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Law Day 1988

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U.S. Circuit Judge

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Dutchess County Bar Association
Poughkeepsie, New York
May 2, 1988

I am very happy to return to Dutchess County, to see so many old friends and colleagues, and to meet some of the newer members of this bar association. As many of you know, I practiced law in Columbia County, where I still live, for about twenty years, and I often appeared in the courts here in Poughkeepsie -- County, Family, Supreme and Bankruptcy. I enjoyed coming down here very much, as did my father, who passed away last year after having practiced law in Hudson for sixty years. There are many here who still remember him quite well. Al Rosenblatt served as District Attorney of Dutchess County when I served as D.A. in Columbia, and I remember working with him on several cases. He was a great District Attorney, and his service as a Judge has been outstanding. He is doing a spectacular job as Chief Administrator of the State Court System, and I have the pleasure of seeing him from time-to-time at the meetings of our state/federal judicial committee. Nearly ten years have passed since I presided at a Term of Supreme Court in Dutchess County, and that is the last time I was here in any professional capacity. Time flies, but I am very glad to be back, and I am especially grateful for the opportunity to speak to you on the occasion of Law Day 1988.

The theme of Law Day 1988 is "Legal Literacy," which suggests the need of the citizenry to become more familiar with the laws and the legal systems of our nation. I do not quarrel with the notion that it is our ongoing duty as lawyers and judges to help our fellow citizens to become legally literate in a general sense. But I think that we have an equally important duty to make sure that the citizenry is literate about lawyers, about who we are and what we do. Our image has never been worse, but we never have been so important to society.

Almost one hundred years ago, the poet, Rudyard Kipling, wrote about the attitude of the British toward their military in a poem called "Tommy." Then, as now, a British soldier was known as a "Tommy." I find great similarity between the public perception of lawyers and the public perception of British soldiers described by Kipling in these words of the poem:

For it's Tommy this, an' Tommy that,
an' "Chuck 'im out, the brute!"
But it's "Savior of 'is country" when
the guns begin to shoot.

It is the same with us, my brothers and sisters -- our protection is sought "when the guns begin to shoot." I don't refer only to protection from the occasional heavy artillery fire -- presidential suspension of habeas corpus; internment of citizens; school segregation; Watergate; Iran-Contra; press censorship; and other major forms of governmental overreaching. I refer also to the rifle skirmishes lawyers are involved in every day throughout the land -- the prosecution and defense of

criminal causes; of claims involving contracts and business matters; of negligence and product liability cases; of landlord and tenant disputes; of will contests; of real estate controversies; and on and on. Although lawyers are vilified in popular speech and in the popular press, it is the lawyer to whom individuals turn when their liberty or property is threatened, or when they seek redress from other individuals, business entities or government itself.

Aristotle said something to the effect that every person thinks he or she knows what the law is or should be. Without question, therefore, there is resentment on the part of those who must turn to lawyers for legal advice and assistance. In a simple, ideal society, lawyers might be unnecessary. But our society is far from ideal, and it is fraught with complexity. Lawyers are trained to help others deal with the complications of modern life. They render this assistance in the courtroom, in their offices and in the homes and business places of their clients. Some lawyers, especially younger ones, question whether their work is important, valuable, or significant. I think that it is all those things, and I will tell you why.

Lawyers provide the essential material for the social fabric -- fairness; moderation; civility; negotiation and compromise; the peaceful settlement of disputes. In recent times the fabric of society has been endangered by the forces of extremism. These forces have been unleashed with great strength at home and, with even greater strength, abroad. That is why I

mentioned earlier that lawyers never were as important as they are today. Lawyers teach their fellow citizens by precept and example that extreme positions are not beneficial to the public as a whole and that dialogue is more desirable than violence. They teach that settlement does not indicate a lack of power or a lack of belief in the rightness of a cause, but merely a recognition of the social benefits of compromise. They teach that civility and kindness are desirable traits, and not inconsistent with views strongly held. These are lessons not only for our fellow citizens in this nation but for our fellow human beings throughout the world.

In court and out of court, in a variety of ways, lawyers diminish social tensions by what they do: by settling lawsuits; by plea bargaining in criminal cases; by negotiating and concluding contracts of all kinds; by compromising disputes involving agencies and departments of government; by bringing people together; by reaching for the middle ground. Abraham Lincoln recognized the importance of these functions when he gave this advice to lawyers: "Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser -- in fees, expenses and waste of time. As a peacemaker the lawyer has a superior opportunity of being a good [person]. There will still be business enough."

Lawyers lift the burdens of their fellow men and women. Many of the troubles that afflict people are shifted to their attorneys. This type of transfer is manifested in the routine

work of the bar -- in the trial of cases; in consulting with clients; in conducting real estate closings; in planning estates; in preparing separation agreements; in supervising adoptions and in the myriad of activities in which lawyers do the things that people are unable or unwilling to do. The responsibility is a heavy one, and the faith that individual clients have in their lawyers is but one manifestation of the confidence of society in the priesthood of the law.

I think that lawyers generally are well aware of the many obligations of their calling and that they discharge those obligations with a high degree of professionalism. Roscoe Pound defined a profession as a group "pursuing a learned art as a common calling in the spirit of public service -- no less a public service because it may incidentally be a means of livelihood." The vast majority of lawyers are professional in every sense of the word. They maintain excellence in knowledge and skill; their ethical behavior is of the highest quality; their duty of public service is performed by participation in community activities of many kinds and by the pro bono representation of those unable to afford legal services. The soul of the profession is caring, and caring is the major contribution of lawyers to society.

Although lawyers are doing well in fulfilling the needs of society, albeit without the credit that is due, there is some cause for concern in our relationships with each other. Although we are engaged in a common calling, there has been in recent

years a noticeable decline in civility within the profession. I am affiliated with an Albany Law School organization called the Inns of Court. It is modeled after the English Inns and is designed to teach law students and young lawyers the skills of advocacy and the standards of ethical behavior. As an experiment, I had one of the student members of the organization conduct a small survey of lawyers to determine what courtesies they regularly extended to other attorneys without the consent of their clients. The results were astounding to an old-time lawyer like myself. Even as to such matters as adjournments or extensions of time, matters customarily confided to professional discretion, many attorneys said that they would first seek the consent of the client. I fear that the adversarial system may have taken us too far afield in our relationships with each other.

Various horror stories have come to me relating to one lawyer's treatment of another. It seems unnecessary to say so, but we must treat each other with decency and respect. The vigorous representation of clients is not inconsistent with civility among members of the bar. The kinship of the profession must be maintained if we are to have a common calling. Clients will benefit, the public will benefit and the profession will benefit if we maintain cordial relations with each other.

A lawyer named Harrison Tweed once wrote:

I have a high opinion of lawyers. With all their faults, they stack up well against those in every other occupation or profession. They are better to work with or play with or fight with or drink with than most other varieties of mankind.

I agree with Harrison Tweed and add only these thoughts:
Let's tell our fellow citizens more about what we do. Let's tell them how they are mistaken about us. Let's tell them what anarchy and terror and violence there would be without lawyers. Let's tell them how much more they need us than we need them. Let's tell them to imagine a society without lawyers. Let's tell them how much we care about them. Then, perhaps, their opinions of us will be just as high as our opinions of ourselves.