

20 Colo.Law. 1083

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1083

Vol. 20, No. 6, Pg. 1083 Is There an Atticus in the House?

by Richard P. Matsch, Judge U.S. District Court, District of Colorado

I am here to encourage you as card-carrying members of the American legal profession. I am not going to quibble about whether we lawyers and judges are entitled to the aura of meritocracy implicit in the once familiar phrase "learned profession"---or whether the Supreme Court is correct in treating us as just another bunch who do it for money---my focus is on what we actually do in this country and whether what we do has any real significance.

You need not be reminded that we are much criticized. Lawyer bashing is about as common and as convenient a means for obtaining favorable audience response as a pratfall. Look at the portrayals in recent books (*Presumed Innocent*), movies (*And Justice for All*), and television (*L.A. Law*). Those who write newspapers and magazines also think we are targets of opportunity. Leonard Larsen in a column that ran in the *Rocky Mountain News* just two weeks ago, in discussing settlement of a dispute between a German church and the family of an American soldier who stole treasures from it in World War II, said this:

A lawyer of the familiar fictional kind, the humble and honest practitioner with his quaint concept of justice under the law, might have urged the Meadors to right the old wrong, to apologize for the act of a war-weary soldier and return the church property he stole.

There was obviously no such storybook lawyer. And when negotiators for the German church---American lawyers among them---sought the stolen articles, all the parties entered the labyrinth of greed and emerged with the extortion settlement.

And that, after all, is what we've grown accustomed to in the law business work, a cynical process fueled by cunning and cleverness, a system so riddled with dishonesty it collects a fee for advising a victim that his day in court would be vastly more expensive than to pay extortion and label it a settlement.

Parenthetically, I hope the advocates of alternative dispute resolution were among the readers of this [newspaper] column.

Public disapproval is not new to us.

Consider Voltaire: "I was never ruined but twice---once when I lost a lawsuit and once when I won one."

Jeremy Bentham quipped: "Lawyers are the only persons in whom ignorance of the law is not punished."

Coleridge: "He saw a lawyer killing a viper on a dunghill hard by his own stable and the Devil smiled for it put him in mind of Cain and his brother Abel."

Ambrose Bierce, a newspaperman writing 100 years ago, gave this cryptic definition of a lawsuit: "A machine which you go into as a pig and come out of as a sausage."

And then, of course, there is the often quoted line from Shakespeare: "The first thing we do; let's kill all the lawyers."

But that is much out of context. We can take pride in it because you will remember that the quotation is from *Henry VI*, Part II, when the conspirator Dick Butcher, is recognizing the importance of getting the lawyers out of the way of the planned rebellion.

I offer you some comfort in these words from the eighteenth century English statesman Edmund Burke: "Those who would carry on the great public schemes must be proof against the most fatiguing delays, the most mortifying disappointments, the most shocking insults and worst of all the presumptuous judgement of the ignorant upon their designs."

So there, take that Leonard Larsen!

I am sure that the appropriate definition of "scheme" in Mr. Burke's usage is: "An orderly combination of related or successive parts or things; system." Let me suggest that you and I are engaged in the great scheme of attempting to bring some sense of justice to a troubled people in difficult times.

There have been many attempts to define justice. Perhaps the truest is this from the ancient Greek philosopher, Epicurus: "Justice is a contract of expediency, entered upon to prevent men harming or being harmed."

Benjamin Disraeli said: "... justice is truth in action." Perhaps it is as undefinable as love or hate---it is a sense---an emotional response.

Voltaire wrote to Frederick the Great: "It seems clear to me that God designed us to live in society---just as He has given the bees the honey; and as our social system could not subsist without the sense of justice and injustice. He has given us the power to acquire that sense." It is the special prerogative and

1084

the essential purpose of the legal profession to develop and apply that power, enhancing that sense in all people.

Well---how are we doing?

The task has always been difficult, but the difficulty increases with the complexity of our economy and the development of a heterogeneous, pluralistic, multi-cultural, multi-racial society in which there are few normative values of general acceptance and in which government has undertaken a positive role in attempting to advance civilization by assisting those disadvantaged by race, gender, physical differences and, of course, history.

What is common among us?

Consider this statement. "Regardless of race, creed, ideology, political bloc... or economic region ..., the most important and basic aspect of all peoples is their shared humanity---the fact that each person, old, young, rich, poor, educated, uneducated, male or female, is a human. This shared humanness and thus the shared aspiration of gaining happiness and avoiding suffering, as well as the basic right to bring these about, are of prime importance." That was The Dalai Lama speaking in 1981 on the subject of religious differences.

Thomas Jefferson really was expressing the same idea when he wrote that life, liberty and the pursuit of happiness are unalienable rights and that the purpose of the government is to secure those rights.

