

Law Review Annual Banquet: The Joy of Law

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MARQUETTE LAW REVIEW ANNUAL BANQUET

UNIVERSITY CLUB
MILWAUKEE, WISCONSIN
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THE JOY OF LAW

THE HONORABLE WILLIAM C. GRIESBACH*

Thank you for inviting me to speak to you this evening. It is always good to return home, and Marquette University and Marquette University Law School had been my home for some seven years of my life when I left some thirty years ago. I owe a great debt of gratitude to this institution for the education I received here, or more accurately, began here. Education, as you know, is or should be a lifelong process that does not end when you graduate from whatever school you last attend. I also met my wife, Joanne, here as an undergraduate, and since we have been happily married now for some thirty-two years, I am pleased to attribute that fortunate event to my alma mater as well.

I have chosen as the subject of my remarks the joy of law, a topic to which you may not have given a lot of thought lately. Given the state of the economy and the investment of time and money you already have made in law, it is a topic that I believe you may find more helpful, or at least more comforting, than any other topic I could have chosen. For I believe there is joy to be found in the profession of law.

Many, perhaps some of you, especially this time of year, would argue that the two words “joy” and “law” do not go together. Those who devote themselves to the practice of law are certainly not as highly esteemed by the general public as they once were. Just consider the number and popularity of lawyer jokes that make the rounds. I can recall sitting in a class on professional responsibility taught by Dean Robert F. Boden more than thirty years ago as he recited the results of a series of surveys that had been conducted on public attitudes about different professions over the years. As I recall, the public attitude toward lawyers had fallen over the previous twenty

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years from quite high to just above used car salesmen. Or was it dentists? I don't remember. I doubt if it has risen much, if at all, since.

Even lawyers do not seem to appreciate the joy and honor to be found in the profession they have chosen. Fifteen years ago, then Harvard Law Professor Mary Ann Glendon wrote a book entitled, *A Nation Under Lawyers: How the Crisis in the Legal Profession Is Transforming American Society*, in which she traced the development of the profession in its three primary areas of employment: the practice, the bench, and the academy. She had this to say about the practitioners:

Lawyers have never wielded more political and economic power than they do today; yet they report a declining sense of control over their own lives.

American lawyers are the wealthiest in the world; yet in all branches of the profession lawyers reported that their levels of satisfaction with their work plummeted by 20 percent in the six years between 1984 and 1990.

Women now enjoy unprecedented opportunities in the law; yet they are twice as dissatisfied as their male counterparts.

College graduates still flock to the nation's law schools; yet nearly one lawyer in four says he would not become an attorney if he had it to do over again.

In influence, affluence, and prestige, practicing lawyers surpass most other occupational groups; yet there is a high incidence among them of clinical depression, and conservative estimates say one lawyer in six is a problem drinker.¹

Professor Glendon ended this passage with the question: "Why are so many lawyers so sad?"² I should add that this was not in the midst of an economic recession.

I don't remember Dean Kearney ever mentioning these statistics in any of his letters to you, which he also kindly copies to us alumni. I also suspect that if I continued on in this vein, this might be the last time I would be invited back here to speak at a law school gathering. But, as I said, my topic is the joy of law, not necessarily the joy of lawyers, and what I mean by that is that there is great joy to be found in our profession, not that all, or even most, lawyers have found it. I would propose for your consideration that many of

1. MARY ANN GLENDON, *A NATION UNDER LAWYERS: HOW THE CRISIS IN THE LEGAL PROFESSION IS TRANSFORMING AMERICAN SOCIETY* 15 (1994).

2. *Id.*

the lawyers of today who are so sad are missing something that, in the past, members of the profession saw more clearly.

So what is there to be joyful about, you may ask? Part of the answer I would propose is described by Professor Glendon in the same book. It is the same thing that has always attracted people to the practice of law: the opportunity to earn a living by using one's mind to help others, whether individuals or businesses, to avoid or solve the problems and disputes that arise in a society governed by law. The practice of law is work, of course, and no one expects everything he does in order to earn a living to fill him with joy. To be sure, there is a genuine dignity in manual labor and other forms of work that people lawfully undertake to earn a living and support themselves and their families wholly aside from any joy they may find in it. But much work is repetitive and offers little challenge or opportunity to use one's mind, or to contribute to our communities in a meaningful way. In short, work can be a drudgery. In law, you have the opportunity to earn a living through activity that fully engages your intellect and constantly offers new and exciting challenges. You will also have the opportunity to help others in the most important matters of life, and even to shape the law that is so important for a healthy society. Finally, you will constantly learn new things about the world in which you live and the people who inhabit it. These are all things that can enrich your lives and give meaning and purpose to them. In doing so, they can also bring great joy.

To see this, you should first remember that you are becoming a member of a profession that has a long and distinguished history in this country. Professor Glendon notes that “[t]raditionally, the country has depended on the legal profession to supply most of our needs for consensus builders, problem solvers, troubleshooters, dispute avoiders, and dispute settlers.”³ While Professor Glendon notes that “[t]he country’s need for talented persons in such roles is greater than it has ever been,”⁴ the essential role lawyers play in this country has been recognized from its birth. Thirty-five of the fifty-five delegates to the Constitutional Convention were lawyers, as were twenty-six of the forty-four presidents of the United States, including thirteen of the first sixteen.⁵

3. *Id.* at 100–01.

4. *Id.* at 101.

5. ROBERT A. FERGUSON, LAW AND LETTERS IN AMERICAN CULTURE 11 (1984); Press Release, Am. Bar Ass’n, Stories of America’s Lawyer-Presidents to Be Told in New Museum Exhibit (Sept. 2004), available at <http://www.abavideo.org/ABA296/release1.php>; U.S. Nat’l Archives & Records Admin., The Founding Fathers: A Brief Overview, http://www.archives.gov/exhibits/charters/constitution_founding_fathers_overview.html (last visited May 27, 2009).

