

~~Test Jumpin' Kee-rist! (Story)~~

John D. Voelker
Iskremung, Mich.

THE HUMAN SIDE OF THE LAW

(Detroit, January 25, 1955)

The human side of the law!

My initiation into the human side of the law came rather abruptly. It was during my first circuit court term as prosecutor of Marquette County. That was quite a few years ago.

The first criminal case was called; the clerk fished the names of twelve prospective jurors out of the box; the jurors slowly took their places; the eager young D.A. sat snorting at his table. We were away.

As was his custom, old Judge Bell short-circuited quite a bit of the normal tugging and hauling over selecting the jury by himself first asking some pointed preliminary questions. Were all the jurors citizens? Were any of them law enforcement officers? Had any of them already served on the jury within the year? That sort of thing. He wound up his inquiry by his usual catch-all question: Did any juror know of any reason why he could not sit and hear and determine the case fairly on the law and evidence?

A male juror got up, a fidgety and dandruffy little man, obviously nervous and embarrassed. The juror coughed and cleared his throat and allowed that perhaps he had better not sit on the jury.

"Why not?" Judge Bell inquired in his kindly way.

"I--I think I had better be at home," the juror replied lamely.

"But why do you think you should be at home?" Judge Bell pressed.

"W-well, y-you see, Your Honor," the juror stammered, "m-my wife is about to become p-p-pregnant."

Not unreasonably, a sort of stunned silence pervaded the courtroom. One could hear a pin drop. Even a Phi Beta Kappa key. That was when the resourceful and zealous young prosecutor arose to fill the breach.

"Your Honor," I said, swiftly getting to my feet, "I think the juror misspoke. I think he meant to say that his wife is about to become confined."

Judge Bell stroked his chin and surveyed the hapless and perspiring juror. He then looked down at me over his rimless glasses.

"Young man," Judge Bell said to me, "it warms my heart to see a young prosecutor so much on his toes. Indeed it does. You have pointed out a most interesting distinction, and one that seems to absorb the attention of quite a ^{number of} few people. Let me compliment you."

I fluttered my eyelashes as proudly as the winner of a refrigerator on a TV quiz who has just guessed President Lincoln's first name. "Oh thank you, Your Honor," I murmured.

"But, Mr. Prosecutor," the Judge drily went on, his gray eyes twinkling, "may I remind you that in either event I ^{still} rather think the proper place for the head of the house is at home. The juror may be excused."

* * *

^{greatly} I regret that only when I am telling stories or arguing to a jury can I say what I have to say without consulting notes. On those infrequent occasions when

I can be persuaded to ^{make} give a formal talk I have found that the whole business ^{of having to give let alone listen to a speech so} appals me that my memory deserts me unless I read what I have to say. So please

forgive me ^{to} I read the following effusions.

Now it is customary, I believe, at affairs of this kind for speakers who address ^{the members of} graduating classes--which you are--to remind you in ringing figures that you are standing on the threshold of a great challenge; that while your formal education is now over, your real education is only about to begin; and that--oh yes--you are shortly to be launched on a voyage of great opportunity for service to your fellow men. O.K. then; I am a slave to tradition. May it be stipulated on the record that all of you stand tonight on a threshold from which you are about to be both challenged and launched? It's going to be a nice trick if we can work it. Hold steady now! This may not hurt a bit.

I do not doubt that most of you have been loitering around on the figurative thresholds of quite a number of figurative challenges for quite a while now; that you are growing a trifle weary of being told that still greater educational headaches await you; and that it may possibly pain you to be reminded that you sit here like a cluster of spanking new PT boats, about to have a figurative magnum of champagne brought down across your noggins, whereupon you will be precipitously launched upon a sea of perpetual service and gladness to your fellow men. Well, anyway, it's nice--that part about the champagne.

But I'm afraid ~~your noggins~~ ^{you} must be spared, ~~and I can think of~~ ^{I see} likelier places to put the champagne.... You young people are lawyers now, so come in over those worn thresholds, come away from all those ringing challenges, come down off those cold launching platforms. Come on in! The water's fine!

^{yes,} For you are now members of the family; at last you have earned the right to sit in on the inner family councils. Nor should it any longer be necessary to coddle you and lead you to believe that in our family everything is sweetness and light. Indeed there is much in our profession to crow about, but there are also a few

skeletons rattling around in the family closet. I think you should know something about them, ^{too.} So tonight I propose ^{among other things,} to run out a few of our family skeletons and, if I am lucky, possibly suggest to you ^{how} a way that some of them might finally be chased out of the family closet. The reason I shall mention any of them is my hope that you might join in the chase. In fact the ultimate success of the chase ^{may} depends on you. ~~Most of us~~ ^{older} lawyers are too far gone in sin. +
+

-- and some of you are ^{} ^{*} ^{*} doubtless already finding --*
You will find that there is a wide gap between the law as it is taught and the law as it is practiced. Sometimes I think the gap is a Grand Canyon. For one thing in law school you learned a lot of ideal legal theory which was clamped like a cold patch to a lot of frozen immutable facts. Or vice versa. In other words, the legal situations you have so far confronted might be called static. If this happened, that would be the inevitable legal result. So your conclusions came out as neatly as geometrical theorems.

But your geometry days are now over. For as you get into that lush tangled jungle that is the law in actual practice you will discover one big thing: That in actual practice all these so-called immutable facts will have suddenly become like molten mercury, running everywhere. Your facts will have become as shimmering and elusive as moonbeams in a deep forest, as changeable as chameleons. In actual practice the facts are almost always in a state of flux. For you will have discovered that the facts you must now deal with must come largely from people, not from books, facts inevitably colored and distorted by the further fact that people are by all odds the most elusive, chameleon, forgetful, vexatious, cunning, stupid, contradictory creatures on the face of the globe.

You will then have discovered, with a vengeance, the human side of the law; that the actual practice of law is several thousand light years removed from the

ideal theory you had learned from books; that indeed this is at once one of the charms and challenges of actual practice; that henceforth a good portion of your talents will have to be devoted not to learning or applying the law, which by now should be comparatively easy, but to that new and absorbing task of applied psychology, the problem of bringing those reluctant and volatile facts to a sufficiently stable state of suspension and equilibrium--not unlike a sort of legal Truth Serum--so that they might finally equate or merge with the law as you already know it.

This you can do successfully only by learning to deal with people, and that is something no law school undertakes to teach you, or could teach you if it tried. Gypsies might be better. For that is the fine old art that can't be captured in or taught from books: the ancient art of getting to know a little something about those strange creatures, one's fellow men. This is the human side of the law.

All this will call ^{upon} up the deepest resources of your personality. And, since frequently the slightest change in the facts will sharply change both the law and the result, with the accompanying realization of how easy or desirable it might be to tinker with those facts, it will also call upon the deepest resources of your character. And that again is something that no law school can teach. Nor gypsies.

I should add, too, that in actual practice the fact that you may be able finally to bring the law and facts to an uneasy state of equilibrium is still no sign that your side will prevail. Especially before a jury. For your facts may dovetail precisely with ^{your} the law, but the jury--those unpredictable people again--^{choose to} may ignore both. More human side of the law. I am reminded of the trial of a local barber for assault and battery.

(Tell story of Rocco's Open Air Barber Shop.)

Osmosis

I have spoken of family skeletons. * * *
Here is a ^{one} ~~family skeleton~~ you will rarely hear mentioned in polite legal circles. It happens to be one of my pets, ~~so with a vengeance.~~ ^{Do country lawyers dare walk in where bar associations fear to tread? We'll chance it.}

Do you know that you are about to enter a profession that is rather widely regarded as numbering among its members, culturally and intellectually speaking, one of the most uncurious and complacent professional groups in the country? Did you know that lawyers as a class are reputed to buy fewer books and paintings, see fewer plays and attend fewer symphony concerts than any other graduate group in the nation? Did you know that even our traditional undergraduate arch enemies, the engineers with their hairy ears, are said to be culturally more on the ball than we?

Perhaps it is that we lawyers have to buy too many of our own trade books during the year. Perhaps the chaotic drama of the courtroom affords us enough cultural outlet. Perhaps, too, part of our plight is ~~simply~~ economic, sadly enough. We simply can't afford to. But whatever the reason I think there is no cause for joy or complacency that one of the world's oldest professions, perhaps the one most naturally allied to the arts by its traditional forensic demands, should find itself among the cultural Kallikaks of the country.

I happen to have learned a little something about this subject from wry personal experience. As you have heard, I have had three books published, two of them concerning one of the most dramatic and colorful branches of the law, the work of the public prosecutor. Both of these books happened also to have been critically most well received. Yet the figures on the total Michigan sales of these books, outside my own bailiwick, move me to conclude that considerably less than one percent of the lawyers of our own state were curious enough to bestir themselves to read either of them.

My other book, "Danny and the Boys," was not about the law except as its characters ^{rather monotonously} frequently collided with it. As an experiment in antithesis--and some other things--I finally prevailed upon my publisher to run a full page ad of that book in the State Bar Journal. The ad appeared complete with glowing quotes from the N. Y. Times, the Detroit News, and other review mediums. It was so irresistible I almost bought a copy myself. ^{Visions of sugar plums danced through my head.} The editor of the Bar Journal, my good friend, Milt Bachmann, also kindly appended a critical hosanna in the same issue advising our panting brethren that one of their number, Johnny Voelker, alias Robert Traver, had hatched another book. Milt outdid himself. The line would please form on the left... That was in 1951.

Now one might naturally have suspected that quite a number of Michigan lawyers would have wanted to read a book written by a brother toiler in the vineyards of the law; that they would want to do this out of curiosity, or perhaps over the sheer novelty of it, or at the very least to pan it. You would have suspected wrong. Would you like to know how many books were sold to lawyers on orders to the author as a result of that ad? Let me tell you. Exactly seven! And two of these brave intellectual Columbuses did not forget to inquire about a professional discount. So that, my young fledglings, is perhaps a clue to why we continue to read those absorbing ads of our gracious host and its competitors rather than those of books and plays, in the succeeding issues of our bar journal. As a class we are ^{pretty widely} regarded in many quarters as untouchable intellectual primitives. Now I am not saying this is so; I am merely saying this is how we are widely regarded. ^{Now am I hinting that you may return to grace only by buying} So much for that particular human side of the law! Perhaps we'd better hurriedly rush that particular skeleton back in the closet and slam the door. There may be a stranger in the house.

If there be any truth in these charges, I also believe there are sound reasons if not excuses for this state of affairs. For one thing, most of us practicing lawyers

unread works
the books of Robert Traver!

are too hard put these days to keep up with our own profession to dally ~~long~~ in the gardens of the arts. It is getting to be a full-time job simply to make a living and keep even faintly abreast of the law itself. It might be interesting to poll this group on how far they are behind in reading their latest Michigan advance sheets, let alone the latest book of the month.

Now one big reason for this lies in the nature of law itself. We may, if you will, regard the law as an enormous coral reef upon which each generation of lawyers and judges builds upon what has already been laid down. You young people are now about to start your period of building. But this ancient coral reef has now grown so massive, so overlaid and encrusted, that no matter how intensive one's legal education may be, or however many seminars one may later attend, each succeeding legal generation must know relatively less per individual of our total legal heritage than the previous one. Our reef has simply gotten ~~way~~ too big.

Thus ^{as} our young lawyers are ~~not only~~ being driven more and more to specialize; our working knowledge of the law ^{is growing} has ~~become~~ more and not less fragmentary. That is why Joseph Blow, Esquire, is now not only known as an able trial lawyer--that is far too broad a designation--but, say, almost exclusively as a plaintiff's attorney who specializes in demonstrative evidence in automobile cases. Well, Mr. Blow may be a bearcat at automobile cases, and more power to him, but the chances are equally good that he couldn't interpret an abstract of title to save his life. And so, alas, many of us lawyers are getting as typed as movie villains. None escapes. Thus, if you should ever pass through my bailiwick, for example, and your deer rifle should go off accidental like and riddle a passing peasant, and you would crave to be sprung, you would simply have to go see Johnny Voelker. You see, he's the official springer spaniel of Marquette County. The myth is abroad that that's all the poor man knows.

