cross-border issues with respect to gathering information flowing over the telecommunications airways and via the Internet. Obtaining evidence in computer cases is especially challenging because evidence in these cases disappears within minutes; it is gone as soon as the criminal logs off. In order to capture the evidence, we must trace the source while the user is still online. This requires cooperation with foreign governments on a moment's notice. Toward that end, we recently negotiated with the G/8 to have twenty-four-hour high-tech support to aid evidence gathering. We need to expand this cooperative agreement to other nations.

A closely related problem stems from encryption, which complicates both enforcement and prosecution. Encryption is necessary to safeguard information; the government needs it, industry needs it, and so do you and I. The problem is that unbreakable encryption would give criminals carte blanche to communicate, and we would be powerless to stop them. Our ability to investigate crimes and capture criminals, as well as our ability to prevent them from committing crimes, would all but evaporate. We must have access to electronically stored information, and we are engaged in a world-wide effort to convince industry and other nations to permit law enforcement access to encrypted information and communications.

CONCLUSION

At the beginning, I told you that I'm working harder than I ever have before. I am, but I love the work I am doing. The issues I face every day are difficult, challenging, and exciting. As the world continues to shrink and crime issues have assumed global proportions, the Criminal Division of the Justice Department is being challenged as never before. A major goal for me during the next two years is to make sure we are doing all that we can to see to it that the United States will be in a position to meet this serious challenge to our national security.

THE SEARCH FOR ATTICUS FINCH†

Edward J. Nevin*

“ ‘Called to the Bar’ in 1907, he had a distinguished career over the next five decades. . . .” What does “called to the bar” mean? What is the origin of this phrase? Turning to Latin, we find “*voco*,” meaning “I call,” and “*vocare*,” “to call.” A vocation is a calling. “Come, follow me,” Christ said to his disciples. Ours is a wonderful calling, a noble vocation.

Gerald Gunther, professor at Stanford Law School and eminent scholar of American constitutional law, addressed us a few years ago about his great biography of Judge Learned Hand.¹ You will recall that when Supreme Court Justice Benjamin Cardozo was asked who was the finest justice in America, he replied that the greatest living American jurist wasn’t *on* the Supreme Court, referring to Learned Hand, who was on the United States court of appeals. Jerry Gunther was a law clerk for Judge Hand. Another of Hand’s former law clerks, Ronald Dworkin, wrote a review of Jerry’s work for the *New York Review of Books*.² In the review, he told a story that illustrates Judge Hand’s breadth—the story of Dworkin’s first date with the woman who was to become his wife. Unfortunately, he had to change their plans for that night because a draft of a memorandum had to be taken to Judge Hand. The woman agreed to accompany him to Judge Hand’s home, even though that did not sound like a very exciting first date. After the young clerk delivered the draft, the judge prepared dry martinis for all of them and proceeded to a wide-ranging conversation about life and literature and art and politics and gossip. He was brilliant and charmingly attentive to the young lady. When the young man took her home and asked if she would see him again, she said she would—as long as he brought Judge Hand with him.

In contrast to that which is good and true and beautiful about our profession, incivility increasingly tarnishes our interactions. For example, not long ago a court in California felt it necessary to state: “The law should also *encourage* professional courtesy between opposing counsel. . . . The law should not create an incentive to take the scorched earth, feet-to-the-fire attitude that

† Address delivered at the Annual Convention of the International Society of Barristers, Four Seasons Resort Hualalai, Kailua-Kona, Hawaii, March 2, 1999.

* Law Offices of Edward J. Nevin, San Francisco, California; Fellow, International Society of Barristers.

¹ G. GUNTHER, *LEARNED HAND: THE MAN AND THE JUDGE* (1994); see Gunther, *Learned Hand—The Myth and the Man*, 31 *INTERNATIONAL SOCIETY OF BARRISTERS QUARTERLY* 301 (1996).

² Dworkin, *Book Review*, *NEW YORK REV. BOOKS*, Aug. 11, 1994, at 17.

is all too common in litigation today.”³ Similarly, John Liber’s presidential address to the Ohio bar, which was published in our *Quarterly*, decried the “rude, crude, and lewd” and made an eloquent plea for professionalism.⁴

Recently, I received a letter inviting me to join one of the million-dollar damage award organizations. The letter said, “The essential purpose and intent of [the organization] is to certify members as having received large awards so that they may use the fact of membership as a dignified and professional means of announcing their accomplishments.” “Dignified and professional”? Who is kidding whom? Such blatant self-aggrandizement only turns off the public and makes it difficult to obtain justice for future plaintiffs who deserve high awards. Ever since lawyers began advertising their million-dollar awards—“highest award in the history of the county,” etc.—the profession, the vocation of law has declined. And this I say while questioning whether the so-called million-dollar award was even adequate, given the nature of the loss suffered. Shouldn’t an ethical and professional lawyer who obtains a million-dollar award for his client be commenting on how deserving the plaintiff is, instead of glorifying himself to get future cases? Won’t the cases come to lawyers who deserve them, without crass self-promotion?

Over the past thousand years the Anglo-American system of justice evolved away from trial by combat and away from the streets. We developed rituals of refinement, of respect, of courtesy. The “Rambo tactics” used by some today seem to be dragging us backwards. In many ways it is unfortunate that we did not carry over the robe and wig of England, because those barrister symbols might have reminded us of why we must be habitual in our “Yes, your Honors; No, your Honors; Thank you, your Honors,” even when the court’s ruling has just devastated our cause.

Sol M. Linowitz, a most distinguished man of the law who was called to the bar of Washington, D.C., in 1938 and retired fifty-six years later in 1994, has given us a wonderful book, *Betrayed Profession*,⁵ which is far more optimistic than the title would suggest. On the page immediately following the dedication page appears this quotation from Paul A. Freund: “Like any profession which considers its function to be that of serving the public, the legal profession must strive for, and will be measured by, three standards: its independence, its availability, and its learning.”

Elihu Root, like Henry Stimson a great lawyer of the early years of this century—secretary of war before Stimson, secretary of state when Stimson was secretary of war, later a U.S. senator—put the matter more simply: “About

³ Phan v. Nguyen, 54 Cal. App. 4th 11, 17, 62 Cal. 2d 422, 425 (1997).

⁴ Liber, *Professionalism in Our “Rude, Crude, and Lewd” Society*, 33 INTERNATIONAL SOCIETY OF BARRISTERS QUARTERLY 409 (1998).

⁵ S. LINOWITZ, *BETRAYED PROFESSION: LAWYERING AT THE END OF THE TWENTIETH CENTURY* (1994).

half the practice of a decent lawyer,” he once said, “consists in telling would-be clients that they are damned fools and should stop.”⁶

Linowitz describes the proper lawyer-client relationship this way:

The relationship of lawyer and client is not that of soldier and general. A much better analogy is, as noted, to the relationship of parishioner and clergyman, where it is understood that the clergyman is not subservient to the parishioner—even when that parishioner is the largest contributor to the church. Like the ministry, law is a *calling*. As the clergyman advises on the moral nexus of his parishioners’ problems, the lawyer tells clients what the law permits them to do. Louis D. Brandeis was the premier corporation lawyer of Boston, representing the “traction” companies (streetcars) and the public utilities. This did not make him any less a crusader for popular causes: His clients bought his professional services, not him. “Instead of holding a position of independence, between the wealth and the people, prepared to curb the excesses of either,” he told a Harvard meeting in 1905, “able lawyers have, to a great extent, allowed themselves to become adjuncts of great corporations and have neglected their obligation to use their powers for the protection of the people. We hear much of the ‘corporation lawyer,’ and far too little of the ‘people’s lawyer.’” He defined his own career very simply: “I would rather have clients,” he said, “than be somebody’s lawyer.”⁷

Another fine book is *In Search of Atticus Finch*, by Mike Papantonio of the Florida bar.⁸ You will recall that in the Harper Lee novel, *To Kill a Mockingbird*, Atticus Finch is a lawyer in a small town in Maycomb County, Alabama. He is drafted by the good and conscientious Judge Taylor to defend Tom Robinson, a black man accused of raping a young white woman, Bob Ewell’s daughter. Mr Papantonio writes a beautiful work, investigating and ruminating on the degree of disenchantment among lawyers practicing today. Of the fine example set by Atticus Finch, Mr. Papantonio says:

Not only is Atticus not in anyone’s face, but when Bob Ewell confronts him on the public street after Tom Robinson’s trial and spits in Atticus’ face, Atticus—calmly restrained anger and distaste clearly written on his face—takes out a handkerchief, wipes off the spittle, but refuses to sink to a lower level . . . saying only later that he wished Bob Ewell didn’t chew tobacco.

If Atticus had practiced law among the legions of Type A personalities that make up the world of modern trial practice, wouldn’t he have been trampled underfoot?

⁶ *Id.* at 4.

⁷ *Id.* at 12.

⁸ M. PAPANONIO, *IN SEARCH OF ATTICUS FINCH: A MOTIVATIONAL BOOK FOR LAWYERS* (1995). Mr. Papantonio is a Fellow of the International Society of Barristers.