Alexis de Tocqueville, that astute observer of American democracy in the early nineteenth century, thought that lawyers in this young democratic republic constituted “a sort of privileged body in the scale of intellect. . . . [T]hey are the masters of a science which is necessary, but which is not very generally known”⁶ He believed that in America, “[l]awyers belong to the people by birth and interest, and to the aristocracy by habit and taste; they may be looked upon as the connecting link of the two great classes of society.”⁷ Tocqueville, who considered tyranny of the majority as the greatest risk to democracy, and who viewed an enlightened aristocracy as the best protection against tyranny of any kind, further observed:

In America there are no nobles or literary men, and the people are apt to mistrust the wealthy; lawyers consequently form the highest political class and the most cultivated portion of society. They have therefore nothing to gain by innovation, which adds a conservative interest to their natural taste for public order. If I were asked where I place the American aristocracy, I should reply without hesitation that it is not among the rich, who are united by no common tie, but that it occupies the judicial bench and the bar.⁸

While it may have been generally true at the time Tocqueville visited the United States in the early 1830s, many people today would no longer share Tocqueville’s view that the lawyer class is the enemy of innovation and the defender of tradition. G.K. Chesterton, that early-twentieth century English writer and non-lawyer who wrote about almost everything, once cautioned that we should never take a fence down until you know the reason it was put up.⁹ Over the last half-century or more, this country has removed many fences, and lawyers and judges have been at the forefront of the movements to do so. Removal of some of those fences was clearly necessary and long overdue, such as the striking down of laws that prevented African-Americans, and other minorities and women, from full participation in the social, economic, and political affairs of the country and full enjoyment of the blessings of liberty. The wisdom of removing other fences, however, has been at least debatable. Among the latter, traditionalists might include laws limiting pornography, gambling, and divorce, as well as laws protecting the

6. ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 161 (Henry Reeve et al. trans., Random House, Inc. 1981) (1835, 1840).

7. *Id.* at 163.

8. *Id.* at 163–64.

9. *See* G.K. CHESTERTON, *THE THING* 27 (1930).

unborn. Traditionalists would also point to certain laws and judicial decisions that they believe have undermined society's mediating institutions, the so-called "seed-beds of virtue," such as schools, religion, voluntary associations, and the family, as examples of too precipitous fence-removal. The growing number of state court decisions striking down laws restricting marriage to heterosexual couples would be, in their view, only the most recent example. Today we live in a world with far fewer fences, both legal and social, and for many it now seems clear why at least some of those fences were constructed in the first place.

Regardless of whether the role of lawyers as the guardians of tradition has changed, however, and regardless of whether, if it has, that change is on the whole a good or a bad thing, it remains true that lawyers play a predominant role in shaping the culture in which we live and in helping individuals and businesses achieve their goals and avoid or resolve the problems and disputes that inevitably arise in this "complex, pluralistic nation oriented to the rule of law, representative government, and fundamental freedoms."¹⁰ It is in carrying out these roles that I believe attorneys can and should find true joy and fulfillment on a daily basis. But it does not come automatically with the conferral of a law degree and admission to the bar. What Abraham Lincoln, our most beloved lawyer-president, wrote in his *Notes for a Law Lecture* is still true: "The leading rule for the lawyer, as for the man [or woman] of every other calling, is diligence."¹¹ If you are to find happiness in law, you must first become competent in the area or areas in which you choose to practice. You must master the applicable substantive and procedural law.

Even that is not enough, however. To serve your clients effectively, you must have a critical eye for the issue and be able to cut through the irrelevant and extraneous material in which it may be hiding. You must develop your critical faculties and be able to communicate both orally and in writing a logical analysis of a given problem.

You must also be able to discern the common ground between opponents and grasp what is essential and expendable to each side. To return again to Lincoln's *Notes for a Law Lecture*:

Discourage litigation. Persuade your neighbors [and, I would add, those with whom you do business] to compromise whenever you can. Point out to them how the nominal winner is often a real loser—in fees, expenses, and waste of

10. GLENDON, *supra* note 1, at 102.

11. 2 ABRAHAM LINCOLN, *Notes for a Law Lecture*, in THE COLLECTED WORKS OF ABRAHAM LINCOLN 81, 81 (Roy P. Basler ed., 1953).

time. As a peacemaker the lawyer has a superior opportunity of being a good man. There will still be business enough.¹²

You should be able to anticipate potential problems and address them before they arise. This is especially important for business and transactional lawyers who draft contracts, corporate charters and by-laws, partnership agreements, collective bargaining agreements, leases, and all manner of documents that create and define the obligations and duties of those who choose to do business together.

Become a problem solver. Professor Glendon notes that “[m]any of the most rewarding moments of law practice occur when a lawyer devises a viable solution to a problem that has brought a client to wit’s end, or when lawyers for antagonists resolve the conflict in a way that expands the pie for all concerned.”¹³ What enables lawyers to accomplish this, Professor Glendon writes, what they bring to the table, besides their specialized training and knowledge of the law, “is a vast fund of inherited experience” gained from trial and error (hopefully, not all one’s own) in addressing the “huge range of variants on recurring human problems.”¹⁴

And, of course, a lawyer must have tolerance and respect for other people, even if not always for the positions they hold, and resolve to remain honest in all matters. On this last, I’ll quote once more from Lincoln’s *Notes for a Law Lecture*:

There is a vague popular belief that lawyers are necessarily dishonest. I say vague, because when we consider to what extent confidence and honors are reposed in and conferred upon lawyers by the people, it appears improbable that their impression of dishonesty is very distinct and vivid. Yet the impression is common, almost universal. Let no young man choosing the law for a calling for a moment yield to the popular belief—resolve to be honest at all events; and if in your own judgment you cannot be an honest lawyer, resolve to be honest without being a lawyer. Choose some other occupation, rather than one in the choosing of which you do, in advance, consent to be a knave.¹⁵

The requirement of honesty cannot be overstated; if you are not honest, you will lose your career, your reputation, and, most importantly, your soul. On

12. *Id.*

13. GLENDON, *supra* note 1, at 106.

14. *Id.*

15. LINCOLN, *supra* note 11, at 82.

the other hand, inculcating and strengthening those virtues, such as honesty, diligence, and tolerance, that are essential to the successful practice of law can also make you a better person.