As this vast coral reef of the law has grown more complex and encrusted, our law courses have necessarily ^{grown} become longer and more arduous. By the time ~~many of~~ ^{we} ~~us~~ have earned our LLB's, these days, ^{many of us} we have also reluctantly acquired such unwelcome dividends as toupees or bi-focals. Or at least some interesting new bridge-work. Not only does the law as it is practiced drive us more and more to become specialists, but the law courses have become so long and so hard that most of us have had to neglect what we call the humanities. So the dilemma of the modern lawyer is double. To ever get to be a lawyer in the first place he must as a student more and more neglect those things and subjects we call cultural. And, once a lawyer, to make the grade he feels frequently compelled to continue that neglect. In any case, the older one gets the harder it is, ^{so} it seems, to develop ~~the~~ taste beyond the literary mayhems of Mickey Spillane. So the modern lawyer is not only apt to be less well informed on things lying outside his profession; because of the growing pressure toward specialization he is pretty apt to be less well versed in ~~the wider traditions of~~ his profession itself.

The net result of all this is that while many of us lawyers are doubtless becoming abler and smarter operators in our particular legal niche, it is a fair question whether we are necessarily becoming wiser or smarter or more cultured citizens. Not only that but there is a grave question, at once deeper and narrower, whether the average lawyer of today sufficiently weighs what he is doing in the light of its broad social implications, whether he pauses often enough ^{-- if at all --} to consider the impact of his work on the common good.

And there are many ^{large} companion questions. Are we lawyers developing more or rather less of a sense of the ultimate aim and philosophy of the law? Are we becoming more or less well-rounded human beings? Do we perform our daily legal chores against an increasingly aware background of social perspective or have some of us come to consider our_selves merely lucky (if one may dare use the phrase) card-carrying members of a sort of lucrative trade union? Are we becoming more rather

than less interested in simply winning our cases, in making a point or gaining an advantage, in satisfying and keeping a client, or gaining a new one, regardless of where the sociological chips may fall?

Yes, there are these and many other searching questions we lawyers might ^{occasionally frame to} ask ourselves; not only those that arise from our daily practice, but those that lie in the broader realm of our role as lawyer-citizens. Has our reaction ^{to certain recent and} ~~recent~~ ^{widely-advertized} phenomena in our public life, emanating from Washington and elsewhere, demonstrated a greater or less concern by us lawyers, taken as a class, over the preservation of certain ancient legal rights and basic liberties? Or have we lawyers, as a class, been for the most part too prone to play it cozy, to pussy-foot on so-called "controversial" issues, to coast if not run with the pack, to cast down our eyes and tend quietly to our knitting? Can we, as a group, honestly say we have recently acquitted ourselves well ^{or ill} in our traditional role as defenders of these basic legal rights and individual liberties? Are we or are we not losing our capacity for ~~simple righteous~~ indignation and, more to the point, for courageous action when we observe ^{a studied} ~~the flaunting or~~ disregard of those rights? ✓

Dare we lawyers any longer afford the luxury of aloofness and non-participation? And if we continue to stand by while the very foundations of our law are eroded or destroyed, will not one day the whole vast structure topple and crash? And, if we need the goad of self-interest, will not we lawyers be the first to perish in the rubble?

I shall not undertake to answer all these pressing sixty-four dollar questions. For two reasons. First it would take too long and doubtless unduly bore or pain you. Second, I don't pretend to know the answers. I suspect that ~~no~~ one man does. ✓
But one thing is certain. Curiosity and soul-searching about our situation and role as lawyers, not ^{apathy and} ~~inertia and complacency~~, is the first step in doing something about it.

And if we--both you young lawyers and we battered old gray timber wolves of the law--do not continue to ask ourselves these kind of questions, isn't it a fairly safe bet that there never will be any real answers? When that happens complacency will have inherited the profession. We can then quietly merge with the steamfitters-- a trade ^{traditionally} characterized by much noise ^{devoted} directed to the safe conduct of hot air.

I am happy to report that there are definite signs on the horizon that ^{many} some of us lawyers are not only beginning to ask ourselves some questions; we're coming up with some ~~practical~~ answers, too. Only last week I read that the District of Columbia Bar Association has announced that henceforth the Association is making available the services of leading members of the district bar to federal employees involved in security cases. From now on any such employee who cannot find an attorney or who cannot afford one will be given the help of the bar on request. So from now on accused employees will get that minimum and basic legal right-- his day in court. *It should be needless to add that my remarks on this*

There are other related factors that have made for the specialization of us lawyers and the centralization of our activities.

When I graduated from law school the bound volumes of the Michigan supreme court reports were in the early 240's. I was impressed. In 25 ^{odd} ~~short~~ years that one overworked court alone has poured out a torrent of nearly one hundred more volumes. I am depressed. And there are 47 other states grinding them out; some, indeed, with double appellate reports. The truth is that we lawyers ^{are today huddling} huddle on a rapidly diminishing island in a rising sea of our own words. The question is inevitable. Won't we ~~lawyers~~ soon be engulfed by our own handiwork? In another 25 years how in Heaven's name is the young lawyer ever going to be able to buy those minimum tools of his profession, his own state reports, let alone keep track of what might be in them? Or, getting them, be able to rent an armory big enough to stash them in? And where

you have been non-partisan. The things of which I speak have been going on for years. Perhaps I had better hurry to make ground.

among this dusty sea of books is the young lawyer and his stenographer going to sit? Perhaps by then we can at least reverse the old secretarial myth and plant him on her lap for a change. It's a thought.

But why wait 25 years to face the bad news? I find myself wondering, tonight, how many of you, here and now, are going to be able to afford a set of the present Michigan reports. (Think of it! Three hundred and forty-one grim and forbidding volumes. At three-fifty a throw.) And pay for the rent and the phone and the stenographer and the cleaning woman and the advance sheets and the citators and all the rest. And if you can't, or if this burden too greatly appalls you, and you find you are unable to marry Eunice and still swing that office you have dreamed of over the Podunk State Bank; if instead you are obliged to obtain, if you are lucky, a clerk's job with some vast teeming city law firm (some of the partners of which have scarcely ever met) or, ^{failing that,} ~~worse yet,~~ you are forced to go brood in the ivied confines of the Replevy Credit Corporation or the We-Pay-No-Claims Insurance Co.--are you then apt to become more or less exposed to the human side of the law?

But I strain the point, and I am both unfair and wrong if I seem to suggest that the big city lawyer is less aware of or sensitive to the human overtones of his profession than his country cousin who sits over the Podunk State Bank drafting ten-dollar wills on Doubleday forms. The only point I seek to make is that the going may be tougher. It is unmistakable that the present drift of our practice is toward more specialization, still bigger law firms, and increased direct corporate employment of more and more of your young lawyers. Now that is not bad in itself.

✓ The ~~only~~ point I wish to make is that in this sort of legal environment it may be more difficult for the young lawyer to get and remain exposed to and therefore more nearly in-tune with the human side of the law. For only then can he ^{more readily realize} ~~achieve his~~

^{his} fullest stature as a lawyer-citizen.

To learn how well and manfully those handicaps ^{can} ~~may~~ be overcome, however, you need look no farther than this room. You may not land in Podunk, but if you will only develop your own sense of humanity, release your own pent cargo of curiosity and enthusiasm and awareness of our common lot, then ^{the} bigger the place you land will only mean the wider the scope for your talents.

But I still cannot help but wonder where, or when, for example, the average city lawyer is ever going to find himself ^{confronting} ~~in~~ a "human" situation like this.

(Tell about the Widow Peterson and the Richmond Township Board.)

Let us rattle ~~gently~~ ^{Let's give ourselves some more gentle hell.} another family ^{* * *} skeleton. It's ^a kind of fun once you get over the initial shock.... Many of us lawyers, with a fine lack of detachment, pride ourselves excessively over the progress the law has made in keeping apace with the swarming problems of modern life. Now there is doubtless much room for pride. We lawyers have done a staggeringly manful job of maintaining some sort of order in the chaotic jungle of modern practice. Let us make that clear. And let us all glow and expand with pride while yet we may.... But there is also considerable room for humility, too. For there are some blighted areas where we have not kept so well apace. Of what do I now speak? I speak of ^{the} ~~one of our noisiest skeletons~~ the language of the law.

Let us suppose we are here tonight to jointly edit an anthology of great poems or plays or stories. Naturally we would agree to go seek out the loftiest utterances of the best writers from the very best sources we could find. Of course we would. And the same would pretty much be true if we were ^{working} ~~doing our editing~~ in the literature of almost any other profession as well. But not always, I regret, in the law. For what do we lawyers so often do? I'll tell you one curious thing that we have done for centuries and still do: we lawyers have been guilty of fashioning a great

portion of the edifice of our law--an edifice that is composed naturally largely of words--by selecting precisely those judicial utterances, those decisions, those instructions, those legal analyses, which were so dubious, ^{so obscure,} so unhappily worded, so clumsy and inept, so riddled and shot with redundancy, pomposity and error, that it took an appeal to a court of last resort to determine whether they could stand at all. Lo, many of them stood, if only by the grace of a patient and unhappily divided court. So what do we lawyers do? We lovingly collect these soiled pearls of dubious legal lore and embalm them in our text and form books as models for you young robins to follow. That is why our "anthologies" of the law nod with whole prairies of ^{legal} corn. X

Since I find myself helplessly interested in writing, and therefore in language and expression, I have long been perplexed and occasionally dazzled over the ^{remarkable} way so many of us lawyers talk and how we ever got to talk that way. Why are there certain lawyers (none of whom, of course, reside in this state!) from whom one would run (not walk) a mile in order to avoid hearing him speak? I think I may just now have put my finger on one of the reasons. Most of us lawyers talk the strange and wonderful way we do because we were taught that way. Many of us don't know any other way. And isn't that why so many of us lawyers and judges have forgotten that language is merely a medium to express thought, not a highly embroidered curtain behind which to hide it? ✓

Now I don't quite know what can be done about the situation at this late date. Perhaps the poor overworked supreme court judges, who so often find themselves obliged to reluctantly affirm so many of these ~~assorted legal~~ monstrosities and weird incantations, could undertake a running English translation as they affirm. At least those judges could who (and none, of course, reside in this state!) have not X themselves fallen victim ^{of} to their own cliches. Or perhaps there should be a chair ✓

devoted to legal expression in every law school. Or perhaps the Bar might set up
+ a sort of Academy of Legal Usage whose members could periodically rummage through
the books and weed out or rephrase the more grotesque and lurching examples of un-
fortunate legal prose. Or perhaps all three. I would not advise, however, that
you delay hanging out your shingles until these miracles are wrought! ✓

The Lord knows that I am not advocating that we lawyers begin to talk like
the Dodgers or ^{henceforth} couch our pleadings in slang or interlard our briefs with wisecracks
or ~~that we henceforth~~ ^{or} approach the many ~~pressing~~ ^{other} problems of the law with verbal
flippancies. I do not suggest that at all. But the American language has developed,
is developing, into a marvellously subtle and lucid instrument of expression.
One need only consult the legal writings of a Brandeis or Holmes, a Cardoza or
Hand, to see that the most abstruse and involved legal thoughts may be expressed
both simply and beautifully. These men knew that to be profound one need not also
be boring ^{or obscure.}

So all I suggest is that you do not idly barter away this remarkable heritage
of living language and glowing and muscular idiom for the dead platitudes, the
voluptuous rhetoric, the boiler-plate prose, and all the other dreary forms of
^{historic} ~~gushing~~ verbal hemorrhage to which all of us in the law have been so long and
constantly exposed. Above all I hope we can reach a gentlemen's agreement, make
a solemn pact, here and now, honest cross our hearts, never never to use "and/or."

