

RECENT SPEECHES

WHAT WOULD YOU DO IF YOU WERE NOT AFRAID?

Martha Barnett*

It is a thrill to celebrate with you as you complete your law school career and begin what I believe is the most rewarding professional career available. In the short span of three years, you have gone from being students to graduates, and shortly, when you have passed the bar examination, as I am sure you will, to being lawyers. *I like lawyers*. They are my heroes and heroines. There is not a day that goes by that I am not deeply proud to be a lawyer.

I want you to take time to savor this moment. It is a special one! While the moment is yours, remember, it is not yours alone. The presence of all of these witnesses — your family and your friends — proves this is their day too. Congratulations to you as well.

While it is a great honor to be your commencement speaker, it is also a challenge to say something that is meaningful and uplifting. I can only imagine the wide range of emotions you are experiencing right now — excitement, relief, joy, apprehension, maybe even impatience for me to get on with these remarks so you can get on with your personal celebrations.

Some of you, especially some of your parents and partners, may be wondering just what you are going to do now that you have your law degree. You may find yourself in the same position as the late Supreme Court Justice Oliver Wendell Holmes did one evening.¹

After leaving the Court, he found himself on a train, but could not locate his ticket. While the conductor watched, smiling, the eighty-eight-year-old Justice Holmes searched through all of his pockets without success. Of course, the conductor recognized the

* © Martha Barnett, 2000. All rights reserved. President, American Bar Association. Ms. Barnett was awarded an honorary Doctors of Law degree from Stetson University College of Law. Ms. Barnett gave this speech at Stetson University College of Law's Spring 2000 Commencement on May 6, 2000.

1. Chief Justice Thomas J. Foyer, *The Bill of Rights — Its Origins and Its Keepers*, 18 Ohio N.U. L. Rev. 187, 194–195 (1991).

distinguished Justice, so he said, “Justice Holmes, don’t worry. You do not need your ticket. You will probably find it when you get off the train, and I am sure the Pennsylvania Railroad will trust you to mail it back later.”

The Justice looked up at the conductor with some irritation and said, “My dear man, that is not the problem at all! The problem is not where my ticket is. The problem is where am I going?” That is precisely the question you must ask yourself — “Where am I going?” Will today’s event be an end in and of itself, or will it truly be a commencement, a new beginning?

You are joining a profession that elicits pride and responsibility. From the day you become a lawyer, you are held accountable to a higher standard than that applicable to the conduct of most. You are bound by rules of professional conduct and a code of ethics. It is expected that you will have integrity. It is unthinkable that you will not.

Many of you received special recognition at the awards ceremony yesterday, and I congratulate you. But, tomorrow, the slate is wiped clean. Few clients care about class rank, and judges do not ask to see your resume — unless you are in trouble! You will be evaluated by your performance, by your energy, by your reputation for intellectual honesty and professional integrity.

So it is with our profession’s future. It is just a blank sheet waiting to be filled. Each of you, of course, will be the ones who will write much of the history that will fill those pages, and we will all be judged by your performance.

It was just twenty-seven years ago that I sat where you sit — not so long ago if you are a tree. I have seen many changes, most especially in “who” practices law. My presence here today — my status as president of the American Bar Association — is evidence of that. The changes have not just been in the face of the profession, but also in the “how” and the “what” — how we deliver legal services and even what services we deliver.

Change is hard, even scary for some people. For others, it is challenging and exhilarating. For most, change is inevitable and good.

What are some of the changes you are likely to see? Here are a few predictions. The law firm of the future will be like the present, except more of it. It will be electronic, international, specialized, and big. By 2020, the average firm will have 1000 lawyers. Boutiques and regional law firms will thrive alongside these national and

global firms only if they are positioned to serve clients around the world and willing to invest heavily in technology and training.

Voice recognition will change the role of secretaries. There will no longer be libraries or perhaps even secretaries. In fact, there may not be any walls in the virtual firm of the future.

The top starting salary will be \$270,000, give or take a little, but do not get too excited. If things go as predicted, there will not be any time to spend that money on play, as the profession is likely to become an intensified version of its current workaholic self.

The law firm of the future might be an accounting firm, or a “professional services firm.” Multidisciplinary practices — also known as partnerships between lawyers and nonlawyers which are now prohibited — will become common.

Our current system of licensing lawyers will change to allow lawyers licensed anywhere, in the United States or overseas, to practice in any state or any country without a local license. So called “multijurisdictional” practices will proliferate.

And the billable hour — whose reputation unfortunately does not exceed its importance — will still be around; you will just be expected to do more in the same sixty minutes.

This would not be a pretty picture if it were the entire picture. But it is not. All the *color* and *passion* and *life* of being a lawyer are missing. That is what you will add.

Even if the prognosticators have missed the mark on the size and the money, there is no question that our profession is in transition. Our challenge — yours and mine — is to remember and preserve the values and time-honored principles that have always distinguished lawyers.

Values, such as service, not just to our clients, but to the public, must continue to guide us. We often accomplish the latter through pro bono work.