And what is the return for those who have mastered their areas of practice and have served their clients in this manner? Usually not fame and great wealth. As Professor Glendon notes, lawyers who succeed in peacemaking and problem-solving are “the legal profession’s equivalent of doctors who practice preventive medicine.”¹⁶ The more a lawyer excels in these efforts, the less likely it is that his or her work will receive acclaim beyond the circle of those immediately benefited. She goes on:

The plain fact is that much of what lawyers do best is exacting, unglamorous, and unadvertised—the reasonable settlement that averts costly litigation, the creditors’ arrangement that permits a failing business to regain its health, the patient drafting of model legislation within the National Conference of Commissioners on Uniform State Laws and the American Law Institute.

The exaltation of litigation, moneymaking, and efforts to achieve social transformation through law in recent years has been at the expense of the useful services that have always given lawyers in the aggregate their best chance to achieve personal satisfaction while contributing to the well-being of their fellow citizens.¹⁷

My own experience over the past thirty years since I graduated from this institution confirms much of what Professor Glendon says. There is joy to be found in helping one’s client achieve his or her goals in the complex regulatory nation in which we live, avoid disputes where possible and resolve those that inevitably arise. There is also much joy to be found in using one’s knowledge and skill to vindicate the rights of individuals, rich or poor, educated or uneducated, who are seriously injured or deprived of their employment, property, or freedom. But my own experience has taught me that there is even more joy to be found in this profession if you know where to look. Whether you find joy and where you find it, of course, depends on the kind of person you are and the area of law in which you have the opportunity and choose to practice.

It is of course best that you find a job that suits your personality and interests. That may be easier said than done in today’s economy. I also

16. GLENDON, *supra* note 1, at 107.

17. *Id.* at 107–08.

recognize that many of you have incurred substantial debt in order to complete your education and therefore economic considerations must play a significant role in your decision of where and what kind of law you will practice. But however you begin your career, it is important to realize that one of the best things about the profession you have chosen is that there are many different ways in which you can use your legal education. At some point, the economy will improve. Doors that are seemingly shut today may open tomorrow, and opportunities that you cannot imagine today may present themselves in the future. To be honest, the opportunities you will have are in some measure a matter of luck, good fortune, the grace of God, however you choose to describe it, as is all of life. I look on my own career as one of the best examples of that. But it is also true that the manner in which you play the hand that is dealt you goes a long way in determining how you come out in the end. The qualities of character, habits of work, and knowledge and skill that you develop and demonstrate on your first job will be more important than your class rank or the name of the school on your diploma in determining what opportunities will be available to you in the future.

You should also not allow money to rule you. Of course, you need to earn enough to support yourself and your family, and to make some dent in the amount of debt you have incurred. But to the extent you are able, live simply, at least early on in your career, so that you are not forced to remain in a job you hate in order to support a lifestyle that demands the income it provides. Otherwise you will not be free to turn down, or leave, one job for a lesser paying job even if you believe you will find greater happiness. Money and the accumulation of things can enslave you; simplicity will make you free. That is why the Jesuits take a vow of poverty. Keeping your overhead low, both at home and at the office, will often leave you with more options.

These are a few of the lessons that I learned growing up and that I've tried to follow in my own life. Along with the luck, good fortune, or grace of God to which I referred earlier, they have led me on a career path that has been much more interesting than I ever thought possible when I was attending law school here some thirty years ago and in which I have been fortunate enough to experience much joy. Allow me to tell you something of that experience now.

My first job on leaving law school was as a law clerk to the Honorable Bruce F. Beilfuss, then the Chief Justice of the Wisconsin Supreme Court. Working at the Wisconsin Supreme Court was itself a joy. One cannot walk into the ornate Supreme Court in our beautiful State Capitol, constructed out of marble from all over the world and with its magnificent murals and solid mahogany woodwork and furniture, without feeling a sense of the history and importance of the court's work. The Chief, as we called him, was a wonderful man and a great boss. I would prepare bench memoranda on cases

to be argued for him and the rest of the court and then help in the research and writing of decisions after the members of the court had voted on the result. Reviewing the record of a case on appeal after judgment had been entered at the trial court, reading the transcripts of the trial, and seeing how the supreme court went about its work taught me how important what went on in the trial court was to the success or failure of an appeal. It provided an overview of the entire process and gave me a better appreciation of the importance of making a record in the trial court and the different standards of review for questions of law and fact. The Chief had a wealth of knowledge and experience that he would generously share at the asking. Though I was not a particularly gifted writer, he seemed to appreciate my efforts and recommended me for a clerkship at the Seventh Circuit when his friend and former colleague, the Honorable Thomas E. Fairchild, who was then the chief judge of that court, called to ask if he knew anyone who might be interested.

I jumped at the chance for an interview and was offered a two-year staff attorney position upon the conclusion of my supreme court clerkship. Judge Fairchild, who had succeeded his father on the Wisconsin Supreme Court before his appointment to the Seventh Circuit by President Johnson in 1966, and who had also served as the Attorney General for Wisconsin and a United States Attorney, is perhaps the most revered judge in Wisconsin history. Though I did not appreciate it when he offered me the position, I realized soon after I arrived at the court in 1980 how highly esteemed Judge Fairchild was by his colleagues, the court staff, and the entire legal community. In his tribute to Judge Fairchild that appeared in the *Wisconsin Law Review* following his death in 2007, Justice Stevens had this to say about his friend and former colleague:

As the son of a distinguished Wisconsin judge, he inherited a special judicial temperament that radiated fairness and impartiality. His research was meticulous and thorough, and he always made sure that he understood the arguments that he was rejecting. His writing was always clear, cogent, and decisive. By his example, he constantly reminded his colleagues that it was more important to get the right answer than to get an answer quickly.¹⁸