If you must ^{go through life talking} ~~talk~~ like a garrulous sixteenth century abbot or a ^{medieval} ~~clanking~~ knight
^{clanking} in armor, at least know what you are about. Don't drift into sin. If instead you
prefer to practice law in plain English I must warn you that your immunity will be
expensive. It will be gained only by constant work and alertness on your part to
avoid becoming contaminated by this hovering and pervasive cloud of verbal

radioactivity. Since you will necessarily be exposed to showers of ^fall out at every turn, your final emancipation will have to be won only under fire. Be of stout heart, however, and lo! one day all of us may finally find ourselves practicing law in simple idiomatic English. All hail the day.

So much for the skeletons.

I think it's time for another story. Smooth sailing!
(Darcy & his will -- Before you get Under our policy)

Before I release you to disappear into the tangled maze of this city I have a confession to make. Perhaps it is a dangerous one to make before a group of this kind. Maybe I'd first better get myself a thirty-yard start. You see, ten or twelve years ago I was a member of the Michigan Board of Law Examiners! A vacancy occurred on the Board and I accepted the Governor's appointment and toughed it out for two years and then abruptly resigned. I resigned because I couldn't take it. And why couldn't I take it? That's where the confession part comes in. It's the first time I've ever told it in public. You see, I couldn't take it because I found I had to fail too many of you young aspirants.

It was not that I failed any more than my colleagues on the Board. My guess is that on the average I perhaps failed fewer. It was simply that those failures haunted me; I began to brood. I even began to lose weight (which I could afford) and hair (which I couldn't). I was oppressed not so much by the notion that I may have flunked a budding Holmes or Cardoza, but rather by the dark suspicion that this poor paper may have been not so much the result of any dire lack of knowledge on the part of the candidate, but rather of his sheer excitement and jitters over the awful fact that so much depended on it. You see, there was no sure way to tell. Is this sorry paper the handiwork of some amiable dunce whose only permissible future contact with the law should be to be restrained by it, I kept asking myself, or was

it the paper of some slow-thinking but essentially sound poor devil who perhaps had to work his way through law school and was haunted by the fear he might fail, or who had to review for his examinations badgered and hag-ridden by financial, domestic or other worries, all of which combined to make him go to pieces?

So I quit; I couldn't take it. It was a task for stouter hearts, ~~free of doubt.~~ X
And for the life of me I don't know precisely why I'm telling you ~~and~~ this now; I'm not quite sure what it proves or whether it proves anything. Perhaps I'm telling you because you have so recently come through that crucible. Perhaps in some vague way it too has something to do with the human side of the law.

In any case I am happy to learn that since I left the bar board, ^{much} more attention is being paid to these things I have just mentioned; that relatively more stress is being given to the character of the applicant rather than his ability to parrot forth a nice pat answer out of the slot when the lever is pressed. For it goes without saying that a smart lawyer with a poor or unstable character or one who regards his law degree as a ^{mere} hunting license is much more dangerous to let loose upon the public than a slower-witted classmate who possesses some sense of community responsibility and, above all, a good heart. X

*(The worst * * * kind!)*

The human side of the law?

When all is said and done, what other side can there possibly be, except as we lawyers ourselves may be guilty of forgetting that there really is no other side?

In the days when Abe Lincoln practiced law out of his tall hat most lawyers knew all about the human side of the law. By 1900 it was not quite so true, and today, a hundred years after Lincoln, it is even less true. Why should the practice have changed so sharply in so short a time?

One ^{big} clue doubtless lies in the amazing expansion of our complex business and industrial civilization, along with the inevitable flood of new laws relating to corporate organization, financing, consolidation, taxation, liquidation. Now no one man can any longer possibly learn all this law, and those that try wind up in the booby hatch.... Then there are the accompanying swarm of laws on workmen's compensation, unemployment compensation, labor relations, domestic relations, and all the rest. And, as our host can doubtless happily reassure us, it is getting awfully complicated even to die.

But however complicated the practice, however driven we may be to specialize, and however hard it may be for us to still grasp and relish the human side of our work, we must try to remember that all law is nothing more or less than a massive accumulation of tribal ground rules; the distilled and recorded essence of those folk memories, those tribal expedients, that seemed to work--and which we kept. It is only when those ground rules have become as complex and entangled as they have now become that many of us fail to see the forest for the trees. Laws, after all, are merely man-made rules designed so that we men might live in a measure of peace with our fellows. These rules were not designed to master men; if I understand them they were conceived largely so that men might live together in sufficient harmony and tranquility to possibly get to know and master themselves.

Nor should we forget that, however complex our profession may have grown, the law in its broadest aspects sets only minimum standards of conduct and that men can live snugly within those standards and still dwell like cavemen. For the law can never replace manners and morals, which are the real if unwritten controls of our relations with our fellow men. That is why certain republics that lie not too far abaft of us, with all their fine constitutions and legal codes, some infinitely more elaborate than our own, still monotonously contrive to conduct their affairs and change their administrations with bullets rather than ballots.

Thus it is that we ourselves possess perhaps the most elaborate codes in the world regulating the speed and manner of driving our automobiles. Yet despite these codes we continue merrily with our curiously compulsive slaying of ourselves and each other in the national game of Crumple Fender. Before each holiday Ned Dearborn of the National Safety Council is able to make shrewd book on the extent of our mass insanity. How can this be? Surely not because we lack enough laws, Heaven knows, but rather, I suspect, because too many among us simply lack the manners and ^{the} moral restraint, the ordinary sense of compassion and good taste and thoughtfulness, to drive like rational human beings rather than like the escaped inmates of zoos. For you see, young friends, good will, like friendship and love, cannot be ordained or legislated. It too must spring from the heart and the mind; it too must arise from a sense of community, of our common destiny in this wondrously exciting adventure we call life.

* * *

Perhaps I have spoken overmuch of family skeletons and too little of our triumphs. Yet one of the big triumphs of the law is the continual capacity of us lawyers for honest appraisal and self-criticism. And improvement. I just gave you one example from the District of Columbia. It does not stand alone. All across this vast nation--indeed at this very hour--there are committees and other voluntary groups of our ablest and most dedicated brothers laboring to reach but one essential goal: the better administration of justice. These ^{unsung} men and women ^{of our profession} seek no personal gain or advantage; indeed that often lies the other way. Rather they seek only to elevate and enlarge the capacities for public responsibility of one of the world's most ancient and honorable professions.

I have spoken rather lightly of thresholds, but there is one threshold upon which all of us stand today about which only fools would dare to speak lightly. That is

the awesome enigmatic threshold that today separates civilization from utter chaos, on the one hand, from a future of unimaginable grandeur and unlocking of the human spirit, ~~on the other,~~ from a world based upon brute force and rule of the jungle from a world based upon restraint and reason and the wisest counsels of men. In this decision and in this future I cannot help but sense that we men of the law have both a responsibility and a tremendous opportunity. And it is not impossible that a good share of the responsibility and opportunity for that future might fall squarely on the law classes of the 1950's. If so, may the Lord give you much wit and more wisdom. The Lord knows you will need both.

*(You dollar * * * * * Darryl & Patsy)*

I did not expect to come way down here and get involved in such heavy going. ~~This is the longest talk I ever made, anywhere,~~ I find myself rather uneasily out of character. Nor did I expect to speak of such lofty things as love and friendship and so many other things. Rather I expected that I would come down here from my roost in the frozen North and tell you a batch of my anecdotes and depart. "This guy Voelker is a character," you would say. You see, besides ^{prospecting for uranium} springing an occasional felon and fly-fishing ~~fiercely~~ for trout, spinning stories happens to be my forte. ~~I can spin them by the hour, in seven dialects, and without notes, too.~~ And I suspect that the good gentlemen who invited me expected much the same thing. Possibly all of us would have enjoyed it more that way. Perhaps I'd better give you just one more ~~example~~ *sample.*

(Tell about Toivo and Impi.)

But something odd happened. As I found myself inventorying my stock of stories, I discovered that I was instead ~~talk~~ taking inventory of myself and of the profession I have made a rather dubious living in this past quarter century.

And then I found myself staring long and curiously into the ~~rather cloudy~~ mirror of my life in the law. As I looked I thought back upon my own hectic days in law school; of the miracle of my graduation; of the wild uncertainties and rumors over the bar exams (one rumor was that the Bar Examiners sat around ^{a big table} and pulled so many ^{lucky} names out of a hat and flunked the rest); my amazement over learning that I had finally passed ^{and} ^{then} ~~that now~~ was really a lawyer; of my blistering hangover the next day; my first job at thirty dollars a month; my courtship and marriage to that quiet dark girl called Grace whom I had met at my last Crease Dance; the nice ^{new} problem of running an empty/law office and raising a family during the Depression; my first campaign for prosecutor and the hundreds of moist babies I kissed, both under and over twenty-one; of all the countless doubts and struggles and exhilarations of those early years... All these shadowy images and many more kept shuttling ~~rapidly~~ ^{dark and on my kaleidoscopic} past in my mirror, not unlike the wonders of Upper Peninsula television. And as I looked I remembered that I was once in your shoes. ✓

It was then I determined that I would be damned if I would come way down here merely to make you laugh, however much you may have welcomed that. I reflected that there were far better clowns on TV. I determined instead that I would try, in my way, to make both you and me pause ~~here~~ ^{together} together and ponder for a moment. For you see, all of us stand on the same great threshold together.

John D. Voelker

Raymond:
Please return.
Jno. 2

THE HUMAN SIDE OF THE LAW

(Detroit, January 25, 1955)

The human side of the law!

My initiation into the human side of the law came rather abruptly. It was during my first circuit court term as prosecutor of Marquette County. That was quite a few years ago.

The first criminal case was called; the clerk fished the names of twelve prospective jurors out of the box; the jurors slowly took their places; the eager young D.A. sat snorting at his table. We were away.

As was his custom, old Judge Bell short-circuited quite a bit of the normal tugging and hauling over selecting the jury by himself first asking some pointed preliminary questions. Were all the jurors citizens? Were any of them law enforcement officers? Had any of them already served on the jury within the year? That sort of thing. He wound up his inquiry by his usual catch-all question: Did any juror know of any reason why he could not sit and hear and determine the case fairly on the law and evidence?

A male juror got up, a fidgety and dandruffy little man, obviously nervous and embarrassed. The juror coughed and cleared his throat and allowed that perhaps he had better not sit on the jury.

"Why not?" Judge Bell inquired in his kindly way.

"I--I think I had better be at home," the juror replied lamely.

"But why do you think you should be at home?" Judge Bell pressed.

"W-well, y-you see, Your Honor," the juror stammered, "m-my wife is about to become p-p-pregnant."

Not unreasonably, a sort of stunned silence pervaded the courtroom. One could hear a pin drop. Even a Phi Beta Kappa key. That was when the resourceful and zealous young prosecutor arose to fill the breach.

"Your Honor," I said, swiftly getting to my feet, "I think the juror misspoke. I think he meant to say that his wife is about to become confined."

Judge Bell stroked his chin and surveyed the hapless and perspiring juror. He then looked down at me over his rimless glasses.

"Young man," Judge Bell said to me, "it warms my heart to see a young prosecutor so much on his toes. Indeed it does. You have pointed out a most interesting distinction, and one that seems to absorb the attention of quite a ^{number of} few-people. Let me compliment you."

I fluttered my eyelashes as proudly as the winner of a refrigerator on a TV quiz who has just guessed President Lincoln's first name. "Oh thank you, Your Honor," I murmured.

"But, Mr. Prosecutor," the Judge drily went on, his gray eyes twinkling, "may I remind you that in either event I ^{still} rather think the proper place for the head of the house is at home. The juror may be excused."

* * *

I regret that only when I am telling stories or arguing to a jury can I say what I have to say without consulting notes. On those infrequent occasions when I can be persuaded to give a formal talk I have found that the whole business ^{of having to give let alone listen to a speech so} appals me that my memory deserts me unless I read what I have to say. So please forgive me.

Now it is customary, I believe, at affairs of this kind for speakers who address ^{the members of} graduating classes--which you are--to remind you in ringing figures that you are standing on the threshold of a great challenge; that while your formal education is now over, your real education is only about to begin; and that--oh yes--you are shortly to be launched on a voyage of great opportunity for service to your fellow men. O.K. then; I am a slave to tradition. May it be stipulated on the record that all of you stand tonight on a threshold from which you are about to be both challenged and launched? It's going to be a nice trick if we can work it. Hold steady now! This may not hurt a bit.