Today we have added great burdens to the experiment in self-governance that is the United States of America. We have put the force of prohibitive law behind our efforts to achieve, in real terms, the promise of egalitarianism in that other famous Jeffersonian self-evident truth that all men are created equal.

Despite the dire warning of Goethe that "any politician who promises liberty and equality is either a charlatan or a fool," we struggle on, driven by the doctrine of free will as expressed by that idealist, Norman Thomas, who, in his old age, after a lifetime of advocating change, said: "I do not believe that man is perfectible... the best that I can say is that we are not damned by our gods or by our genes to stay the way we are or the way we have been."

We are also confronting the hue and cry of our political leaders whose reaction to the problem of crime in the streets---particularly crimes relating to drugs---approaches hysteria. It is ironic that elaborate plans are being made for circulation of the paper on which the Bill of Rights was written at a time when those limitations on governmental power are being steadily eroded.

Many of you don't appear in criminal cases---you may not be aware of the fact that law enforcement agencies are using militaristic methods---including advanced technology---in waging the war on drugs. Perhaps you are also unaware that the higher federal courts have affirmed the authority of a federal grand jury to act as grand inquisitors, answerable to no one. Under the veil of secrecy, a grand jury may serve as a complete shield to prosecutorial ambition or vindictiveness. That grand jury authority, by the way, includes the power to subpoena lawyers' books and records to determine sources and amounts of fee payments. Are you civil lawyers comfortable sitting on the sidelines when these battles are being waged and lost?

Well---it isn't easy to be an American lawyer in this last decade of the twentieth century. Perhaps you could be helped by a role model. I offer you Atticus Finch of fictional Macomb, Alabama. He is the creation of Harper Lee in what I regard as a classic work, *To Kill a Mockingbird*. Let me remind you of the story. Atticus is a widower with two young children in a sleepy southern town, as long ago as when I was a child. He is asked by the county judge to defend Tom Robinson, accused of rape by the daughter of a brute who is the epitome of what once was called "white trash." Atticus accepts the responsibility for the representation and fights the demons of bigotry, hate, revulsion and fear that are unleashed by the accusation. Both literally and figuratively, he puts himself and his children between his client and a mob with lynching on its mind. Early on in the story, his daughter, Scout, asks why he is defending Tom and whether he will win the case. Atticus' reply is characteristic of the nobility of his spirit: "Simply because we were licked 100 years before we started is no reason for us not to try to win."

Of course, the case is lost and his client is killed in an escape attempt, and, in the end, the sheriff usurps the law by forcing the conclusion of an accidental death of the accuser to protect Boo Radley.

Why is Atticus a hero?

Emerson wrote: "A great style of hero draws equally all classes, all the extremes of society, till we say the very dogs believe in him." In his time and place, Atticus Finch was the opponent of oppression, the paradigm of propriety, the dean of decent citizens, and the core of his community. Everybody in Macomb believed in him---he was a known

quantity. He was the complete lawyer.

<http://www.cobar.org/tcl/disclaimer.cfm?year=2005>.

What about us? How do we measure up? I must confess that from time to time, I have joined the chorus of critics decrying the lack of professionalism among lawyers and despairing of the future of the Republic. Yet, as I have worked with law clerks and students in a class I am privileged to teach, I feel refreshed and renewed in spirit because I hear and see the values and idealism, which, I like to think, drove me to law school many years ago. I also believe that it still prevails among the people in this room.

The problem is that our sense of justice and our perspective on the mission of our profession has been larded over with the greed that comes with allowing ourselves to consider the marketplace as the standard for measuring our value to society, and we have adopted the bureaucracy of the corporation as the model for organizing our group practice. That, with ever-narrowing specialization of practice and the dehumanizing technology of modern communications, has caused too many of us to hunker down in comfortable cubicles of conscience, withdrawing from the public arenas of politics and community conflict, the better to achieve personal acquisitive goals.

How many bar association meetings have been devoted to the question of the relative worth of lawyers compared with teachers, soldiers and the clergy---the other old traditional public service professionals? Physicians are newcomers and we're still trying to figure out where they fit in. Perhaps the stress of time derbies and the ethical problems of sharing the income stream with non-lawyers would greatly diminish if we lifted our eyes up from the word processor screens to see the sunrise of each new day of developing democracy in a world desperate for leadership and earnestly seeking empowerment for that evolving human emotion---a sense of justice.

I ask you the question.

Is there an Atticus in the house?

1085

Viewpoint*The following viewpoint on the profession is written by Maurice Reuler, who practices primarily as a litigator, with emphasis on family law, estates and real estate. He is a former chair of the Board of Law Examiners.*

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