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IN APPRECIATION: OUR ADMINISTRATIVE SECRETARY

William H. Erickson*

Associate Editor's Note: Whenever I am fortunate enough to attend meetings of the Society, many of those in attendance tell me that John Reed is "the conscience of the Barristers" or "the heart and soul of this organization" or other variations on that theme. The deep respect and affection for John and for his wife, "Dot," are palpable. Out of a desire to recognize formally John's immense contributions to the organization, the Board of Governors asked Past President Bill Erickson to prepare a history of John's affiliation with the Barristers for publication at the beginning of a forthcoming issue of the Quarterly.

The history of the International Society of Barristers has been documented and reviewed in a number of articles,¹ but certain portions of that history bear repeating, to highlight the immeasurable contributions of one remarkable person.

The development and improvement of the art of trial and appellate advocacy are the crux of the stated goals of the Society. Many talented and gifted members of the Society have labored long and hard to contribute to the achievement of these goals. The goals became more attainable when John Reed became part of our organization.

The category of "Academic Fellows" was created at the Boca Raton meeting in January 1978, and John Reed was elected the first such Fellow at that time. In 1979, he assumed responsibility for editing the Society's *Quarterly*; his first issue as Editor was issue 4 of volume 14, dated October 1979. In 1981 he acceded to the Society's request that he take on the administrative duties as well as the editorial ones. On October 1, 1981, John W. Reed became our Administrative Secretary; he continues to serve as both Editor and Administrative Secretary today.

The following is but a partial listing of the tasks John Reed performs as Administrative Secretary: He screens the nominations for fellowship in the Bar-

*Retired Justice and former Chief Justice of the Colorado Supreme Court; President, International Society of Barristers, 1971.

¹Erickson, *The History and Goals of the International Society of Barristers*, 36 INTERNATIONAL SOCIETY OF BARRISTERS QUARTERLY 343 (2001), and articles cited therein.

risters, obtains the necessary letters from the judges before whom the nominees have practiced, assists in making the arrangements for the meetings, organizes the business portions of the meetings, and handles voluminous correspondence and bookkeeping. At each annual convention, he delivers the concluding address, which always is insightful, inspiring, and entertaining. He does all of this with grace and wit. His wife, "Dot," also plays a role in the Society; she assists at our annual meetings and adds enormously to the spirit at those meetings. The Society's offices are maintained without significant cost at the University of Michigan Law School because of, and thanks to, John's presence there.

John Reed has distinguished himself professionally beyond his service to the Barristers. Fortunately for the students at the University of Michigan Law School, he still teaches there from time to time as the Thomas M. Cooley Professor Emeritus, and he has been a visiting professor at Harvard, Yale, Chicago, NYU, and San Diego. He is a nationally recognized authority on the law of evidence. He was Dean of the University of Colorado Law School from 1964 to 1968, and Dean of Wayne State University Law School from 1987 to 1992, after which an endowed scholarship was created at Wayne State in his honor, funded largely by gifts from this Society and its Fellows. He is the author of articles on evidence, advocacy, and professionalism. He also was Director of Michigan's Institute of Continuing Legal Education from 1968 to 1973 and, in 1983, received the Harrison Tweed Award for excellence in continuing legal education. In 1985 the American College of Trial Lawyers conferred on him its Samuel E. Gates Award for his contributions to the training of advocates, and in 1989 the State Bar of Michigan gave him the Roberts P. Hudson Award for his service to the profession. John has earned the respect and good will of judges, professors, and lawyers all over the country; and he brings to the Society a wide background of law practice that preceded his entry into academia.²

Every member of the Society fully agrees that the Barristers have gained in stature and recognition as a result of John's efforts as our Administrative Secretary. In any assessment of the success of the Barristers, one conclusion stands out from all others: For more than two decades, he has kept before us a vision of high professionalism and has been the guiding force in enabling the Society to contribute to the art of trial and appellate advocacy.

For all of these reasons, we are profoundly grateful to him.

²More information about John Reed's many accomplishments, and the esteem and affection felt toward him, may be found in the tributes written when John temporarily retired from the University of Michigan law faculty to assume the deanship of Wayne State University Law School, tributes that were published in the October 1987 issue of the MICHIGAN LAW REVIEW and reprinted at 22 INTERNATIONAL SOCIETY OF BARRISTERS QUARTERLY 428 (1987).

FIFTY YEARS AT THE TRIAL BAR[†]

James W. Jeans, Sr.*

It was made known at an early stage that I was speaking here as a pinch hitter for someone else. You might think that that would undercut one's confidence, but I take a great deal of comfort in an event that happened in my native town of St. Louis. I was an avid Cardinal fan, and in the 1940s the Cardinals and the Brooklyn Dodgers were rivals, always competing for the pennant. At the end of one season, the Cardinals were in a crucial series with the Dodgers. In the ninth inning, the bases were loaded, we had two outs, we were behind by one run, and the pitcher was due to bat, so there was obviously a need for a pinch hitter. Eddie Dyer, the manager and third base coach, signaled the dugout and out came Walt Sessi. Sessi was a rookie that year—a big fellow, about six foot four and two hundred fifty pounds—and he had had a miserable season. As soon as he appeared, people started catcalling and booing and throwing their cushions out on the field; it was a near riot. Dyer came down from third base, put his arm around the big guy, and said, “Son, don't worry. Forget about those boos. Stand up here and take your cut.” And the rookie looked down at his manager and said, “Mr. Dyer, I'm not worried about the boos; they're not booing me. They're booing you for picking me.” In that spirit, I'm going to direct all your displeasure toward your program chairman.

I have observed that there is a propensity among humankind to list things, to classify them, to categorize them; and that human propensity has been with us for a long time. Perhaps it started with the listing of the Ten Commandments. I know that some of you have read the book that came out about ten years ago expressing the author's view that he learned everything he needed to know in kindergarten.¹ Was it not at the Orlando convention where an executive from the Orlando Magic told us that everything he needed to know he learned from his dog? Do any of you remember his delightful speech? His lessons included these: When a loved one comes home, run to meet them. Don't bite when a growl will do. And when all else fails, beg.²

[†] Address delivered at the Annual Convention of the International Society of Barristers, Four Seasons Resort Hualalai, Kailua-Kona, Hawaii, March 4, 2002.

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¹ R. FULGHUM, *ALL I REALLY NEED TO KNOW I LEARNED IN KINDERGARTEN* (1993).

² Williams, *Five Secrets for a Magical, Miraculous Way of Life*, 33 INTERNATIONAL SOCIETY OF BARRISTERS QUARTERLY 419, 420 (1998).

Well, I have succumbed to this propensity to list and classify, although I must admit that it is difficult now, particularly when it concerns the law, because the law, like any art form, is in a continuing state of evolution. If you think about the primitive state of visual art, you perhaps recall those outlines on the caves in southern France where you can see animals in profile, with a single line indicating the outline of each body—simplicity in its simplest form. Law began that way too. We read about Lincoln and how he tried cases: He and the judge and other lawyers would ride into town, sign up clients, come back on the circuit a month later and try the cases—very simple. But art forms don't stop at the primitive; they move into the classical. We might think of the beautiful classic architecture, the perfect proportions of the buildings of the Greco-Roman era, the fluted columns—everything in proportion, everything functional, everything aesthetically pleasing. We as lawyers went through that same evolutionary process; after the Civil War we started organizing. The first bar associations were organized, the Field Code of civil procedure was proposed and adopted, we had bar exams and bar examiners. I guess you could say that was our classical stage. It doesn't stop there, does it? We move on to the baroque and rococo where the focus no longer is function but rather the addition of embellishments that are neither aesthetic nor functional. I think of Victorian architecture, the houses with the turrets and the scalloped decorations on the wraparound roofs. In the parlor, you would see tassels and doodads and knickknacks and clutter. We reached that stage in the law, too, didn't we? Three-and four-day depositions, interrogatories that go on and on and on, jury selections that last for two or three weeks—that's the baroque state of the law. But we move even beyond that, into the surreal, defined in the dictionary as phantasmagoric and bizarre: *State v. O. J. Simpson*. All we can hope is that we hurry through the surreal into a neoclassical period. In the midst of the dynamics of the evolutionary process, it is difficult to come up with some rules for human conduct.

The other factor that is at work, at the same time as the internal evolution of law, is the volatility of our culture. Consider for a moment how we have changed in our attitudes toward human sexuality, attitudes toward abortion, attitudes toward smoking, attitudes toward language. Let me address just the last two fleetingly. Smoking used to be a very desirable thing; you were stylish if you smoked. Look at the old movies; everybody seems to be lighting up in about every third frame. But now in many places it's unlawful, in fact, and every time we get on an airplane we are reminded of the magnitude of any infraction regarding smoking or even tampering with the smoke detectors. And language . . . , oh my goodness. I can tell by your gray beards and balding heads that some of you are old enough to remember the time when speaking of a woman being pregnant was considered a breach of civility. We used such

circumlocutions as “a cake is in the oven” or “she’s on the nest,” but we never uttered the word “pregnant.” And in 1939 the moguls in Hollywood agonized over whether or not Rhett could say at the end of *Gone with the Wind*, “Frankly, my dear, I don’t give a damn.”

Because we are in the middle of this evolutionary process and cultural volatility, it is difficult to descry a couple of rules of life or of human behavior that are universal and timeless. And so I went to good literature for guidance because literature is good precisely because it deals insightfully with the human condition—and if anybody should know about the human condition, it is we lawyers. I now dare to make a few observations about humanity in general, and I invite you to see whether they agree with some of your observations of life.

RULES OF HUMAN BEHAVIOR

First, we are limited by our individual points of view. West Point has a practice of allowing the plebes, the first-year students, to invite their families to the campus at the end of the first year. A couple from Ohio were walking the campus with their plebe son, and they encountered a statue of a Union soldier. They asked, “Son, why is that statue here?” He said, “That commemorates the brave men who gave their lives to save the Union.” A few minutes later a couple from Virginia passed by the same statue and asked the same question, “Why is that statue here?” The Virginia plebe said, “That commemorates southern marksmanship.” Same statue, different point of view.

“When I came to Kansas,” grandfather said,
 “I built us a cabin and chinked it tight.
 There was oak and hickory for our firewood,
 And a clear, cold spring near the cabin site.”
 Grandmother said, “The wolves howled every night.”

“I shot plenty of deer,” he reminisced,
 And prairie chickens were thick as hops;
 Fish in the crick and squirrels in the woods,
 So we didn’t depend alone on crops.”
 She sighed, “We were miles and miles from the nearest shops.”