I do not doubt that most of you have been loitering around on the figurative thresholds of quite a number of figurative challenges for quite a while now; that you are growing a trifle weary of being told that still greater educational headaches await you; and that it may possibly pain you to be reminded that you sit here like a cluster of spanking new PT boats, about to have a figurative magnum of champagne brought down across your noggins, whereupon you will be precipitously launched upon a sea of perpetual service and gladness to your fellow men. Well, anyway, it's nice--that part about the champagne.

But I'm afraid ~~your noggins~~ ^{your} must be spared. ^{And I can think of} I see ^{likelier} places to put the champagne.... You young people are lawyers now, so come in over those worn thresholds, come away from all those ringing challenges, come down off those cold launching platforms. Come on in! The water's fine!

^{Yes,} For you are now members of the family; at last you have earned the right to sit in on the inner family councils. Nor should it any longer be necessary to coddle you and lead you to believe that in our family everything is sweetness and light. Indeed there is much in our profession to crow about, but there are also a few

skeletons rattling around in the family closet. I think you should know something about them, ^{too.} So tonight I propose to run out a few of our family skeletons and, if I am lucky, possibly suggest to you ~~a way that~~ ^{how} some of them might finally be chased out of the family closet. The reason I shall mention any of them is my hope that you might join in the chase. In fact the ultimate success of the chase depends on you. ^{many} ~~Most~~ of us older lawyers are too far gone in sin. ^{man}

* * *

You will find that there is a wide gap between the law as it is taught and the law as it is practiced. Sometimes I think the gap is a Grand Canyon. For one thing in law school you learned a lot of ideal legal theory which was clamped like a cold patch to a lot of frozen immutable facts. Or vice versa. In other words, the legal situations you have so far confronted might be called static. If this happened, that would be the inevitable legal result. So your conclusions came out as neatly as geometrical theorems.

But your geometry days are now over. For as you get into that lush tangled jungle that is the law in actual practice you will discover one big thing: That in actual practice all these so-called immutable facts will have suddenly become like molten mercury, running everywhere. Your facts will have become as shimmering and elusive as moonbeams in a deep forest, as changeable as chameleons. In actual practice the facts are almost always in a state of flux. For you will have discovered that the facts you must now deal with must come largely from people, not from books, facts inevitably colored and distorted by the further fact that people are by all odds the most elusive, chameleon, forgetful, vexatious, cunning, stupid, contradictory creatures on the face of the globe.

You will then have discovered, with a vengeance, the human side of the law; that the actual practice of law is several thousand light years removed from the

ideal theory you had learned from books; that indeed this is at once one of the charms and challenges of actual practice; that henceforth a good portion of your talents will have to be devoted not to learning or applying the law, which by now should be comparatively easy, but to that new and absorbing task of applied psychology, the problem of bringing those reluctant and volatile facts to a sufficiently stable state of suspension and equilibrium--not unlike a sort of legal Truth Serum--so that they might finally equate or merge with the law as you already know it.

This you can do successfully only by learning to deal with people, and that is something no law school undertakes to teach you, or could teach you if it tried. Gypsies might be better. For that is the fine old art that can't be captured in or taught from books: the ancient art of getting to know a little something about those strange creatures, one's fellow men. This is the human side of the law.

All this will call ^{upon} up the deepest resources of your personality. And, since frequently the slightest change in the facts will sharply change both the law and the result, with the accompanying realization of how easy or desirable it might be to tinker with those facts, it will also call upon the deepest resources of your character. And that again is something that no law school can teach. Nor gypsies.

I should add, too, that in actual practice the fact that you may be able finally to bring the law and facts to an uneasy state of equilibrium is still no sign that your side will prevail. Especially before a jury. For your facts may dovetail precisely with ^{your} the law, but the jury--those unpredictable people again-- may ^{choose to} ignore both. More human side of the law. I am reminded of the trial of a local barber for assault and battery.

(Tell story of Rocco's Open Air Barber Shop.)

* * *

Here is a family skeleton you will rarely hear mentioned in polite legal circles. It happens to be one of my pets. ~~Do country lawyers dare walk in where bar associations fear to tread? We'll chance it.~~

Do you know that you are about to enter a profession that is rather widely regarded as numbering among its members, culturally and intellectually speaking, one of the most uncurious and complacent professional groups in the country? Did you know that lawyers as a class are reputed to buy fewer books and paintings, see fewer plays and attend fewer symphony concerts than any other graduate group in the nation? Did you know that even our traditional undergraduate arch enemies, the engineers with their hairy ears, are said to be culturally more on the ball than we?

Perhaps it is that we lawyers have to buy too many of our own trade books during the year. Perhaps the chaotic drama of the courtroom affords us enough cultural outlet. Perhaps, too, part of our plight is ~~simply~~ economic, sadly enough. We simply can't afford to. But whatever the reason I think there is no cause for joy or complacency that one of the world's oldest professions, perhaps the one most naturally allied to the arts by its traditional forensic demands, should find itself among the cultural Kallikaks of the country.

I happen to have learned a little something about this subject from wry personal experience. As you have heard, I have had three books published, two of them concerning one of the most dramatic and colorful branches of the law, the work of the public prosecutor. Both of these books happened also to have been critically most well received. Yet the figures on the total Michigan sales of these books, outside my own bailiwick, move me to conclude that considerably less than one percent of the lawyers of our own state were curious enough to bestir themselves to read either of them.

My other book, "Danny and the Boys," was not about the law except as its characters frequently collided with it. As an experiment in antithesis--and some other things--I finally prevailed upon my publisher to run a full page ad of that book in the State Bar Journal. The ad appeared complete with glowing quotes from the N. Y. Times, the Detroit News, and other review mediums. It was so irresistible I almost bought a copy myself. The editor of the Bar Journal, my good friend, Milt Bachmann, also kindly appended a critical hosanna in the same issue advising our panting brethern that one of their number, Johnny Voelker, alias Robert Traver, had hatched another book. Milt outdid himself. The line would please form on the left... That was in 1951.

Now one might naturally have suspected that quite a number of Michigan lawyers would have wanted to read a book written by a brother toiler in the vineyards of the law; that they would want to do this out of curiosity, or perhaps over the sheer novelty of it, or at the very least to pan it. You would have suspected wrong. Would you like to know how many books were sold to lawyers on orders to the author as a result of that ad? Let me tell you. Exactly seven! And two of these brave intellectual Columbuses did not forget to inquire about a professional discount. So that, my young fledglings, is perhaps a clue to why we continue to read those absorbing ads of our gracious host and its competitors rather than those of books and plays, in the succeeding issues of our bar journal. As a class we are ^{pretty much} regarded in many quarters as untouchable intellectual primitives. Now I am not ^{want to} saying this is so; I am merely saying this is how we are widely regarded. ^{Now how I ~~hating~~ that the ~~sole~~ return to grace is to} So much for that particular human side of the law! Perhaps we'd better hurriedly rush that particular skeleton back in the closet and slam the door. There may be a stranger in the house. ^{read the works of R.T.}

If there be any truth in these charges, I also believe there are sound reasons if not excuses for this state of affairs. For one thing, most of us practicing lawyers

are too hard put these days to keep up with our own profession to dally ~~long~~ in the gardens of the arts. It is getting to be a full-time job simply to make a living and keep even faintly abreast of the law itself. It might be interesting to poll this group on how far they are behind in reading their latest Michigan advance sheets, let alone the latest book of the month.

Now one big reason for this lies in the nature of law itself. We may, if you will, regard the law as an enormous coral reef upon which each generation of lawyers and judges builds upon what has already been laid down. You young people are now about to start your period of building. But this ancient coral reef has now grown so massive, so overlaid and encrusted, that no matter how intensive one's legal education may be, or however many seminars one may later attend, each succeeding legal generation must know relatively less per individual of our total legal heritage than the previous one. Our reef has simply gotten ~~any~~ too big.

Thus ^{as} our young lawyers are not ~~only~~ being driven more and more to specialize; our working knowledge of the law ^{is growing} has ~~become~~ more and not less fragmentary. That is why Joseph Blow, Esquire, is now not only known as an able trial lawyer--that is far too broad a designation--but, say, almost exclusively as a plaintiff's attorney who specializes in demonstrative evidence in automobile cases. Well, Mr. Blow may be a bearcat at automobile cases, and more power to him, but the chances are equally good that he couldn't interpret an abstract of title to save his life. And so, alas, many of us lawyers are getting as typed as movie villains. None escapes. Thus, if you should ever pass through my bailiwick, for example, and your deer rifle should go off accidental like and riddle a passing peasant, and you would crave to be sprung, you would simply have to go see Johnny Voelker. You see, he's the official springer spaniel of Marquette County. The myth is abroad that that's all the poor man knows.

As this vast coral reef of the law has grown more complex and encrusted, our law courses have necessarily become ^{grown} longer and more arduous. By the time ~~many of~~ ^{we} ~~us~~ ^{many of us} have earned our LLB's, these days, ~~we~~ have also reluctantly acquired such unwelcome dividends as toupees or bi-focals. Or at least some interesting new bridge-work. Not only does the law as it is practiced drive us more and more to become specialists, but the law courses have become so long and so hard that most of us have had to neglect what we call the humanities. So the dilemma of the modern lawyer is double. To ever get to be a lawyer in the first place he must as a student more and more neglect those things and subjects we call cultural. And, once a lawyer, to make the grade he feels frequently compelled to continue that neglect. In any case, the older one gets the harder it is, it seems, to develop a taste beyond the literary mayhems of Mickey Spillane. So the modern lawyer is not only apt to be less well informed on things lying outside his profession; because of the growing pressure toward specialization he is pretty apt to be less well versed in his profession itself.

The net result of all this is that while many of us lawyers are doubtless becoming abler and smarter operators in our particular legal niche, it is a fair question whether we are necessarily becoming wiser or smarter or more cultured citizens. Not only that but there is a grave question, at once deeper and narrower, whether the average lawyer of today sufficiently weighs what he is doing in the light of its broad social implications, whether he pauses often enough to consider the impact of his work on the common good.

And there are many ^{large} companion questions. Are we lawyers developing more or rather less of a sense of the ultimate aim and philosophy of the law? Are we becoming more or less well-rounded human beings? Do we perform our daily legal chores against an increasingly aware background of social perspective or have some of us come to consider our_selves merely lucky (if one may dare use the phrase) card-carrying members of a sort of lucrative trade union? Are we becoming more rather

than less interested in simply winning our cases, in making a point or gaining an advantage, in satisfying and keeping a client, or gaining a new one, regardless of where the sociological chips may fall?

Yes, there are these and many other searching questions we lawyers might ^{occasionally pose to} ask ourselves; not only those that arise from our daily practice, but those that lie in the broader realm of our role as lawyer-citizens. Has our reactions to certain ^{recent and} recent ^{widely advertised} phenomena in our public life, emanating from Washington and elsewhere, demonstrated a greater or less concern by us lawyers, taken as a class, over the preservation of certain ancient legal rights and basic liberties? Or have we lawyers, as a class, been for the most part too prone to play it cozy, to pussy-foot on so-called "controversial" issues, to coast if not run with the pack, to cast down our eyes and tend quietly to our knitting? Can we, as a group, honestly say we have recently acquitted ourselves well ^{or ill} in our traditional role as defenders of these basic legal rights and individual liberties? Are we or are we not losing our capacity for simple righteous indignation and, more to the point, for courageous action when we observe ^{a studied} the ~~flouting~~ or disregard of those rights?

Dare we lawyers any longer afford the luxury of aloofness and non-participation? And if we continue to stand by while the very foundations of our law are eroded or destroyed, will not one day the whole vast structure topple and crash? And, if we need the goad of self-interest, will not we lawyers be the first to perish in the rubble?