As a staff attorney for the court (sort of an unassigned clerk), I did not work directly under Judge Fairchild's supervision, but I did have the opportunity to work on several decisions or orders disposing of cases to which

18. Justice John Paul Stevens, *Tom Fairchild: Friend and Colleague*, 2007 WIS. L. REV. 43, 43.

he was assigned, and of course, I read all of his decisions, just like those of the other judges. I can also recall at least one occasion when he joined a number of the staff attorneys for a beer after work at the renowned Berghoff bar and restaurant, next door to the Dirksen Building in downtown Chicago where the court is located, and told us stories about his own career as a lawyer and his campaigns for political office, including his unsuccessful 1952 campaign for the Senate seat held by Joe McCarthy. As limited as my own contact with Judge Fairchild was, it was not hard to recognize in him the qualities that Justice Stevens spoke about in his tribute. The opportunity to see men and women of the caliber of Chief Judge Fairchild, Chief Justice Beilfuss, and the other judges on the two appellate courts I was privileged to work for left me with a lasting impression of what it means to be a judge. It also provided invaluable experience for a young lawyer about to begin the practice of law.

I spent the next five years in private practice with a growing firm called Liebman, Conway, Olejniczak & Jerry, S.C., in Green Bay. When I started, there were seven other attorneys. By the time I left, it had grown to twelve. There, I was taught the nuts and bolts of private practice and was given the opportunity to put the knowledge and experience I had gained from clerking to work for real flesh-and-blood clients, both the firm's and any I could bring in. It was there also that I experienced the joy of successfully representing clients, both plaintiffs and defendants. In the course of doing so I also found another source of joy in the practice of law. I found that the practice of law opens a window on nearly every other area of life. In no other profession do you have the opportunity to learn so much about everything else for the simple reason that law affects everything else. This reminds me of another Chesterton quote: "There are no such things as uninteresting subjects, only uninterested people."¹⁹ One of my first cases in private practice involved a bank building constructed with huge brick panels that were allegedly failing due to the chemical reaction of a mortar additive manufactured by a large chemical company with metal reinforcement bars that had been added as a precaution to increase the tensile strength of the panels. In the course of representing the structural engineer on the project, I learned more than I ever thought possible about chemistry, engineering, architecture, and masonry, as well as more general subjects like product design, testing and marketing, and building construction.

Over time, I have seen how the same opportunity to learn occurs in other cases. In personal injury actions, you learn about medicine and various methods of health care, and in medical malpractice cases the education is even

19. JAMES V. SCHALL, S.J., *THE LIFE OF THE MIND: ON THE JOYS AND TRAVAILS OF THINKING* 4 (2006).

more intense. Farm accident or stray voltage cases give you a window into the incredible work habits, natural intelligence, and amazing productivity of our farmers. Accident reconstruction exposes you to laws of physics, and product liability cases educate you on subjects as diverse as mechanical engineering and human factors analysis. Accounting and economics expertise is a part of many cases as well. In practicing law, one can't help but gain a new appreciation for the creative genius of not just the American people, but the human race as a whole.

Though I enjoyed private practice and the people with whom I worked, I felt I would be happier working in a district attorney's office. I had interned in the Milwaukee District Attorney's office while in law school and found the work both interesting and enjoyable. The opportunity to make the change surfaced, and even though we had three children by that time, I took a position as an assistant district attorney in Brown County in 1987. It turned out to be the right decision for me. I very much enjoyed working as an assistant district attorney for the State of Wisconsin. The role of a prosecutor, as you know, is very different than that of attorneys in other areas of practice. I can recall attending the new prosecutors' course put on by the State Justice Department where Milwaukee's long-serving and highly respected District Attorney E. Michael McCann introduced us to the Wisconsin Supreme Court's inspiring description of the role of a district attorney in *O'Neill v. State*:

The district attorney is a quasi judicial officer. . . . In the trial of a criminal case, the code of ethics of the district attorney in all such matters cannot too closely follow the ethics of the bench. A prosecutor should act not as a partisan eager to convict, but as an officer of the court, whose duty it is to aid in arriving at the truth in every case. His object, like that of the court, should be simply justice; and he has no right to sacrifice this to any pride of professional success. And, however strong may be his belief of the prisoner's guilt, he must remember that, though unfair means may happen to result in doing justice to the prisoner in the particular case, yet, justice so attained, is unjust and dangerous to the whole community. No court has taken a higher view of the dignity of the office of district attorney than this court. He is an officer of the state, * * * to see that the criminal laws of the state are honestly and impartially administered, * * * holding a position analogous to that of the judge who presides at the trial. The district attorney is not a mere legal attorney. He is a sworn minister of justice.²⁰

20. 207 N.W. 280, 281 (Wis. 1926) (internal quotations and citations omitted).

The responsibility of a prosecutor is immense. The mere fact of being charged with a crime, especially a sensitive crime like a sexual assault, can ruin a person's life. The decisions prosecutors are called upon to make are among the weightiest lawyers ever make.

I started out as an assistant district attorney working in juvenile court partly because I was the low man in the office and nobody else wanted it, but also in part because I had been interested in that area of law since I took Juvenile Law here with Associate Dean Charles Mentkowski. It always seemed to me that if rehabilitation was really possible, intervening when the offender was young would offer the greatest hope. By working in that area, I thought I might be able to help troubled kids and their families and make a positive contribution to my community. As the juvenile court prosecutor, I also handled cases in which children were alleged to be in need of protection and services (Chips cases). These are cases in which the county intervenes on behalf of young children who have been abused or neglected, as well as older children who are truant or uncontrollable. I was also responsible for handling TPRs, Termination of Parental Rights proceedings, where the county seeks to terminate the parental rights of the natural parents in order to free a child for adoption. These are the tools the state uses to intervene in families and address the problems that the parent or parents either cause or are unwilling or unable to resolve.

