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A Rededication

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Michael Franck

John Reed, known to many or most of you from his long association with the University of Michigan Law School and the Institute of Continuing Legal Education, and now as Dean of the Wayne State University Law School, delivered the keynote address during the dedication, April 18, 1988, of the new Lansing courtroom of the United States District Court for the Western District of Michigan.

The prospect of a John Reed after-dinner speech holds no terror for those who know him. He is not given to dry, academic discourse. This address ranks with the best, I believe, for the tone and inspiration it suggests for the conduct of our professional lives, day to day. I offer it as this month's Lansing Letter.

We have done a fine thing today. We — that is, you and I and our fellow citizens — have provided and dedicated a new courtroom; and I salute those whose special efforts made it possible.

I hope you will take this opportunity to engage in yet another dedication: A dedication, or rededication, of yourselves to the profession of the law and to the public welfare that it should serve.

Dedicating a new courtroom is an exciting thing to have done, but also solemn and a little frightening, because we have created a place into which will be brought the hopes and expectations and fears of countless citizens who look to our courts for justice.

More and more, our people look to the law and to the courts to solve more and more of our problems. Though our people are relatively prosperous and well off in material things, we seem nevertheless to be in a time of depression. I do not mean economic depression, but rather a depression of spirit, of imagination, a depression of daring and adventure, a depression of hope. We seem to have lost nerve. Indeed, we have lost faith in faith.

Make this personal, if you will. I ask you to compare your feeling about life today with the feeling you had, say, fifteen or twenty years ago. You are unusual if you don’t feel things are less under control now. Then there was a persistent feeling that there would be a break-through — scientific, technological, governmental, or something — that would provide a handle for solving whatever the problem was. It was but a continuation of the traditional American optimism, a spirit of can-do.

Now, all too many things seem not to work. In the familiar words of Murphy’s law: “Whatever can go wrong, will.” The airlines lose our luggage, our automobiles are recalled, crack houses operate everywhere, important public papers are shredded under our noses, planes are hijacked, there is a murderous frenzy in Ireland and in Israel, and television evangelists suddenly become photographers of the nude female form.

I could go on with the litany of our troubles, repeating, like some mantra, “Beirut, Dow-Jones, Panama, ozone layer, teenage pregnancy,” and on and on. It may be that the feeling of depression that I am describing is not universal, but is merely personal to me, being a kind of male menopause, in which even the happy events produce little pleasure. But, however paranoid I may be, there is nevertheless great truth in the country preacher’s definition of status quo. “Status quo,” he explained, “is Latin for ‘the mess we is in.’ ” And the ophthalmologist was right when he said to his patient: “Your eyes are fine; it’s the world that’s out of focus.”
Now, what has all this to do with you as judges and lawyers?
Well, having lost faith in government, in education, in science — in the old verities — people must turn to something. The gods abhor a vacuum. If old gods and old faith recede, new gods and a new faith inevitably arise. And so we look for the new civil religion. What is it, and who are its priests?

A clue to the answer lies in the spectacular growth in judicial statistics and in the size of the trial bar. When I was a young lawyer, litigation departments of major firms were small and their members were low-paid. Now, the biggest firms have large and often dominant trial departments. The Litigation Section of the American Bar Association, only fifteen years old, has almost 50,000 members. Judicial dockets have exploded. Yes, I suggest that America's new secular religion is litigation, and that trial lawyers and judges are her priests.

Is there a problem in society? Pass a law, issue a regulation. And then be assertive, be aggressive, know your rights, stand up for them. And if you don't get satisfaction, sue! In almost every field of activity or endeavor you can name — in business, education, government, sports, and on and on — one can compile a catalog of situations in which law and litigation are now looked to as savior, to provide socially and personally acceptable solutions to problems that only a few short years ago were left to informal resolution, or were not even recognized as problems.

I do not view all these changes as either good or bad. Some, of course, are foolish in the extreme and unjustly Charles Dickens's dictum, "The law is a ass." Others give expression to our highest ideal, of the dignity of persons. But I seek simply to remind you of the extent to which law now touches our lives, as citizens and as groups, in ways little imagined only a generation ago.

That, dear friends, is the state of the law and of litigation, America's secular religion, whose priests we are. We might wish it otherwise, but there it is.

Is there no word of hope then? Can nothing good be said?

Despite my catalogue of negatives, I really am an optimist. I am not like the character in the Guindon cartoon who, sitting with a group of world-weary friends in a quiche-and-hanging-fern cafe, asks: "Is evolution still going on, or is this pretty much it?"

I suggest that yours is a golden opportunity to help meet the crisis in confidence. Precisely because proliferating laws and litigation cause our people to turn more and more to lawyers for help in time of trouble — for that very reason — you have a God-given chance as never before to serve them and to help restore in them something of the sense of hope and destiny that have made us so vital and productive for two centuries.

I have used the metaphor of religion in calling litigation our new secular religion and in terming you her priests. Let me carry forward the metaphor and urge upon you certain attitudes with which to bear that priesthood.

First, whatever the ideals with which you entered the profession, and whatever corrosion they have suffered from the acid of practice, you should rededicate yourself — judge and advocate alike — to the keeping of the dream embodied in the phrase carved in the stone of the United States Supreme Court building: "Equal justice under law."

Its very familiarity dangerously dulls its capacity to excite us, but familiar or not, it is a cardinal tenet of our theology. We cannot afford to adopt the mentality of the marketplace, even if we may now advertise. Ours is a profession and, in a literal sense a sacred calling. To offer less than passionate devotion to equal justice under law is to fail our people, whose faith now is in us.