I shall not undertake to answer all these pressing sixty-four dollar questions. For two reasons. First it would take too long and doubtless unduly bore or pain you. Second, I don't pretend to know the answers. I suspect that no ~~one~~ man does. But one thing is certain. Curiosity and soul-searching about our situation and role as lawyers, not ^{apathy} inertia and ^{inertia} complacency, is the first step in doing something about it.

And if we--both you young lawyers and we battered old gray timber wolves of the law--do not continue to ask ourselves these kind of questions, isn't it a fairly safe bet that there never will be any real answers? When that happens complacency will have inherited the profession. We can then quietly merge with the steamfitters-- a trade ^{traditionally} characterized by much noise ^{devoted} ~~directed~~ to the safe conduct of hot air.

I am happy to report that there are definite signs on the horizon that ^{many} ~~some~~ of us lawyers are not only beginning to ask ourselves some questions; we're coming up with some ~~practical~~ answers, too. Only last week I read that the District of Columbia Bar Association has announced that henceforth the Association is making available the services of leading members of the district bar to federal employees involved in security cases. From now on any such employee who cannot find an attorney or who cannot afford one will be given the help of the bar on request. So from now on accused employees will get that minimum and basic legal right-- his day in court. (Add remarks are non-partisan)

There are other related factors that have made for the specialization of us lawyers and the centralization of our activities.

When I graduated from law school the bound volumes of the Michigan supreme court reports were in the early 240's. I was impressed. In 25 ^{odd} ~~short~~ years that one overworked court alone has poured out a torrent of nearly one hundred more volumes. I am depressed. And there are 47 other states grinding them out; some, indeed, with double appellate reports. The truth is that we lawyers ^{are huddling} ~~huddle~~ on a rapidly diminishing island in a rising sea of our own words. The question is inevitable. Won't we lawyers soon be engulfed by our own handiwork? In another 25 years how in Heaven's name is the young lawyer ever going to be able to buy those minimum tools of his profession, his own state reports, let alone keep track of what might be in them? Or, getting them, be able to rent an armory big enough to stash them in? And where

among this dusty sea of books is the young lawyer and his stenographer going to sit? Perhaps by then we can at least reverse the old secretarial myth and plant him on her lap for a change. It's a thought.

But why wait 25 years to face the bad news? I find myself wondering, tonight, how many of you, here and now, are going to be able to afford a set of the present Michigan reports. (Think of it! Three hundred and forty-one grim and forbidding volumes. At three-fifty a throw.) And pay for the rent and the phone and the stenographer and the cleaning woman and the advance sheets and the citators and all the rest. And if you can't, or if this burden too greatly appalls you, and you find you are unable to marry Eunice and still swing that office you have dreamed of over the Podunk State Bank; if instead you are obliged to obtain, if you are lucky, a clerk's job with some vast teeming city law firm (some of the partners of which have scarcely ever met) or, ^{falling that,} ~~worse yet,~~ you are forced to go brood in the ivied confines of the Replevy Credit Corporation or the We-Pay-No-Claims Insurance Co.—are you then apt to become more or less exposed to the human side of the law?

But I strain the point, and I am both unfair and wrong if I seem to suggest that the big city lawyer is less aware of or sensitive to the human overtones of his profession than his country cousin who sits over the Podunk State Bank drafting ten-dollar wills on Doubleday forms. The only point I seek to make is that the going may be tougher. It is unmistakable that the present drift of our practice is toward more specialization, still bigger law firms, and increased direct corporate employment of more and more of your young lawyers. Now that is not bad in itself. The ~~only~~ point I wish to make is that in this sort of legal environment it may be more difficult for the young lawyer to get and remain exposed to and therefore more nearly in tune with the human side of the law. For only then can he achieve his ^{more nearly} fullest stature as a lawyer-citizen.

To learn how well and manfully those handicaps ^{can} may be overcome, however, you need look no farther than this room. You may not land in Podunk, but if you will only develop your own sense of humanity, release your own pent cargo of curiosity and enthusiasm and awareness of our common lot, then the bigger the place you land will only mean the wider the scope for your talents.

But I still cannot help but wonder where, or when, for example, the average city lawyer is ever going to find himself ^{confronting} a "human" situation like this.

(Tell about the Widow Peterson and the Richmond Township Board.)

* * *

Let's give ourselves some more gentle hell.

Let us rattle gently another family skeleton. It's ^a kind of fun once you get over the initial shock.... Many of us lawyers, with a fine lack of detachment, pride ourselves excessively over the progress the law has made in keeping pace with the swarming problems of modern life. Now there is doubtless much room for pride. We lawyers have done a staggeringly manful job of maintaining some sort of order in the chaotic jungle of modern practice. Let us make that clear. And let us all glow and expand with pride while yet we may.... But there is also considerable room for humility, too. For there are some blighted areas where we have not kept so well apace. Of what do I now speak? I speak of ~~one of our noisiest skeletons—the~~ ^{the} language of the law.

Let us suppose we are here tonight to jointly edit an anthology of great poems or plays or stories. Naturally we would agree to go seek out the loftiest utterances of the best writers from the very best sources we could find. Of course we would. And the same would pretty much be true if we were ^{working} ~~doing our editing~~ in the literature of almost any other profession as well. But not always, I regret, in the law. For what do we lawyers so often do? I'll tell you one curious thing that we have done for centuries and still do: we lawyers have been guilty of fashioning a great

portion of the edifice of our law--an edifice that is composed naturally largely of words--by selecting precisely those judicial utterances, those decisions, those instructions, those legal analyses, which were so dubious, ^{so obscure,} so unhappily worded, so clumsy and inept, so riddled and shot with redundancy, pomposity and error, that it took an appeal to a court of last resort to determine whether they could stand at all. Lo, many of them stood, if only by the grace of a patient and unhappily divided court. So what do we lawyers do? We lovingly collect these soiled pearls of dubious legal lore and embalm them in our text and form books as models for you young robins to follow. That is why our "anthologies" of the law nod with whole prairies of ^{legal} corn.

Since I find myself helplessly interested in writing, and therefore in language and expression, I have long been perplexed and occasionally dazzled over the ^{remarkable} way so many of us lawyers talk and how we ever got to talk that way. Why are there certain lawyers (none of whom, of course, reside in this state!) from whom one would run (not walk) a mile in order to avoid hearing him speak? I think I may just now have put my finger on one of the reasons. Most of us lawyers talk the strange and wonderful way we do because we were taught that way. Many of us don't know any other way. And isn't that why so many of us lawyers and judges have forgotten that language is merely a medium to express thought, not a highly embroidered curtain behind which to hide it?

Now I don't quite know what can be done about the situation at this late date. Perhaps the poor overworked supreme court judges, who so often find themselves obliged to reluctantly affirm so many of these ~~desecrated legal~~ monstrosities and weird incantations, could undertake a running English translation as they affirm. At least those judges could who (and none, of course, reside in this state!) have not themselves fallen victim ^{to} their own cliches. Or perhaps there should be a chair

devoted to legal expression in every law school. Or perhaps the Bar might set up a sort of Academy of Legal Usage whose members could periodically rummage through the books and weed out or rephrase the more grotesque and lurching examples of unfortunate legal prose. Or perhaps all three. I would not advise, however, that you delay hanging out your shingles until these miracles are wrought!

The Lord knows that I am not advocating that we lawyers begin to talk like the Dodgers or ^{henceforth} couch our pleadings in slang or interlard our briefs with wisecracks or ~~that we henceforth~~ approach the many pressing problems of the law with verbal flippancies. I do not suggest that at all. But the American language has developed, is developing, into a marvellously subtle and lucid instrument of expression. One need only consult the legal writings of a Brandeis or Holmes, a Cardozo or Hand, to see that the most abstruse and involved legal thoughts may be expressed both simply and beautifully. These men knew that to be profound one need not also be boring or ~~obscure~~.

So all I suggest is that you do not idly barter away this remarkable heritage of living language and glowing and muscular idiom for the dead platitudes, the voluptuous rhetoric, the boiler-plate prose, and all the other dreary forms of ~~gushing~~ ^{historic} verbal hemorrhage to which all of us in the law have been so long and constantly exposed. Above all I hope we can reach a gentlemen's agreement, make a solemn pact, here and now, honest cross our hearts, never never to use "and/or."

If you must ~~talk~~ ^{go through life talking} like a garrulous sixteenth century abbot or a ^{medieval} ~~clanking~~ knight in armor, at least know what you are about. Don't drift into sin. If instead you prefer to practice law in plain English I must warn you that your immunity will be expensive. It will be gained only by constant work and alertness on your part to avoid becoming contaminated by this hovering and pervasive cloud of verbal

radioactivity. Since you will necessarily be exposed to showers of ^fall out at every turn, your final emancipation will have to be won only under fire. Be of stout heart, however, and lo! one day all of us may finally find ourselves practicing law in simple idiomatic English. All hail the day. ✓

So much for the skeletons.

(Dawney story)

* * *

Before I release you to disappear into the tangled maze of this city I have a confession to make. Perhaps it is a dangerous one to make before a group of this kind. Maybe I'd first better get myself a thirty-yard start. You see, ten or twelve years ago I was a member of the Michigan Board of Law Examiners! A vacancy occurred on the Board and I accepted the Governor's appointment and toughed it out for two years and then abruptly resigned. I resigned because I couldn't take it. And why couldn't I take it? That's where the confession part comes in. It's the first time I've ever told it in public. You see, I couldn't take it because I found I had to fail too many of you young aspirants.

It was not that I failed any more than my colleagues on the Board. My guess is that on the average I perhaps failed fewer. It was simply that those failures haunted me; I began to brood. I even began to lose weight (which I could afford) and hair (which I couldn't). I was oppressed not so much by the notion that I may have flunked a budding Holmes or Cardoza, but rather by the dark suspicion that this poor paper may have been not so much the result of any dire lack of knowledge on the part of the candidate, but rather of his sheer excitement and jitters over the awful fact that so much depended on it. You see, there was no sure way to tell. Is this sorry paper the handiwork of some amiable dunce whose only permissible future contact with the law should be to be restrained by it, I kept asking myself, or was

it the paper of some slow-thinking but essentially sound poor devil who perhaps had to work his way through law school and was haunted by the fear he might fail, or who had to review for his examinations badgered and hag-ridden by financial, domestic or other worries, all of which combined to make him go to pieces?

So I quit; I couldn't take it. It was a task for stouter hearts ~~free of doubt~~. And for the life of me I don't know precisely why I'm telling you ~~me~~ this now; I'm not quite sure what it proves or whether it proves anything. Perhaps I'm telling you because you have so recently come through that crucible. Perhaps in some vague way it too has something to do with the human side of the law.

In any case I am happy to learn that since I left the bar board, much more attention is being paid to these things I have just mentioned; that relatively more stress is being given to the character of the applicant rather than his ability to parrot forth a nice pat answer out of the slot when the lever is pressed. For it goes without saying that a smart lawyer with a poor or unstable character or one who regards his law degree as a ^{mere} hunting license is much more dangerous to let loose upon the public than a slower-witted classmate who possesses some sense of community responsibility and, above all, a good heart.

* * *

(story)

The human side of the law?

When all is said and done, what other side can there possibly be, except as we lawyers ourselves may be guilty of forgetting that there really is no other side?

In the days when Abe Lincoln practiced law out of his tall hat most lawyers knew all about the human side of the law. By 1900 it was not quite so true, and today, a hundred years after Lincoln, it is even less true. Why should the practice have changed so sharply in so short a time?

One ^{big} clue doubtless lies in the amazing expansion of our complex business and industrial civilization, along with the inevitable flood of new laws relating to corporate organization, financing, consolidation, taxation, liquidation. Now no one man can any longer possibly learn all this law, and those that try wind up in the booby hatch.... Then there are the accompanying swarm of laws on workmen's compensation, unemployment compensation, labor relations, domestic relations, and all the rest. And, as our host can doubtless happily reassure us, it is getting awfully complicated even to die.