In carrying out these duties, I worked with the police who referred kids for delinquency proceedings, hospitals and schools who reported abuse and neglect cases, the social workers who investigated and prepared reports, and the various counselors, treatment providers, group homes, foster parents, and correctional facilities that provided the services mandated by the Court. Working on these kinds of cases provided an opportunity to observe and think about the growing social pathology that cities and towns across the country were dealing with as family structure seemed to weaken or disintegrate. While some of what the court was able to do no doubt helped some families, I came to the conclusion that no program the state could offer could make up for the absence of competent and loving parents. Even when children were removed from their homes, they usually returned to the same environment that led to the problems that caused their removal in the first place. Typically, grounds did not exist for the state to intervene until substantial damage to children had already occurred. For all of its frustrations, I enjoyed the experience, but I began wondering whether we had indeed removed too many of those fences that used to stop us, or at least slow us, from giving in to our more selfish tendencies.

I also had the opportunity while working as an assistant district attorney to prosecute the entire gamut of adult crime. It was an honor and privilege to

represent the “People of the State of Wisconsin” over a period of more than eight years. As the Wisconsin Supreme Court emphasized in *O’Neill*, a prosecutor has as his object simply justice.²¹ This direct devotion to justice is unique to prosecutors among lawyers who go to court, and is itself a source of joy to those fortunate enough to be so employed. Justice is, after all, the goal we strive for in law. In Catholic teaching, it is one of the Cardinal Virtues, one of the hinges to which other virtues are related. According to the Bible, justice is one of the primary attributes of, and has its source in, God. This concept of the divine origin of justice is reflected in an inscription on a wall in the Brown County Courthouse that I would see every day when I would walk up the stairs to the third floor to enter what would later become my own courtroom. The inscription reads: “There is no virtue so truly great and Godlike as justice.” The sense that I was directly pursuing this great and Godlike virtue gave me a sense of meaning and purpose, as well as joy, as I went about my daily work.

Of course, defense attorneys also pursue justice, albeit often indirectly, by zealously representing the interests of their clients and relying on the adversarial clash of evidence and argument before the impartial fact finder to arrive at a true and just result. This too is an essential role and can have its own rewards, especially when one is convinced of the justice of his client’s cause. Given the human fallibility of prosecutors, the public pressure to charge that can sometimes be brought, and the enactment of more laws in recent years providing for lengthier and often mandatory sentences, the role of defense attorneys may be more important than ever. Most importantly, the defense attorney is an essential check against the greatest injustice that can occur in our system—the wrongful conviction and imprisonment of an innocent person. Even though they are often underpaid and almost always unappreciated, my sense is that many of the attorneys who do defense work find joy and fulfillment in the essential work they do, as well.

All lawyers have the opportunity to try cases, but it is as a prosecutor that an attorney has the greatest opportunity to try cases to a jury, and trying cases, though often stressful, is also one of the joys of practicing law. In trying a case before a jury, a lawyer brings to bear all of his or her knowledge and skill as an attorney in an effort to prove his case. Direct and cross examination, opening statement and closing argument, objections and argument over the evidence and the law, all call for the analytical and rhetorical skills that have been the hallmark of our great trial attorneys since the adversary system was invented. As a practicing attorney, you will have the opportunity to develop these skills on your own and to watch other attorneys who have mastered them. That, in itself, is a joy. And then, of course, there is the thrill of victory

21. *See id.*

if you are fortunate enough to prevail. On the other hand, there is also the agony of defeat you will experience when you do not prevail.

Jury trials are frequently so stressful for the attorneys because the attorneys bear the weight of their cause on their shoulders. It is different for the judge who presides over a trial. I came to see this first-hand when in 1995, I was appointed to the bench by former Governor Tommy Thompson to fill a vacancy resulting from the death of Judge Donald Hanaway, a former Attorney General for the state. From the perspective of the judge, what is most important is that the trial is fair and, insofar as possible, free from error. That is not to say that a judge does not want to see justice done, but in a jury trial it is not the role of the judge to produce the result he or she thinks just. Instead, the judge, like the attorneys, relies on the jury, that remarkable invention of our ancestors, to arrive at a true and just verdict. The right to trial by jury is one of our most sacred rights because a jury is one of our most sacred institutions. After serving on a jury himself, Chesterton said he “saw with a queer and indescribable kind of clearness what a jury really is, and why we must never let it go.”²² He offered the following explanation:

Our civilisation has decided, and very justly decided, that determining the guilt or innocence of men is a thing too important to be trusted to trained men. [Because] [i]t wishes for light upon that awful matter, it asks men who know no more law than I know, but who can feel the things that I felt in the jury box. When it wants a library catalogued, or the solar system discovered, or any trifle of that kind, it uses up its specialists. But when it wishes anything done which is really serious, it collects twelve of the ordinary men standing round. The same thing was done, if I remember right, by the Founder of Christianity.²³

My own experience has convinced me of the wisdom of Chesterton's view: there are some things that are too important to be turned over to experts, and determining the guilt or innocence of a person accused of a crime is one of them. Over the years that I have had the opportunity to both try and then preside over cases, I have never ceased to be impressed with how attentive juries are to the evidence and how seriously they take their role. It has left me with a genuine appreciation of the fundamental decency and fairness of the average citizen, another source of joy.

22. G.K. CHESTERTON, *The Twelve Men*, in TREMENDOUS TRIFLES 54, 56 (1909).

23. *Id.* at 58.