“I broke the sod, planted corn and wheat,
 But grasshoppers plagued us and a dry spell came.
 Some folks packed up and they went back East,

But we stayed on and proved our claim.”
Said she, “I was all alone when the baby came.”³

Same situation, different points of view, and we have to recognize that.

Ogden Nash, whom you might consider a whimsical poet, wrote a lot about animals. “There is nothing in any religion/Which compels us to love the pigeon.” I believe that was one of his. Another was:

The turtle lives ’twixt plated decks
Which practically conceal its sex.
I think it clever of the turtle
In such a fix to be so fertile.

But he wrote other poems, one of which is particularly pertinent and poignant.

People expect old men to die,
They do not really mourn old men.
They look at them and wonder when . . .
They watch them pass with undimmed eyes,
But an old man knows when an old man dies.

Yet, though each of us has an individual point of view, there is always something that also binds us together. We all know John Donne’s devotion: “No man is an island entire of itself; every man is a piece of the continent, a part of the main; if a clod be washed away by the sea, Europe is the less . . .” Longfellow made that same observation in his little poem called “Flower in the Crannied Wall.”

Flower in the crannied wall,
I pluck you out of the crannies,
I hold you here, root and all, in my hand,
Little flower—but *if* I could understand
What you are, root and all, all in all,
I should know what God and man is.

There is a certain identity of all of us within our family, within institutions and organizations such as this, within the cosmic spirit of existence. So we have both the individual point of view and the common bond.

³ Velma West, Kansas Pioneers.

We also must recognize that things aren't always as they appear. Do any of you have the column "Weird News" in your local newspapers? We have it in Kansas City. Let me share with you a recent item.

An Edmonton police cruiser stopped an armored car that was weaving erratically; a guard appeared to be signaling for help by repeatedly opening the door on the passenger side. It turned out that there had not been a hold-up. The driver had passed gas and the other guard was attempting to clear the odor out of the cab.

Things aren't always as they appear.

Whenever Richard Cory went down town,
We people on the pavement looked at him:
He was a gentleman from sole to crown,
Clean featured, and imperially slim.

And he was always tastefully arrayed,
And he was always human when he talked;
But still he fluttered pulses when he said,
"Good-morning," and he glittered when he walked.

And he was rich—yes, richer than a king—
And admirably schooled in every grace:
In fine, we thought he was everything
To make us wish that we were in his place.

So on we worked, and waited for the light,
And went without the meat, and cursed the bread;
And Richard Cory, one calm summer night,
Went home and put a bullet through his head.⁴

Things aren't always as they appear.

The corollary to that is that we shouldn't jump to conclusions. A young farm boy was walking down a dirt path, attired as you might expect of Huck Finn or Tom Sawyer, with a straw hat and overalls. He was wearing one shoe. A farmer was coming the other way and looked at the boy and said, "Son, I see you've lost a shoe." The boy replied, "No, sir, I found one." Good trial lawyers don't jump to conclusions.

⁴ EDWIN ARLINGTON ROBINSON, *Richard Cory*, THE CHILDREN OF THE NIGHT.

Repetitive behavior dulls the senses. I would suggest for your reading pleasure a group of essays by G. K. Chesterton called *Tremendous Trifles*. One of the essays is “The Twelve Men,” in which Chesterton describes having served on a jury near the turn of the century in England. His observation was this:

[T]he horrible thing about all legal officials, even the best, about all judges, magistrates, barristers, detectives, and policemen, is not that they are wicked (some of them are good), not that they are stupid (several of them are quite intelligent), it is simply that they have got used to it.

Strictly they do not see the prisoner in the dock; all they see is the usual man in the usual place. They do not see the awful court of judgment; they only see their own workshop. Therefore, the instinct of Christian civilisation has most widely declared that into their judgments there shall upon every occasion be infused fresh blood and fresh thoughts from the streets. Men shall come in who can see the court and the crowd, and coarse faces of the policemen and the professional criminals, the wasted faces of the wastrels, the unreal faces of the gesticulating counsel, and see it all as one sees a new picture or a ballet hitherto unvisited.

We get used to things and that dulls our senses:

He trod a deep and narrow groove
Which few would find fulfilling,
But when he had a chance to move,
He turned it down unwilling,
A fact that only goes to prove
Stagnation can be thrilling.

And too many of us stagnate, do we not?

Another universal observation of the human condition is that ambitions fade:

I always wanted a red balloon,
It only cost a dime;
But Ma said it was risky,
They broke so quickly,
And besides, she didn't have time,
And even if she did, she didn't
Think they were worth a dime.

We lived on a farm and I only went
 To one circus and fair,
 And all the balloons I ever saw
 Were there:
 There were yellow ones and blue ones,
 But the kind I liked the best
 Were red, and I don't see why
 She couldn't have stopped and said
 That maybe I could have one—
 But she didn't—I suppose that now
 You can buy them anywheres,
 And that they still sell red ones
 At circuses and fairs.

I got a little money saved;
 I got a lot of time,
 I got no one to tell me how
 And where to spend my dime;
 Plenty of balloons—but somehow
 There's something died inside of me,
 And I don't want one . . . now.

That poem is “Tragedy” by Jill Spargur. Ambitions have to be continually nurtured if they are to be kept alive.

While ambitions fade, prejudices remain. As you know, one of the big competitions in history was that between the Spartans and the Athenians. Some local poet of the time wrote this little ditty:

Spartans are bad—not some good
 And some bad, but all.
 There's not a Spartan in the lot
 You could a good man call
 Save Procles—but Procles was
 A Spartan after all.

Prejudices are hard to overcome.

We yearn for things beyond the mundane. A young couple had a three-year-old son and they were expecting a second child. They had heard about sibling rivalry, and they thought they would be careful to prepare their son for the arrival of the new sibling. When the mother delivered a baby girl and was ready to come home, the father took his three-year-old son aside and said,

“Son, I’ve got some wonderful news. An angel has brought you a baby sister. Do you want to see your sister?” His little son replied, “No, I want to see the angel.”

PROPER ATTITUDES

Keeping in mind all of those general rules regarding humanity, we move on to the need to develop proper attitudes. I think we can begin with some advice from Peter Drucker, a business guru. When he goes in to help a failing business, the first questions he asks are: “What is your business, and who are your customers?” We lawyers have to ask those questions of ourselves. It is a daunting task to try to answer Drucker’s rather simple questions, but it is something that each of us has to wrestle with in the course of our careers.

We have a lot of customers—clients, judges, witnesses, jurors, society in general. Then we have to determine our role within the judicial system. Do we envision the system as a hierarchical structure with the judge at the top, and lawyers somewhere below that, and jurors somewhat lower, and witnesses still a little lower, and finally all the court reporters and clerks and what have you at the base, forming some kind of a pyramid? Or do you envision our judicial system as a molecular structure in which each unit operates independent of another, i.e., independent in such a way that there is both an attraction and a repulsion creating a tension that allows the system to exist? If the former, do we become obeisant to those at the higher level? Teddy Koskoff, a lawyer from Connecticut, used to say, “A lawyer can’t try a lawsuit on his knees.” I like that because sometimes you find that, indeed, lawyers are too obsequious; they forget their independent role and the fact that they are the only ones in the whole system who speak for their clients.

Drawing upon some history, I love the story of Lord Coke when he was the chief legal officer of England and confronted a rather arrogant King James I. He looked the good king right in the eye and said, “Your Majesty, you are sub deo and sub lege [under God and under the law].” Similarly, in developing proper attitudes, we have to establish who we are and where we fit into the system.

The other thing we have to do, of course, is determine our identity or relationship with others, how we’re going to deal with them. Can we develop an empathy with our clients, with the jury, with the judge? Do we find out what their problems are and try to identify with them?

My people? Who are they?

I went into the church where the congregation

Worshiped my God. Were they my people?

I felt no kinship to them as I knelt there.
 My people! Where are they?
 I went into the land where I was born,
 Where men spoke my language . . .
 I was a stranger there.
 “My people,” my soul cried. “Who are my people?”

Last night in the rain I met an old man
 Who spoke a language I do not speak,
 Which marked him as one who does not know my God.
 With apologetic smile he offered me
 The shelter of his patched umbrella.
 I met his eyes . . . And then I knew⁵

Do we look into the eyes of other people and attempt to empathize with them, attempt to catch that unity, that common bond among all of us?

I read another poem that impressed me at the time, and still does, that deals with that same topic:

If I had known what trouble you were bearing;
 What griefs were in the silence of your face;
 I would have been more gentle, and more caring,
 And tried to give you gladness for a space.
 I would have brought more warmth into the place,
 If I had known.

If I had known what thoughts despairing drew you;
 (Why do we never try to understand?)
 I would have lent a little friendship to you,
 And slipped my hand within your hand,
 And made your stay more pleasant in the land,
 If I had known.⁶

How many of us ever take the time to know, to empathize, to know that there is indeed grief in the silence of others' faces? So often we deal so superficially with others. It is refreshing that the members of this organization seek to penetrate the veneers of self-confidence and poise and to deal with each other on a person-to-person basis.

⁵ Rosa Zagnoni Marinoni, *Who Are My People*.

⁶ Mary Carolyn Davies, *If I Had Known*.

We have to recognize possibilities:

Isn't it funny that beggars and kings
 And clowns that caper in sawdust rings
 And common people like you and me
 Are builders for eternity.
 Each is given a bag of tools,
 A shapeless mass, a book of rules.
 And each must make, ere life is flown,
 A stumbling block or a stepping stone.

We all have that possibility of being stepping stones—particularly those of us in the law dealing with justice.

Let me offer another poem that illustrates that same possibility. It is preceded by an explanation that the date is February 12, 1809, the place Kentucky, an Indian word for “dark and bloody ground.”

A squalid village set in wintry mud.
 A hub-deep ox cart slowly groans and creaks.
 A rider halts and hails and shifts his cud and speaks:
 “Have you heard about Tom Lincoln’s wife today?
 The devil’s luck for folks as poor as they.
 Poor Tom. Poor Nance. Poor youngun born without a chance,
 A baby in that God-forsaken den,
 That worse than cattle pen.
 Well, what are they but cattle? Cattle. Tut,
 A critter is beef, bone, tallow.
 Who would trade that for the critters in that hut?
 White trash is what they are. Small fry
 Whose only instinct is to multiply—
 They’re good at that.
 And so today, God wot, another brat,
 Another squawking, squalling red-faced good-for-naught
 Spilled on the world, Heaven only knows for what.
 But there are those who say this Lincoln cub might be
 Of equal value in this world as you or me.
 Yes, Jefferson, Tom Jefferson, who but he
 Who hints that even black men should be free.
 That feather-headed fool would tell you maybe
 A president could lie in this new baby,
 This human spawn born to have the world

Wipe its feet upon a few years hence,
 And now more helpless than the litter of a sow.
 Go tell the women folks to see to Nance
 And her poor little devil, born without a chance.”