But however complicated the practice, however driven we may be to specialize, and however hard it may be for us to still grasp and relish the human side of our work, we must try to remember that all law is nothing more or less than a massive accumulation of tribal ground rules; the distilled and recorded essence of those folk memories, those tribal expedients, that seemed to work--and which we kept. It is only when those ground rules have become as complex and entangled as they have now become that many of us fail to see the forest for the trees. Laws, after all, are merely man-made rules designed so that we men might live in a measure of peace with our fellows. These rules were not designed to master men; if I understand them they were conceived largely so that men might live together in sufficient harmony and tranquility to possibly get to know and master themselves.

Nor should we forget that, however complex our profession may have grown, the law in its broadest aspects sets only minimum standards of conduct and that men can live snugly within those standards and still dwell like cavemen. For the law can never replace manners and morals, which are the real if unwritten controls of our relations with our fellow men. That is why certain republics that lie not too far abaft of us, with all their fine constitutions and legal codes, some infinitely more elaborate than our own, still monotonously contrive to conduct their affairs and change their administrations with bullets rather than ballots.

Thus it is that we ourselves possess perhaps the most elaborate codes in the world regulating the speed and manner of driving our automobiles. Yet despite these codes we continue merrily with our curiously compulsive slaying of ourselves and each other in the national game of Crumple Fender. Before each holiday Ned Dearborn of the National Safety Council is able to make shrewd book on the extent of our mass insanity. How can this be? Surely not because we lack enough laws, Heaven knows, but rather, I suspect, because too many among us simply lack the manners and ^{the} moral restraint, the ordinary sense of compassion and good taste and thoughtfulness, to drive like rational human beings rather than like the escaped inmates of zoos. For you see, young friends, good will, like friendship and love, cannot be ordained or legislated. It too must spring from the heart and the mind; it too must arise from a sense of community, of our common destiny in this wondrously exciting adventure we call life.

* * *

Perhaps I have spoken overmuch of family skeletons and too little of our triumphs. Yet one of the big triumphs of the law is the continual capacity of us lawyers for honest appraisal and self-criticism. And improvement. I just gave you one example from the District of Columbia. It does not stand alone. All across this vast nation--indeed at this very hour--there are committees and other voluntary groups of our ablest and most dedicated brothers laboring to reach but one essential goal: the better administration of justice. ^{ensuing} These men and women ^{of our profession} seek no personal gain or advantage; indeed that often lies the other way. Rather they seek only to elevate and enlarge the capacities for public responsibility of one of the world's most ancient and honorable professions.

I have spoken rather lightly of thresholds, but there is one threshold upon which all of us stand today about which only fools would dare to speak lightly. That is

the awesome enigmatic threshold that today separates civilization from utter chaos, on the one hand, from a future of unimaginable grandeur and unlocking of the human spirit on the other; from a world based upon brute force and rule of the jungle from a world based upon restraint and reason and the wisest counsels of men. In this decision and in this future I cannot help but sense that we men of the law have both a responsibility and a tremendous opportunity. And it is not impossible that a good share of the responsibility and opportunity for that future might fall squarely on the law classes of the 1950's. If so, may the Lord give you much wit and more wisdom. The Lord knows you will need both.

* * *

I did not expect to come way down here and get involved in such heavy going. ~~This is the longest talk I ever made, anywhere,~~ [^] I find myself rather uneasily out of character. Nor did I expect to speak of such lofty things as love and friendship and so many other things. Rather I expected that I would come down here from my roost in the frozen North and tell you a batch of my anecdotes and depart. "This guy Voelker is a character," you would say. You see, besides springing an occasional felon ^{prospecting for uranium} and fly-fishing ~~fiercely~~ for trout, spinning stories happens to be my forte. ~~I can spin them by the hour; in seven dialects. And without notes, too.~~ And I suspect that the good gentlemen who invited me expected much the same thing. Possibly all of us would have enjoyed it more that way. Perhaps I'd better give you just one more ~~example~~ ^{sample}.


(Tell about Toivo and Impi.)

But something odd happened. As I found myself inventorying my stock of stories, I discovered that I was instead ~~talk~~ taking inventory of myself and of the profession I have made a rather dubious living in this past quarter century.

And then I found myself staring long and curiously into the ~~rather cloudy~~ mirror of my life in the law. As I looked I thought back upon my own hectic days in law school; of the miracle of my graduation; of the wild uncertainties and rumors over the bar exams (one rumor was that the Bar Examiners sat around and pulled so many names out of a hat and flunked the rest); my amazement over learning that I had finally passed, ~~that~~ ^{then} ~~and~~ ^{and} I was really a lawyer; of my blistering hangover the next day; my first job at thirty dollars a month; my courtship and marriage to that quiet dark girl called Grace whom I had met at my last Crease Dance; the nice problem of running an ^{new} empty law office and raising a family during the Depression; my first campaign for prosecutor and the hundreds of moist babies I kissed, both under and over twenty-one; of all the countless doubts and struggles and exhilarations of those early years.... All these shadowy images and many more kept shuttling ~~rapidly~~ past in my mirror, not unlike the ^{dark kaleidoscopic} wonders of Upper Peninsula television. And as I looked I remembered that I was once in your shoes.

It was then I determined that I would be damned if I would come way down here merely to make you laugh, however much you may have welcomed that. I reflected that there were far better clowns on TV. I determined instead that I would try, in my way, to make both you and me pause ~~here together~~ ^{together} and ponder for a moment. For you see, all of us stand on the same great threshold together.

John D. Voelker



THE HUMAN SIDE OF THE LAW

(Detroit, January 25, 1955)

The human side of the law!

My initiation into the human side of the law came rather abruptly. It was during my first circuit court term as prosecutor of Marquette County. That was quite a few years ago.

The first criminal case was called; the clerk fished the names of twelve prospective jurors out of the box; the jurors slowly took their places; the eager young D.A. sat snorting at his table. We were away.

As was his custom, old Judge Bell short-circuited quite a bit of the normal tugging and hauling over selecting the jury by himself first asking some pointed preliminary questions. Were all the jurors citizens? Were any of them law enforcement officers; Had any of them already served on the jury within the year? That sort of thing. He wound up his inquiry by his usual catch-all question: Did any juror know of any reason why he could not sit and hear and determine the case fairly on the law and evidence?

A male juror got up, a fidgety and dandruffy little man, obviously nervous and embarrassed. The juror coughed and cleared his throat and allowed that perhaps he had better not sit on the jury.

"Why not?" Judge Bell inquired in his friendly way.

"I--I think I had better be at home," the juror replied lamely.

"But why do you think you should be at home?" Judge Bell pressed.

"W-well, y-you see, Your Honor," the juror stammered, "my-my wife is about to become p-p-pregnant."

Not unreasonably, a sort of stunned silence prevailed the courtroom. One could hear a pin drop. Even a Phi Beta Kappa key. That was when the resourceful and zealous young prosecutor arose to fill the breach.

"Your Honor," I said, swiftly getting to my feet, "I think the juror misspoke. I think he meant to say that his wife is about to become confined."

Judge Bell stroked his chin and surveyed the hapless and perspiring juror. He then looked down at me over his rimless glasses.

"Young man," Judge Bell said to me, "it warms my heart to see a young prosecutor so much on his toes. Indeed it does. You have pointed out a most interesting distinction, and one that seems to absorb the attentions of quite a number of people. Let me compliment you."

I fluttered my eyelashes as proudly as the winner of a refrigerator on a TV quiz who has just guessed President Lincoln's first name. "Oh thank you, Your Honor," I murmured.

"But, Mr. Prosecutor," the judge drily went on, his gray eyes twinkling, "in either event I still think the proper place for the head of the house is at home. The juror may be excused."

* * *

I greatly regret that only when I am telling stories or arguing to a jury can I say what I have to say without consulting notes. On those infrequent occasions when I can be persuaded to make a formal talk I have found that the whole business of having to give let alone listen to a speech so appals me that my memory deserts me unless I read what I have to say. So please forgive if I read the following effusions.

Now it is customary, I believe, at affairs of this kind for speakers who address the members of graduating classes --which you are--to remind you in ringing figures that you are standing on the threshold of a great challenge; that while your formal education is now over, your real education is only about to begin; and that --oh yes -- you are shortly to be launched on a voyage of great opportunity for service to your fellow men. O.K. then; I am a slave to tradition. May it be stipulated on the record that all of you stand tonight on a threshold from which you are about to be both challenged and launched? It's going to be a nice trick if we can work it. Hold steady now! This may not hurt a bit.

I do not doubt that most of you have been loitering around on the figurative thresholds of quite a number of figurative challenges for quite a while now; that you are growing a trifle weary of being told that still greater educational headaches await you; and that it may possibly pain you to be reminded that you sit here like a cluster of spanking new PT boats, about to have a figurative magnum of champagne brought down across your noggins, whereupon you will be precipitously launched upon a sea of perpetual service and gladness to your fellow men. Well, anyway, it's nice--that part about the champagne.

But I'm afraid you must be spared. I can think of likelier places to put the champagne.... You young people are lawyers now, so come in over those worn thresholds, come away from all those ringing challenges, come down off those cold launching platforms. Come on in! The water's fine!

Yes, you are now members of the family; at last you have earned the right to sit in on the inner family councils. Nor should it any longer be necessary

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to coddle you and lead you to believe that in our family everything is sweetness and light. Indeed there is much in our profession to crow about, but there are also a few skeletons rattling around in the family closet. I think you should know something about them, too. So tonight I propose, among other things, to run out a few of our family skeletons and, if I am lucky, possibly suggest to you how some of them might finally be chased out of the family closet. The reason I shall mention any of them is my hope that you might join in the chase. In fact the ultimate success of the chase may depend on you. Older lawyers are too far gone in sin.

* * *

You will find, -- and some of you are doubtless already finding -- that there is a wide gap between the law as it is taught and the law as it is practiced. Sometimes I think the gap is a Grand Canyon. For one thing in law school you learned a lot of ideal legal theory which was clamped like a cold patch to a lot of frozen immutable facts. Or vice versa. In other words, the legal situations you have so far confronted might be called static. If this happened, that would be the inevitable legal result. So your conclusions came out as neatly as geometrical theorems.

But your geometry days are now over. For as you get into that lush tangled jungle that is the law in actual practice you will discover one big thing: That in actual practice all these so-called immutable facts will have suddenly become like molten mercury, running everywhere. Your facts will have become as shimmering and elusive as moonbeams in a deep forest, as changeable as chameleons. In actual practice the facts are almost always

in a state of flux. For you will have discovered that the facts you must deal with must come largely from people, not from books, facts inevitably colored and distorted by the further fact that people are by all odds the most elusive, chameleon, forgetful, vexatious, cunning, stupid, contradictory creatures on the face of the globe.

You will then have discovered, with a vengeance, the human side of the law; that the actual practice of law is several thousand light years removed from the ideal theory you had learned from books; that indeed this is at once one of the charms and challenges of actual practice; that henceforth a good portion of your talents will have to be devoted not to learning or applying the law, which by now should be comparatively easy, but to that new and absorbing task of applied psychology, the problem of bringing those reluctant and volatile facts to a sufficiently stable state of suspension and equilibrium--not unlike a sort of legal Truth Serum--so that they might finally equate or merge with the law as you already know it.

This you can do successfully only by learning to deal with people, and that is something no law school undertakes to teach you, or could teach you if it tried. Gypsies might be better. For that is the fine old art that can't be captured in or taught from books: the ancient art of getting to know a little something about those strange creatures, one's fellow men. This is the human side of the law.

All this will call upon the deepest resources of your personality. And, since frequently the slightest change in the facts will sharply change both the law and the result, with the accompanying realization of how easy or

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desirable it might be to tinker with those facts, it will also call upon the deepest resources of your character. And that again is something that no law school can teach. Nor gypsies.

I should add, too, that in actual practice the fact that you may be able finally to bring the law and facts to an uneasy state of equilibrium is still no sign that your side will prevail. Especially before a jury. For your facts may dovetail precisely with your law, but the jury--those unpredictable people again--may choose to ignore both. More human side of the law. I am reminded of the trial of a local barber for assault and battery.