My inclination by this time was to ask, “What has Atticus Finch—a small-town lawyer in a bygone time—got to do with me?”

Yet, on reflection, the answer is still, “Everything!” Certainly, we have impediments that Atticus does not have when it comes to enjoying the kind of full and meaningful quality of life that he does. But it became clear to me that if we dealt with those impediments in the same way Atticus deals with his life, many of those impediments would disappear, and many of our problems would be more easily and satisfactorily solved.

For one thing, Atticus’ power is found in his restraint. The “in your face” approach to trial practice that has been evolving since the early seventies no doubt would have been an annoyance to him, but the contentious, combative trial lawyer of the nineties would be easy pickings for brother Finch. Atticus leads, Atticus teaches, and Atticus persuades with his force of character and intellect. *What a mismatch!*⁹

Mr. Papantonio quotes a past president of the Florida Bar, Ray Ferrero, Jr., who suggests that we have forgotten what Atticus understood:

[O]ne participant in a focus group summed the feelings of all: “They teach them law in school, not humanity.” Our individual challenge in this crisis of change is to retain our humanity, share the warmth of that humanity, and in general humanize the way we work with clients, the public and each other. . . . We need to see ourselves in the role of peacemakers, bringing justice where it is lacking, tranquility where there was turmoil, freedom where it was deprived, and rewards where they are due.

Although there are many issues facing the profession today, I sincerely believe the overriding precipitator is what I perceive as a diminished peripheral vision of attorneys in general. The lack of a pervasive sense of mission by individual lawyers, the absence of a sense of rightness and righteousness that transcends self-interest and commercialism, the loss of a sense of calling, an idealism as in a vocation, that gives all our labor its dignity.¹⁰

Mr. Papantonio also quotes Rick Kuykendall, who does most of the hiring for his firm in Birmingham, Alabama: “Generation X is now sending me their resumé’s. Their grades are impressive; they passed their bar exams with no trouble, but it is unusual when they can comfortably converse about concepts and ideas that should be basic to any classical education. They understand Palsgraf, but struggle with Plato.”¹¹

“Scout” was the nickname for Miss Jean Louise Finch, the preteen daughter of Atticus, who narrates the novel and often steals center stage as she comes of age. She grapples with childhood confusion over the strange series of events.

⁹ *Id.* at 34-35 (emphasis added).

¹⁰ *Id.* at 130-31.

¹¹ *Id.* at 132.

The tribute and respect Atticus receives for a lifetime of service as both a lawyer and human being runs even deeper, wider, broader than we first realize. They cross lines of age, gender, and even race in a time and place where race is the deepest and most cruel division of all.

Although in the middle of the Depression, Maycomb County, Alabama, blacks do not vote or wield political power, their full respect for Atticus is shown in one of the most powerful and moving scenes in the book.

It occurs just after Atticus has fought hard to win an acquittal for Tom Robinson, but has failed. In reality what has happened is the jury has failed, the system has broken down, and justice was not done . . .

[When the jury returns its verdict against Tom Robinson, Scout and her brother Jem are sitting in the segregated high balcony with the Reverend Sykes, Tom Robinson's pastor, and the other black citizens of Maycomb.]

[As] Judge Taylor polls the jury[,] Scout relates the following: "I peeked at Jem: his hands were white from gripping the balcony rail, and his shoulders jerked as if each 'guilty' was a separate stab between them."

Atticus shoves his papers into his briefcase, speaks briefly with the court reporter and the prosecutor. He whispers something to Tom Robinson, pulls on his coat and leaves, walking down the middle aisle. Scout says

I followed the top of his head as he made his way to the door.
He did not look up.

Someone was punching me, but I was reluctant to take my eyes from the people below us and from the image of Atticus' lonely walk down the aisle.

"Miss Jean Louise?"

I looked around. They were standing. All around us and in the balcony on the opposite wall . . . Reverend Sykes's voice was as distant as Judge Taylor's:

"Miss Jean Louise, stand up. Your father's passin' ."¹²

ELOQUENCE AND THE ART OF ADVOCACY

Is advocacy an inherent talent which may not be learned? Must one be born "Chrysostom," the fourth century patriarch of Constantinople whose name literally means "golden tongue"? No; eloquence may be borrowed and techniques may be acquired. In words of wisdom attributed to Jacob Fuchsberg, who was an eminent New York trial lawyer: "It is a mistake to think that one has to be born a trial lawyer to be a good one. As with all arts, a touch of genius of course will make the difference between the master and the craftsman but, while of masters there may be few, of first rate craftsmen there can be many."

Gerald Gunther reports that Judge Learned Hand was an agnostic, but nevertheless his songfests were a combination of Gilbert and Sullivan, and

¹² *Id.* at 66-68.

Calvinist songs from his youth. His writings were sprinkled with biblical allusions and allegories. I believe this reflects a recognition that the scriptures are the highest expression of man's goodness, the inspiration for the poetry of Dante and the art of da Vinci and Michelangelo.

Let me put this case before you, the case of plaintiffs Mohammed and Rabia, Afghanistan refugees whose sixteen-year-old son was killed in a railroad crossing accident. What do you, the advocate, do when the clerk says to the court reporter, "They sure learn quickly how to sue once they get here"?

That kind of remark, while particularly hurtful at the outset of trial, can serve as an inspiration, not a discouragement. The problem presented, of course, is how the jury will treat the Muslims. Will the jurors disdain them, as the clerk has just done, as "camel jockeys," "sand fleas," "ragheads"? You don't address that fear by saying to the jury, "Don't be prejudiced; you must be fair; you promised." Instead, don't we *inspire* them to be fair through references to *égalité*, *fraternité*? Don't human beings have a drive to be noble? All of us—even those who present a veneer of resistance—want to be reminded of the higher feelings and values. Inspiration is the way to persuade.

The argument might proceed along these lines: The *Koran*, the *Old Testament*, the *New Testament*, and the classics remind us all that we are one in our view of parent and child love. In volume II, chapter 29, entitled "The Spider," the *Koran* says, "We have charged man that he be kind to his parents." Volume II, chapter 46, entitled "The Sand Dunes," states:

We have charged man that he be kind to his parents. His mother bore him painfully, and painfully she gave birth to him; his bearing and his weaning are thirty months. Until, when he is fully grown and reaches forty years, he says, "O my Lord, dispose me that I may be thankful for Thy blessing where-with thou hast blest me and my father and mother, and that I may do righteousness well pleasing to Thee; and make me righteous also in my seed.

In volume III, chapter 17, entitled "The Night Journey," we see:

Thy Lord has decreed you shall not serve any but him. And to be good to parents whether one or both of them attains old age with thee; say not to them "Fie," neither chide them, but speak unto them words respectful and lower to them the wing of humbleness, out of mercy and say, "My Lord, have mercy upon them, as they raised me up when I was little."

According to the *Torah* of the Jews, "Children are like arrows in my quiver . . .," and the *New Testament* contains the passage: "This is my beloved son, in whom I am well pleased."

We see this love portrayed in art, perhaps most splendidly in the Pietà at Saint Peter's in Rome. Why is that work of Michelangelo one of the great masterpieces, if not *the* masterpiece of our world? The famous statue of David that stands in the foyer of the Academy of Arts in Florence is great, but in some ways, may I be so bold as to say, it misses the mark. It shows a body of tremendous strength and beauty—a most powerful youth—when really David was a weak, frightened, little Jewish boy who was called upon by God to take on the mighty Goliath. David's victory was by faith, not by strength. But with the Saint Peter's Pietà, Michelangelo got it so right. Remember that Mary was a young Jewish girl, only fifteen years old, living a simple life in her little village, when the angel appeared before her and said that she was to be the mother of God. She was confused and frightened, but nevertheless she said, "Adsum"; "I am here"; "Amen"; "So be it"; "Thy will be done." The Pietà depicts a terrible scene, thirty-three years later. Mary is now a mature woman, and the body of her dead son has been taken down from the cross and placed in her lap; he is enfolded once again within her robes, symbolizing return to the body from which he had come, from whence God had become man. Mary's right hand cradles her son, but despite the exquisite pain in her face, her left hand is lifted, in a simple, loving gesture of faith, of acceptance once again: "Adsum"; "I am here"; "Amen"; "So be it"; "Thy will be done." This masterpiece embodies the very core of the meaning of our lives, of our existence as loving human beings who are blessed with faith, hope, and charity.

This Muslim mother and father and family will go on with their lives of faith in their God, lives of faith in themselves, in their family and their relatives and friends, will go on with their lives of love of each other and of their fellow man according to the ideal. It is for you, ladies and gentlemen of the jury, to reach out, to find truth and beauty and justice, and to award them fair, just, and reasonable compensation for their terrible, terrible loss.

As this hypothetical argument shows, we trial lawyers must go naked; we must bare our souls. We must remember that we are believers. Reflect on the first time that you stood inside the Jefferson Memorial in that beautiful tidal basin in our nation's capital and read the words around the rotunda, "I have sworn upon the altar of God eternal hostility against every form of tyranny over the mind of man."

