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Creative Lawyering in a Changing World

November 6, 2008

Oath Ceremony for New Lawyers, Supreme Court of Illinois (Third District)

Steven C. Bahls, JD, President of Augustana College

Mr. Justice Kilbride; members of the Judiciary; members of the Bar; candidates for admission to the Bar; families, friends and honored guests,

It is my pleasure to be among the first to congratulate you for your admission to the bar. And I would like to thank the families, spouses and friends of our soon-to-be lawyers for the support and encouragement you have given to the newest members of the bar.

It was nearly thirty years ago that I had the privilege of being admitted to the bar as a lawyer. There is not a day that goes past that I don't use my skills as a lawyer, even though today I am a college president and am no longer engaged in the traditional practice of law.

Little did I know, at the time I was admitted to the bar, what a fulfilling career that I would have as a lawyer? And little did I know how significantly the nation would change in the thirty years to come. And I did not appreciate then, as I do now, that whenever the nation changes, it looks to the law and to lawyers to defend and maintain the fabric of justice that makes our country strong.

When I was standing in your shoes, I had never heard of the Internet and could not have imagined how it would change the world in so many ways. I could not have imagined then that scientific research would progress to the point where one could clone an animal and engineer a gene. I could not have imagined that our country would be subjected to an unimaginable terrorist attack. Nor could I have imagined the worst meltdown in the financial system since the Great Depression.

How do you think this country and world will change during the course of your career as an attorney? What will a greener, more sustainable economy mean for the law and the legal profession? Will the practice of law become truly globalized, and if so, what will that mean for you? Imagine what else you might see over your career as an attorney. It's my bet that whatever you imagine, it is only a small part of the changes that you will see in the world.

Every time there has been a major change in the world, the world has looked to lawyers to help sort out the implications of the change. But the law has struggled with each major change in the thirty years that I have been a lawyer. Laws made to accommodate face-to-face commerce didn't accommodate electronic commerce over the Internet. Property laws, made to accommodate traditional, tangible personal property, have struggled to address rapid advances in science, such as those that have made patenting of genetic material possible. The 9/11 terrorist attacks on our country and our response have challenged the legal framework of war. And the laws regulating banks and securities failed us when it came to regulation of exotic hybrid investments, and did so in ways that contributed to the nation's recent economic meltdown.

You, in your career, will undoubtedly experience events and developments where the law struggles to keep up. And the legal profession will change in ways that none of us can imagine today. I suspect that in the years to come, during times of scientific and technological development, in times of national tragedy and challenge, and in times of social change, America will look to the law and lawyers to help.

But with all of this change, there is one constant. The values of the legal profession are steadfast. And thanks to these enduring values, we, as the legal profession, will help America respond to the many challenges ahead.

Justice and fairness

I'd like to focus on what I consider to be the most important and most constant value of the legal profession – our calling, as lawyers, to strive to promote justice and fairness. Let's be clear – laws do not guarantee justice and fairness. Thomas B. Reed, Speaker of the United States House of Representatives, was correct when, in 1891, he said: "One of the greatest delusions in the world is the hope that the evils of the world can be cured by legislations." What assures that justice is done is not laws by themselves. What assures that justice is done is lawyers who are faithful in using the law and changing the law when necessary to achieve results that are fair and just. Laws are only a tool that lawyers have in their pursuit of justice. What makes this tool most effective is when it is employed in the hands of lawyers who possess the attributes of determination, integrity, empathy and judgment. But to this list of lawyer attributes that we so often hear about – determination, integrity, empathy and judgment – let me add one other attribute that allows us to pursue justice in changing times. And that is creativity.

The world's greatest lawyers are the world's most creative lawyers. When I was a law school dean, I would urge my students to think of a crystal as an image of how to think creatively. Imagine a crystal. What happens when you give a child a crystal? The child will look into the crystal and slowly turn it, seeing the room from different angles. Creative lawyers know how to turn the crystal. In doing so, they are able to step back from their clients' problems and look at the problems from the perspectives of others. In doing so, lawyers are able to craft creative arguments and creative solutions.

Consider a great trial lawyer. When a great trial lawyer prepares a case for trial, she turns the crystal by looking at her case from several vantage points. She will not only look at the case from the viewpoint of her client, but will strengthen her case by looking at it from the viewpoints of the opposing side and from the likely viewpoint of the judge. And she will step back from the case – what would the school teacher on the jury think? How would the auto mechanic on the jury see it? And what about the retired business person? By turning the crystal and looking at the case from different angles, great trial lawyers learn to view their cases from different perspectives, allowing them to build their creativity into the cases in such a way as to produce results that are just and fair.

Three great Illinois lawyers

Consider three great, creative Illinois lawyers who knew how to turn the crystal. Each of these lawyers found themselves in a time of great change in society and used their creative skills to confront changing times.