(Tell story of Rocco's Open Air Barber Shop)

(Osmosis)

* * *

I have spoken of family skeletons. Here is one you will rarely hear mentioned in polite legal circles. It happens to be one of my pets.

Do you know that you are about to enter a profession that is rather widely regarded as numbering among its members, culturally and intellectually speaking, one of the most uncurious and complacent professional groups in the country? Did you know that lawyers as a class are reputed to buy fewer books and paintings, see fewer plays and attend fewer symphony concerts than any other graduate group in the nation? Did you know that even our traditional undergraduate arch enemies, the engineers with their hairy ears, are said to be culturally more on the ball than we?

Perhaps it is that we lawyers have to buy too many of our own trade books during the year. Perhaps the chaotic drama of the courtroom affords us enough outlet. Perhaps, too, part of our plight is economic, sadly enough.

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We simply can't afford to. But whatever the reason I think there is no cause for joy or complacency that one of the world's oldest professions, perhaps the one most naturally allied to the arts by its traditional forensic demands, should find itself among the cultural Kallikaks of the country.

I happen to have learned a little something about this subject from wry personal experience. As you have heard, I have had three books published, two of them concerning one of the most dramatic and colorful branches of the law, the work of the public prosecutor. Both of these books happened also to have been critically most well received. Yet the figures on the total Michigan sales of these books, outside my own bailiwick, move me to conclude that considerably less than one percent of the lawyers of our own state were curious enough to bestir themselves to read either of them.

My other book, "Danny and the Boys," was not about the law except as its characters rather monotonously collided with it. As an experiment in antithesis--and some other things--I finally prevailed upon my publisher to run a full page ad of that book in the State Bar Journal. The ad appeared complete with glowing quotes from the N. Y. Times, the Detroit News, and other review mediums. It was so irresistible I almost bought a copy myself. Visions of sugar plums danced through my head. The editor of the Bar Journal, my good friend, Milt Bachmann, also kindly appended a critical hosanna in the same issue advising our panting brethren that one of their number, Johnny Voelker, alias Robert Traver, had hatched another book. Milt outdid himself. The line would please form on the left... That was in 1951.

Now one might naturally have suspected that quite a number of Michigan

lawyers would have wanted to read a book written by a brother toiler in the vineyards of the law; that they would want to do this out of curiosity, or perhaps over the sheer novelty of it, or at the very least to pan it. You would have suspected wrong. Would you like to know how many books were sold to lawyers on orders to the author as a result of that ad? Let me tell you. Exactly seven! And two of these brave intellectual Columbuses did not forget to inquire about a professional discount. So that, my young fledglings, is perhaps a clue to why we continue to read those absorbing ads of our gracious host and its competitors rather than those of books and plays, in the succeeding issues of our bar journal. As a class we are pretty widely regarded in many quarters as untouchable intellectual primitives. Now I am not saying this is so; I am merely saying this is how we are widely regarded. Nor am I hinting that you may return to grace only by buying the unread works of Robert Traver! So much for that particular human side of the law! Perhaps we'd better hurriedly rush that particular skeleton back in the closet and slam the door. There may be a stranger in the house.

If there be any truth in these charges, I also believe there are sound reasons if not excuses for this state of affairs. For one thing, most of us practicing lawyers are too hard put these days to keep up with our own profession to dally in the gardens of the arts. It is getting to be a full-time job simply to make a living and keep even faintly abreast of the law itself. It might be interesting to poll this ^{group} on how far they are behind in reading their latest Michigan advance sheets, let alone the latest book of the month.

Now one big reason for this lies in the nature of law itself. We may, if you will, regard the law as an enormous coral reef upon which each generation

of lawyers and judges builds upon what has already been laid down. You young people are now about to start your period of building. But this ancient coral reef has now grown so massive, so overlaid and encrusted, that no matter how intensive one's legal education may be, or however many seminars one may later attend, each succeeding legal generation must know relatively less per individual of our total legal heritage than the previous one. Our reef has simply gotten too big.

Thus as our young lawyers are being driven more and more to specialize, our working knowledge of the law is growing more and not less fragmentary. That is why Joseph Blow, Esquire, is now not only known as an able trial lawyer -- that is far too broad a designation--but, say, almost exclusively as a plaintiff's attorney who specializes in demonstrative evidence in automobile cases. Well, Mr. Blow may be a bearcat at automobile cases, and more power to him, but the chances are equally good that he couldn't interpret an abstract of title to save his life. And so, alas, many of us lawyers are getting as typed as movie villains. None escapes. Thus, if you should ever pass through my bailiwick, for example, and your deer rifle should go off accidental like and riddle a passing peasant, and you would crave to be sprung, you would simply have to go see Johnny Voelker. You see, he's the official springer spaniel of Marquette County. The myth is abroad that that's all the poor man knows.

As this vast coral reef of the law has grown more complex and encrusted, our law courses have necessarily grown longer and more arduous. By the time we have earned our LLB's, these days, many of us have also

reluctantly acquired such unwelcome dividends as toupees or bi-focals.

Or at least some interesting new bridgework. Not only does the law as it is practiced drive us more and more to become specialists, but the law courses have become so long and so hard that most of us have had to neglect what we call the humanities. So the dilemma of the modern lawyer is double. To ever get to be a lawyer in the first place he must as a student more and more neglect those things and subjects we call cultural. And, once a lawyer, to make the grade he feels frequently compelled to continue that neglect. In any case, the older one gets the harder it is, so it seems, to develop tastes beyond the literary mayhems of Mickey Spillane. So the modern lawyer is not only apt to be less well informed on things lying outside his profession; because of the growing pressure toward specialization he is pretty apt to be less well versed in his profession itself.

The net result of all this is that while many of us lawyers are doubtless becoming^{ing} abler and smarter operators in our particular legal niche, it is a fair question whether we are necessarily becoming wiser or smarter or more cultured citizens. Not only that but there is a grave question, at once deeper and narrower, whether the average lawyer of today sufficiently weighs what he is doing in the light of its broad social implications, whether he pauses often enough -- if at all -- to consider the impact of his work on the common good.

And there are many large companion questions. Are we lawyers developing more or rather less of a sense of the ultimate aim and philosophy of the law? Are we becoming more or less well-rounded human beings? Do we perform our daily legal chores against an increasingly aware background

of social perspective or have some of us come to consider ourselves merely lucky (if one may dare use the phrase) card-carrying members of a sort of lucrative trade union? Are we becoming more rather than less interested in simply winning our cases, in making a point or gaining an advantage, in satisfying and keeping a client, or gaining a new one, regardless of where the sociological chips may fall?

Yes, there are these and many other searching questions we lawyers might occasionally pause to ask ourselves; not only those that arise from our daily practice, but those that lie in the broader realm of our role as lawyer-citizens. Has our reaction to certain recent and widely-advertised phenomena in our public life, emanating from Washington and elsewhere, demonstrated a greater or less concern by us lawyers, taken as a class, over the preservation of certain ancient legal rights and basic liberties? Or have we lawyers, as a class, been for the most part too prone to play it cozy, to pussyfoot on so-called "controversial" issues, to coast if not run with the pack, to cast down our eyes and tend quietly to our knitting? Can we, as a group, honestly say we have recently acquitted ourselves well or ill in our traditional role as defenders of these basic legal rights and individual liberties? Are we or are we not losing our capacity for indignation and, more to the point, for courageous action when we observe a studied disregard of those rights?

Dare we lawyers any longer afford the luxury of aloofness and non-participation? And if we continue to stand by while the very foundations of our law are eroded or destroyed, will not one day the whole vast structure topple and crash? And, if we need the goad of self-interest, will not we

lawyers be the first to perish in the rubble?

I shall not undertake to answer all these pressing sixty-four dollar questions. For two reasons. First it would take too long and doubtless unduly bore or pain you. Second, I don't pretend to know the answers. I suspect that no one man does. But one thing is certain. Curiosity and soul-searching about our situation and role as lawyers, not apathy and inertia, is the first step in doing something about it. And if we--both you young lawyers and we battered old gray timber wolves of the law--do not continue to ask ourselves these kind of questions, isn't it a fairly safe bet that there never will be any real answers? When that happens complacency will have inherited the profession. We can then quietly merge with the steamfitters--a trade traditionally characterized by much noise devoted to the safe conduct of hot air.

I am happy to report that there are definite signs on the horizon that many of us lawyers are not only beginning to ask ourselves some questions; we're coming up with some answers, too. Only last week I read that the District of Columbia Bar Association has announced that henceforth the Association is making available the services of leading members of the district bar to federal employees involved in security cases. From now on any such employee who cannot find an attorney or who cannot afford one will be given the help of the bar on request. So from now on accused employees will get that minimum and basic legal right--his day in court. It should be needless to add that my remarks on this score have been non-partisan. The things of which I speak have

been going on for years. Perhaps I had better hurry back to safer ground.

* * *

There are other related factors that have made for the specialization of us lawyers and the centralization of our activities.

When I graduated from law school the bound volumes of the Michigan supreme court reports were in the early 240's. I was impressed. In 25 odd years that one overworked court alone has poured out a torrent of nearly one hundred more volumes. I am impressed. And there are 47 other states grinding them out; some, indeed, with double appellate reports. The truth is that we lawyers are today huddling on a rapidly diminishing island in a rising sea of our own words. The question is inevitable. Won't we soon be engulfed by our own handiwork? In another 25 years how in Heaven's name is the young lawyer ever going to be able to buy those minimum tools of his profession, his own state reports, let alone keep track of what might be in them? Or, getting them, be able to rent an armory big enough to stash them in? And where among this dusty sea of books is the young lawyer and his stenographer going to sit? Perhaps by then we can at least reverse the old secretarial myth and plant him on her lap for a change. It's a thought.

But why wait 25 years to face the bad news? I find myself wondering, tonight, how many of you, here and now, are going to be able to afford a set of the present Michigan reports. (Think of it! Three hundred and forty-one grim and forbidding volumes. At three-fifty a throw.) And pay

for the rent and the phone and the stenographer and the cleaning woman and the advance sheets and the citators and all the rest. And if you can't, or if this burden too greatly appalls you, and you find you are unable to marry Eunice and still swing that office you have dreamed of over the Podunk State Bank; if instead you are obliged to obtain, if you are lucky, a clerk's job with some vast teeming city law firm (some of the partners of which have scarcely ever met) or, failing that, you are forced to go brood in the ivied confines of the Replevy Credit Corporation or the We-Pay-No-Claims Insurance Co. --are you then apt to become more or less exposed to the human side of the law?

But I ^Istain the point, and I am both unfair and wrong if I seem to suggest that the big city lawyer is less aware of or sensitive to the human overtones of his profession than his country cousin who sits over the Podunk State Bank drafting ten-dollar wills on Doubleday forms. The only point I seek to make is that the going may be tougher. It is unmistakable that the present drift of our practice is toward more specialization, still bigger law firms, and increased direct corporate employment of more and more of your young lawyers. Now that is not bad in itself. The point I wish to make is that in this sort of legal environment it may be more difficult for the young lawyer to get and remain exposed to and therefore more nearly in tune with the human side of the law. For only then can he more readily realize his fullest stature as a lawyer-citizen.

To learn how well and manfully those handicaps can be overcome, however, you need look no farther than this room. You may not land in

Podunk, but if you will only develop your own sense of humanity, release your own pent cargo of curiosity and enthusiasm and awareness of our common lot, then the bigger the place you land will only mean the wider the scope for your talents.

But I still cannot help but wonder where, or when, for example, the average city lawyer is ever going to find himself confronting a "human" situation like this.

(Tell about the Widow Peterson and the Richmond Township Board.)

* * *

Let us rattle another family skeleton. Let's give ourselves some more gentle hell. It's kind of fun once you get over the initial shock Many of us lawyers, with a fine lack of detachment, pride ourselves excessively over the progress the law has made in keeping apace with the swarming problems of modern life. Now there is doubtless much room for pride. We lawyers have done a staggeringly manful job of maintaining some sort of order in the chaotic jungle of modern practice. Let us make that clear. And let us all glow and expand with pride while yet we may But there is also considerable room for humility, too. For there are some blighted areas where we have not kept so well apace. Of what do I now speak? I speak of the language of the law.