My wife, Christina, loves America because America held out its arms to her and received her as an eighteen-year-old refugee from the failed Hungarian revolution of 1956. I join her in urging each and every one of you to stand inside the Lincoln Memorial, hold the hand of someone you love, and read out loud the words of President Lincoln's Second Inaugural Address on the side wall: "With malice toward none, with charity for all, with firmness in the right as God gives us to see the right, let us strive on to finish the work we are

in, to bind up the nation's wounds, to care for him who shall have borne the battle and for his widow and his orphan . . ." I defy you to finish that reading without tears, without choking. It stirs so much emotion because you so much believe in what it stands for.

This, I believe, is the work of our organization: We must continue to strive to inspire each other so that we all can inspire others and share our convictions—inspire and thereby persuade. Only by such inspiration can you persuade a jury that it is a terrible thing for a young, accomplished, and caring physician to be tagged with the death of a young husband and father, who died despite the physician's best efforts and certainly through no fault of his. Only by such inspiration can you persuade a jury that a young wife and mother's injury to her hand goes beyond the bones and flesh to her very soul.

"DANNY BOY"

This week that we share each year is a wonderful time of reflection, of retreat, of refreshment, of renewal. We come to be reminded of our love for our profession and for our daily lives with our families. In that spirit of warmth and love which we share so deeply each year, I dedicate the balance of my remarks to Bob and Dorothy Popelka, to Joel and Jean Boyden, and to all among us who are in pain or afraid or otherwise in need. And in that spirit, I will talk about "Danny Boy," which Joel and Jean have sung for us for so many years on the eve of St. Patrick's Day.¹³

Before I get to "Danny Boy," however, I want to share with you just one poem from the Irish poet Seamus Heaney, who won the Nobel Prize in 1995. An observation by Woodrow Wilson sets the stage for this poem; referring to the great story of American immigration, Wilson said that the immigrant grandfather and his son labor with their hands and their shovels so that the grandson can go to Princeton or Yale or Harvard. Seamus Heaney, born in 1939, the firstborn of a large family in County Derry, put his poetic slant on that same human truth in his poem called "Digging." Beginning, as all Irish poets must, with a sense of guilt—guilt that his labor does not put sweat on his brow—he ends with the recognition that his grandfather's and his father's work is like his and his is like theirs:

Between my finger and my thumb
The squat pen rests; snug as a gun.

¹³ *Editor's note:* Joel Boyden, who movingly sang "Danny Boy" at the very meeting at which Mr. Nevin delivered this address, sadly lost his valiant fight against cancer six months later.

Under my window, a clean rasping sound
When the spade sinks into gravelly ground;
My father, digging. I look down

Till his straining rump among the flowerbeds
Bends low, comes up twenty years away
Stooping in rhythm through potato drills
Where he was digging.

The coarse boot nestled on the lug, the shaft
Against the inside knee was levered firmly.
He rooted out tall tops, buried the bright edge deep
To scatter new potatoes that we picked
Loving their cool hardness in our hands.

By God, the old man could handle a spade.
Just like his old man.

My grandfather cut more turf in a day
Than any other man on Toner's bog.
Once I carried him milk in a bottle
Corked sloppily with paper. He straightened up
To drink it then fell to right away

Nicking and slicing neatly, heaving sods
Over his shoulder, going down and down
For the good turf. Digging.

The cold smell of potato mould, the squelch and slap
Of soggy peat, the curt cuts of an edge
Through living roots awaken in my head.
But I've no spade to follow men like them.

Between my fingers and my thumb
The squat pen rests.
I'll dig with it.

By contrast with the Heaney poem, "Danny Boy" is part of our popular culture and at times seems almost trite. Have you noticed that the mention of "Danny Boy" to the Irish of Ireland or the native-born Irish here in America sometimes brings a sneer or even a jeer? Ask the tenor to sing "Danny Boy"

and he often looks at you as if you are the piano bar drunk who is asking for "Funny Valentine" for the fifth time. The Irish of Ireland can experience a deep disappointment that the poor "yank" knows only one tired old song, never hearing or asking for another from the treasure trove of wonderful, heroic Irish folk songs.

But I speak here today in defense of the American-Irish love for that song. It is my firm conviction that third and fourth generation Irish-Americans and our friends who learn it from us love "Danny Boy" because of the Irish immigrants who were our fathers and grandfathers and great-grandfathers. They came in droves, especially during and after the famine of the 1840s. Think of that terrible moment that they called the "wake," the evening before they handed over that ticket to the sea captain, the ticket for which they probably were overcharged and for which they labored for a year or two or more, the ticket to cross the sea on a ship that they prayed would be equal to the challenge of winter in the mid-Atlantic. At that wake and in the morning at the seaside, each emigrant kissed the furrowed brow of his mother and squeezed the gnarled but still strong hand of his "Da," knowing with absolute, irrefutable, utterly painful certainty that he would never see or squeeze or touch or kiss them again. He took his place in steerage and then, sick as a dog, sailed across the ocean to the New World. He trembled at Ellis Island, fearful that he or his lungs wouldn't pass muster. When he did make it through, he went into the City of New York and perhaps from there to Boston or Atlanta or Chicago or San Francisco or to the mines of Montana, and joined in forming one of the great immigrant cultures of his new land. But no matter what his happiness and joy, no matter what his success over the years thereafter, no matter how wonderful his wife and his children and his friends, he had a constant, gnawing pain without surcease. It was the pain of separation, of loss of mother and father, of motherland and fatherland. This was what caused him to reach back to the sentiment of "Danny Boy," and it is through him and through his pain that we who are his children and grandchildren and great-grandchildren have had the song inscribed on our souls.

The melody of "Danny Boy" is an ancient one, lost in the mist of time, an "aire" from Derry. The lyrics now bound to that melody tell the story of an old man of the Irish countryside. The bagpipes are calling to recruit the young men to cross over from glen to glen and go down the mountainside and off to war for Ireland. Danny is the old man's fifth and only surviving son, the first four already having died in the cause of freedom for Ireland. Patriot that he is, incredible proof that he has given, must he do it again? And this time, it is even worse because he is old; even if Danny survives, by the time he comes home, the old man will surely be dead. Either way, he knows deep down in his soul that he is seeing and touching his beloved Danny Boy for the last time.

But even in contemplation of death, he is a man of faith. When Danny Boy comes home, though dead the old man well may be, he still believes that he will hear Danny, if Danny but kneels on his grave and sings a simple Ave Maria. The Paters and Aves were the prayers of the simple, illiterate Brothers who served the great Irish monks by tilling the fields and cooking and serving the meals while the monks sang the Gregorian chants and studied and preserved the great works of antiquity; while the monks read the fancy Latin prayers, the servants needed simple prayers they could memorize since they could not read. All of that tradition comes gushing forth in the simple “Danny Boy” lyric: “and kneel and say an ‘Ave’ there for me.” This simple man of faith knows that he will hear his boy, though Danny treads softly on his grave, and his grave will warmer, sweeter be. Then his Danny will bend “and tell me that you love me,” and he shall sleep in peace.

I would like to close with an Irish prayer, one that I think reflects back to us the spirit of this week that we so happily spend together. May we be as available to each other in time of need as we are in these times of joy:

Beannacht¹⁴

On the day when
the weight deadens
on your shoulders
and you stumble,
may the clay dance
to balance you.

And when your eyes
freeze behind
the gray window
and the ghost of loss
gets in to you,
may a flock of colors,
indigo, red, green
and azure blue
come to awaken in you
a meadow of delight.

¹⁴ This poem is from John O’Donohue’s dedication, “For Josie,” in his beautiful book, *ANAM CARA: A BOOK OF CELTIC WISDOM* (1997). I don’t know the literal meaning of “Beannacht,” but I like to think it means “A Night Blessing,” night being a poetic symbol of darkness and fear, and a blessing being a poetic symbol of light, illuminating that darkness.

When the canvas frays
in the curach¹⁵ of thought
and a stain of ocean
blackens beneath you,
may there come across the waters
a path of yellow moonlight
to bring you safely home.

May the nourishment of the earth be yours,
may the clarity of light be yours,
may the fluency of the ocean be yours,
may the protection of the ancestors be yours.

And so may a slow
wind work these words
of love around you,
an invisible cloak
to mind your life.

¹⁵ A “curach/curagh” is an ancient Irish boat of the type used by St. Brendan in his brave sea voyage of the sixth century. It is made of wicker, covered with animal skin, and has a canvas sail.

IRISH LEGAL TRADITIONS: THE STRUGGLE TOWARD FREEDOM AND LAW[†]

James J. Brosnahan*

I am Irish, and I trust that all of you are, too, because if you are not, Ed Nevin¹ and I may be giving you more about Ireland than you really want. I want to talk to you about Irish legal traditions—about some people who have tried cases and stood for principles of freedom and law, about these people and their traditions that we have built on. Occasionally someone will say, “You know, I did it all myself.” That is a strange comment. I would never hear that from a trial lawyer. What about teachers and parents and grandparents and what they went through?