Of course, anyone who spends much time in the courts of our nation cannot help but see the evil that men and women are capable of as well. In the criminal courts of this country, one sees the depths to which human beings are capable of sinking. Unspeakable crimes of murder, rape, assault, and crimes both by and against children, often fueled by alcohol or drugs, as well as the more mundane burglary, shoplifting, disorderly conduct, and traffic offenses are handled there. But it is not only the crime one learns about in these cases. Every felony conviction gives rise to a detailed pre-sentence report that not only describes the circumstances of the crime and the effect on the victim, but also provides a detailed summary of the defendant's background, including a description of his or her parents and upbringing, education, employment, mental and physical health, substance abuse history, and criminal record. I cannot tell you the number of times that I have read these reports and wondered what my own life would have been like if I had been subjected to the same parental neglect or abuse, or sheer chaos in upbringing, that so many of those who appeared in court had. It also got me wondering more about all those fences that had been taken down.

People sometimes ask whether it gets depressing to work in the courts and see these kinds of things day in and day out. I have never found it so. For one thing, you see not only the worst that people can be, you also see the best—the courage and strength of the victims of crime who come forward, as well as the heroic and hardworking police officers, social workers, and regular citizens who go out of their way, sometimes at risk to themselves, to help someone in need. In juvenile court, I've seen foster parents who have become the adoptive parents for some of the most needy kids you can imagine. There was one case I recall where a young mother came to court seeking to voluntarily terminate her parental rights to a child who had been born without arms. Despite the difficulty of raising a child with such a disability, I thought there would be no way I could approve the termination because in order to do so, I would have to find it in the best interest of the child. Since it would be almost impossible to place the child with so severe a disability for adoption, there seemed no basis upon which to make such a finding. I walked out into the courtroom only to meet the family that stood ready, willing, and able to adopt the child. What was amazing is that they had already adopted a child who had the same disability. Observing similar acts of sacrifice, generosity, and kindness unfold before me over the years left me with a sense of joy.

The other insight one comes away with by spending time in our criminal courts, at least one that I've come away with, is that the vast majority of people who came before me were not evil. What they did may have been evil, but many hated their crime as much as, if not more than, the rest of us. Mostly what I saw was human weakness, the same human weakness that we often experience in ourselves but that, again, because of the grace of God, or a

good upbringing, or for whatever reason, we've been able to overcome at those points in life when the temptation to act out of greed or lust or rage may have been strongest. That doesn't mean that the individuals who commit these crimes are not deserving of punishment or that they are not a danger to society, and of course it is my duty as a judge to decide what that punishment should be. But it does mean that I have been able to see in them that same dignity that is inherent in all humans, in our very nature, and to maintain the conviction that in sentencing a man to prison, I am not condemning him, but his conduct, while continuing to hope that he, as an individual, will ultimately be better for it. This conviction has made what most judges regard as their most difficult task less burdensome and in some cases where, consistent with my oath, I am able to show mercy, even a joy.

Most recently in my own career, I have received the great honor of being appointed the first United States District Judge to preside over a permanent federal court in Green Bay. Like my earlier appointment to the state bench, I was deeply grateful for the trust placed in me by the appointment and resolved to do all I could to prove deserving of it. I am now in my fourteenth year as a judge and appreciate more than ever the crucial role practicing attorneys play in the resolution of cases and the development of the law. Most cases are settled, thereby avoiding the time, expense, and uncertainty of a trial, and it is the attorneys, using their role as counselors, who must be given the credit for such outcomes. Even when cases do not settle, however, the attorneys take the major role in bringing them to a resolution. What a judge is able to accomplish in a given case is determined by the nature of the case before him or her and the legal arguments advanced by the attorneys. In a trial, it is the attorneys who bring forth the evidence and argue their cases to the jury. They argue for the principles of law that are used to instruct the jury or that they believe should guide the court's determination. They also make the record that allows them to seek further review on appeal and thereby contribute to the development of the law. While there is a tendency to praise (or blame) the courts for changes in the law that result from appellate court decisions, it is the attorneys who play the major role in bringing about change in the law. They present the cases and make the arguments that persuade the courts to decide as they do. Attorneys who actively participate in this process, either as a proponent for, or opponent of, the change in the law that is urged, find their work on these kinds of cases meaningful and enjoyable.

Since I have moved to the federal bench, I have found that federal judges work much harder than I thought they did before I became one. While the volume of cases is far less than I had as a state judge, the magnitude and complexity of the cases, especially on the civil side, more than make up for it. The amount of motion practice is far greater, as is the need to research and write opinions, as opposed to rule from the bench. But there is much joy to be

found in writing opinions (though some judges may not agree), just as (and more than a few attorneys might disagree here) there is joy to be found in writing briefs. If you love words and language, logic and ideas, if you view writing as a craft (and here I'm talking at a law review awards banquet), what could be better than having as a major part of your job the task of setting out as clearly as you can your analysis and conclusions in a complex case raising interesting legal issues?

In his book *A Matter of Interpretation: Federal Courts and the Law*, Justice Scalia describes the process of legal reasoning using an analogy that a Green Bay Packers fan could not help but love. He speaks of the image that every law student and newborn lawyer has of the great judge as

the man (or woman) who has the intelligence to discern the best rule of law for the case at hand and then the skill to perform the broken-field running through earlier cases that leaves him free to impose that rule: distinguishing one prior case on the left, straight-arming another one on the right, high-stepping away from another precedent about to tackle him from the rear, until (bravo!) he reaches the goal—good law.²⁴

What could be more enjoyable than to engage in this reasoning process and then try to craft a decision explaining in clear prose how you arrived at the goal of a legally sound decision? And of course, as a district judge, I can take comfort in knowing that the Seventh Circuit is always there to throw a flag and reverse me if I run the wrong way or go out of bounds.

I also see as a source of joy in the legal profession the people with whom I have been privileged to work. Contrary to popular belief, people in the profession of law are, for the most part, interesting, friendly, decent, and civic-minded people. You will meet some, like a Justice Beilfuss or Judge Fairchild, who inspire you with their strong commitment to justice and their basic decency and kindness. The experiences you have in common with other attorneys, whether they are your own partners or attorneys you've gotten to know from being on the same or opposite sides in a case, can form the basis of strong and lasting friendships. You will meet others in the course of your career as well—secretaries, paralegals, investigators, clerks, law enforcement officers, clients, law clerks, court reporters, bailiffs, even judges—who will enrich your life and help you become a better lawyer and, hopefully, a better person.

