



John T. Berry

# Lawyers = Experts at Throwing Starfish

*The following is an excerpt from the speech John Berry made to the ABA's Conference on Professional Responsibility in Vancouver on May 31, 2002. Mr. Berry was this year's recipient of the Michael Franck Award.*

In November, 1990, Robert B. McKay challenged us in an *ABA Journal* article entitled, "The Road Not Traveled—Charting the Future for Law, Law Schools and Lawyers," to undertake "an entirely earnest quest for the soul of the profession."

A decade later Justice Norman Veasey said, "We are in a battle for the heart and soul of our profession." The ways in which the heart and soul of our profession are inextricably bound to the fate of democracy was etched indelibly on my own heart during a recent trip to Nigeria.

U.S. Magistrate William Wagner and I were asked by the State Department to go to Nigeria, a nation of 120 million starting on a difficult journey toward democracy after 25 years of oppressive dictatorship. Our assignment was to help their government and a special anti-corruption commission find a way to nurture that fledgling democracy amongst widespread corruption, violence, and stark poverty.

Housed behind a barbed wire compound protected by armed security, the Nigerian Independent Corrupt Practices Commission looked to us for help in understanding the role lawyers and judges must play in found-

ing a democracy and fighting corruption. We reminded them that no democracy can long survive without an independent judiciary, which has as its officers not just competent but also ethical and trustworthy lawyers. For the lawyers I met in Nigeria, making democracy work means making the judiciary work. To accomplish that, they must model the very best in both intellect and heart. They must insist, often at the risk of their own lives, that the rule of law—not violence—is the only acceptable way to resolve conflict.

Our problems are not nearly so severe, but they are equally urgent. A friend and co-worker of mine at the Florida Bar was fond of

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saying, "We have lost sight of our goal, but redoubled our efforts." Let us be sure that we avoid this all-too-common failing by staying focused on our most important goal—defining our profession based upon a heart and soul for serving the public.

I would suggest that, the true soul of our profession must be to serve the public by providing competent, ethical service to our clients and the public in the resolution of their legal problems.

I have asked literally thousands of lawyers from over 30 states and from foreign nations from England to Nigeria, "What is justice?" In answering, our colleagues universally point not only to a fair end result but to a *process* that is fair—that reduces pain rather than adding to it.

Dealing with changes in our profession requires us to analyze attacks on the legal system, admitting mistakes where needed, and defending the status quo only where it is in the best interest of the *public* to do so. If we are to succeed, we will have to unite our fracturing profession by communicating better with one another—bars, members, law schools, and courts. Like it or not, the future of our profession ultimately rests in the public's hands, not ours.

We lawyers, who are trained to analyze, dice, and slice issues, tend to react very poorly to dramatic change. Our instinct is to reduce uncertainty, not embrace it. The changing economic and societal landscape in which we

operate is *driving* calls for change. It's our call. What's it going to be? Narrow-minded self-interest, or a rededication of our essential values to a changing environment? Bar leaders must listen to individual lawyers' concerns, but in the long run the role of our profession in protecting our democracy through the rule of law trumps our individual concerns, and our service to the public is the foremost consideration of all. This means that in accepting the privilege of practicing law we must also accept the requirements of high competence, high integrity, and the cost in terms of both time and money of promoting both qualities individually and through-out the profession.

Let's just take one part of the profession being confronted with demands for change—

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law school education. Being a dean of a law school is hard work with constant demands for change on all fronts. Pressures exist to admit more students and a more diverse student body—not just diverse by race or gender but by academic aptitude and economic factors. The competing demands of maintaining the financial well-being of the institution, serving society, and serving the profession are all constantly on a dean's mind.

Some of our more progressive law schools are now developing models of education that make the heart of the profession as important to the legal body as the hand which implements learning practical skills and the mind that is the energy source for competent legal advice. Knowledge, skills, and ethics are equally valued in these new models.

It is my hope that all of our law schools would actively encourage their students to embrace whatever faith or philosophy inspires them to public service, rather than viewing the profession solely as a means to earn a living. In a democracy we value the mix of political, religious, and philosophical diversity. We should encourage a respect for different opinions. Within that framework of respect, we must challenge all prospective new lawyers to seek their own truth and to use their personal beliefs as the foundation for a commitment to serve the public through their new profession.

Whatever different personal and political philosophies we bring to the profession as the foundation for our commitment to public service, I am certain of one thing: our commitment must be grounded in the fundamental principles of morality common to all faith-based and ethical traditions. Yes, I am talking about the lessons we were supposed to have learned in kindergarten.

Do not steal, not even by exaggerating time spent on a client's behalf in a billing statement. Such "exaggerations" or "padding" when done intentionally should be called what they are: fraud and theft. The prevalence of such practices is well known by all discipline authorities and it constitutes the not-so-hidden scandal of our profession.

Efforts are under way to review hourly billing practices and many experts refer to the pressures on lawyers to bill more and more hours. As prevalent as those pressures are and

as much as I support reform and movement to a pricing system more reflective of value than time, we can't forget one thing—moral, ethical, and legal accountability. We also must find better ways for our clients to understand what they are being billed for and how they can use that information in an understandable way. Informed competitive pressures on lawyers and informed clients will help both the public and the legal profession.

No matter what the systematic pressures may be, lawyers must resist the temptation to lie, cheat, or steal. Billing hours you never worked or improperly multiple billing violates our ethical rules and our moral conscience. We must hold ourselves to be accountable for unethical billing no matter what form the billing takes.

Do not lie. We may disagree about what truth is, but we should all be clear in our commitment to such basic propositions as telling the truth under oath. Lawyers are clever people, but our cleverness needs to be subservient to our consciences, not used to justify cutting corners on ethical requirements.

In the article, "It's Not Too Late to Teach College Students about Values," Arthur J. Schwartz tried to debunk a few myths, including the myth that a person's character is formed by the time he or she gets to college. In a marvelous statement he says, "The significant presence of principled people and

shared standards all have the power to reshape a person's character." I *believe* together we can change the character of our profession for the better. I *know* we can improve our behavior.

Leading the fight for positive change ultimately requires courage and a willingness to stay the course and pay the price. My Nigerian friends are willing to give their lives for a changed society. Would we be willing to risk our jobs, our organization's existence, or even our lives to stand up for what we believe in?

As I did in my closing remarks to the Nigerian lawyers, I want to share with you the story of the person walking on the beach who encountered literally thousands of starfish washing ashore—all still alive but with time quickly running out. One by one the walker calmly proceeded to throw the starfish back into the ocean.

A passerby stopped and asked, "Why are you doing that? It makes no difference."

The walker answered, "It makes a difference to the starfish I throw back."

When I left Nigeria, a wonderful Nigerian lawyer presented me with a picture of some Nigerian colleagues with this note on the back: "We are going to keep throwing the starfish back." If necessary it may only be one at a time. Even if it appears a lost cause for all but a few, we will just have to find more throwers. ◆