Although we talk about the Irish this morning, there are many other groups who came to the United States, and their stories are fascinating, too. I encourage you to ask those you know how their people came to the United States. But the story of the Irish here epitomizes the story of America.

Of course, I am more Irish at some times than at others. Sometimes I’m not Irish at all. I forget. I forget to be Irish. But I’m always American. And that took a lot of work. That took generation after generation.

If I do forget that I am Irish, St. Patrick’s Day comes once a year to remind me. On that day, I recall my Uncle Francis and my Aunt Kitty, and I put on the special tie, and someone inevitably says, “Oh, you’re Irish.” If they pursue it, I say “Yes, six of my eight great-grandparents came from Ireland at the time of the famine.” But I always end up feeling that the observance of St. Patrick’s Day isn’t quite right. There is a bit too much sentimentality, and some lack of understanding of the stories and aspirations of the people who were my ancestors and perhaps yours.

PERSONAL HISTORY

Over the years, I have wondered about my ancestors and searched to find a single Brosnahan who did anything significant in Irish history. I have read many books and looked everywhere for a reference to a moment when a battle was in dispute and someone turned and said, “Brosnahan, what shall we

[†]Address delivered at the Annual Convention of the International Society of Barristers, Four Seasons Resort Hualalai, Kailua-Kona, Hawaii, March 2, 1999.

*Morrison & Foerster, San Francisco, California; Fellow, International Society of Barristers.

¹ See Nevin, *The Search for Atticus Finch*, *supra* p. 331.

do?” Or to a time in court when there was even a witness, never mind a lawyer or judge, named Brosnahan. In desperation, I even looked for a turn-coat somewhere working with the British. No, no, no! There was not even a footnote mentioning a Brosnahan. It truly is in modesty that I come before you today.

The Brosnahans lived south of Limerick in a small town called Brosna. My wife Carol and I went to that town, which is up on a little hill. There were forty buildings, nine of which were pubs. Contemplate the ratio. (It reminded me of seeing my father watch television in its early days. Whenever it depicted an Irish person who was drinking, my father would get really upset and curse the stereotype—while he held a drink in his right hand.) In Brosna, we looked everywhere, including the graveyard, for some sign of my family’s history. Finally, I went to the church on Thursday morning at nine thirty. I found the priest and discovered that he had been sampling the sacramental wine since Tuesday. Still, I introduced myself and Carol, and I said, “Father, I have come looking for my ancestors here.” He replied, “Oh, that’s a wonderful thing to do. Where are you from?” I said we were from San Francisco. He said, “Oh yes, Sister Kate is down there in San Diego. You must know her.” I said, “No, Father, I am looking for information about the Brosnahans here. They came from somewhere around here in 1850 or ’51, at the time of the famine.” “Ach,” he said, “I wouldn’t have known them; I just came in December.”

So we went back up to Limerick, and we got a clue that there was a Timothy Brosnahan there. By going from bar to bar, we tracked him down, and he gave us the whole history of the family. I learned some things about the people who stayed and the people who went to America. Of course, the ones who went to America were, in a lot of ways, the lucky ones.

IRISH HUMOR AND IRISH HISTORY

The Irish do have a sense of humor. In Belfast, they refer to having a pint and “getting on the crack.” That isn’t what you might think. “Getting on the crack” means engaging in frivolous exchanges of words that mean nothing but are funny. (This group can appreciate that.) In his book *Angela’s Ashes*, Frank McCourt describes what happened when he got kept back in the fifth grade after missing more than two months of school due to typhoid. He complained to his mother, and his mother said, “It won’t kill you.” Irish mothers tend to say things like that. Then his teacher assigned him a special composition, which he would read to the class “to show [the other students] how well he learned to write in this class last year.” The next day McCourt read his composition which, in Ireland, would be referred to as “on the crack”; the as-

signed subject was what would have happened if Jesus had been born and raised in Limerick?

This is my composition. I don't think Jesus Who is Our Lord would have liked the weather in Limerick because it's always raining and the Shannon keeps the whole city damp. My father says the Shannon is a killer river because it killed my two brothers. When you look at pictures of Jesus He's always wandering around ancient Israel in a sheet. It never rains there and you never hear of anyone coughing or getting consumption or anything like that and no one has a job there because all they do is stand around and eat manna and shake their fists and go to crucifixions.

Anytime Jesus got hungry all He had to do was walk up the road to a fig tree or an orange tree and have His fill. If He wanted a pint He could wave His hand over a big glass and there was the pint. Or He could visit Mary Magdalene and her sister, Martha, and they'd give Him His dinner no questions asked and He'd get His feet washed and dried with Mary Magdalene's hair while Martha washed the dishes, which I don't think is fair. Why should she have to wash the dishes while her sister sits out there chatting away with Our Lord? It's a good thing Jesus decided to be born Jewish in that warm place because if he was born in Limerick he'd catch the consumption and be dead in a month and there wouldn't be any Catholic Church and there wouldn't be any Communion or Confirmation and we wouldn't have to learn the catechism and write compositions about Him. The End.²

How did the Irish develop this sense of humor? The British had a lot to do with it. At this point, I need to give you a little history, with a few dates. The first is 1695, when the Treaty of Limerick was broken and land was taken from Irish Catholics, which resulted in the departure of members of some 11,000 families. (For a long time, the story of Ireland has been a story of leaving, often because of religious issues.) This was called "the flight of the wild geese." Thus, the Irish began to layer words over something too painful to live with, and this process continues through time.

Where did the wild geese go? They went all over the world, and they succeeded; they were the cream of the crop. Ireland repeatedly has driven out its best people. Many of those who fled at the end of the seventeenth century were military people—"Fighting Irish" is not a term that Notre Dame started; it began long ago and meant that the Irish would fight in other nations' armies because we never had an army of our own. Among the places that the wild geese flew in 1695 was Spain, where they rose to positions of power. For example, they were leaders in the decision to populate what became the state of California—names like Commandante O'Donnell, Count DeLacy, Generalis-

² F. McCOURT, *ANGELA'S ASHES: A MEMOIR* 204-06 (1996).

simo Allesandro O'Reilly. General O'Connor was in charge of all of Mexico. So the Irish show up in the oddest places.

A piece of Irish history that motivates me is another element of the repression at the turn of the eighteenth century. As of 1704, when the Brosnans were up on that little hill near the Brosna River, it was legislated not only that no Catholic could be a magistrate, that no Catholic could own a horse of greater value than five pounds, and that it was a crime to teach a Catholic child, but also that no Catholic could be a lawyer. That resonates across the years in a way that motivates me, so that when I'm stuck in my conference room and the water for my tea is not as warm as I would like and the associate has not worked all weekend, I think back to that reality and realize that I am not really having a bad day.

I think that we all have such stories if we trace our histories back to our magnificent ancestors. We are the fulfillment of the hopes of those grandmothers long ago who wanted more for their descendants than what they saw around them. Grandmothers all over Europe, in Asia, wherever you want to go. I think this is our time. We are American lawyers. And I don't say that just for this talk. I say it to myself on a Monday morning when I have to get out of bed and go talk to a judge who is demented.

A few more legal highlights in Irish history: In April of 1916 Sir Roger Casement landed on a broad beach, having come in from Germany, which was the enemy of Great Britain. He was arrested after landing. Although he had been knighted in 1911 for his work in exposing human rights violations in Africa and South America, he had joined the Irish Volunteers in 1913 and had spent two years, from 1914 to 1916, in Berlin, in an attempt to obtain aid and troops for the Irish struggle. Because of his arrest, the "Easter rising," the most famous rising and the most successful rising in all of the years of the history of Ireland, took place without Casement.

Operating from headquarters in a post office, the cream of Ireland's crop—Patrick Pearse, James Connolly, Constance Markievicz, and Eamon de Valera—risked everything they had in the name of nationhood, something Americans can understand. The British army ultimately prevailed, but the rebels resisted longer and more successfully than could have been expected. The British then made an enormous mistake. Within a couple of weeks after the insurrection, they executed fifteen of the leaders, including Pearse and Connolly, after brief courts martial rather than trials. And the people in Ireland, who had been quite ambivalent about the rebel movement, were converted instantly. As Yeats wrote: "All changed, changed utterly: A terrible beauty is born."³ Within six years Ireland was a free state for the first time in 400 years.

³ William Butler Yeats, *Easter 1916*.

Let us return to Sir Roger Casement, who had been arrested upon his return from Germany just prior to the Easter rising. He was not summarily executed and was granted a trial; but he could not get a barrister in London, and the government circulated the “Black Diaries” which purportedly were his and evidenced that he was gay. Public opinion turned against Casement, and he was convicted and hanged.

The Casement episode is reminiscent of the trial of Charles Stewart Parnell in 1888, at the time of the great Land Upheavals. Landlords in Ireland were wont to evict tenants who could not pay their rent. Rents were excessive, and the situation was exacerbated when Ireland was hit with a partial famine in 1878. Parnell urged Irish peasants to boycott landlords who did evict tenants; such landlords found that they could not get new tenants to work the land. (Indeed, the term “boycott” comes from the name of one British land agent, Captain Charles Boycott, who found himself on the receiving end of the tenants’ refusal to work.) Parnell was jailed in 1881 for this and other tactics in support of home rule. Although a compromise resulted in his release, the British sought to discredit him and paint him as a violent person.

