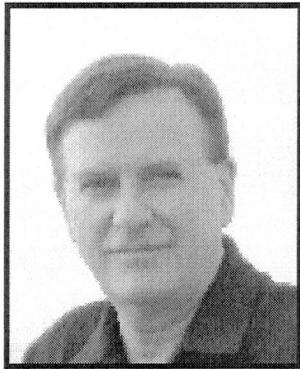


IN PRAISE OF LAWYERS

W. DENNIS DUGGAN, F.C.J.

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As Jesus was preaching in Jerusalem at Passover time, a Pharisee attempted to trick him into making a heretical remark. He asked; "Teacher, which is the greatest commandment in the law?"; thinking he could force Jesus to choose one of the Ten Commandments as the greatest. Jesus answered the Pharisee this way; "You shall love the Lord your God with all your heart, with all you soul and with all your mind. This is the first and greatest commandment. And the second is like it: You shall love your neighbor as yourself. On these two commandments hang all the Law and all the Prophets." (Matthew, 22:35)

What if you were asked; "What is the greatest right in our Bill of Rights?" Upon what right hangs all the law? What would your answer be? Would it be your right to freedom of speech, religion or to assemble? Would it be the right to be secure in your person, houses, papers and effects? Would it be the right not to be forced to incriminate

yourself or not to be deprived of your life, liberty or property without due process of law? Would it be your right to a speedy trial by a jury of your peers?

For me, the answer would be this: the most precious right is the right to hire my own attorney and if I could not afford one, one would be appointed for me. The Sixth Amendment guarantees the first part of this right. But, for almost 200 years, it was only a guaranteed right if you could afford it. The full right to counsel was a long time coming and it still has a long way to go. May 1st is Law Day and it is fitting and proper for us to reflect upon what I believe is our most precious right

**Please, ye we may contrive
 this afternoon, And do so as
 adversaries do in law—Strive
 mightily, but eat and drink
 as friends.**

The Taming of the Shrew,

Without an attorney, all of your Constitutional rights are like the oral contract referred to by Samuel

Goldwyn. They're not worth the paper they're printed on. Consider that in the history of the world, most crime has been committed by governments. For example, 55 million persons died as a result of WW II. That war was the result of a brutal and murderous Nazi regime that controlled all of the levers of violence that could be brought to bear by the German government. Millions of Africans were enslaved and imported into the Americas as the direct

result of the policies of the governments of England and Spain. The American Indian population was decimated by the policies of the United States government. At the beginning of the Twentieth Century, there were only about 250,000 native Americans left in the continental United States out of the approximately five million when the Pilgrims came ashore. How could such terrible things happen? WW II could take place, in part, because the German legal system was totally overwhelmed and fully compromised by the violence and evil of the Nazi regime. One reason that slavery and the decimation of the Indians happened was that they took place at a time when the legal profession and the enforcement of personal freedoms were in their infancy. The truth is, the only thing standing between the coercive power of government and the common man are good lawyers.

Let's assemble a short list of good lawyers. There's **John Adams** defending the British soldiers after the Boston Massacre—and obtaining acquittals. There's **Thurgood Marshall** (the greatest lawyer-Supreme Court Justice) and the NAACP Legal Defense Fund breaking down the walls of segregation. There's **William Kunstler**, America's foremost radical lawyer, defending Lenny Bruce, the Freedom Riders, the Black Panthers, and the Chicago Seven when the whole world was watching. There's **Sam Leibowitz** defending the Scottsboro Boys. There's **Clarence Darrow**, the lawyer for the damned such as Eugene Debs, John Scopes, Leopold and Loeb and Big Bill Haywood. There's **James D. St. Clair** defending Richard M. Nixon. There's **Gerry Spence** representing Karen Silkwood against Kerr-Mcgee. There's **Lloyd Stryker** defending Alger Hiss. There's **Max Steuer** defending the Triangle Shirtwaist Company. There's **Morris Dees**, the founder of the Southern Poverty Law Center, bringing the KKK to justice. There's **Andrew Hamilton**, under threat of disbarment by William Cosby, the Royal Governor, defending John Peter Zenger and the freedom of the press.

There's **Clarence Earl Gideon**, defending himself so others would have defenders, writing this to the United States Supreme Court: "The question is very simple. I requested the court to appoint me an attorney and the court refused." There's **Luther Martin** defending Aaron Burr in his treason trial before John Marshall as the trial judge and defending Supreme Court Justice Samuel Chase against his impeachment charges. There's **Louie Brandeis**, submitting his "Brandeis Brief" in *Muller v. Oregon*, the famous minimum hour case. There's **Percy Foreman** defending James Earl Ray. There's **Earl Rogers** who brought both his consummate trial skills and his dignity into the courtroom and elevated the practice of criminal defense. When Clarence Darrow needed a lawyer, he hired Earl Rogers. There's **Thomas Puccio** and **Harold Price Fahringer** defending Claus Von Bulow.