Isn't that the beauty of America? All born with a chance. And we have to ask ourselves what our role is in making those chances come true.

We have to retain a sense of humor. I don't know if any of you knew Tom McNamara from Grand Rapids, Michigan. He was a delightful fellow—a tremendous teacher and a tremendous trial lawyer with a tremendous sense of humor. He left these instructions for the younger lawyers in his firm: “The men's toilet in the Montcalm County Courthouse doesn't work. Neither does the Montcalm County Circuit Judge. Therefore, avoid both if at all possible. If not, try a plunger in the former and a fifth of Old Crow on the latter. If unsuccessful, reverse the procedure.”

Don't hold a grudge:

A stranger came one night to Yussouf's tent,
 Saying, “Behold one outcast in dread,
 Against whose life the bow of power is bent,
 Who flies, and hath not where to lay his head;
 I come to thee for shelter and for food,
 To Yussouf, called through all our tribes ‘The Good.’”

“This tent is mine,” said Yussouf, “but no more
 Than it is God's; come in and be at peace;
 Freely shalt thou partake of all my store
 As I of His who buildeth over these
 Our tents His glorious roof of night and day,
 And at whose door none ever yet heard Nay,”

So Yussouf entertained his guest that night,
 And, waking him ere day, said: “Here is gold;
 My swiftest horse is saddled for thy flight;
 Depart before thy prying day grow bold.”
 As one lamp lights another, nor grows less,
 So nobleness enkindleth nobleness.

That inward light the stranger's face made grand,
 Which shines from self-conquest; kneeling low,
 He bowed his forehead upon Yussouf's hand,

Sobbing, "O Sheik, I cannot leave thee so;
I will repay thee; all this that thou hast done
Unto that Ibrahim who slew thy son!"

"Take thrice the gold," said Yussouf, "for with thee
Into the desert, never to return,
My one black thought shall ride away from me;
First-born, for whom by day and night I yearn,
Balanced and just are all of God's decrees;
Thou art avenged, my first-born, sleep in peace!"⁷

We must not hold grudges, for when you have an abiding hatred, it does eat at you. I heard someone say that hating someone is like taking poison in the hope that your enemy will die.

Sometimes hatred can lead to mutual destruction:

The gingham dog and the calico cat
Side by side on the table sat;
'Twas half past twelve, and (what do you think!)
Nor one nor t'other had slept a wink!
The old Dutch clock and the Chinese plate
Appeared to know as sure as fate
There was going to be a terrible spat.
(I wasn't there; I simply state
What was told to me by the Chinese plate!)

The gingham dog went "Bow-wow-wow!"
And the calico cat replied "Mee-ow!"
The air was littered, an hour or so,
With bits of gingham and calico,
While the old Dutch clock in the chimney-place
Up with its hands before its face,
For it always dreaded a family row!
(Now mind: I'm only telling you
What the old Dutch clock declares is true!)

The Chinese plate looked very blue,
And wailed, "Oh, dear! what shall we do!"

⁷ James Russell Lowell, Yussouf.

But the gingham dog and the calico cat
 Wallowed this way and tumbled that,
 Employing every tooth and claw
 In the awfulest way you ever saw—
 And oh! How the gingham and calico flew!
 (Don't fancy I exaggerate—
 I got my news from the Chinese plate!)

Next morning, where the two had sat
 They found no trace of dog or cat;
 And some folks think unto this day
 That burglars stole that pair away!
 But the truth about that cat and pup
 Is this: they ate each other up!
 Now what do you really think of that!
 (The old Dutch clock it told me so,
 And that is how I came to know.)⁸

One other attitude certainly is one that trial lawyers need: Don't give up. We get our heads handed to us occasionally; we take those inevitable losses.

Blind and staggering, weak and wan,
 Losing courage and strength and grit.
 What's the object of fighting on,
 Feeling that you'd like to quit?
 Let me whisper a word to you—
 Maybe the other guy's groggy, too.
 Maybe his arms have lost their punch,
 And maybe his heart is faint and sick.
 Go on fighting with just that hunch;
 Summon your last grim grit and stick.
 Stick 'til the final round is through;
 Maybe the other guy's groggy, too.

I wonder if judges get groggy.

⁸ Eugene Field, *The Duel*.

ESSENTIAL SKILLS

Along with developing the proper attitudes, trial lawyers have to develop essential skills. First, we have to learn the mechanics of communication. Too often, we don't do that. Remember in *Hamlet* when Hamlet drew his traveling acting group aside to give them instructions on the play that was going to be performed? He said:

Speak the speech, I pray you, as I pronounced it to you, trippingly on the tongue; but if you mouth it, as many of your players do, I had as lief the town-crier spoke my lines. Nor do not saw the air too much with your hand, thus, but use all gently; for in the very torrent, tempest, and, as I might say, the whirlwind of passion, you must acquire and beget a temperance that may give it smoothness. O, it offends me to the soul to hear a robustious periwig-pated fellow tear a passion to tatters, to very rags, to split the ears of the groundlings, who for the most part are capable of nothing but inexplicable dumbshows and noise.⁹

We have to learn certain mechanics of speech, and we have to love the language. I don't know if we talk about the latter enough. We identify ourselves as wordsmiths, but do we love the language? Can we listen deeply to something, savor it because of its rhythm, its meter? I still remember the day in high school when I was introduced to "The Rime of the Ancient Mariner" by Samuel Taylor Coleridge:

The fair breeze blew, the white foam flew,
The furrow followed free;
We were the first that ever burst
Into that silent sea.

That is something to savor! I think that we as wordsmiths have to develop an appreciation for the fine use of language so that when we hear something wonderful, we stop and savor it as we would a good wine, and not just gulp it down. We can study good literature, to find out what it is about the cadence and rhythm, about the meter that makes it aesthetically pleasing.

Dare to be eloquent. Many of the trial lawyers of a generation or two or three ago were very eloquent. I would like to share with you a few examples

⁹ W. SHAKESPEARE, *HAMLET*, act III, scene 2.

of some of the greats of old, because we should try to emulate them. The first is part of a closing argument in the case of *Missouri v. Frank James*, Jesse's notorious brother. After Jesse was assassinated in St. Joseph, Missouri, his brother, who was hiding out in Virginia, gave up and surrendered. He surrendered not as a criminal coming to the sheriff; he considered himself to be still fighting for the Confederacy when he walked into the governor's office in Missouri and laid his sidearms on the table. He gave up under the condition that state officials choose among all the crimes he had been accused of in Missouri, take their best shot, and try him for only one. Of course, everybody wanted to get into the act so there were five prosecutors involved. The trial essentially replayed the Civil War, with the James brothers as Southern sympathizers. William Wallace, a prosecutor from Jackson County, gave one of the closing arguments. (The closing arguments lasted three days, incidentally.) As I read a portion of Wallace's closing argument, turn back the clock to 1883 in rural Missouri, and think of a speech filled with references to the classics and to the Bible and to Shakespeare:

I can only say, gentlemen, that with the wondering eyes of a boy just in his teens, I saw enough to know and appreciate the motive of the counsel for the defendant in going outside of the law and the evidence to mention the words, swords, and flags, and animosities of a cruel war in a court of justice. I know at least the tremendous sympathies and prejudices that would awaken in your breast by bringing its horrid scenes so fresh to your memories. I can only say that on the border of our state, where the red lightning of murder played the fiercest along the western sky, and the dogs of war were turned loose on defenseless women and children, I saw it all. When torch and fire and sword and rape and pillage and plunder and robbery and murder and assassination were abroad in the land, when sabered horsemen shot across the prairies, and devouring flames leaped from farm to farm and house to house until both earth and sky seemed to blaze with living horrors, I saw it all. And like a vast panorama, it rolls before me as I speak.

The other two quotations are excerpts from two famous trials by highly esteemed lawyers. One is from Clarence Darrow's defense of Leopold and Loeb, who had admitted to the "thrill murder" of young Bobby Franks in Chicago, and the other one is by Daniel Webster as a prosecutor. It seems to me that these excerpts should be learned by every lawyer who is involved in a murder case because they synthesize the arguments for and against capital punishment. I will begin with Daniel Webster's words:

It is said that laws are made not for the punishment of the guilty but for the protection of the innocent. But who are the innocent the law would protect? The laws establish that those who live quietly may sleep quietly, and they may feel no harm from others. Is a proved conspirator to murder innocent? How deep-stained with blood, how reckless in crime, how deep in depravity—and yet remain innocent? The law is made, if we would speak with entire accuracy, to protect the innocent by punishing the guilty. The criminal law is not founded on a principle of vengeance, it does not punish that it may inflict suffering, but uses evil as the means of preventing greater evil. It seeks to deter from crime by the sample of punishment. It forfeits the life of the murderer that other murders may not be committed. When the guilty therefore are not punished the law has so far failed of its purpose.

Clarence Darrow offered a rebuttal, in a sense, in the Leopold and Loeb case. He waived the jury and tried the case before a judge because he knew that it was more difficult for a single man to send someone to death than for twelve collectively to share the responsibility. This plea came near the end of a twelve-hour summation:

I know your Honor stands between the future and the past. I know the future is with me and what I stand for here, not merely for the lives of these two unfortunate lads, but for all boys and all girls, for all of the young, and as far as possible, for all of the old. I am pleading for life, understanding, charity, kindness, and the infinite mercy that considers all. I am pleading that we overcome cruelty with kindness and hatred with love. . . . I am pleading for the future, I am pleading for a time when hatred and cruelty will not control the hearts of men, when we can learn by reason and judgment and understanding and faith that all life is worth saving and that mercy is the highest attribute of man. . . . If I should succeed in saving these boys' lives and do nothing for the progress of the law, I should feel sad, indeed. If I can succeed, my greatest reward and my greatest hope will be that I have done something for the tens of thousands of other boys, for the countless unfortunates who must tread the same road in blind childhood that these poor boys have trod—that I have done something to help human understanding, to temper justice with mercy, to overcome hate with love.

We must dare to be eloquent as they were eloquent.

In order to be eloquent, we must develop our capacity to deal with emotion. Isn't it strange that we like to invoke emotion with jurors, but we stand

aside from it and say we can't be emotional ourselves. I share with you an exchange of letters between a mother and a daughter at Christmastime.

Dear Mom,

You know how hard Paul and I have worked to get ahead. We're in a whirl. We're asked to dine and dance—a must affair—so we'll be there instead of coming home for Christmas. Can't miss this chance. Enclosed is a check for you and Dad.