Finally, in 1887 *The Times* of London published articles accusing Parnell of encouraging Irish violence and printed a sample letter apparently by Parnell in which he condoned the 1882 murders of two British officials in Dublin’s Phoenix Park. A government commission was formed to investigate, and Sir Charles Russell took on the role of lead advocate for Parnell. In questioning Richard Pigott, the witness who had produced the letter, Russell proceeded along these lines: “I want to give you a piece of paper, and I’d like you to write these words, if you don’t mind. Would you write ‘livelihood,’ and then ‘likelihold,’ ‘proselytism,’ . . .,” and then, as if an afterthought as he was turning away, Russell said, “And would you write the word ‘hesitancy,’ please, and with a small *h* if you don’t mind?” Pigott handed up the piece of paper to Russell and at that moment Charles Stewart Parnell was exonerated because Pigott had misspelled “hesitancy” just as he had misspelled it in the letters he had forged under Parnell’s name. This occurred on a Friday afternoon. They took a recess and came back Monday morning. No Pigott! The police were dispatched to look for him. He was ultimately found in Spain and arrested. He asked to use the facilities before starting the trip, went into the bathroom, and killed himself. In my book this is the mark of a great cross-examination! I always think of Pigott when the learned lecturers tell us you can never destroy a witness.

As a further example of the power of words in the history of the Irish struggle, I always think of Robert Emmet. Emmet was a young man of twenty when he decided in 1798 to take up the cause of Ireland’s independence. In 1803, he started with about 2,000 men to march on Dublin Castle, which had

its doors open, so confident were the British of their situation. As Emmet's men marched, however, some began to leave, and when they approached the castle, the group numbered no more than about one hundred. Emmet escaped but was later captured, tried, and convicted. The British had won; the rising had been squelched, humiliatingly. Then under British procedure, the prisoner was allowed to say something. What a tactical error! The words spoken would be remembered by generations of Irish and were even read by Lincoln, by firelight in a cabin in Kentucky. Here is part of what Emmet said:

My lords, you are impatient for the sacrifice—the blood which you seek is not congealed by the artificial terrors which surround your victim; it circulates warmly and unruffled, through the channels which God created for noble purposes, but which you are bent to destroy, for purposes so grievous, that they cry to heaven. Be yet patient! I have but a few words more to say. I am going to my cold and silent grave: my lamp of life is nearly extinguished: my race is run: the grave opens to receive me, and I sink into its bosom! I have but one request to ask at my departure from this world—it is the charity of its silence! Let no man write my epitaph: for as no man who knows my motives dare now vindicate them, let not prejudice or ignorance asperse them. Let them and me repose in obscurity and peace, and my tomb remain uninscribed, until other times, and other men, can do justice to my character; when my country takes her place among the nations of the earth, then, and not till then, let my epitaph be written.⁴

At the age of twenty-five, Robert Emmet was executed. As is true in all suppression of peoples, the greatest loss is the loss of talent.

PATRICK FINUCANE

In closing I would like to introduce to you a lawyer that you might have invited here to speak, a lawyer who shared the qualities of our organization in a very special way: Patrick Finucane. Patrick Finucane was a lawyer in Northern Ireland. He was born in 1949, and he established his law practice in the 1970s and rose to prominence in the 1980s. He became well known as a member of a small group of solicitors who pioneered various legal devices for holding the authorities accountable for their actions. (Among other things, in the Diplock courts in Northern Ireland, the jury has been done away with, and bail has been circumscribed. Things that we take for granted, and which they take for granted in the regular criminal courts, are no longer available in “terrorist” cases.) Finucane's defense practice flourished. He represented, among

⁴ *Trials: Robert Emmet Demands That Posterity Be the Judge of His Irish Patriotism*, in LEND ME YOUR EARS: GREAT SPEECHES IN HISTORY 331, 336 (W. Safire rev. ed. 1997).

others, Bobby Sands, who was the first of ten prisoners to die of starvation during a hunger strike in 1981. (I always ask myself what it is that would drive anyone to take that way out of life, for it is one of the hardest ways to go.) Finucane resorted to litigation to change the legal framework in which the security forces operated. He instituted compensation claims. He represented both Catholics and Protestants. He represented Republicans and Unionists. He fought the media ban that prevented any discussion in public of the points of view of Sinn Fein. He fought for prisoners' rights. He was our kind of lawyer. He did all of this even though he knew the dangers, even though he was threatened.

One morning while we were interviewing a witness in his house, Finucane gave us valuable information, but he could not come to the United States to testify for fear of the risks, and he pointed to his beautiful little children, who were bouncing off the walls the way young kids will do. I thought to myself as I left his house, "What is this to me? I am a fourth generation American Irish, not Irish American; what is this to me?" The answer is that it is a fight that can be waged anywhere in this world by trial lawyers, and Finucane was such a lawyer.

Patrick Finucane cannot be with us today, or ever, because one day in 1989, as he sat in his kitchen with his wife and his children, two gunmen entered his house and shot him dead. They shot him in his home in front of his wife and children to magnify the terror, to show that there is no safe place for the trial lawyer to retreat.

It is my hope that we will find some way to preserve the name of Patrick Finucane, so that this nonviolent, dedicated, brilliant young lawyer will not have died in vain. We have a lot of traditions in America, and one of them is that we like trials and we like trial lawyers, and we will stand up for one of our own. Out of this long history of longing for democracy, for freedom, and for schools and jobs, Patrick Finucane was one of the proud bearers of the standard of the nonviolent lawyer and showed what such a lawyer can do.

THE BISHOP ESTATE—A BROKEN TRUST†

Margery S. Bronster*

The title of the last speech before mine was “You Can’t Make Up Stuff Like This,” and that would have been appropriate for my talk, too, because the events and issues that I am about to discuss with you are nearly unbelievable. Let me begin with a bit of background. I was appointed attorney general four years ago, and at that time I had been living in Hawaii for less than six years. I applied for the job just after Governor Cayetano was elected in 1994. I didn’t really expect to get the job because most appointed attorneys general are close friends of the governors, but I applied and got an interview with the Governor and twenty people whom I had never met before, the members of his transition team. Not knowing the Governor, I didn’t know what he expected, so I couldn’t answer the questions as he expected or wanted them answered. I just had to answer them the best way I could. At one point, he asked me, “So what do you think of being my lawyer?” This probably was not the wisest answer, but I said to him, “Governor, the way I read the state constitution, I am not only the lawyer for the governor, but I am the lawyer for the entire state. I am the lawyer for all eighteen departments of the state government. I am the lawyer for the judiciary as well as for the legislature. Basically, I view myself as being the lawyer for the people in the state of Hawaii.” Dead silence followed. Not one person on that transition team could believe that those words had come out of my mouth. I’m sure they thought when the interview ended that they were glad they wouldn’t have to deal with me for the next four years.

The next day I was sitting in my office, and the receptionist said, “Margery, there is someone on the phone who claims to be the Governor.” The Governor offered me the job, and I was so stunned that I couldn’t answer. He said, “Well, you wouldn’t have applied for the job if you didn’t want it, would you?” I was still too stunned to give him a decision. Finally, he said, “Perhaps you want to take a little time before you answer, but make sure you do it by the end of the day.” By the end of the day I thought about it; was I really crazy enough to want this job? I decided I was.

I worked for a couple of years, and everything seemed to be going smoothly. At any given time, I have about 50,000 matters in my office. My

† Address delivered at the Annual Convention of the International Society of Barristers, Four Seasons Resort Hualalai, Kailua-Kona, Hawaii, March 4, 1999.

* Attorney General, State of Hawaii, at the time of the address. In late April, the state senate declined to confirm Ms. Bronster for a second term.

staff numbers 575 people, with 171 lawyers, and I have a budget of more than \$50 million a year. It's a pretty big law firm. Still, nothing prepared me for what happened two years ago when the Bishop Estate matter presented itself.

THE BISHOP ESTATE

Bishop Estate is the largest private property owner in the state of Hawaii. It owns approximately ten percent of all land in this state. The trust was set up about 115 years ago by Princess Bernice Pauahi Bishop and is now worth, conservatively, about \$10 billion. It is managed by five trustees who are appointed, as provided in the Princess's will, by the justices of the state supreme court acting in their individual capacities. The sole purpose of the estate has been and still is to support a school—actually, two schools, one for girls and one for boys—for the education of Hawaiian children. In its 115 years, the Kamehameha Schools have educated approximately 18,000 children, so this school with ten billion dollars behind it has a relatively limited reach.

The trustees who have been managing this trust have been doing so virtually without accountability for years and years. The probate court has appointed a master each year to go in and look at the books and records, but until recently the master was allowed to look at the records but was not allowed to copy anything, and the master was allowed to ask a few questions of the employees but was not allowed to get any help from outside experts. Then the master would write a report—and usually that report was reviewed by the trustees before it was submitted to the probate court.

