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Lawyering As A Way of Life [Reflections]

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Reflections

William F. Fischer, Ph.D., a clinical psychologist and Professor of Psychology at Duquesne University, delivered the following address, *Lawyering As A Way of Life*, at the annual Duquesne Law Review Banquet, which was held at the Vista International Hotel, in Pittsburgh Pennsylvania, on April 28, 1990. Present were law school administration and faculty, law review editorial board members and staff and invited guests. In this provocative address, Dr. Fischer drew attention to some of the psychological dangers which inhere in professional education in general and legal education in particular.

Dr. Fischer showed that legal education, rooted in anxiety and stress, can bring about a transformation of one's world view. Thereafter, the person indoctrinated into legal professionalism, may employ that professional posture as a shield from further anxiety. Worse, one can insulate oneself from spontaneity, creativity, and personal attachments, fixated as one is to the argumentative, rhetorical, and instrumental posturing which legal education inculcates and rewards. Calculation and cunning, so often the exclusive psychological modes of professional legal life, are possible addictive behaviors of the legal professional. Dr. Fischer's address functioned as a remedial warning — a warning to which spouses and friends gave their knowing assent.

Perhaps this address, like marital counseling itself, will only be fully appreciated when couples — one or both of which are lawyers — come back for a maintenance check-up. So this address is a *ca-veat emptor* to the consumer of modern legal education; and like all warnings, only the future will foretell.

Lawyering As A Way of Life

*William F. Fischer, Ph.D.**

Dean Sciuillo, Faculty, members of the Law Review, invited guests, ladies and gentlemen. Before I speak of the transformation of one's world which can occur when one attempts to lawyer as a way of life, I would like to express my profound appreciation for the honor which you have bestowed upon me by inviting me to address you at this celebration. In particular, I want to thank Mr. Robert Boyer, the current editor-in-chief of the *Duquesne Law Review*, for extending the invitation, and Professor Robert Taylor for suggesting it and for encouraging me to accept it. Finally, I want to congratulate all of you for your outstanding academic achievement.

Certainly, I have no desire to diminish in any way the festive mood of this occasion. Still, having observed what frequently happens to psychologists when they fail to distinguish between their professional and personal lives, i.e., when they relate to their families and friends as if they too were clients or fellow psychologists, and having realized that lawyers are vulnerable to an analogous phenomenon, I am encouraged to raise a red flag, to ask you to take a moment, at least, for more serious reflection. Hence, in my talk this evening, I would like to describe, even to the point of exaggeration, what I believe is likely to happen when a lawyer attempts to live, in his or her non-professional life, the values, attitudes, and modes of comportment that tend to be idealized in legal education today. In other words, I want to characterize the ways in which a lawyer's relations with family and friends are transformed when he or she experiences and behaves towards them as if they were clients, witnesses, judges, and/or fellow lawyers.

Before I identify and discuss these values, attitudes and modes of comportment, I first want to ask: why a lawyer, an intelligent, educated person, would treat spouse, children, parents and friends as if the emergence of their desires required him or her to appropriate a professional mode of presence? In general, there are two

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answers to this question. First, as educators in a variety of disciplines have often noted, when one is schooled in the ways of thinking and modes of comportment of a particular profession, one does not merely appropriate a special skill. Rather, one's entire outlook, including one's senses of self, others, and the world, is radically enlarged, if not fundamentally reshaped. If I were to state the matter somewhat more psychologically, I would suggest that the typically intense, often anxiety-laden, education and training, to which lawyers (as well as psychologists and other professionals) are exposed, characteristically induces in them a fundamental change in world-view, a change in how they experience the meanings and significances of human situations, as well as a change in the ways in which they relate to them. In the case of the lawyer, I will try to describe some of these changes in a few minutes.

The second answer rests upon a recognition of the fact that the ideal of a detached, unemotional, hyper-rational stance, towards which lawyers have been strongly encouraged to strive when dealing with opposing lawyers, witnesses, judges, or even with clients, is exceedingly powerful, especially in situations which are fraught with personal, as well as interpersonal conflict. Hence, even when it tends to undermine the affectional bonds of husband and wife, parent and child, and friend with friend, the temptation to appropriate that stance in tense situations is frequently irresistible. To state the matter in a most concrete manner, the appropriation of a professional mode of relating can go a long way toward alleviating the lawyer's anxieties and frustrations in everyday, non-professional interpersonal situations.

Now we may ask, what are the values, attitudes, and modes of comportment that tend to be idealized in legal education today. Among the most prominent of these, Roger Cramton has cited, "a skeptical attitude toward generalizations, principles, and received wisdom," "an instrumental approach to law and lawyering," and "a tough-minded and analytical attitude towards lawyer tasks and professional roles".¹ What do these mean and how does their unrestricted appropriation and implementation transform the lawyer's non-professional, or personal life? Please note that I am not addressing the suitability or effectiveness of these values, attitudes, and modes of comportment in professional situations. While I am aware that there exists some disagreement as to their suitability, I

1. Crampton, *The Ordinary Religion of The Law School Classroom*, 29 J. L. EDU. 247-63 (1978).

readily acknowledge that I have little, if any, competence to participate in that debate.