Love to all,

Paul, Becky and Lenore

The mother responds:

My dears,

Have fun. As usual here, despite the early rain—the fruitcake all put away, green boughs about the house. Last night Dad and I trimmed the Christmas tree, and the old Christmas box was a mine to dig in—the tailless bird, the spun glass angel. When we found your old doll, Dad kissed me. We are such fools over little things. Give Becky a hug for Gram.

Love to all.

The daughter replies:

Dear Mom,

We're coming home. Fancy parties—poof! Paul and Becky must dig into that box. I want to hear the rain sing on the roof. What fun we'll have together filling socks!

Sometimes we have to cultivate those emotions and learn to deal with them so that when we do stand in front of a jury, we can do so effectively, having bared our own souls to some emotional feeling.

It doesn't always have to be sad and maudlin. Lawyers have to become righteously indignant at times, do they not?

I loathe, abhor, detest, despise,
 Abominate dried-apple pies.
 I like good bread, I like good meat
 Or anything that's fit to eat;

But of all poor grub beneath the skies,
 The poorest is dried-apple pies.
 Give me the toothache, or sore eyes,
 But don't give me dried-apple pies.
 The farmer takes his gnarliest fruit
 'Tis wormy, bitter, and hard, to boot;
 He leaves the hulls to make us cough,
 And don't take half the peeling off.
 Then on a dirty cord 'tis strung
 And in a garret window hung,
 And there it serves as roost for flies,
 Until it's made up into pies.
 Tread on my corns, or tell me lies,
 But don't pass me dried-apple pies.

We also have to learn the courageous response, showing grace under pressure. As someone else put it, if a person would truly be a trial lawyer, he has to learn how to take a burning firebrand up the nose and not flinch. A great example of grace under pressure comes from Daniel Webster, who was a bit of a womanizer as well as a wonderful lawyer. At a party, he was dancing with a comely young lady and waltzed her out to the veranda. He was embracing her when his wife burst through the French door. His wife said, "Daniel, I'm surprised." He responded, "No, dear, *you're* shocked; *we* were surprised." In a similar vein is this anecdote: A group of fellows sitting around in a bar were talking about various cities and how cities had certain characteristics. One guy said, "Take Green Bay, Wisconsin. Everybody that lives there is either a football player or a prostitute." Another guy said, "My wife comes from Green Bay." The first fellow replied, "Oh? What position does she play?"

You have to develop a philosophy of life that you can rely upon, and one part of that is a sense of solitude that will serve you when things get tough. You need some source beyond yourself upon which you can draw, one that can help you maintain a buoyant spirit. I love that little song from Robert Browning's "Pippa Passes":

The year's at the spring
 The spring's at the morn;
 Morning's at seven;
 The hill-side's dew-pearled
 The lark's on the wing;

The snail's on the thorn;
God's in his heaven—
All's right with the world!

Surely this is one of the most comforting pieces of literature ever written:

The Lord is my shepherd; I shall not want. He maketh me to lie down in green pastures; He leadeth me beside the still waters; He restoreth my soul. He leadeth me in the paths of righteousness for His name's sake. Yea, though I walk through the valley of the shadow of death, I shall fear no evil, for Thou art with me. Thy rod and Thy staff, they comfort me. Thou preparest a table before me in the presence of mine enemies; Thou anointest my head with oil; my cup runneth over. Surely goodness and mercy shall follow me all the days of my life, and I shall dwell in the house of the Lord forever.¹⁰

That is the kind of resource we can draw upon to maintain a buoyant spirit and remind us of what really matters in the long run.

As you develop your philosophy, each member of this group needs to keep in mind that you are role models, whether you like it or not. In a sense, we have bloodlines within the law. For example, Jack Liber is part of the bloodline of Craig Spangenberg, and I'm proud to say that I'm of the bloodline of Orville Richardson. That is both good and bad. In a scene in *Othello*, Desdemona and Emilia talked about how men stray, and Emilia said:

What is it they do when they change us for others? Is it sport? I think it is. And doth affection breed it? I think it doth. Is't frailty that thus errs? It is so too. And have we not desire for sport, and frailty, as men have? Then let them use us well; else let them know, the ills we do, their ills instruct us so.¹¹

Your ills as well as your good characteristics are instructing someone else.

We have to remember that ours is a service-oriented profession. A poem from the turn of the last century—a time when many popular poems were sentimental and almost maudlin, and perhaps out of sync with our more cynical culture—might trigger thoughts or sentiments of service. It does not have great merit by way of its rhyme scheme or its meter, but it has a lot to tell us, I believe.

¹⁰ *Psalms* 23.

¹¹ W. SHAKESPEARE, *OTHELLO*, act IV, scene 3.

The woman was old and ragged and gray
And bent with the chill of the winter's day.

The street was wet with a recent snow
And the woman's feet were aged and slow.

She stood at the crossing and waited long,
Alone, uncared for, amid the throng

Of human beings who passed her by
Nor heeded the glance of her anxious eye.

Down the street, with laughter and shout,
Glad in the freedom of "school let out,"

Came the boys like a flock of sheep,
Hailing the snow piled white and deep.

Past the woman so old and gray
Hastened the children on their way

Nor offering a helping hand to her
So meek, so timid, afraid to stir

Lest the carriage wheels or the horses' feet
Should crowd her down in the slippery street.

At last came one of the merry troop,
The gayest laddie of the group.

He paused beside her and whispered low,
"I'll help you cross, if you wish to go."

Her aged hand on his strong young arm
She placed, and so, without hurt or harm,

He guided the trembling feet along,
Proud that his own were firm and strong.

Then back again to his friends he went,
His young heart happy and well content.

"She's somebody's mother, boys, you know,
For all she's aged and poor and slow,

"And I hope some fellow will lend a hand
To help my mother, you understand,

"If ever she's poor and old and gray,
When her dear boy is far away."

And “somebody’s mother” bowed her head
 In her home that night, and the prayer she said
 Was, “God be kind to the noble boy,
 Who is somebody’s son, and pride and joy!”¹²

Do you ever envision yourself in that role? How many of your clients come to you with that same sense of disability and inadequacy? I don’t mean physical disability necessarily. The client might be a healthy, self-confident CEO whose company is being sued for a product failure, and loss of the suit might eliminate the CEO’s retirement benefits and more. Clients’ disabilities come in all shapes and forms, but they’re looking to you to take their trembling hands on your strong arm. Your arm might not be young anymore, but they are hoping that it is strong.

You have to know that ours is a special calling. I love an excerpt from “Gareth and Lynette” that is part of Tennyson’s *Idylls of the King*. Young Gareth reached manhood and wanted to leave the castle, where he lived in comfort and spent his time hunting deer and doing all manner of frivolous things. He went to his mother and told her it was time for him to leave and go to King Arthur’s court. His mother, being a mother, tried to dissuade him from doing that. He responded in this way: “O Mother, [h]ow can ye keep me tether’d to you—Shame. Man am I grown, a man’s work must I do. Follow the deer? Follow the Christ, the King, [l]ive pure, speak true, right wrong, follow the King—Else, wherefore born?”¹³ What a challenge for us—do good, right wrong—else, wherefore born?

THE MOST IMPORTANT QUALITY

Some years ago I ran across “Blackstone’s Prayer.” Of course, I’d often heard of William Blackstone, well known for his *Commentaries on the Laws of England*, but I had always thought of him as only a scholar. When I discovered his “Prayer,” I realized he was a moralist of the highest order. Part of the legacy that he left, which is far greater than his codifications and commentaries, was this expression of the role of the lawyer:

Ordained to tread the thorny ground
 Where very few, I fear, are found,
 Mine be a conscience void of blame,

¹² M. D. Brine, *Somebody’s Mother*.

¹³ TENNYSON, *Gareth and Lynette*, lines 113–117, in *IDYLLS OF THE KING* (J. Gray ed. 1983).

The upright heart, the spotless name.
The tribute of a widow's prayer,
The righted orphan's grateful tear.
To virtue and her friends a friend.
Still may my voice the weak defend.
Ne'er may my prostituted tongue
Protect the oppressor in his wrong.
Nor wrest the spirit of the laws
To sanctify the villain's cause.
Let others with unsparing hand
Inflame dissension and kindle strife
And strew with ills the path of life.
On them her gifts let Fortune shower,
Add wealth to wealth, power to power.
On me may my God bestow
That peace that only good men know,
That joy of joys by few possessed,
The eternal sunshine of the breast.
Power, fame, and riches I resign,
The praise of honesty be mine,
That friends may weep, the worthy sigh,
And poor men bless me when I die.

Although it might seem anticlimactic after Blackstone's expression of the highest aspirations of our profession, I turn to the great Roman orator Quintilian for my concluding thought. Quintilian was asked what makes a good orator. The response that the person who asked the question probably expected was that a good orator is someone who has an extensive vocabulary, knows gesturing, has a well-modulated voice, articulates well—all those technical qualities. But Quintilian paused and then said simply, "An orator is a good man who speaks well." I believe this applies broadly. What makes a good lawyer or any other professional? What is the essence of who we are? I agree with Quintilian—it's goodness, not anything else. We do have acquired skills, important certainly, but they need to be used in the service of goodness. And my hunch is that the essence of this organization is not to develop the skills as much as to stimulate the goodness. That is why it is such a pleasure for me to be with you.

THE COLLAPSE OF BOGLE AND GATES[†]

John C. Coughenour*

Before I went on the bench in 1981, I practiced for fifteen years in the trial department of Bogle and Gates in Seattle. Bogle was then and had been for decades the largest law firm in Seattle. In fact, it was the largest firm west of the Mississippi and north of San Francisco. It was also the oldest firm in the Pacific Northwest, having been founded in the 1800s. When I was hired in 1966, I was the thirty-eighth lawyer in the firm. By 1998 Bogle had grown to about two hundred lawyers, with offices in Washington, Alaska, Oregon, the District of Columbia, and, for a time, Japan and Canada. 1998 was the firm's best year ever financially, and the budget for 1999 predicted an even better year. Through all the years I knew Bogle, it was considered one of the most prosperous of the major firms in the Northwest. It had no debt. Its clients read like a who's who of the Northwest: Exxon, Safeway, Ernst & Whinney, Arthur Andersen, Boise Cascade, Weyerhaeuser, and on and on. One of its partners, Paul Steere, was chairman of the board of directors of ALAS, the malpractice insurance company that insures many of the major firms in the country. The firm had a very favorable long-term lease in one of the most prestigious buildings in Seattle, with offices that were stunningly beautiful and state-of-the-art.