STIRRINGS OF DISCONTENT

Two years ago, the students, alumni, and faculty of the Kamehameha Schools started getting upset because the trustees wouldn't talk to them. The trustees wouldn't give the teachers contracts that lasted, so two months before school started each year, the teachers didn't know whether they had jobs. The students were upset with how things were being run but got no response to their questions and complaints. So in May of 1997, a group of students, parents, and alumni decided to march to the offices of the Bishop Estate to try to find out why they couldn't get an audience. Instead of listening, the trustees hired private investigators to take pictures of all the people who participated in that march. A group by the name of Na Pua, made up of some of the students and alumni, then called for the appointment by the court of a fact finder to go into the schools and find out what was really happening. The trustees thought perhaps they should go along with having a fact finder—so they handpicked one: a retired judge who had

been a probate court judge and who had approved the trust account year after year after year!

One of the trustees, Oswald Stender, was very unhappy. He called the me and said, "Attorney General, you don't know me, and I cannot be seen going into your offices, and you cannot be seen coming into my office. Perhaps we can find a quiet place to meet." We did, and he told me that there were some serious problems—abuse of power, misuse of funds, other actions he didn't think were right. He asked me to look into them. I thought about it and felt that my office was running smoothly enough that I could take a look at the situation.

About a week after that meeting, a group of five prominent people decided that it was time to go public with an article about some of the allegations concerning the Bishop Estate. The article was called "Broken Trust." It talked about the \$900,000 a year that each trustee was receiving in compensation. It talked about the trustees entering into contracts and deals, here and abroad, solely because their friends or family said to do so. It talked about the trust hiring attorneys to represent the trustees' personal interests when there was no benefit for the trust. It talked about monetary gifts—legal and illegal—to politicians in order to affect the estate. It asserted that there was something amiss in the selection of these trustees.

Let's focus more specifically on the trustees who have become the handlers of this multibillion dollar estate. One is Henry Peters, a former speaker of the house of the state legislature. In fact, Henry Peters was both the speaker of the house and a Bishop Estate trustee for a number of years. Another trustee, Richard "Dickie" Wong, became a Bishop Estate trustee when he finished serving as the president of the state senate. The third trustee, Oz Stender, actually was the trustee of a private trust. The fourth, Lokelani Lindsey, had been with the department of education and is a relative of a former governor. Finally, Gerard Jervis is a lawyer and heads our judicial selection commission.

As I indicated a moment ago, a concern of many people was how the Bishop Estate trustees were selected. From the beginning, they had been selected by the supreme court justices. The supreme court justices, in turn, were selected by the governor from a list prepared by the judicial selection commission. Even before the various complaints surfaced in 1997, questions had been raised as to whether people became supreme court justices so that they in turn could designate certain people as Bishop Estate trustees. Back in 1993 there was a big hue and cry over this. As a result, the supreme court justices decided to set up a blue ribbon panel that would conduct interviews of potential trustees and prepare a list from which the supreme court justices would select any new trustees. The blue ribbon panel was composed of community

leaders and business leaders, and they spent months culling through resumé's, doing interviews, and calling people. Proud of the work they had done, they prepared their list for the supreme court. Gladys Brandt, one of the members of the panel and a former head of the girls' school of the Kamehameha Schools, went to see the chief justice of the supreme court and handed him the list. The words out of his mouth when he saw it were, "Where is his name?"—referring to the name of our former governor John Waihee, whom many had expected to be the next Bishop Estate trustee. That name was not on the list. The chief justice flung the list down on the desk and walked out.

All of this and more came out in the "Broken Trust" article. Governor Cayetano said to me, "Margery, would you please investigate? And, by the way, get back to me in a week."

OUR INVESTIGATION AND PROCEEDINGS

The first thing I had to determine was whether I had any authority to investigate. This much I managed to do in a week! I found that the attorney general acts as *parens patriae* on behalf of all of the unnamed beneficiaries of charitable trusts; that is true not just in Hawaii but throughout the fifty states.

So I started an investigation. Little did I know that in order to conduct the investigation, and in order to use my subpoena power, I would have to file thousands of pages of motions and appeals. It was a fight every step of the way to get information out of a public charitable trust whose terms, in the Princess's own words, mandated that it "be open for public inspection." I had to use subpoenas for the most basic information, such as minutes of trustee meetings. I could not get them for months.

I realized, from the first, that one of the things I had to investigate was the selection process, so I went to the supreme court justices and said, "At some point in this process, I am going to have to interview you." They did not take kindly to that; the justices said, "No, you won't." I replied, "Well, I'm afraid I have subpoena power, and it's clearly within the realm of the investigation that I have been ordered to conduct." And they responded, "We'll just see whether your subpoena power goes so far. If we're the ones to decide it, we don't think so."

In light of that conversation, you can imagine my discomfort when the very first appeal that went up to the supreme court involved the scope of my subpoena power. I thought perhaps they would realize that they didn't want to rule on something related to a discussion they had already had with one of the participants, so I wrote them a letter suggesting that they might want to recuse themselves from hearing that particular issue. They answered, "You want us to recuse ourselves, you make a motion." They probably thought I'd

wise up and go away, but I did make that motion. They sat on it for a couple of months, and finally they sent it off to the judicial conduct commission, with a suggestion that the “appearance of impropriety” justified or necessitated recusal. The judicial conduct commission agreed; but nobody seemed to mention the fact that these conversations had occurred. Luckily, the justices did recuse themselves, as they have in twelve out of thirteen appeals that have gone up to the supreme court. We’re still waiting for number thirteen.

The substitute justices who considered the first appeal did decide that we were entitled to all the information we had requested. And what was some of the information we discovered? We found that despite the fact that they were paying themselves \$8-900,000 a year, the trustees were not taking even the most basic steps to fulfill their fiduciary duties. They were not bothering to do basic due diligence on their deals. They were hiring friends and relatives.

Let me give you just one specific example. The trustees decided to invest trust funds in an internet company called “KDP.” KDP was an internet company with a twofold purpose: It ran a dating service called Love Mate, and it was an online talent agency. How did the Bishop Estate get into this deal? A friend of Lokelani Lindsey had decided that this would be a good investment for approximately \$2 million of Bishop Estate funds. (Lindsey and this same friend previously had jointly invested in Philippine gold futures and had jointly lost \$400,000.) The deal also justified putting on the payroll, at about \$100,000 a year, the brother-in-law of one of the other trustees who was a talent scout. I decided to go online one day to take a look at KDP and was absolutely astounded to see pictures of half-naked kids. It was appalling. The money of the princess whose purpose was to educate Hawaiian children was supporting some internet kiddie porn project! (And we learned that the Bishop Estate people knew this.)

The Bishop Estate trustees did decide to get out of that project—I don’t know whether their decision stemmed from my office showing up online or from the federal indictment of the head of KDP on other charges—but that project was not alone. It was only one of many questionable investments. The investigation is ongoing.

OTHER PROCEEDINGS AND CONCLUSION

The I.R.S., we now know, also has been investigating and conducting an audit, which is useful, because the I.R.S. has powerful tools with which to stop people from deriving private benefit from public charitable organizations. The most recent probate court master has uncovered tremendous examples of wrongdoing that he has brought to the attention of the probate court. Two of the trustees, Gerard Jervis and Oz Stender, have sued to remove Loke-

Iani Lindsey. We have sued to remove all of the trustees who have been responsible for the wrongs and for failing to spend the money on the purposes of the trust.

Each day, the local newspapers have something new to report about the Bishop Estate. It is a long fight, which I hope to see through. We have not tried in any way, shape, or form to hurt this trust. In fact, it is our goal to make sure that the trust is put into the hands of people who are responsible, people who are caring, and people who understand their fiduciary responsibilities to the legacy of Princess Bernice Pauahi Bishop and the education of Hawaii's children.

BLIND MAN'S BLUFF†

John Craven*

The first thing I have to do is give you a disclaimer about the book *Blind Man's Bluff*.¹ It is a virtual story about a virtual reality creature with the name "John Craven." After it was published, somebody called my daughter and said, "Sarah, your father is no longer your father; he is now James Bond!" I told her that couldn't be true because James Bond had lots of sexy girlfriends, and I've had only one sexy girlfriend in my life, for forty-eight years.

The other preliminary point I want to make is that after spending the week here with you, I decided last night that I had to rewrite my entire talk. It's as though I were about to deliver a summation to the jury and realized the night before that I had the whole theme of the case wrong and had to rewrite it. You are getting the rewritten version, drafted mostly at midnight last night.

HISTORICAL PERSPECTIVE

Those of us who were born in 1924 were seventeen years old on December 7, 1941. A small but significant percentage of us got enmeshed in real war, which was not over until 1945. In that short period, from 1942 to 1945, people born in '24 (or '23 or '25) had lived an entire lifetime. We lived an entire lifetime and knew the importance of making sure no wars occurred again. We had to resolve conflicts in the world before they got out of control.