Second, as a priest and practitioner of litigation (the new secular religion), you should make worship in the temple — that is, trials — simple and accessible. The former Chief Justice to the contrary, the answer is not a caste of high priests known as barristers. They would make worship more expensive and exclusive. Neither is the answer to narrow the doors of the courts. I have in mind the proposals to remove from the federal courts certain subject matter cases and all diversity cases. A temple open to some and closed to others houses a false faith.

The answer undoubtedly will include simplification of discovery, economies by the use of paralegals, the diversion of some disputes to less formal settings, and the like. But it is essential that litigation be made simple and pure.

True religion has always been clean and elegant of line, simple though not simplistic. Indeed the thunder of Old Testament prophets was loudest when religion became complex, technical, and hypocritical. As a priest of the new religion, commit yourself to working for an accessible, straightforward mode of litigation.

Third and finally, I exhort you to let your faith in the law and in its courts so shine that it will be
contagious and evangelistic, not merely that you may be a better judge or a more effective advocate (though you will be), but that you may, by force of example, provide a yeast of optimism and of courage and of hope that will help the rest of the bar, and ultimately all our people, move into our third century with a revival of faith and nerve.

As leaders of our profession you have much to offer your community, the people of the Western District of Michigan. The changes and problems I have suggested represent for each of us an enormous challenge: To channel the changes wisely, in directions that will produce a more just society than ever before — so that, in the words of the prophet Amos, “judgment [will] run down as waters, and righteousness as a mighty stream.”

If we can be wise and compassionate judges, skilled and ethical advocates, zealous in improving the law, then the people’s cry for justice will be answered and this new courtroom will be not primarily an arena of conflict, but rather a temple of justice. But it’s up to us. The most modern courtroom cannot dispense justice; only you and I can do that. That is the challenge.

But what if you should feel that the problems we face are too big for us to solve, or even cope with? Isn’t it reasonable, then, to throw up our hands and let come what may? Let me encourage you to resist that impulse and to persevere, by reminding you of a famous moment — in our lifetimes — in which ordinary people, most of them with fewer resources than you and I, changed the course of history.

It is the story movingly told in the book, “Mrs. Miniver,” which became an acclaimed moving picture starring Greer Garson. You will recall that the powerful forces of the Third Reich swept through the Lowlands and pinned down 300,000 Allied troops, most of them British, on the beaches at Dunkirk, in French Flanders. Almost surely the British troops would be captured or destroyed, and there would then be no obstacle to the Nazi crossing of the Channel and the invasion of England, and victory for Hitler. The face of Europe and of freedom would have been disfigured for our generation, and perhaps for generations to come.

But you will recall what happened instead. The able-bodied young men of England were trapped on the beach. Back home there remained only those ineligible for military service — the infirm, the elderly, those who for one reason or another were deemed unfit for frontline duty. From among those rejects were summoned all persons who had access to any kind of boat: Fishing dories, small motor launches, outboard pleasure craft, small ferryboats, tugs — in short, whatever boat might conceivably be able to cross the water to Dunkirk and return with a precious payload of soldiers.

If you saw the picture, you will remember the trickle of miscellaneous craft, manned mostly by rag-tag civilian crews, that issued from the harbors and rivers and inlets of England’s southeast coast; and the trickle became a stream; and the stream became a flood of little boats, moving into the face of danger off the Flanders coast. With help from the weather and the RAF they shuttled back and forth, back and forth, rescuing the 300,000, two or three or twenty or thirty at a time.

Few scenes in history, or fiction, have been as moving as the sight of that flotilla setting out to do what had
to be done. Here were hundreds and hundreds of ordinary citizens who gave what they had — not health and strength, so important for soldiers — but courage and their boats. No great troopship saved the beleaguered men, but rather fishing boats and launches. No daring commandos darted in with a complicated and deceptive rescue mission, but rather fishermen and retired schoolteachers.

In short, the cream of the British army was saved to fight another day because the little people, the ordinary people, were courageous, generous, and faithful. And because of their actions there was no invasion, and the course of the war was changed. And the world was changed.

If there were to be a new canon of scripture, I would propose that the story of Dunkirk be included as a parable, from which one can draw the lesson that the common man can make a difference.

Each of us, Walter Mitty-like, enjoys daydreaming about the beneficent changes he would make if he were king. “If I were king, the poor would be given jobs. If I were king, justice would roll down like waters, and righteousness as a mighty stream.” Or, less grandly, “If I were king, the arts would flourish. If I were king, justice would offer itself and your craft (the word can mean your boat, as in “Mrs. Miniver,” or as here, your skills) — that you will offer yourself and your craft in the service of your profession and the community. Whether your boat is a yacht or a dory, it is needed in the service of the larger cause. Do not remain tied at the dock, but sail for Dunkirk. In the words of the poet, there is yet much to be “determined, dared, and done.”

We have dedicated a court today. I hope we have also rededicated ourselves to the profession that has called us all.

But realistically, few of us will ever be kings (only a few, federal judges); and the temptation is to lose faith that as non-kings — as ordinary men and women — we can make a difference.

But we can make a difference, each by responding to the opportunities of the day with whatever talents he has. Not all of those opportunities will be as dramatic, but there will be other Dunkirks. They will not be called Dunkirk; they will be called “the attack on the jury,” “the decline of professionalism,” “court congestion,” and the like.

I hope that when the call comes, you will offer yourself and your craft (the word can mean your boat, as in “Mrs. Miniver,” or as here, your skills) — that you will offer yourself and your craft in the service of your profession and the community. Whether your boat is a yacht or a dory, it is needed in the service of the larger cause. Do not remain tied at the dock, but sail for Dunkirk. In the words of the poet, there is yet much to be “determined, dared, and done.”

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SOMETHING’S MISSING...

Some names were left off the Michigan Shorthand Reporters Association reporters’ list of the Michigan Bar Journal 1988 Directory.

Please clip out these names and attach to the last page of the reporters’ list.

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