In February of 1999 eight of the firm's business lawyers announced that they were moving to a new office to be opened in Seattle by a large Minneapolis firm. Within a few weeks, in March, the firm ceased to exist. Why?

First, let me readily admit that I'm not the only person who has an opinion on this topic. In fact, if you polled fifty former Bogle partners, you'd probably get fifty different answers to this question. Still, as a former member of the firm's executive committee, long-range planning committee, and chair of the hiring committee, I'm more than just a casual observer on this topic.

So Bogle went "boom." Should that be of any interest to you? That depends. If you're with a large law firm, the answer is "yes." If you're with a small law firm, the answer is "yes." If you're a sole practitioner, the answer is "yes." If you're married to a lawyer, the answer is "yes." In short, if you're a lawyer or have a relationship with a lawyer, what I have to say is something that is likely to be of interest to you.

[†] Address delivered at the Annual Convention of the International Society of Barristers, Four Seasons Resort Hualalai, Kailua-Kona, Hawaii, March 7, 2002.

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In the 1960s and '70s, the firm's culture was characterized by the motto: "Quality work promptly done." This wasn't just a trite saying; it was believed, and lived, by the firm's leading lawyers. The power structure of the firm was centered around those partners who were the best legal craftsmen, what we called "lawyers' lawyers." Many times I heard my partners refer to the practice as a calling. There was a de-emphasis on rainmaking. In fact, some who were most adept at bringing in business constantly had to re-prove themselves to be worthy of the respect of their partners for their legal talents. Bringing in business was not necessarily considered the sign of a lawyer's lawyer. The firm believed that the best way to attract business was good lawyering. Compensation was primarily a matter of lock-step progression with one's peers. Younger lawyers didn't ask what others in the firm were earning. Ladies and gentlemen did not ask such questions. When I became a partner, the only page of the partnership agreement I saw was a signature page. Only about two years later did I muster the courage to ask for the whole thing. In the 1960s the billable hour was a relatively new concept. Litigated matters were generally billed at the conclusion of the case, with much emphasis on what we had accomplished for the client. One bill I remember seeing read: "Legal services rendered . . . \$971,000; miscellaneous expenses . . . \$87,500; Very truly yours." No summary of work performed, no budget. Clients were trusting, faithful, and loyal. I started at what was the highest beginning pay in Seattle—\$650 a month. Even adjusted for inflation, that would still be only a fraction of today's salaries in the major firms. My first raise was \$30 a week, and I was thrilled to get it.

In the 1970s my generation of lawyers started pressing for higher salaries. I was as guilty as anyone else. And we succeeded. But this was soon seen as a shift of income from upper level partners to younger people. To paraphrase Lenin, "What was to be done?" Or, as George Will would say, "Well!" There were two factors in the income formula: hourly rates and billable hours. We could raise the hourly rate only so high, but we could certainly get a lot more hours out of the younger people. If the billable hours of the associates went up, upper-level partner income could be maintained. In my first full year as an associate at Bogle, I billed 1600 hours, a respectable year in those days. In my last full year as a partner, I billed 2150 hours, and the difference came from nights and weekends and holidays.

Nevertheless, this shift in income continued to erode the senior levels of compensation. There was more and more emphasis on the business side of the practice. People started saying things like, "This isn't a fraternity [pardon the sexist term]," or "We've got to start operating like a business." I might add that most of this talk came from the business lawyers, people I refer to as solicitors. At about the same time, more and more information became available

about what people in other firms in other cities were earning. Steve Brill came on the scene and gave us detailed charts that showed what everybody around the country was making in other large firms. Computers then came on the scene. (God, how I hate them.) They made data readily available that theretofore were difficult to gather: who billed what, who collected what, who brought in which business. Some of us became preoccupied with income and who was producing business. Monthly computer printouts—with information that previously was closely kept and not discussed—became available. Before, when one referred to “my client,” the response was, “it’s the firm’s client.” Now people started hoarding their clients and were reluctant to pass them on to the new generation of younger lawyers. Instead, they concentrated on whether they got adequate credit for bringing in the business or, perhaps more important, whom they could take with them if they went down the street. In the 1960s, after seventy years of existence, Bogle could truthfully say they had never had a partner leave to go into competition with the firm. By the 1980s there was a constant flow of partners leaving and joining the firm; and the income of partners, whatever their direction, depended largely on what clients they took or brought with them. Lateral hires arrived with an underdeveloped sense of loyalty to the institution.

Another phenomenon occurred in the late ’80s and early ’90s, particularly in the Northwest. Younger partners in their high earnings years began to see friends of theirs in the dot.com community retiring in their thirties and forties with fortunes measured in the tens if not hundreds of millions. Inevitably, many lawyers started having an early onset of midlife crisis, thinking that the world was passing them by. Incomes in the hundreds of thousands were a sign that someone had missed the boat. The ensuing greed frenzy caused even more attention to be focused on income and money and business. Then the large multi-city, multi-state law firm began to develop, and Bogle joined this movement. Partners in remote cities and states didn’t seem to have the same loyalty to the institution. And, I might add, I don’t think it’s a coincidence that a multi-state firm was the catalyst for Bogle’s collapse.

Then there was the intra-firm tension between the trial lawyers and the business lawyers—barristers versus solicitors. I firmly believe that a higher percentage of trial lawyers consider their profession to be a calling than is true of people who write wills and draft articles of incorporation. Bogle had the largest, most successful litigation practice in the Northwest. In what at one time was referred to as the golden years, some said there was a greater collection of top-notch trial lawyers at Bogle than at most large law firms in the country. And the litigation section was profitable. Indeed, it could be said that litigation carried the business side for a long time. Business and litigation were also different cultures that didn’t seem to understand one another. (How

can you relate to someone who probates dead people's wills and reads the Internal Revenue Code?!)

Much of Bogle's litigation was of the "hired gun" variety, where the trial lawyers had limited opportunities to establish long-term relationships with clients. For years the solicitors kept saying, "What will happen when this or that big case settles?" And for years, new litigation filled the gap—until the Exxon-Valdez case stopped. There was then, for the first time, a short-term glitch in the litigation income stream, and the solicitors jumped up and down and said, "I told you so, I told you so. My God, the sky is falling, the sky is falling!" In addition, the well-deserved inferiority complex of the solicitors led them to believe that their department needed to be strengthened, probably by merger with another large multi-state firm. That was what led to the contacts with the Minneapolis firm and ultimately the announcement by the eight solicitors that they were leaving. Interestingly, at this point the trial lawyers were the ones who tried the hardest to save the firm, and the solicitors engaged largely in a "me-oriented" scramble. The ensuing panic led, within weeks, to the puzzling decision by the firm's partners to dissolve the firm.

What does all of this mean to you? First, contrary to popular belief in Russia, bigger isn't necessarily better. As firms increase in size, they have a harder and harder time maintaining a firm culture that will bind everyone together. Partnerships that were friendships in smaller times become business associations. It may be that the large multi-city, multi-state firm is not a sustainable institution, or at least that it is very fragile. Second, you folks with smaller or solo practices may have something special that you should not fail to appreciate and should fight to keep. Be wary of growth for the sake of growth, and watch out for the gradual erosion of professional values with the increase in size. Third, try to remember why you went to law school. I teach a class at the University of Washington Law School called "Advanced Trial Advocacy," and each year since the collapse of Bogle, I've asked my students to write on a piece of paper why they came to law school. In all the years since Bogle collapsed, not a single one of them has used the word "money." I tell them to fold up that piece of paper and put it in their wallet or purse, and take it out in ten or fifteen years, and look at it then to see whether they've been seduced in the meantime. Fourth, if you find that you or your partners are referring to the practice as a business, watch out! It is not a business. It is a profession, and there's supposed to be a difference.

I tell my students that if they think it's only about money, they should go into business instead, because that's where the money is. They are likely to make more there anyhow, and we all will probably be better off.

CREATING STAR PLAYERS FOR OUR DEMOCRACIES: THE POWER OF LAW-RELATED EDUCATION[†]

Lori Urogdy Eiler*

I have come here today to speak from the heart—to speak for children and to speak for the health of our democracy. A speaker yesterday mentioned that you must remember that you are the only voice for your client in a courtroom. Sometimes I feel that I am the only voice for my clients, the children in East Cleveland, and all children everywhere, regardless of where they live. I am in the business of empowering students to become positive participants in our democracy, and my specific customers are the students of Shaw High School. Shaw is an urban-suburban high school, grades nine through twelve, and 99.9 percent of our students are African American. They have been dealt the bad economic card in life, and many of them face struggles that would overpower even some of the strongest among us. Yet, they are some of the brightest, most creative, and most resilient children you will meet. For years they have been making me look good as a teacher. Despite the difficulties I face in a district that has limited resources, I have chosen to stay in East Cleveland because of the children there.

A government teacher once told us this story in a workshop: He was teaching in an inner-city school and had a student who was filled with dreams. The student kept saying he was going to be a city councilman one day, and then mayor, and then governor. The teacher told him, “First you have to graduate from high school.” At the workshop, the government teacher concluded the story this way: “Damn if that guy isn’t the mayor of our city today.” With the right motivation, these children can do anything.

I want you to think back to your days in high school. I know you thought you knew everything back then, but what did you know about law at that time? What did you know about how government really worked? You probably didn’t have much formal education regarding the law. I believe that this gap in education has severe consequences, especially for young people already on the margin of our society.

[†] Address delivered at the Annual Convention of the International Society of Barristers, Four Seasons Resort Hualalai, Kailua-Kona, Hawaii, March 5, 2002.

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CONSEQUENCES OF LACK OF KNOWLEDGE

Editor's Note: At this point in her talk, Ms. Eiler called for volunteers and conducted a demonstration. She separated the volunteers into two teams and gave the rules of a simple game to the members of one team but not to the members of the other team. She said to the members of the second team, "Don't worry about it. You're intelligent; you'll figure it out. . . . It really isn't too complicated." As the game progressed, however, it became clear that the rules could not be discerned solely through observation and that the second team could not win. After the game ended, Ms. Eiler questioned the members of the second team and then drew valuable lessons from the exercise.

That was kind of silly, but I would ask the members of the second team how it feels to be in a game where you don't know the rules: "I thought we would get there eventually." "Frustrating!" "I was ready to hurt the teacher." So one team member was an optimist but the other two experienced some stress and anger. Unfortunately, what I did to the second team is what we often do to kids in the real world. We send them out into the world without ever teaching them the rules of the game. It's like sending kids onto a basketball court without teaching them the rules and then wondering why they foul out. Law-related education is like a life saver; it gives students the chance to learn the rules they need to know to participate effectively in our system. It takes some effort, but it makes life a lot sweeter. It can even save lives. Some kids are lucky. They grow up in communities such as East Cleveland, where educators and law professionals have teamed up for a long time; Shaw High School has the second oldest law-related education program in the nation and thus has been on the cutting edge of this education for a long time. Too often young people get no law-related education and are left to figure it out on their own. They just have to learn while playing. Unfortunately, as we saw here, that breeds anger and frustration. Although some youngsters manage to remain hopeful, it takes them a lot longer to get the understanding they need.