The next conflict that came along was the Korean War, resolved by an armistice that still exists. As soon as that was resolved, the world was faced with the invention of the ballistic missile and the recognition that the Soviet Union could launch missiles with nuclear warheads against the United States. That created an urgent need for the United States to develop a deterrent system; and as that deterrent system was being developed, there was also the need to develop a means of winning the Cold War. We did win the Cold War—the first war, so far as I know, that ended with one major power conceding defeat without military action. It's absolutely incredible, historically speaking, that the Soviet Union simply folded its cards. The activities of the submarine espionage people probably played an important role in achieving that outcome.

† Address delivered at the Annual Convention of the International Society of Barristers, Four Seasons Resort Hualalai, Kailua-Kona, Hawaii, March 4, 1999.

* President, Common Heritage Corporation, Honolulu, Hawaii.

¹ S. SONTAG AND C. DREW, *BLIND MAN'S BLUFF: THE UNTOLD STORY OF AMERICAN SUBMARINE ESPIONAGE* (1998).

Now we have to recognize that the next world problem is one of population—the population explosion and the migration of population to the coastal zones. We are already seeing some fall-out from this. We need to resolve the resource and economic problems of this burgeoning population before they get out of control. The problems and consequences will move our way.

This describes the situation for those of us born in 1924 or a little before or after that year:

Warriors and peacemakers enmeshed in endless warfare, hot or cold, they lose the concept of time. There are only new and previously unanticipated missions, needs for instant development and acquisition of innovative hardware to carry out the new missions, and the necessity for instant recruitment and training of personnel for the immediate conduct of the missions. In the turbulent mists of endless war, all of these processes are telescoped into a multiplexed existential continuum, without beginning and without end. Everything is of highest priority and utmost urgency, and when called upon to execute the mission, you go. You go as soon as you are called upon to go. You go with what you have got. You go and you execute with competence, skill, and dispatch, or you die.

PERSONAL HISTORY

I was not planning to talk about my own experience in World War II, but yesterday I played golf with a young man who was born in 1925, and I asked him, “What did you do in World War II?” He said, “I was a helmsman on a heavy cruiser.” I said, “You were? I was a helmsman on the battleship *New Mexico*.” We started telling stories about helmsmen, and it became clear that we knew (although no one else did) that the most important man aboard a ship is the helmsman. In all sorts of crisis situations, such as battles or approaching collisions, there are frantic cries from the admiral on the flag bridge, frantic cries from the captain, wild statements from the officer of the deck—and the helmsman is the only one who’s going to do anything to respond.

I could tell you all sorts of sea stories about the many situations in which the helmsman knows he’s responsible, but I won’t. I will tell you that I learned volumes about the hydrodynamics of the oceans because we had to zigzag. Because of the military need for zigzagging, we had to go in head seas, following seas, beam seas, all kinds of seas that you normally would avoid, and I learned more about how a rudder controls a large ship than I ever could have learned earning any Ph.D. I might have gotten. That was my baptism into endless war in a position where competence, skill, coolness in a crisis, and emotional detachment were vital to the completion of the mission and to survival.

After that the G.I. Bill sent me through formal education in what we now call ocean engineering, and I decided that I would associate with the United States Navy as a Navy scientist. I went to work during the Korean War, just at the time that we were losing our minesweepers in Wonsan Harbor as a result of the Russian mines planted by the Koreans. I started out working on the technology for minesweeping—and the Korean War ended. We then turned our attention to the new nuclear-powered submarine. Frankly, nobody knew why we were building a nuclear-powered submarine. The real reason was that the famous Admiral Rickover (whom a lot of us did not like as much as the public did) wanted to get even with his fellow midshipmen at the Naval Academy by achieving a position of power and responsibility that would show those guys they had mistreated him at the Academy.

One of the stories not yet told is that the submarine *Nautilus* had serious structural (hydrodynamic) problems. The submarine almost failed. Then the team that I was on—a bunch of wild guys who were willing to go to sea on ships that were sinking or going to sink, to figure out what the problems were—was successful in solving those problems. We therefore got identified as problem solvers.

At about that time, the awareness dawned that there was indeed a crisis of a missile gap with the Soviet Union. It was recognized that if the nuclear submarine could be developed with a missile compartment, it would provide a secure, invulnerable deterrent. It very shortly became the nation's number one deterrent; but it had to be built very quickly, and its technical complexity necessitated technical advances in every area of the program—in the warhead, in guidance, in missile propulsion, in the underwater launch, in structure, in the at-sea communications, in the training of personnel.

A single management office, called the special projects office, was put in charge of the program. This office was managed by two of the most brilliant men I've known. One was Admiral Raborn, a great executive leader. Every morning he would look at all of us and say, "Gentlemen, when I put my pants on in the morning, the whole world is not dressed. Therefore, don't expect to get guidance from me. I want you guys to figure out what you're supposed to do and go out and do it!" The second was our technical director, Levering Smith, the smartest technical director we ever had. The first seven missiles that we fired broke up and flew all over the place, and the rest of us were terribly disappointed; but Smith was very cheery. I asked him why he was so cheerful, and he replied, "Well, you fired seven missiles, and seven different things went wrong, so we have now corrected seven mistakes in the missiles. What's this development program for anyhow?"

THE OFFICE OF THE CHIEF SCIENTIST

After awhile, it was decided that the Polaris program needed a guru to tackle the problems that nobody knew how to solve, so the office of chief scientist was established. They offered this office to each laboratory director in the Navy system—all middle-aged individuals who realized that if they took the job, they would be asked questions they couldn't answer, and they would have to work sixty or seventy hours a week. They all turned down the post. I happened to be on the committee, and I was only thirty-four years old. They offered me the job. I pointed out that the civil service would not allow someone my age to go from GS-13 to GS-18 overnight, to which Admiral Raborn responded, "Are you trying to tell me what I can do and what I can't do, Craven?" I said, "No." He said, "Will you be the chief scientist?" In a rash moment I said I would. He solved the promotion problem, and I found myself in a new position.

The first day I was on the job as chief scientist, a group of men walked in and said, "Craven, we need your advice on the maser amplifier for the radiometric sextant." I said, "The what for the who?" They said, "You know that microwave amplification by stimulated emission of radiation is the maser [lasers had not been invented then] and the radiometric sextant is to get the radio signals from the stars so we can navigate by day." I said, "Gentlemen, I need a little time to think about this," and they said, "Okay, we'll have a meeting tomorrow afternoon." As soon as they left, I called the Office of Naval Research and spoke to the expert in this area; I said, "Tell me about masers." He said, "I can't." I said, "Why is that?" He said, "They haven't been invented yet." I said, "What am I going to do?" He said, "There's a young professor up at Harvard named Charles Townes who's the guy working on these things. [He later won a Nobel Prize for inventing lasers.] Why don't you call him?" So I did. I said, "Professor Townes, you don't know me; I'm *temporarily* the chief scientist in the Polaris program. Could you explain to me like I'm a freshman in college what a maser is and how it works?" He said, "Of course," and gave me an explanation. All of a sudden, the magic words came up; he said, "I think the signal-to-noise ratio will be the following: . . ." I said, "Repeat that again." He said, "The signal-to-noise ratio will be the following: . . ." I said, "Thank you, Dr. Townes." At my meeting the next day, I said, "You know, gentlemen, I've been thinking about it all night long, and I think the signal-to-noise ratio will be the following: . . . We ought to acquire one of these things as fast as we can." We did and it worked. That's how I developed my Oracle of Delphi technique: As soon as you are asked a question, you think for awhile, then you call the expert in the field and get him to help you with your problem.

As we worked further into the Polaris program, we got involved with telling the Bureau of Ships how they should design submarines. Throughout the entire history of the Navy, nobody but the Bureau of Ships, staffed by officers who had graduated from the Naval Academy, had designed submarines. They did not appreciate our telling them that they were designing their submarines wrong. Then our decision to build a submarine called the *Thresher*, which was to be the pre-prototype for both the Polaris boats and for the attack boats, led to a fierce argument with the logistics command over various aspects of design and testing and operation. It finally got to the point that one admiral leaned over and said to my admiral, "Admiral, if I were you and if I were persisting with this line of approach, I couldn't sleep at night," and my admiral responded, "If I were you and took *your* line of approach, *I* couldn't sleep at night."

Then came the traumatic day when we were having a meeting with all of the top brass in Annapolis, and the commander of the submarine forces in the Atlantic was called out of the meeting. When he returned, he announced that the submarine *Thresher* had gone down with all hands aboard. I was sitting next to Captain Harry Jackson, who was the engineering duty officer for the *Thresher* and had just been detached; this was the first dive of the *Thresher* that he hadn't gone on, and he turned as white as a sheet. He said over and over, "I should have been there." This was the most traumatic thing that could happen to the submarine forces.

At this point, the Navy set up a committee under an oceanographer to look at what the Navy should do in the future about deep submergence and technology. Out of this came a program called the "Deep Submergence Systems Project," the primary focus of which was the design of a deep-submergence rescue vehicle. Frankly, this was more a matter of political strategy than military necessity. The possibility that the Navy would ever have to rescue survivors from a deeply submerged submarine is infinitesimally small. So why spend a tremendous amount of money on designing and building a deep-submergence rescue vehicle? The answer is very simple: That's the only program you can sell to the public. It was not a fraud, because a submarine that could rescue people from a downed submarine would have many other uses; we would gain a mission capability of taking a small submarine anywhere in the world on twenty-four hours' notice and using it to transfer personnel from one submarine to another under water under extreme conditions such as heavy pressure. Even if we weren't really designing a rescue vehicle, we certainly were designing a personnel transfer capsule and a vehicle that would be able to put saturated divers on the deep ocean floor in the future.