In the professional context, these values, attitudes, and modes of comportment express the lawyer's recognition of the fact that law is not based upon exhaustive and conclusive scientific studies of human nature. We do not have a consensually accepted understanding of what it means to be a human being. Hence, the law, as a code which attempts to regulate the expression and modes of satisfaction of human desire, is not, in fact, a logical system. The lawyer cannot assert with confidence that the law articulates the goals towards which people should strive. Nor can the lawyer seriously claim that the law is systematically derived from divine revelation. Despite the fact that we may become attached to and harbor all manner of opinions about what people are and towards what they should strive, we simply do not know, in any consensually agreed upon sense, what it means to be a person. Hence, the lawyer realizes that the law is a historically relative expression of a society's beliefs, its ways of valuing, and its aspirations for its people. With its various categories and classifications, the law is a system of rules and procedures created by people of a certain time and place in an effort to regulate their own diverse desires. As such, the law is subject to all of their fads, fashions, and biases. Hence, the lawyer is rightfully dubious about the alleged validity of any social goals, or values, merely because a vocal majority seems to favor them or because someone claims that they have always been accepted.

Since the lawyer knows that no-one really knows the ultimate nature of human being and hence cannot, with authority, tell people what they should desire or for what they should strive, he or she recognizes that the law is nothing but an instrument by which society attempts to implement what it currently believes to be desirable. That is to say, the law is a means to whatever ends society, or its representatives, propose at a given time in the history of that society. Moreover, the lawyer realizes that he or she is merely an agent, a craftsman or skilled technician, one who has been trained to assist other's—be they individual clients, corporations, governmental agencies, or society as a whole—to achieve their goals. Thus, lawyers do not presume to judge or evaluate these goals; rather, they devote themselves to realizing them. Whether or not the goal is good or bad for the client, or the corporation, or the society, will, as it were, come out in the wash.

As I have already suggested, the lawyer, as a professional, sys-

tematically develops and refines his or her ability to distinguish between the so-called "cold, hard facts of a case" and people's diverse feelings about them. The former are to be thoroughly researched, understood and respected; the latter may be disregarded or exploited, depending upon the particulars of the case at hand. Cognitive rationality and calculation are the appropriate modes of presence; sentiment and spontaneity are not only irrelevant, they are potentially dangerous.

In the non-professional, or personal world of the lawyer, the appropriation and implementation of these values, attitudes, and modes of comportment has a profound transformative effect. First, the possibility of relaxedly experiencing and living oneself as being an intrinsic part of a "we," a larger whole, whether this be a marital dyad, or a family, or a group of friends, is significantly diminished. One has difficulty with letting go, even temporarily, of one's sense of self as knowing better than others, of one's prized autonomy and need to feel in control, and of one's concerns with knowing who one is by radically distinguishing oneself from others. One cannot forget the adversarial potential of the other and hence, one is more comfortable when one occupies the position of the interested spectator or agent. Moreover, when one is tempted to allow oneself to feel a sense of belonging, one senses that there is always the danger that one will get caught up in some activity of the group; one might even be spontaneous and do something foolish, such as act upon one's feelings or sentiments, rather than upon the established facts; one might forget to listen for the facts, for what it all amounts to, for the "bottom line."

Since there are no consensually agreed bases for establishing a moral hierarchy or a set of principles for ordering of human desires, and since everyone wants to do or have his or her own thing, the lawyer cannot help but become skeptical, if not cynical, in the face of the claims which people make concerning the loftiness or worthiness of their own particular desires and aspirations. Even when these desires express the hopes and wishes of one's spouse, or child, or parent, or friend, they are not necessarily to be accorded a special or privileged status, especially when they conflict with one's own. In fact, in the latter case, the other may be cast in the role of an adversary. How much some thing or state of affairs matters to that person will be less important than how well he or she can argue for it. The lawyer knows only too well that whether one is for or against some possibility is invariably less important than how well one states one's case. Moreover, winning the

argument constitutes an affirmation of the worth or goodness of that for which one has argued. The lawyer knows that good and bad are relative to time and place; it is how well one argues that really counts.

In summary, to lawyer as a way of life means that one is inclined to exchange the vulnerabilities and satisfactions that come from a sense of commitment to and solidarity with others, for the experience of personal safety and power that is afforded to one who relates to others primarily in terms of services. Moreover, to lawyer as a way of life means that for the sake of diminishing the possibility that one may be taken by surprise, that one may be revealed as foolish, one has abandoned, to a significant extent, one's freedom to speculate without calculation, one's willingness to acknowledge that one is acting on the basis of feeling, and one's prerogative to reveal oneself in spontaneous expression. Finally, to lawyer as a way of life means that one has despaired of the possibility of finding a personal moral stance, one which personally, as well as publicly, articulates and defines how one understands and lives out one's sense of human freedom and responsibility.