Principles, such as the independence of the judiciary and just as important, the independence of the lawyer, must be honored and protected. It is our responsibility to make the constitutional promise of access to justice a reality.

Maybe it has always been so, but it seems to me that our profession is increasingly under attack. The recent antics of the Florida legislature to “pack” the supreme court, to control the judicial nominating commissions, and to rewrite the rules of the courts are just some examples. Similar things are happening around the country.

“Judge bashing” has become all too common. It is one thing to criticize a particular decision on the merits; it is quite another to “label” the judge and threaten impeachment.

During the past few years, I have had an opportunity to travel to Eastern Europe with the American Bar Association’s Central Eastern European Law Initiative (CEELI). Since the Berlin Wall fell and the Iron Curtain went up, the lawyers of America have been working with those emerging democracies to provide the tools for success. The most important tool is the concept of an independent judicial branch. Many countries have experimented with democracy, with an independent executive, and with an independent legislature. I believe that what has set the United States apart, what has made us the leaders of the world, is that we also included a separate and independent judiciary. I can tell you the world is hungry for what we have and what we so often take for granted. Do not be complacent. Our very freedom may depend on it.

Never forget that you are an officer of the court. When you take your oath, you become part of that judicial branch of government with responsibilities for the administration of justice.

Long ago, Henry David Thoreau wrote the following:

The past is history.

The future a mystery.

Today is a gift; that’s why we call it “the present.”²

I believe that our gift of the present — of today — is our ability to shape the future. This day is a new beginning for you, and I encourage you *today*, if only for a moment, to think about the legal profession of the future and your role in it. You can insure that those inevitable changes I have mentioned are in fact good ones.

I recently began to ask myself the question — “What would you do if you were not afraid?” I first started thinking about this during our firm’s annual partner compensation process. Like most law firms, we reward production. We also evaluate our lawyers on other criteria, such as pro bono work, community service, service to the firm, and the like. Some of it is subjective.

2. Mass. Gen. Hosp., *Neurology Web Forums, The Art of Making Lemonade* <<http://demOnmac.mgh.harvard.edu/neurowebforum/TouretteSyndromeArticles/2.22.974.57PMTheArtofMakingLem>> (accessed Aug. 14, 2000).

We were dealing with a difficult partner. The partner is a good lawyer with lots of loyal, lucrative clients. On a pure production basis, that partner could expect a healthy bonus. Yet, the partner had some real behavioral problems; he hoarded work, berated staff and associates, made unreasonable demands, and the like. We had discussed all of this with that person on several occasions without much success. So, we talked about using compensation as a way to send a message to change behavior. We knew what was right and what we should do.

The problem was “we were afraid” — afraid that the partner would leave, which was okay, and that the clients would follow, which was not okay.

Compensation has come and gone, but I have thought about the question without any reference to money. “What would I do if I were not afraid?” On a personal level, I would learn to dance, keep a journal, tell someone I love him or her, and take risks.

On a professional level, maybe I would try to change the definition of success. For too long it has been equated with money, power, and control. What if success meant,

- Not how much you earned, but how much you gave away?
- Not how many lawsuits you won, but how many you helped your client avoid?
- Not how many times you were at the office before sunrise, but how many sunsets you saw with your family?
- Not just that you achieved great things, but that you mentioned others in doing the same?

Earlier I suggested that you ask, “Where am I going?” Now I urge you to add the question, “What would I do if I were not afraid?” I promise you that you will come face to face with situations in which your answer to these questions will make all the difference.

Professor Karl N. Llewellyn made his students sign a “corny little oath” just prior to their graduation from law school. What he put in the form of an oath, I now put in the form of my “wish” for you. It is as follows:

In accepting the honor and the responsibility of life in the profession of the law, . . . [may you, to the best of your ability:

Be guided by the watchwords of “principle” and “ethics”];

[W]ork always with care and with a whole heart and with good faith; . . .

[W]eigh [your] conflicting loyalties . . . with an eye to the good less of [your]self than of justice and of the people; and . . .

[A]t all times, even at personal sacrifice, [may you be] a champion of fairness and due process, in court or out, and for all, whether the powerful or envied . . . or the helpless or the hated or the oppressed.³

Someone once observed that “[l]ife can only be understood backwards; but it must be lived forwards.”⁴ As I conclude, I want to re-emphasize that you are now at the beginning of your career. As you go forward, you should always bear in mind how you want to be judged at the end of your career. Each of you will leave the law a little better or a little worse. Remember, always, you are responsible not just for your own success or failure; you are the ones who will fill in those now blank pages of our profession’s history.

Once again, my sincere congratulations and good wishes go with you on the remarkable journey you are about to undertake. Remember, you are a lawyer. Be proud. Do good.

3. Karl N. Llewellyn, *Jurisprudence: Realism in Theory and Practice* 395 (U. Chi. Press 1962).

4. *101 Thoughts Worth Thinking: On Wings of Angels* 54 (Paul C. Brownlow ed., Brownlow Pblg. Co., Inc. 1993) (emphasis in original).