The one vocation that every child has is "citizen." Children are not born loving democracy. They are not born instilled with responsible or civil behavior. Yet we expect them to become responsible, civil players in our democracy. Regardless of skill, they will have the power to vote. They will choose our lawmakers, our judges, our future. As members of your juries, they will determine what is just. They will be our neighbors. It behooves us to do what we can to insure that all children can become star players in our democracy.

COMPONENTS OF LAW-RELATED EDUCATION

How do you create star players? Not by making them listen endlessly while the coach talks about the game. Not by having them watch the coach or others play the game. They are created by hours of practice actually playing the game or handling the ball before they're sent out to play a game that counts. In my classroom that's what we do—we practice playing the game, through role play and simulations. We play the law.

The course that I teach at Shaw High School is called "Street Law." It actually was created in the 1970s by law students at Georgetown University, in Washington, D.C. These law students decided that they would go into the classrooms of D.C. public schools and teach practical law for kids. They allowed the kids to name the course at the end of the year, hence "Street Law." It's a practical law course for high school students, and it is taught in every state throughout the United States. It is also used in emerging democracies to train citizens how to participate in a democracy.

The best way to learn law-related material is through actual doing, so in my classroom we simulate life. For instance, we have our own class court where students can sue each other for wrongs such as intentional interference with property or persons. We have a crepe paper jail where students sit awaiting their arraignments, before they make bond. If they can't make bond, they stay there for a longer time. When we do family law, we have a Department of Child Services that investigates alleged abuse of the mock babies. Carrying around a mock baby is real cute for about a day or two, but then the babies end up in lockers or in worse circumstances. Some of my students become attorneys by passing a school bar exam, and then they practice law in our school court, which is an alternative discipline program. Through this program, any child who is facing a discipline referral can choose to plead guilty or no contest and have his case heard in a sentencing hearing. Then we sentence them to serve anywhere from five to fifteen hours.

Editor's Note: At this time, Ms. Eiler again had volunteers present a demonstration. The volunteers had been provided with several possible scenarios developed by Ms. Eiler's students, had discussed the possibilities and planned what they would do, and then acted out a warrantless search situation. Ms. Eiler explained that this is one of the role-playing exercises actually done by her students.

That is the type of activity that, according to research studies, makes for an effective law-related education program. Students are directly involved in their own work, and it is interactive. It is especially effective if resource peo-

ple from the justice system, such as you, come in and participate. You do need sufficient quality and quantity of instruction, with teachers and resource persons acting as a team, but the students need to participate actively.

RESULTS OF LAW-RELATED EDUCATION

If you really want to know the truth, just ask your teenagers, because they will tell you. Before I left to come to this meeting, I asked my students to write out on little cards how their lives are different now that they have been in Street Law for five months. Some, of course, wrote more eloquently than others. One student—a student who was afraid to talk to anyone during the first week he was in the class—wrote something that really struck me: “The second week of September I enrolled myself in Street Law. On the first day I was a bit nervous and I didn’t have any idea what the class was about. But after five months, I’ve learned different types of law like family law and court procedure and how to file a police report. I’ve learned how to be an attorney. Street Law is one of the best classes that I’ve ever taken. This class changed my life because it made me feel brave, strong, and a lot more comfortable around people.” That’s one of the things that Street Law does, according to students and according to research; it increases their self-esteem because they become empowered to know how to deal with life and how to deal with the rules of the game.

Another student wrote: “After this course for five months I understand my rights and how to exercise them. I have a true sense of the people’s power in government and also understand the great responsibility which accompanies a newfound power, and the role we each play in this process.” A number of studies and volumes of data have shown the benefits of law-related education, and they support these testimonials from my students. The studies and data are easily accessible if you are interested.

Recently I talked to one of my former students who is now in graduate school at American University and an advocate for social justice. I asked him what Street Law did for him; when I had him on the mock trial team as a sophomore, he was great. He said, “You didn’t know me in the ninth grade before mock trial; you didn’t know me before I took Street Law.” It turned out that although he was a gifted student in elementary school, and he was in all the highest level classes before high school, by ninth grade he had dropped out of all of those programs. He had failed English and was in remedial English. It actually was law-related education that turned the light back on inside him. He subsequently wrote to me, “As I continue to work for social justice and equality for all people regardless of race, gender, religion, disability, or sexual orientation, I will always remember the foundation of

legal understanding that I learned while I was in high school through law-related education.”

ALL CHILDREN CAN BECOME SUPERSTARS

People often ask me to describe the proudest moment I have ever had as a teacher. My proudest moment was when my students placed second at the national mock trial championship. Those students were able to see the truth of what I had been telling them all along—that they really were some of the best and most creative and brightest kids in the entire nation. More importantly, it silenced forever those people who used to sit around in our teacher’s lounge saying “these kids can’t” for whatever reason.

It taught my students valuable lessons. The first was that we all make mistakes; what’s important is what you do after you make mistakes. In the national championships, one student was to give both of our openings. In the first round, when he was especially nervous, we had the plaintiff’s side. Our student got up and started giving the defense opening. As I sat in the back of the room, I thought, “Oh, no! I can’t believe we came to nationals and we’re giving the wrong opening.” I blamed myself because I had them start both openings the same way. (Of course, we had figured out what they were going to say only the night before.) For about two minutes, he continued giving the wrong side, but then suddenly he said, “Well, your Honor, all of that may be true, but what really matters in this case is . . .,” and he shifted right into the plaintiff’s side. At the end of the round, which we did win, the national judges complimented him for giving one of the strongest opening statements they had ever heard, because it laid out the other side and then completely refuted it.

My students learned other things as well. They learned that losing with grace and dignity can be more enjoyable and honorable than victory and celebration. At the concluding banquet, the New Mexico team presented my students with a tablecloth (one of the hotel’s!) on which members of all the teams, led by the New Mexico team, had written messages commending my students on the wonderful job they had done and saying my students were winners in their minds. It made my students feel really good. The Colorado team that did take first place and took home the big trophy didn’t get that token of appreciation.

Finally, the competition taught me a valuable lesson as well. When we returned to school, there wasn’t much fanfare. When one of our assistant principals was asked about our team, he said it really wasn’t much, that they were just a bunch of ordinary kids from Shaw High School. At first, I was furious. He never saw us compete; how dare he call these students ordinary? They

were extraordinary as advocates, as individuals, as ambassadors for our school, as ambassadors for our state. But then, after I calmed down, I realized that I was the one who was wrong; they really were just a bunch of ordinary students from Shaw High School. We had the class clown, a student who needed night school to graduate, an honor student, a C student, a cheerleader, a student who had attendance problems, and a variety of other kinds of students. That is the great benefit of law-related education: It shows the students and all of us that ordinary students are truly extraordinary, and it turns all children, ordinary children, into star players in our democracy.

I have the pleasure of teaching next door to someone who was my student in 1988. At that time she was on the mock trial team and won “best attorney” awards. She went off to college to be a lawyer, and she would have been an outstanding attorney, but circumstances made her switch to teaching. I asked her what one thing I should tell attorneys who are the best of the best internationally. She sent me this message:

Being a student in Street Law and a member of the mock trial team made me realize that outside of my ability to sing, I was blessed with many other talents. I realized that I also had the ability to get up in front of my peers and speak intelligently and persuasively. I gained so much confidence in myself, and it led me to minor in criminal justice in college. I had planned to attend law school right after college, but my plans changed due to an unfortunate tragedy in my family. However, I believe that what I did next was the best thing for me, and that was becoming a teacher. I may not defend others in a courtroom, but I stand in front of my classroom filled with teenagers, speaking intelligently and persuading them to believe that what I am teaching them is important and valuable. The confidence that allows me to do my job is the confidence I gained in my Street Law classroom fourteen years ago.

THE NEED FOR YOUR PARTNERSHIP

I would like to return to my analogy to learning to play basketball and to my original statement about teaching kids to be star players in democracy. Do you know what I see when I look out at this audience? Do you know who you are? You are the Michael Jordans of justice. You are the Michael Jordans of our democracy. You have the ability to drive the ball down the court better than anybody else. You have the ability to leap through the air and make amazing shots. You have the ability to handle the ball in ways that make others marvel. You are democracy’s superstars.

I respectfully request that when you go back home, wherever your home may be, you become a star trainer, because the next generation's star players are awaiting you. Who better to train them than the very best? After all, if Michael Jordan showed up tomorrow on that basketball court out there, he would surely be a great trainer to teach us basketball. Or if Tiger Woods participated in your golf tournament and offered to give you a couple of tips, you would surely take them. Well, that is who you are to my children. If you don't know where to start, just ask Jack Liber how he and members of the education initiative changed Cleveland's public schools. Ask me about Shirley Simon's story. She is a solo practitioner from Akron who visited my classroom a year and a half ago and said, "This is really great. I'm going to get it for all the kids in Akron." A year and a half later, Shirley has Street Law in every public high school in the city of Akron and in all the suburbs. They have a five-year plan for including law-related education in grades kindergarten through twelve. One person made that happen. This is important because these programs are not organized and run solely by educators. The National Mock Trial Program and the Street Law Program, as well as many other law-related education programs, are organized by the legal community in partnership with educators.

I would like to close with a poem I wrote a long time ago. Although it is not a great poem, I hope the message is clear.

Children Are Like Seeds

Children are like seeds—
Some vegetables, some flowers, some trees, and yes, some weeds—
And different seeds have different needs.
Some need more water and light.
Some need less, and soil that's right.
Some take in poison and die before they peak.
Some are strong, and some are weak.
Some grow furiously regardless of what we do,
But most need a lot of nurturing from me and you.
If we don't give all to every seed, and trust,
God only knows the beauty that lies in the dust.
We must provide so all seeds may grow,
For a full garden is what I wish to sow.

As a teacher, I am a simple gardener. You are the soil, the water, and light. I need you, and the students need you. We all have a responsibility for the future and society. The children are the future, and we do reap what we sow.

The last thought I'd like to leave with you is the best definition I know of the word "school": four walls with a future inside. I hope you will touch that future and help us create more star players for democracy by going home and becoming star trainers.