Let us suppose we are here tonight to jointly edit an anthology of great poems or plays or stories. Naturally we would agree to go seek out the loftiest utterances of the best writers from the very best sources we could find. Of course, we would. And the same would pretty much be true if we

were working in the literature of almost any other profession as well. But not always, I regret, in the law. For what do we lawyers so often do? I'll tell you one curious thing that we have done for centuries and still do: we lawyers have been guilty of fashioning a great portion of the edifice of our law--an edifice that is composed naturally largely of words--by selecting precisely those judicial utterances, those decisions, those instructions, those legal analyses, which were so dubious, so obscure, so unhappily worded, so clumsy and inept, so riddled and shot with redundancy, pomposity and error, that it took an appeal to a court of last resort to determine whether they could stand at all. Lo, many of them stood, if only by the grace of a patient and unhappily divided court. So what do we lawyers do? We lovingly collect these soiled pearls of dubious legal lore and embalm them in our text and form books as models for you young robins to follow. That is why our "anthologies" of the law nod with whole prairies of legal corn.

Since I find myself helplessly interested in writing, and therefore in language and expression, I have long been perplexed and occasionally dazzled over the remarkable way so many of us lawyers talk and how we ever got to talk that way. Why are there certain lawyers (none of whom, of course, reside in this state!) from whom one would run (not walk) a mile in order to avoid hearing him speak? I think I may just now have put my finger on one of the reasons. Most of us lawyers talk the strange and wonderful way we do because we were taught that way. Many of us know any other way. And isn't that why so many of us lawyers and don't

judges have forgotten that language is merely a medium to express thought, not a highly embroidered curtain behind which to hide it?

Now I don't quite know what can be done about the situation at this late date. Perhaps the poor overworked supreme court judges, who so often find themselves obliged to reluctantly affirm so many of these monstrosities and weird incantations, could undertake a running English translation as they affirm. At least those judges could who (and none, of course, reside in this state!) have not themselves fallen victim of their own cliches. Or perhaps there should be a chair devoted to legal expression in every law school. Or perhaps the Bar might set up a sort of Academy of Legal Usage whose members could periodically rummage through the books and weed out or rephrase the more grotesque and lurching examples of unfortunate legal prose. Or perhaps all three. I would not advise, however, that you delay hanging out your shingles until these miracles are wrought!

The Lord knows that I am not advocating that we lawyers begin to talk like the Dodgers or henceforth couch our pleadings in slang or interlard our briefs with wisecracks or approach the many pressing problems of the law with verbal flippancies. I do not suggest that at all. But the American language has developed, is developing, into a marvellously subtle and lucid instrument of expression. One need only consult the legal writings of a Brandeis or Holmes, a Cardozo or Hand, to see that the most abstruse and involved legal thoughts may be expressed both simply and beautifully. These men knew that to be profound one need not also be boring or obscure.

So all I suggest is that you do not idly barter away this remarkable heritage of living language and glowing and muscular idiom for the dead platitudes, the voluptuous rhetoric, the boiler-plate prose, and all the other dreary forms of historic verbal hemorrhage to which all of us in the law have been so long and constantly exposed. Above all I hope we can reach a gentlemen's agreement, make a solemn pact, here and now, honest cross our hearts, never never to use "and/or."

If you must go through life talking like a garrulous sixteenth century abbot or a medieval knight in clanking armor, at least know what you are about. Don't drift into sin. If instead you prefer to practice law in plain English I must warn you that your immunity will be expensive. It will be gained only by constant work and alertness on your part to avoid becoming contaminated by this hovering and pervasive cloud of verbal radioactivity. Since you will necessarily be exposed to showers of fall out at every turn, your final emancipation will have to be won only under fire. Be of stout heart, however, and lo! one day all of us may finally find ourselves practicing law in simple idiomatic English. All hail the day.

So much for the skeletons. I think it's time for another story.

Seventh Inning stretch!

(Davey and his will -- under our policy)

* * *

Before I release you to disappear into the tangled maze of this city I have a confession to make. Perhaps it is a dangerous one to make before a group of this kind. Maybe I'd first better get myself a thirty-yard start.

You see, ten or twelve years ago I was a member of the Michigan Board of Law Examiners! A vacancy occurred on the Board and I accepted the Governor's appointment and toughed it out for two years and then abruptly resigned. I resigned because I couldn't take it. And why couldn't I take it? That's where the confession part comes in. It's the first time I've ever told it in public. You see, I couldn't take it because I found I had to fail too many of you young aspirants.

It was not that I failed any more than my colleagues on the Board. My guess is that on the average I perhaps failed fewer. It was simply that those failures haunted me; I began to brood. I even began to lose weight (which I could afford) and hair (which I couldn't). I was oppressed not so much by the notion that I may have flunked a budding Holmes or Cardozo, but rather by the dark suspicion that this poor paper may have not been so much the result of any dire lack of knowledge on the part of the candidate, but rather of his sheer excitement and jitters over the awful fact that so much depended on it. You see, there was no sure way to tell. Is this sorry paper the handiwork of some amiable dunce whose only permissible future contact with the law should be to be restrained by it, I kept asking myself, or was it the paper of some slow-thinking but essentially sound poor devil who perhaps had to work his way through law school and was haunted by the fear he might fail, or who had to review for his examinations badgered and hag-ridden by financial, domestic or other worries, all of which combined to make him go to pieces?

So I quit; I couldn't take it. It was a task for stouter hearts. And

for the life of me I don't know precisely why I'm telling you this now; I'm not quite sure what it proves or whether it proves anything. Perhaps I'm telling you because you have so recently come through that crucible. Perhaps in some vague way it too has something to do with the human side of the law.

In any case I am happy to learn that since I left the bar board much more attention is being paid to these things I have just mentioned; that relatively more stress is being given to the character of the applicant rather than his ability to parrot forth a nice pat answer out of the slot when the lever is pressed. For it goes without saying that a smart lawyer with a poor or unstable character or one who regards his law degree as a mere hunting license is much more dangerous to let loose upon the public than a slower-witted classmate who possesses some sense of community responsibility and, above all, a good heart.

(The word kind!)

* * *

The human side of the law?

When all is said and done, what other side can there possibly be, except as we lawyers ourselves may be guilty of forgetting that there really is no other side?

In the days when Abe Lincoln practiced law out of his tall hat most lawyers knew all about the human side of the law. By 1900 it was not quite so true, and today, a hundred years after Lincoln, it is even less true. Why should the practice have changed so sharply in so short a time?

One big clue doubtless lies in the amazing expansion of our complex business and industrial civilization, along with the inevitable flood of new laws relating to corporate organization, financing, consolidation, taxation, liquidation. Now no one man can any longer possibly learn all this law, and those that try wind up in the booby hatch. . . . Then there are the accompanying swarm of laws on workmen's compensation, unemployment compensation, labor relations, domestic relations, and all the rest. And, as our host can doubtless happily reassure us, it is getting awfully complicated even to die.

But however complicated the practice, however driven we may be to specialize, and however hard it may be for us to still grasp and relish the human side of our work, we must try to remember that all law is nothing more or less than a massive accumulation of tribal ground rules; the distilled and recorded essence of those folk memories, those tribal expedients, that seemed to work--and which we kept. It is only when those ground rules have become so complex and entangled as they have now become that many of us fail to see the forest for the trees. Laws, after all, are merely man-made rules designed so that we men might live in a measure of peace with our fellows. These rules were not designed to master men; if I understand them they were conceived largely so that men might live together in sufficient harmony and tranquility to possibly get to know and master themselves.

Nor should we forget that, however complex our profession may have grown, the law in its broadest aspects sets only minimum standards of

conduct and that men can live smugly within those standards and still dwell like cavemen. For the law can never replace manners and morals, which are the real if unwritten controls of our relations with our fellow men. That is why certain republics that lie not too far abaft of us, with all their fine constitutions and legal codes, some infinitely more elaborate than our own, still monotonously contrive to conduct their affairs and change their administrations with bullets rather than ballots.

Thus it is that we ourselves possess perhaps the most elaborate codes in the world regulating the speed and manner of driving our automobiles. Yet despite those codes we continue merrily with our curiously compulsive slaying of ourselves and each other in the national game of Crumple Fender. Before each holiday Ned Dearborn of the National Safety Council is able to make shrewd book on the extent of our mass insanity. How can this be? Surely not because we lack enough laws. Heaven knows, but rather, suspect, because too many among us simply lack the manners and the moral restraint, the ordinary sense of compassion and good taste and thoughtfulness, to drive like rational human beings rather than like the escaped inmates of zoos. For you see, young friends, good will, like friendship and love, cannot be ordained or legislated. It too must spring from the heart and the mind; it too must arise from a sense of community, of our common destiny in this wondrously exciting adventure we call life.

* * *

Perhaps I have spoken overmuch of family skeletons and too little of

our triumphs. Yet one of the big triumphs of the law is the continual capacity of us lawyers for honest appraisal and self-criticism. And improvement. I just gave you one example from the District of Columbia. It does not stand alone. All across this vast nation--indeed at this very hour--there are committees and other voluntary groups of our ablest and most dedicated brothers laboring to reach one essential goal: the better administration of justice. These unsung men and women of our profession seek no personal gain or advantage; indeed that often lies the other way. Rather they seek only to elevate and enlarge the capacities for public responsibility of one of the world's most ancient and honorable professions.

I have spoken rather lightly of thresholds, but there is one threshold upon which all of us stand today about which only fools would dare to speak lightly. That is the awesome enigmatic threshold that today separates civilization from utter chaos, on the one hand, from a future of unimaginable grandeur and unlo^{ck}ing of the human spirit; from a world based upon brute force and rule of the jungle from a world based upon restraint and reason and the wisest counsels of men. In this decision and in this future I cannot help but sense that we men of the law have both a responsibility and a tremendous opportunity. And it is not impossible that a good share of the responsibility and opportunity for that future might fall squarely on the law classes of the 1950's. If so, may the Lord give you much wit and more wisdom. The Lord knows you will need both.

* * *

I did not expect to come way down here and get involved in such heavy

going. I find myself rather uneasily out of character. Nor did I expect to speak of such lofty things as love and friendship and so many other things. Rather I expected that I would come down here from my roost in the frozen North and tell you a batch of my anecdotes and depart. "This guy Voelker is a character," you would say. You see, besides springing an occasional felon, prospecting for uranium, and fly-fishing for trout, spinning stories happens to be my forte. And I suspect that the good gentlemen who invited me expected much the same thing. Possibly all of us would have enjoyed it more that way. Perhaps I'd better give you just one more sample.

(Tell about Toivo and Impi)

But something odd happened. As I found myself inventorying my stock of stories, I discovered that I was instead taking inventory of myself and of the profession I have made a rather dubious living in this past quarter century. And then I found myself staring long and curiously into the mirror of my life in the law. As I looked I thought back upon my own hectic days in law school; of the miracle of my graduation; of the wild uncertainties and rumors over the bar exams (one rumor was that the Bar Examiners sat around a big table and pulled so many lucky names out of a hat--and then flunked the rest); my amazement over learning that I had finally passed and was really a lawyer; of my blistering hangover the next day; my first job at thirty dollars a month; my courtship and marriage to that quiet dark girl called Grace whom I had met at my last Crease Dance; the nice problem of running an empty new law office and raising a family during the Depression; my first campaign for

prosecutor and the hundreds of moist babies I kissed, both under and over twenty-one; of all the countless doubts and struggles and exhilarations of those early years. . . . All these shadowy images and many more kept shuttling past in my mirror, not unlike the dark and snowy kaleidoscopic wonders of Upper Peninsula television. And as I looked I remembered that I was once in your shoes.

It was then I determined that I would be damned if I would come way down here merely to make you laugh, however much you may have welcomed that. I reflected that there were far better clowns on TV. I determined instead that I would try, in my way, to make both you and me pause and ponder together for a moment. For you see, all of us stand on the same great threshold together.

John D. Voelker