Of course, the responsibility for the design and management of this vehicle had to be assigned. A decision was made not to give it to the Bureau of

Ships but to set up a special projects office within the Polaris program and to assign the office to the chief scientist. The problem was that all projects have to be run by a naval officer so that the responsible person is subject to court martial. They looked for an engineering duty officer to head the project, but no engineering duty officer wanted the program because it would be disloyal to the ships system command, and because a lot of people felt that the technical mission was just not doable. The result was that they had to make me the project manager and considered the possibility of calling me back as a former ensign in the reserve and promoting me to full captain or admiral in the United States Navy. They decided that wouldn't be appropriate, so they gave me the full legal status of a commanding officer in the United States Navy. That was a rather anomalous position, but it wasn't too bad because all we had was the deep-submergence rescue vehicle.

After that, a whole series of missions and assignments just cascaded, one after the other, such that I can't tell you when they occurred or how they occurred. I think the first thing was that the United States lost a hydrogen bomb off the coast of Palomares, Spain. At that time, we hadn't established techniques for finding such a thing in deep water, so the Supervisor of Salvage came to my office and said, "Craven, I can't handle this; let's do it together." We were successful, so they assigned to our office the responsibility for all future events of deep water salvage.

Then there was a program called the "Man in the Sea Program," run by the Office of Naval Research, which had developed a technique for putting saturated divers on the ocean floor. When they ran SeaLab 1, they almost killed somebody, but they were successful. While they were running SeaLab 2, the Navy decided that this was a capability worth developing, so they offered it to the Bureau of Ships. The Bureau of Ships refused it, so they gave it to me. I said, "Gosh, I can't even snorkel." The first day I was on the program, I called the guy that I selected as the project manager and asked him if he could get me trained in a short period of time. He asked if I was healthy, and I said I was. He asked me if I could swim, and I said I could. He told me to show up at the diving unit the next Monday. When I got there, I first swam with every piece of scuba gear and mixed gas that the Navy had. A guy swam beside me ready to punch me in the stomach if he saw me holding my breath, because if I held my breath, I would die of an air embolism. I got through that and then said, "Am I finished now?" They said, "No, Craven, you're not finished." They put me in a hard-hat suit, put me at the bottom of the Anacostia River, and gave me the test for hard-hat divers. When I finished that, they put me in a decompression chamber and took me down 200 feet (which explains my behavior today). That's the way I qualified for the Man in the Sea Program.

To tell you about the craziest project of all, I have to give you a little background. When I was assigned to Polaris, I did a study, over Admiral Rickover's objection, of a small nuclear-powered submarine. Rickover tried to block the project; and when he couldn't block it, he assigned one of his own people to it. Every week his person would write a report about what a stupid project it was and how badly it was being done. You see, Rickover was angry because he wasn't going to have one of these vehicles, and he wanted one. Two months after our project was over, I got a call from one of Rickover's men, who said, "Craven, you know that crazy submarine you were doing? Rickover and I know how to do it." I said, "Well, that's fine." He continued, "The Admiral wants to know whether, if we do it, you will be the project manager." I said, "I guess so."

At this point I want to tell you about a most remarkable thing in terms of military procurement. We had a meeting with Admiral Rickover, Admiral Smith, and an assistant secretary of the Navy, to talk about starting the NR-1. The Secretary of the Navy assumed that we were starting a project that would finally get to Congress and be authorized at least two years later; that was the usual process. He didn't understand Rickover. During our meeting, Rickover said to me, "Craven how much money do you have?" and to Smith, "How much money do *you* have?" He came up with a \$20 million total, or something like that, and he said, "Go ahead." A few days later Rickover called me to say, "Lyndon Johnson's going to announce from the ranch this afternoon that the Navy's going to build the NR-1 submarine. Tell the Secretary of Defense and the Secretary of the Navy about this." That morning we told McNamara; he had never heard of the NR-1 and had no idea what it was, but you couldn't tell Lyndon Johnson what to do or not to do. Johnson made the announcement.

The Congress immediately went through the roof and wanted to know what this unauthorized submarine was. I got a call from Rickover, who said, "Craven, there's an emergency meeting of the House Appropriations Committee next Monday, and I want a full report on the design and mission requirements for the NR-1." I said, "Admiral, I'm going to have to use that study I did." He said, "That's okay." I said, "That study requires a thirty-day mission." He said, "*Invent* a thirty-day mission." We made our presentation to Congress, and after two hours one congressman said, "What are we doing here?" "The Admiral said you are here to approve the NR-1." They all laughed, and they approved the NR-1. In other words, we went from start to congressional approval in about three weeks.

Then Rickover and I turned to designing the NR-1. We literally designed it on the back of an envelope, and we had the submarine in the water, fully launched, eighteen months later. That submarine is still operating today. It is

the oldest and longest operating nuclear-powered submarine in the history of submarines. It has had a long and distinguished career, most of which is classified. Not many know that, for example, it collected all of the *Challenger* debris, including the personnel involved.

Let's return to the mid-1960s. The office of the chief scientist had a rather full plate, with the deep-submergence rescue vehicle, Man in the Sea, NR-1, and other programs, when I got a call from the intelligence people, asking whether we could do anything for naval intelligence. I said we really couldn't if they wanted to operate from the surface of the sea, but we could do something from a submarine. They said, "Okay, we'll do it from a submarine. You can have the submarine. What submarine do you want?" I picked the submarine *Halibut* and found myself in a program so secret that I couldn't tell my colleagues anything about it; and yet we had to carry out this major development. We completely modified the *Halibut* to do all sorts of things. Also, the Navy announced that because there was a loss of a diver on SeaLab 3, the saturation diver program was being terminated. That program did not end, however; it was changed and expanded and shifted to the *Halibut*.

The net result of all these programs is that we have occupied the ocean. That might sound hyperbolic; but suppose that in our space program we had a hundred space stations of a couple of hundred men apiece floating around through space, and we had the capability of transferring individuals from one space station to another without coming back to earth, and we had the capability of putting people outside into space at any spot to carry on as free individuals outside a vehicle. Would we say that we had occupied space? Of course we would. That's exactly what we have done in the ocean. We have a hundred submarines that go out to sea. We have at least two deep submergence rescue vehicles that can move people from one submarine to another without coming to the surface. We have at least one saturation diving facility that puts people into innerspace at depths I cannot reveal—but I can tell you that the French have had men diving to a depth of 3,000 feet. Have we occupied innerspace? You bet we have—but the American people don't know it yet.

A CONCLUDING STORY

I have been asked to tell you a specific story, and I will finish with that. When I was working with the fierce Admiral Rickover, we had a great, turbulent time. One day he called me and said, "Craven, I'm taking over as project manager. Is that okay with you?" I said, "Fine." Nothing happened for a whole week, and then he called me again and said, "Craven, I'm giving the program back to you. You have a large, incompetent organization. I have a competent organization but a small one. We need a large organization to run

this thing, so you've got your program back." I said, "Fine, Admiral. That means my people are running the meetings and programs?" He agreed.

About a week later there was a meeting in New York, after which my man wrote a report on the meeting. Rickover's man called Rickover, who declared that the report was all wrong and dictated what the report should say. My man told Rickover's man that the report was not going to be changed. This went back and forth several times, with Rickover trying to dictate the report and my man refusing to change it. Finally, Rickover told his man, "The meeting's held over from Friday to Saturday. I'm getting on the train, and we're going to rewrite the whole report." My man responded, "You tell the Admiral that if he gets here, there'll be nobody here. The meeting's adjourned, and I'm writing the report."

Then I got a call from my man, who said, "John, you're in trouble." I said, "When did this occur?" He said, "The meeting was adjourned two hours ago." I said, "I'm not in trouble. If I were in trouble, I would have heard from the kindly old gent already." So we followed the kindly old gent around for the weekend, and he was a holy terror through all the other programs. Monday and Tuesday went by. On Wednesday, I called his aide to ask what Rickover was going to do about the report because we had an agreement that both of us would sign all reports. A few minutes later the telephone rang, and I knew it was Rickover (I always knew when it was Rickover because the phone trembled). "Craven, this is Rickover." "Yes, sir." "You know what I'm calling about?" "Yes." He said, "In this business you've got to be a son of a bitch. You're good, but you're not good enough! I want you to go home tonight and stand in front of the mirror and say 'son of a bitch' seventeen times and I want you to do that every day for thirty days." I went home, looked in the mirror, and said "son of a bitch" three times—and I laughed. That was it for me. (I did confirm with his aide that the Admiral signed the report.) What I didn't understand then was that the Admiral was right, because now I know you Society of Barristers guys, and I really feel like an S.O.B.