THE ESSENCE OF GOOD TEACHING[†]

Richard Lodish*

My focus here will be on good and poor teaching, and I have realized as I have listened to your other speakers that there are tremendous parallels between great teachers and great lawyers and between good schools and good law firms. For example, John Coughenour talked about the importance of the size of law firms; when they get too large, they lose the sense of community and firm culture. The same issue has arisen in schools, and the movement now is toward small schools where the teachers and staff really get to know the students and respect them and look at them as true individuals. John also mentioned that many lawyers look at their practices now as a business rather than a profession. That is happening in schools as we speak. Business people are coming into schools and insisting that we need to run them as businesses and treat teachers as employees instead of true professionals. I think there are also parallels between the art and science of being a lawyer and the art and science of being a teacher. And we are all here, as Sarah Buel said, to help others.

As I prepared for this talk, I was reminded of a story about a professor of child development at a major university. He wrote his first book, called *The Theory of Child Development*. Then he got married and had a child of his own. When his child was two years old, the professor visited his child's nursery school class, after which he wrote his second book, *A Theory of Child Development*. When his child got into first grade, the professor started spending one day a week in the first grade classroom. He then wrote his third book, called *Theories of Child Development*. Two years later he took a sabbatical. For his sabbatical, he switched places with the first grade teacher and taught first grade for a year. After that experience, he wrote his last book, *The History of England*. I think to some extent, we are all constantly learning how much we don't yet know.

I have had my own sabbatical experience during this past year. I've been the founding head of an inner-city charter school in Oakland, California. It is a wonderful school based on service learning and sponsored by the East Bay Conservation Corps, an outstanding service organization. I have never

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felt so fatigued or more valued. I have gone from Sidwell Friends, an independent Quaker school populated by students from wealthy, highly educated families, to an inner-city school for children who have known only poverty and whose parents have few personal or institutional resources. Worries about health care for children, food on the table, and sometimes domestic violence are the norm for these parents. Yet, even there, so many parents will do anything for their children.

Ever since I went into education thirty-five years ago, these issues have fascinated me: What is a good teacher? What do good teachers look like in the classroom? How is good teaching defined? How do we evaluate good teaching? What qualities should good teachers possess? Are there qualities that all teachers should possess? How do the media help to form these perceptions? Throughout my inner-city experience this past year, I've asked myself many times whether good teaching is the same for tough kids. Can teachers who are good in one setting, say a private school such as Sidwell Friends, teach in an inner-city school and vice versa? What would happen if we took all the teachers at an inner-city school and put them in a fancy private school, and took all those private school teachers and put them in an inner-city school? This year we have 120 students in our new school in Oakland. The only teacher who is having real problems is one who has taught for twenty years in a well-known private school in Oakland. She is a very sweet person, and she knows curriculum, and she knows kids; she just can't manage the toughness of these kids.

TWO METAPHORS

In talking about good and poor teaching, and by implication good and poor lawyering, I'd like to begin by sharing with you two metaphors that might seem somewhat bizarre at first. One is about fly-fishing, and the other is about losing weight.

In my youth as a novice fisherman, I did as my Uncle Benny showed me: I put a worm on a hook, cast it out, let it sit on the bottom of a lake or a river, and waited for a fish with an appetite. Like bait-fishing, most teaching today is teacher-centered. We cast out some knowledge, we present a lesson, and then we wait. We expect children to hook themselves on learning. Even though a lot of them might swallow the presentations, the teachers miss the excitement, the engagement, the sensitivity, and interaction between themselves and children. I fished with bait for years and taught in that manner as a beginning teacher in Cleveland. Then later in my teaching career I met Chuck, of Chuck's Tackle Shop. He hooked me spiritually and emotionally on fly-fishing—and quite by accident helped me with a clearer understand-

ing of the nature of exceptional teachers. On rivers and in schools, I learned to appreciate and understand the aesthetic, the elegant, the natural. Fishing became an active, creative type of angling for me, angling that drew on alert senses and self-control. I learned that fly-fishing must be cultivated and pursued as an art, yet I also learned that I must approach it with scientific dedication and thoroughness. I needed to learn how to cast out the right fly with flowing elegance, softly and cautiously, yet with confidence and finesse. I discovered that fly-fishing is ultimately fish-centered. The fisherman freely and passionately goes to the fish.

Thanks to fly-fishing, I have realized that great teaching is ultimately child-centered—not in a sentimental sense but in the sense of truly understanding and respecting children. I have learned that superb teachers engage, communicate with, and key in to each student's learning with a sense of assuredness that comes from preparation, experience, and expertise. Great teachers, like great fly-fishers, meet the natural rhythm of children and teach in harmony with each child's development and habitat. They know when to instruct, when to guide, and when to lend a helping hand as their students are lured into the excitement and challenge of actively pursuing learning. Yet great teaching, like fly-fishing, is also playful and exhilarating, filled with infinite variations. Ultimately, there is a spiritual bonding between great teachers and their students.

The second metaphor that has helped me look at teaching differently is weight loss. Teaching and learning—as you all know from your own education and work, and probably from your children—require hard work and perseverance over a long period of time. Neither teaching nor learning is a short-term process or a quick procedure. There's a parallel between weight loss and educational gain. Our culture's obsessions with weight and educational gain expand the great American waistband and expose our nation's educational wasteland. Unfortunately, in improving education and in losing weight, common sense is becoming uncommon. In both areas, people complicate the simple and obfuscate the obvious. If you want to lose weight, you must eat less and exercise more. If you want to learn more, you must play less and study harder. It is that simple, for the most part. Every year the diet gurus arrive with easy ways to lose pounds without hunger or effort. Likewise, so-called educational experts delude themselves about the amount of hard work required for great teaching and learning. In many ways fast-food eating has been translated educationally into fast-track learning, which is not effective learning.

Another parallel between weight loss and educational gain or results is this: In both areas, we think we're better off than we are. For example, according to the *American Journal of Clinical Nutrition*, when we report

how much we weigh, many of us underestimate, either knowingly or not. Participants in the American educational system suffer from a similar misperception. Of all the studies on schools in the past ten years or so, the one that was most disconcerting to me compared thirteen-year-olds in six countries. Americans placed last in mathematics, but when the students themselves, along with their parents and teachers, were asked if they were good in math, most Americans said yes. Americans had the highest percentage of positive self-evaluation of all the nationalities. As we've all heard or read, Americans recently have scored lower on general achievement tests. Still, American students, along with their parents and teachers, tend to be more satisfied with their performances than are students of other nationalities.

There are no quick fixes. Fancy health spas, with their high monthly dues and computer-enhanced, ergonomic gadgets, cannot take the place of arduous workouts, consistent sweat, and resolve. Likewise, computer-assisted instruction, expensive new textbooks, and multimedia presentations cannot replace long hours of study. I remember clearly a particular day during my second year of teaching. I was teaching second grade in Cleveland, and the children were acting up and goofing around; they weren't concentrating or working hard. I gathered them together and said, "I would rather you leave this class at the end of the year not liking Mr. Lodish and knowing how to read, than liking Mr. Lodish and not knowing how to read. Now sit down and do your work, and you're going to work hard for the rest of the year." That was an epiphany for me about what real teachers need to do. Schools do not need to turn out more students who don't work hard but still feel good about themselves. A great educator has said:

Let us not confuse ourselves by failing to recognize that there are two kinds of self-confidence—one a trait of personality and another that comes from knowledge of a subject. It is no particular credit to the educator to help build the first without building the second. The objective of education is not the production of self-confident fools.¹

PROGRESSIVE VERSUS TRADITIONAL EDUCATION

We also need to ask toward what end our teachers are teaching. They cannot be curricular egalitarians, believing one subject is as important as another as long as it keeps the children happy and occupied. Today, as always, there are pendulum swings between progressive education and tra-

¹ The website of an Emory University professor attributes this quotation to A. BANDURA, *SELF-EFFICACY: THE EXERCISE OF CONTROL* (1997).

ditional education. A few weeks ago I was on an airplane and picked up a copy of *The Economist*. That is not a magazine I usually read, but our brethren from England printed an article about what's cool in the classroom. They said that learning by being taught is in and learning by discovery is out; facts are in and concepts are out; outcomes are in and processes are out; spelling and grammar are in and self-expression is out. Their list went on and on, as does the debate generally. Indeed, the source of the argument goes back to the 1700s. As a former Assistant Secretary of Education said, "One view of education is characterized by a Rousseau-ian romanticism that sees children as wildflowers that bloom naturally when they are ready. The other sees children as crops that we have to plow, water, and fertilize." In the movie *The Prime of Miss Jean Brody*, Miss Brody says to her headmistress, "Education is simply a leading out of what is already there." The headmistress counters, "I had hoped there might also be a certain amount of putting in."

As is true in many debates over characterizations and generalizations, I believe the truth lies somewhere in between. What I think great teachers have in common is that they take a balanced approach to education. Too often in education we think we do either this or that but not both. Great teachers look at the "and" of learning, the "and" of what they do in the classrooms; they are not limited by "either/or" notions. Great teachers have classrooms with both quality *and* humanity, high productivity *and* high sensitivity. They make certain that their children work hard *and* enjoy their work. They assist kids who do not meet their standards and insist that the standards not be lowered. They teach their students basic skills and allow for individual, creative expression. They value individuality and commonality; self-expression and self-discipline; diversity and community; humor and seriousness; work and play. They want not only knowledge pursuing children but also children pursuing knowledge. They balance and keep in perspective the paradox of a lively calm and a tranquil excitement. They demand that the schools be alive with spirit and yet have a certain spirituality. They want schools noisy with learning and quiet with reflection, full of independent thinkers and thinkers who are receptive to the ideas of others, brimming with joyful learners and serious pursuers of knowledge.

THE FUNDAMENTAL QUALITY OF GREAT TEACHERS

Because Jim Jeans and Sarah Buel both reflected on this, I am certain that this is another parallel between great lawyers and great teachers: Forget about the methods, and forget about the techniques; what really matters is who the person is, in a deep spiritual sense. Jonathan Kozol, in his latest

book, *Ordinary Resurrections*,² talks about watching April Gamble, one of those sparkling young teachers who's just in love with children. He describes a situation in which the children were getting noisy and out of hand. In response, Ms. Gamble pretended she was playing an imaginary flute, and the children quieted down and imitated her.³ Another gifted young teacher wrote a lesson on the blackboard, punctuated with exclamation points. When she turned back to face the class, she noticed one little boy was crying. She immediately went to comfort the boy and drew the rest of the class into the effort to cheer him.⁴ This is the affective side of teaching.