There's **Harold Medina** in 1942 representing pro bono a man charged with treason for helping six German spies who had snuck ashore on Long Island. The man was convicted but three years later, Medina got the conviction reversed in the United States Supreme Court. There's **Barry Slotnick** defending Bernhard Goetz, the subway vigilante. There's **F. Lee Bailey** defending the Boston Strangler, Dr. Sam Sheppard and Patty Hearst. There's **Daniel Webster** arguing for the life of Dartmouth College before the Supreme Court. With tears in his eyes he concluded his argument; "Sir, as I have said, a small college. And yet there are those who love it." There's **Melvin Belli** representing Jack Ruby, pro bono. There's **John W. Davis** who argued 140 cases before the Supreme Court. In the first half of the 20th Century, he was America's foremost lawyer's lawyer. There's **Edward Bennett Williams**, the ultimate Washington lawyer and the defender of Jimmy Hoffa, Adam Clayton Powell, Bobby Baker, Robert Vesco, Hugh Hefner, Richard Helms, John Connolly and mobster Frank Costello. There's **Ruth Bader Ginsburg** at the forefront of the fight

for women's rights. There's **Samuel Tilden**, America's foremost railroad attorney in the 1850's, who took on Boss Tweed and brought down Tammany Hall. There's **Barry Scheck** and **Peter Neufeld** of the Innocence Project that has freed hundreds of the wrongly convicted. Finally, there are the thousands of **District Attorney's, DSS Attorneys** and **Public Defenders** who toil every day in hundreds and hundreds of America's criminal and family courts, trying to keep a creaky ship of justice afloat. Their only reward is knowing that it is their efforts alone that keep our government honest and our liberties intact.

It is no accident that the longest standing democratic constitution in the history of the world is that of the United States of America. And, it is no accident that our Constitution was drafted by the greatest group of lawyers ever assembled. (32 of the 55 Convention delegates were lawyers.) And, it is no accident those rights guaranteed by our Constitution have been protected because many brave lawyers have been willing to risk their lives, their fortunes and their sacred honor.

Shakespeare knew all about how lawyers provided the bulwark for society's freedoms. In Henry VI, Part II a character says; "*The first thing we do, let's kill all the lawyers.*" But Shakespeare's character was not advocating a final solution for a lawyer problem because it would be an improvement for society—just the opposite. In the play, Henry VI is a feeble king. During his reign, insurrection is just below the boiling point. The Duke of York is stoking the flames of rebellion. He entices a boorish rabble rouser, Jack Cade, to lead the uprising. Cade is describing to his men the communistic utopia that will exist once the monarchy is brought to its knees. His sidekick, Dick the Butcher, then utters the immortal line about killing all the lawyers. Cade responds, "Nay, that I mean to do." Shakespeare knew that a society without lawyers would quickly be reduced to anarchy.

The common law of England provided little purchase for the growth of the right to counsel. Not until 1836 was a defendant permitted to have counsel in felony cases in the land of the Magna Carta. The policy was justified by the fiction that the burden of proof in a felony case was so high for the prosecution that no lawyer was needed for the accused. The right to counsel in colonial America had to fight its way into the courtroom. The colonies of Virginia and Connecticut, for example, had statutes that barred lawyers from the courtroom. In Massachusetts and the Carolinas, lawyers were prohibited from collecting fees for representing someone in court. The Pennsylvania Charter of Liberties of 1701 broke new ground with respect to the right to counsel. It provided that, "all criminals shall have the same privilege of witnesses and council as their prosecutors." *Gideon v. Wainwright*, which guaranteed the right to counsel for indigent defendants in felony cases, came 260 years later. There is some continuing irony to this. For example, if you are charged with petit larceny for stealing a candy bar from a 7-11, you can get a free attorney. However, the 14th Amendment does not entitle you to a free attorney if you face the termination of your parental rights to your children. (*Lassiter v. DSS*, 452 U.S. 18 [1981])

Robert Bolt's play "*A Man For All Seasons*," is about Sir Thomas More, the patron Saint of lawyers, and his struggle with Henry VIII over the annulment of Henry's marriage with Catherine of Aragon. There is a scene in which More and Roper (More's son-in law) discuss the arrest of a possible spy. It is, perhaps, the most poignant description of the law and its relation to civil society in all of literature. Listening to More, there is no doubt that he would give the Devil both the benefit of the law and an advocate to assert that benefit. The scene goes like this:

Roper: Arrest him [*Rich, the spy*].

More: For what?

Roper: He's a bad man.

More: There's no law against that.

Roper: There is! God's law!

More: Then let God arrest him....The law, Roper, the law. I know what's legal, not what's right. And I'll stick to what's legal.

Roper: Then you set man's law above God's

More: No, far below; but let me draw your attention to a fact—I'm not God. The currents and eddies of right and wrong, which you find such plain sailing, I can't navigate. I'm no voyager. But in the thickets of law, oh, there I'm a forester. I doubt there's a man alive who could follow me there, thank God.

[More's daughter points out that the spy is escaping]

More: And go he should if he was the devil himself, until he broke the law!

Roper: So now you'd give the Devil the benefit of the law!

More: Yes, what would you do? Cut a great road through the law to get after the Devil?

Roper: I'd cut down every law in England to do that!

More: Oh? And when the last law was down, and the Devil turned round on you—where would you hide, Roper, the laws all being flat? This Country's planted thick with laws from coast to coast—man's laws, not God's—and if you cut them down—and you're just the man to do it—d'you really think you could stand upright in the winds that would blow then? Yes, I'd give the Devil benefit of law, for my own safety's sake.

Because we have an advocacy legal system in America and there are lawyers on either side of every question, the legal profession can find itself doing ill as well as good. When it does ill, however, it will be other lawyers who will take note and issue a corrective course. No better example of this was seen just recently. Eric Holder, the Attorney General of the United States, directed the dismissal of the indictment against former Senator Ted Stevens because of prosecutorial misconduct. The principle at stake was simple. If our system of justice is not fair, what other possible purpose could it serve. Once again, a man from Nazareth, who could have been a lawyer because he knew the law better than the teachers in the Temple, put it more eloquently: "Woe to you, scribes and Pharisees, hypocrites!...for you have omitted the weightier matters of the law—judgment, mercy, and faithfulness, these ought you to have done." (Matthew, 23:23)