24. ANTONIN SCALIA, *A MATTER OF INTERPRETATION: FEDERAL COURTS AND THE LAW* 9 (1997).

So why is it that, given all of this, so many lawyers are unable to find joy in their profession? To return to Professor Glendon's question, why are so many lawyers so sad? To a large extent, I think, it is due to the change in the economics of the practice of law and the other changes that Professor Glendon discusses that have made the practice of law less civil, more cut-throat, and, for some, a less certain way of earning a decent living than it was in the past. These include the increasing size and over-emphasis on profitability in many large firms at the expense of loyalty to older lawyers, and mentoring and training of younger ones;²⁵ the transformation of billable hours from "a sensible tool of office management to a frenetic way of life";²⁶ the more frequent resort to litigation as the weapon of first resort; the use of "scorched earth" litigation tactics, including abusive discovery measures;²⁷ and the rise of lawyer advertising.²⁸ Professor Glendon suggests that these and other changes have transformed the legal system in this country from an often invisible and largely unused set of rules and customs that provided a framework for people to order their lives together and peacefully resolve disputes, to a weapon that is brandished as a club by anyone who senses a violation of his or her ever-expanding rights.²⁹ The experience of many lawyers is that our legal system has become a too expensive and inefficient way to resolve disputes.

She also suggests that we have lost a sense of what law can do well, and what it cannot accomplish.³⁰ As the family and other social institutions that we relied upon in the past to instill and nurture the individual virtues and habits of behavior that are essential to a healthy society have become weaker, we have looked to law more and more to address the social pathology that has become rampant in so many of our cities and society as a whole. The coercive power of criminal law, however, is a poor substitute for the internal self-restraint and attitudes of respect for person and property that in former times were instilled in future citizens by their parents with the support and encouragement of their communities, churches, and schools. Nor is the state through its laws equipped to develop in its future citizens the qualities of character and behavior that are necessary if they are to hold a job or raise a family of their own. We have, over time, and as a people, taken on an exaggerated confidence in the power of law to cure social and economic ills. Professor Glendon notes that "[t]he same citizens who want to get annoying

25. GLENDON, *supra* note 1, at 22–27.

26. *Id.* at 29.

27. *Id.* at 51, 56.

28. *See id.* at 54–55.

29. *See id.* at 268.

30. *See id.* at 262.

regulations out of their own lives often believe that the way to deal with a broad range of social problems is to bring a lawsuit, to criminalize unwanted activity, or to augment the power of the police and prosecutors.”³¹ Lawyers who work and earn their living in such a system sense that in many respects we seem to be going in the wrong direction.

Finally, I would point to a problem that Professor Glendon suggests more subtly in the parts of her book devoted to the other two branches of the legal profession, the academy and the bench, but that another law school professor, the University of Chicago’s Albert Alschuler, spoke more directly about a few years back in an article that appeared in the journal *First Things* entitled *A Century of Skepticism*.³² It is fundamentally a philosophical problem, but as it has seeped out of the academy and into the professional world and the popular culture, it has undermined our shared sense of meaning and purpose, a sense that there is such a thing as right and wrong. In his *First Things* article, and even more so in his book on Justice Oliver Wendell Holmes, entitled *Law Without Values: The Life, Work, and Legacy of Justice Holmes*,³³ Professor Alschuler, who has since joined the faculty at the Northwestern University Law School, traces the history of American legal theory from the natural law jurisprudence of Blackstone, to the moral skepticism of Holmes and his contemporary offspring. Indeed, Professor Alschuler travels back in time even farther than Blackstone to the writings of Plato, some 400 years before the birth of Christ where, in *The Republic*, Socrates discusses the meaning of justice with the philosopher Thrasymachus. “Thrasymachus anticipated Holmes by 2300 years,” Professor Alschuler notes,

when he said, “Justice is nothing else than the interest of the stronger.” Socrates replied that justice was not the will of the powerful but the “excellence of the soul.” [Socrates] argued that justice was unlike medical treatment (a means to an end) or an amusing game (which had no end beyond itself). Justice was a good of the highest order—an end and a means, a good to be valued for itself and for its consequences.³⁴

Key to this concept of justice is the idea that there is a moral order to the universe, that there is such a thing as right and wrong that is not dependent on the subjective beliefs of the individual. Systems of law were first developed

31. *Id.*

32. Albert W. Alschuler, *A Century of Skepticism*, *FIRST THINGS*, Feb. 2002, at 34 [hereinafter Alschuler, *FIRST THINGS*].

33. ALBERT W. ALSCHULER, *LAW WITHOUT VALUES: THE LIFE, WORK, AND LEGACY OF JUSTICE HOLMES* (2000)

34. *Id.* at 8.

in response to, and as a rejection of, the barbaric idea that “might makes right.” Law, as opposed to raw power, was intended to bring order and justice to our lives in this world by providing legal protection to the rights of the weak, as well as the strong, and thereby make obsolete the use of private force to further one’s interests. The moral realism underlying this concept of law was dominant in Western Civilization in general and America in particular until the final third of the nineteenth century.³⁵ Law was considered just insofar as it was in accord with and did not violate moral law. An unjust law, one that violated the moral law, was no law at all in the thinking of Augustine and Aquinas, and thus there was no obligation to obey it.³⁶ As is apparent from the justification for the rebellion of the original thirteen colonies against England that was set forth by Thomas Jefferson in the Declaration of Independence, this understanding of law and its relation to moral truths gave rise to the creation of this country.³⁷ It also underlay the abolitionist movement to end slavery, the Nuremburg Trials that followed World War II, and the civil rights movement of the 1960s led by Martin Luther King, Jr.³⁸

It was this understanding of law that Holmes and his followers rejected. For Holmes, who once observed, “[a]ll my life I have sneered at the natural rights of man,”³⁹ moral values were a matter of personal taste: “Do you like sugar in your coffee or don’t you? . . . So as to truth.”⁴⁰ As Professor Alschuler explains, the revolution that Holmes began was not a revolt against formalism as he claimed, “but a revolt against objective concepts of right and wrong—a revolt against natural law.”⁴¹ But what becomes of a society and its legal system when the dominant viewpoint is that there is no such thing as “right,” or when the concept of right is reduced to the useful or the economical? Alschuler suggests an answer to this question:

I do not know the extent to which intellectual movements shape society or if they do so at all. Nevertheless, “the nation’s mood is sullen.” The vices of atomism, alienation, ambivalence, self-centeredness, and vacuity of commitment appear characteristic of our culture. Americans have become indolent, cynical, and bitter—envious of those above,

35. *Id.* at 9.