Kozol conveys the enormous pleasure that good teachers and their students take in one another, and the indescribable chemistry that ties them to each other. You really can't learn these in any methods course, and they are never part of any political demand for standards and exams and benchmarks and competencies. I think great teaching has a transcendental quality. In the movie *Mr. Holland's Opus*, Mrs. Jacobs, the principal, tells Mr. Holland, played by Richard Dreyfuss, "A teacher has two jobs—fill young minds with knowledge, yes, but more important, give those minds a compass so that that knowledge doesn't go to waste." Perhaps when all is said and done, the best advice for me when I began teaching in Cleveland came from my Grandma Fanny, who said, "Richie, dear, remember, the books will change, the theories will change, the ideas about teaching will change, but the *kinder* will remain the same." I would also add that great teaching will remain the same; it hasn't changed much over the years.

MEDIA REPRESENTATIONS OF TEACHERS

I want to conclude with some movie clips depicting good and poor teaching. There are about thirty vignettes of teachers in movies. Let me say just a few words about them. Many of these clips are bizarre. Some are believable, but many are funny—and humor is important. T. S. Eliot once said that humor is also a way of saying something serious.

I think it is important to see and understand how teachers are portrayed in the media, the images they evoke. These help shape the perceptions we have of good and poor teachers (just as films about lawyers do for lawyers). Unfortunately, as you'll see, there are too many negative images of teachers in film and in the media generally. The film makers predominantly portray teachers as uncaring and inept. In fact, in a dissertation a few years ago from

² ORDINARY RESURRECTIONS: CHILDREN IN THE YEARS OF HOPE (2000).

³ *Id.* at 275–76.

⁴ *Id.* at 188.

the University of Florida, a doctoral candidate analyzed the images of teachers in film, television, and literature, and found that seventy percent of the images were negative. That's pretty much what these film clips show. The first two-thirds of the clips will be negative, and the rest will be positive.

My own sense, after seeing literally hundreds of films portraying teachers, is that these media representations are contributing to the image crisis we have in teaching today. While we might be inclined to dismiss them as trivial, they may in fact have a significant cumulative effect on audiences, and may subtly dissuade young people from considering teaching as a profession. As you watch the film clips, I hope you will come to understand your own illusions and stereotypes better, and begin evaluating teaching differently. With this renewed understanding, I hope that all of you, through your interactions with students, parents, and community members, will help to reconstruct the image of teachers, to recognize the passion, the energy, and the resolve that so many teachers put into their work, and to accord teachers the respect they deserve.

Mr. Lodish then showed and commented on assorted film clips of school teachers drawn from moving pictures, both familiar and unfamiliar, showing the power of that medium to affect public opinion about a profession.

LAWYERS ON TRIAL[†]

Bruce W. Neckers*

A recent, widely circulated e-mail message from the Michigan Chamber of Commerce contained the following statement:

Trial lawyers have wreaked havoc with frivolous lawsuits. The judicial system is often overwhelmed with cases. And businesses and organizations must spend excessive money to protect themselves from these sharks.

There are many things wrong with this message, starting with the intended purpose, which, I believe, was to use a form of knee-jerk bigotry against lawyers to raise money for political campaigns. But it is also wrong to draw a line in the sand between "business" and "lawyers" because it creates a false dichotomy. I am in a business, as are most Michigan lawyers. We are employers and business people. We are Republicans, Democrats, and independents. We have the same worries and challenges as other business people and citizens. We pay substantial premiums for malpractice insurance and health insurance for our employees. We pay significant amounts in taxes, including single business and worker's compensation taxes. What's more, we are active participants in the business community. My own firm has contributed mightily to the Grand Rapids Junior Chamber of Commerce. We are members of the Grand Rapids Chamber of Commerce, and I know that many lawyers across Michigan give time, money, and leadership skill to local chambers.

So why do lawyers tolerate an organization to which many of us belong using us as a whipping post through the insulting vitriol that has appeared in e-mail, on the Chamber website, and in the media? In fact, the attack on trial lawyers is, I believe, merely a smokescreen for an attack on the Chamber's real target: the jury system itself. To be sure, the Chamber's agenda does not include the preservation of the judicial system. But those of us whose agenda, and indeed ethical obligation, does include the preservation of the judicial system should be quicker to remind the Chamber and the public why

[†] This essay, reprinted with permission, originally appeared as the "President's Page" in the MICHIGAN BAR JOURNAL, July 2002, at 10.

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our judicial system, including the centuries-old system of tort law and jury trials and the role of lawyers within it, is a critically important part of a citizen's right to petition for justice—regardless of socioeconomic status, race/ethnic background, occupation, or other factors that, without the protections of our system, would tend to create unequal footing.

Talk about irony! The Chamber of Commerce has in effect filed a frivolous lawsuit against the entire legal profession through a vicious *ad hominem*, *ad extremum*, *ad nauseum* attack. And most lawyers, despite their training in persuasion, advocacy, and defense, have been anything but “shark-like” in response. We must do more to conduct ourselves in ways that contradict the negative stereotype being peddled by the Chamber and others. We must educate the public about the value of our system of justice, at the same time acknowledging the failures of the few members of our profession who abuse it. We must care about the problem of nuisance and frivolous lawsuits as much as the Chamber of Commerce does because it is our problem even more than it is theirs, and because their methods of addressing it are destructive.

We are not perfect, but we are the sum of all our parts, the best and the brightest as well as the worst. If other institutions and professions—medicine, auto manufacturing, insurance, accounting, teaching, or the Catholic priesthood—are measured simply by their worst practitioners, they will certainly fare no better or worse than lawyers.

I have been a trial lawyer for thirty-four years. Much of my work has fit the profile squarely in the propaganda bulls-eye, representing unpopular criminal defendants and doing a fair amount of contingency fee work on behalf of injured plaintiffs, but much of it has also been on behalf of businesses as well. In the past year, I have mediated more than twenty-five cases and have not seen a frivolous one in the bunch. Each case involved legitimate disputes between citizens. All of the lawyers involved handled their cases with dignity. There was not a shark among them.

Here are a few simple truths that the Chamber seems to have forgotten:

- *Trial lawyers serve both plaintiffs and defendants.*
- Lawyers provide invaluable services to business.
- The American jury system, a bedrock of protection for the public, was made part of our Constitution by our founding fathers.
- Juries, guided by lawyers who ensure that the rights of *each* side are represented, try to sort fact from fiction in courtrooms across Michigan every day.

Recently, I rediscovered three classic movies I had seen before I was a lawyer: *Twelve Angry Men*, *To Kill a Mockingbird*, and *Anatomy of a*

Murder. In *Twelve Angry Men*, Henry Fonda is the only juror who initially votes for acquittal of a young man charged with stabbing his father with a knife. Over the course of the next two hours the audience is taken into the jury room as Fonda convinces the others and the audience that the facts relied upon by the prosecution are simply wrong, and the innocent young man is acquitted.

In *To Kill a Mockingbird*, Gregory Peck is Atticus Finch, a poor, small-town southern lawyer appointed to represent Tom Robinson, an African-American man alleged to have raped and beaten a young white girl. Finch's closing argument is a classic.

In this country our courts are the great leveler. All men are created equal. I'm no idealist to believe firmly in the integrity of our courts and our jury system. That's no ideal to me. That's a living, working reality. In the name of God, do your duty.

After the jury rejects Finch's arguments and convicts Tom Robinson, Robinson's minister noticed that the children were still seated as their father packed up his papers and began to leave the courtroom. The minister chided Atticus' son, Jem:

Some men in this world are bound to do our unpleasant jobs for us. Your father's one of them. At least stand up, your father's a passin'.

In *Anatomy of a Murder*, by our own former Supreme Court Justice John Voelker, one of the lawyers, Parnell McCarthy says:

A jury is twelve people who go off in a room with twelve different minds, twelve different hearts and twelve different walks of life. They have twelve different sets of eyes, twelve different pairs of ears. They are of all different shapes and sizes. They are asked to judge a person as different from them as they are from one another. In their judgment they must be of one mind: unanimous. It is one of the mysteries of man's disorganized soul that they can do it and in most instances do it right well. God bless juries.

In their zeal to protect the businesses who are their members, the Chamber and others would stifle the jury trial and the protections it provides by, among other things, calling the lawyers who appear before them "sharks." I believe the jury trial is the most important right of the Bill of Rights because it puts

citizens between government and those charged with crimes and it allows *citizens* to decide civil disputes. It has been labeled inefficient, unpredictable, and subject to the emotions and whims of the few. Like all human enterprises, it is not perfect. Its faults have been numbered, its weaknesses catalogued. And yet, the jury system has inner strength and abiding wisdom which dictatorships around the world lack.

Nearly 230 years ago, just before the outbreak of the Revolutionary War, another trial lawyer, this time not a fictionalized version found in a movie or book, but a living, breathing husband and father, had a very successful practice in Boston, Massachusetts. That lawyer lost his practice when he defended a British soldier involved in the attack on the crowd during the Boston Massacre. When asked why he would ever do such a thing, the trial lawyer expressed his opinion that it would be far better for ninety-nine guilty men to go free than for one innocent man to be hanged.

The irony of the story, and the true testament to that lawyer's character, is that he was no loyalist, and no great fan of the English monarchy. To the contrary, less than a decade later that same trial lawyer was accused by many of pushing the colonies into a war against Britain based on his own petty and selfish grievances against King George. His name, of course, was John Adams.

Adams and the other founders believed that the right to a jury trial was absolutely essential to the preservation of our freedoms. Recognizing that there might be some confusion in the Constitution, the Bill of Rights was added and guaranteed the right to jury trial in civil cases. Alexander Hamilton said in *Federalist 83*:

The friends and adversaries of the plan of the convention, if they agree in nothing else, concur at least in the value they set upon the trial by jury . . . the former regard it as a valuable safeguard to liberty; the latter represent it as the very palladium of free government. For my own part, the more the operation of the institution has fallen under my observation, the more reason I have discovered for holding it in high estimation.

Me too! I'm with Adams and Hamilton, Parnell McCarthy, and Atticus Finch. Pretty good company!

It is for every generation of Americans to rediscover the power and necessity of the jury trial—the hallmark of our constitutional system of government. It lets the *people* decide what justice demands in particular cases. How else can it possibly operate in a government of the people, by the people, and for the people?

Measured strictly in terms of the speed and clinical precision that our modern society is conditioned to venerate, the jury trial falls short. It is inefficient, expensive, and worst of all, as some highly publicized cases have demonstrated, it is sometimes wrong. I have seen its faults. But more often I have observed, in courtrooms not fit for Hollywood, with lawyers not vying for an Academy Award, that a jury trial is often the best way to assure that justice is done.

That is why I am proud to be “labeled” a trial lawyer.