The first is Abraham Lincoln. Although he was a gifted trial lawyer, he could also step back from a situation to view it from different angles. He was hesitant to pursue litigation because it didn't always serve the common good. He looked at cases more holistically than what his clients asked him to do – which, given his reputation,

was often to file a lawsuit. Even though the client thought litigation was in his best interest, Lincoln asked whether it was really in the clients' best interest. Were there more effective ways of solving the problem? He famously observed: "As a peacemaker, the lawyer has a superior opportunity of being a good man. There will be business enough."¹

As president, Lincoln's skills as a creative lawyer were equally apparent. Take the example of his Second Inaugural Address, which – though it was intended to prepare our war-torn nation for healing – reminds me of a powerful, but succinct, closing argument. At the time of his Second Inaugural Address, the Union was within days of winning the Civil War. Notwithstanding the incredible toll exacted by the War, Lincoln used his skills as a lawyer to seize on one of the most important moments in U.S. history. Laying the groundwork for Reconstruction, he turned the crystal. He charitably looked at the nation through the eyes of both the Union and the Confederacy. Observing that both sides "read the same Bible, and pray to the same God," he asked each to "bind up the nation's wounds...[and] do all which may achieve and cherish a just, and a lasting peace among ourselves."

A second Illinois lawyer, Clarence Darrow, is widely regarded to be one of the best defense lawyers in U.S. history. His passion for justice took him from a lucrative job as a lawyer for the Chicago and Northwestern Railway, to representing controversial union leaders, war protesters, and civil rights leaders, as well as a school teacher in State of Tennessee versus John Scopes, better known as the "Scopes Monkey Trial". Darrow was a master at turning the crystal in order to create a compelling case for his clients. He did so by viewing his client's problems in a larger context. He was a master at putting his clients' individual problems in a context of much larger social struggles in America. In the Scopes case, Darrow knew he was not only arguing before a local jury in Dayton, Tennessee, but indeed before a nation that had arrived at a turning point. And because of this, even though he lost the battle, he clearly won the war against applying strict Biblical literalism to contemporary American law.

The third Illinois lawyer who knows how to turn the crystal is our next president, Barack Obama. Now, I know, not everyone here voted for Senator Obama and that is OK. But whether or not we voted for him, I hope we can agree that he is a lawyer who knows how to turn the crystal. As a young lawyer organizing community groups on Chicago's South Side, he knew that social change meant more than simply having the best argument. Organizers like President-elect Obama learned how to turn the crystal – by making the same basic argument, but in different ways ... at times in ways that community members would understand, at times in ways that politicians would understand and at times in ways that the media would understand. And in his book, *Audacity of Hope*, his skills as a lawyer were apparent. Like a lawyer settling a case or negotiating a difficult contract, he was able to look at many of the most difficult political issues in America through the eyes of different types of Americans and find common ground.

The broader viewpoint

So I urge you to continue to develop your creative thinking skills. Employ those "Law and..." courses you took in law school – Law and Philosophy, Law and Religion, Law and History, Law and Literature, Law and Gender, Law and Race, Law and Economics, Law and Psychology, and Law and Social Change. And if you didn't take those courses, don't forget your undergraduate courses in such areas as philosophy, religion and economics. The broader perspective of what you learned in these courses will allow you to step back from the daily practice

of law, to turn the crystal, to see problems not only from your viewpoint, but from a broader viewpoint – in just the ways that the attorneys Lincoln, Darrow and Obama did.

But Lincoln, Darrow and Obama understood something more about law and the role of lawyers. They understood that while creative arguments can influence a jury and a nation, the power of creative arguments should be used to advance a higher end. For Darrow, it was not only to make the case for his individual clients, but also to illuminate larger social injustices in the United States. For Lincoln and Obama, their arguments were made to bring together an ailing and divided nation. Each understood that justice should be combined with mercy and humility. I suspect that each knew that Shakespeare was right on target in *The Merchant of Venice* when he observed, “And earthly power doth then show like God’s, when mercy seasons justice.”

So candidates for admission to the bar, I know that you will be creative in serving your clients and shaping the law to justly respond to the many changes ahead in our world and our society. Take pride in becoming an attorney. There is not a day that goes by that I am not proud that I am a lawyer. May God bless and keep you as you embark on the important journey of service as a lawyer.

[1] *Abraham Lincoln’s Notes for A Law Lecture (1850)*

 AUGUSTANA COLLEGE	Accounting Africana Studies Anthropology Art Art History Asian Studies Biochemistry Biology Business Administration Chemistry Chinese Classics Communication Sciences & Disorders	Communication Studies Computer Science Creative Writing Economics Elementary Education Engineering Engineering Physics English (Literature) English (Writing) Environmental Management & Forestry Environmental Studies Ethics French	Geography Geology German Studies Greek Graphic Design History International Business Japanese Landscape Architecture Latin Library and Information Science Mathematics Multimedia Journalism & Mass Communication	Music Music Education Music Performance Neuroscience Non-Profit Leadership Development Philosophy Physics Political Science Pre-Dentistry Pre-Law Pre-Medicine Pre-Music Therapy Pre-Nursing Pre-Occupational Therapy	Pre-Optometry Pre-Pharmacy Pre-Physical Therapy Pre-Physician Assistant Pre-Seminary Pre-Veterinary Medicine Psychology Religion Scandinavian Studies Secondary Education Sociology Sociology (Social Welfare) Spanish Theatre Women’s & Gender Studies
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