36. AUGUSTINE, ON FREE CHOICE OF THE WILL 8 (Thomas Willians trans., Hackett Publ’g Co. 1993); 2 THOMAS AQUINAS, SUMMA THEOLOGICA 1014 (Fathers of the English Dominican Province trans., Christian Classics 1981) (1911).

37. See THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776).

38. See MARTIN LUTHER KING, JR., THE AUTOBIOGRAPHY OF MARTIN LUTHER KING, JR. 193 (Clayborne Carson ed., 1998).

39. ALSCHULER, *supra* note 33, at 26.

40. Alschuler, FIRST THINGS, *supra* note 32, at 34.

41. ALSCHULER, *supra* note 33, at 10.

reproachful toward those below, and mistrustful of those around them. In 1960, 58 percent of Americans agreed that “most people can be trusted”; in 1994, only 35 percent did. A sense that the people around us are looking out for themselves and that we will be suckers unless we become a little bit like them seems pervasive. A distinguished national study group concludes, “[O]ur democracy is growing weaker because we are using up, but not replenishing, the civic and moral resources that make our democracy possible.”⁴²

Have those of us who work most closely with the law imbibed this sense of meaninglessness more than others?

I offer these observations by Professors Glendon and Alschuler not to give reason for despair. To the contrary, here, too, I see cause for hope and for joy. There is cause for hope because there is a growing appreciation of the fact that we may be on the wrong track. C.S. Lewis, another non-lawyer English writer of the last century, said that often the way forward requires us to go back to that fork in the road where we went the wrong way.⁴³ It is becoming more and more apparent to many that as a society we have made some wrong turns. For evidence of this, you need look no further than the daily newspaper or the nightly news. Writers like Professors Glendon and Alschuler, it seems to me, have provided a great service for us all by raising important questions about our contemporary situation and by shedding new light on older truths that we, as a profession, may have forgotten.

If these writers are correct and we are on the wrong track; if over the past half-century we have removed fences that protected us from our more self-destructive tendencies or weakened other institutions that are essential for a healthy and sustainable society; if law has been transformed from the clearly delineated set of rules by which substantial disputes between parties acting in good faith are resolved, only after other informal and less expensive means have failed, to an ever-expanding means of resolving all of our grievances; if on a regular basis “the heavy machinery of law is being wheeled out to deal with a growing array of personal, economic, and political matters to which it is poorly suited”;⁴⁴ if our courts have become a replacement for our duly constituted legislatures in achieving reform; if some or all of this is true, then our legal system is in need of repair. And who, if not those trained in the law, will be in a position to propose and advocate for the reform that many believe

42. *Id.* at 187–88 (footnotes omitted).

43. C.S. LEWIS, *MERE CHRISTIANITY* 22 (1952).

44. GLENDON, *supra* note 1, at 268.

is so badly needed? Professor Glendon notes at the end of her book that the die is not cast on the future of the American legal profession:

The shades of our ancestors whisper that law is a means of taming as well as serving power; an instrument for the orderly pursuit of dignified living; a sturdy framework for democracy's hurly-burly; a witness to the ability of fallible men and women to give themselves rules, to abide by them, and to fashion them anew when need arises.⁴⁵

Where are we to find solutions to these problems, she asks? "'Reason,' say the ancient voices. 'Reason, now and always, the life of the law.'"⁴⁶

Professor Alschuler has addressed the deeper question, the ultimate question of meaning and purpose that extends far beyond the confines of the practice of law and carries important implications for the overall moral and spiritual health of American society and culture. He too, however, sees cause for hope and ends his book on a positive note. In the last chapter of his book, entitled *Ending the Slide from Socrates and Climbing Back*, Professor Alschuler points to a new epistemology that can lead us away from Holmes's nihilism and back to the path of moral realism in which previous generations saw striving for moral virtue as more than a matter of taste.⁴⁷ As Professor Alschuler explains on a more personal level in his *First Things* article, his professional experience taught him that "law not grounded on a strong sense of right and wrong was lousy law."⁴⁸ Even more fitting for the topic I have chosen for my remarks, Professor Alschuler observed in his *First Things* article that "[t]hinking about law, like thinking about most things, can lead one to God,"⁴⁹ who for Jews, Christians, and Muslims, is the ultimate source of everlasting joy and happiness. Even to begin to address that issue, however, would require a whole separate talk. Perhaps I will be invited back on another occasion.

With what I have already said, I hope that you have some sense of the joy that lies ahead for you. It is into this professional and intellectual environment that you will be starting your careers in law. I urge you to look for guides like Professors Glendon and Alschuler as you go forward. There is a joy to be found in using your minds to help others avoid or solve the problems and disputes that arise in a modern, complex society governed by

45. *Id.* at 293.

46. *Id.* at 294.

47. ALSCHULER, *supra* note 33, at 190–94.

48. Alschuler, *FIRST THINGS*, *supra* note 32, at 39.

49. *Id.*

law. There is also joy in picking up the gauntlet that has been thrown down by academic and popular culture, by conventional wisdom, and by political correctness, and entering the debate that has been ongoing since the time of the ancients. There is far more to be joyful about in the study and practice of law than you can imagine.