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The Honorable Howard T. Markey

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ON LOVE, TECHNOLOGY, AND LAW

A TALK BY

CHIEF JUDGE HOWARD T. MARKEY*

Welcome to a great and ancient profession — nay, to a great and ancient opportunity. The chance to serve society, to work at the heart-beat of a free society — the law — is a privileged joy. Contrary to popular canard, Shakespeare was praising lawyers when he put the words, “the first thing we do, let’s kill all the lawyers,” into the mouth of Dick the Butcher who saw that Cade’s plan for dictatorship would fail if even one lawyer remained alive to defend the people’s rights.

The world is a mess. Of course it is. So what’s new? It has always been. However, it is less a mess than it was when I sat in those chairs thirty years ago, and, with your help, it will be infinitely less a mess thirty years from now.

It is your help the world will need. The triumph of good over evil depends primarily on the educated. Today you join the one quarter of one per cent of the people of the world who have ever set foot in a college and perhaps the one one hundredth of one per cent of the world’s people who have earned a Juris Doctor degree.

Certainly you will face problems — massive problems, but solving problems, and creating new ones, is the sparkle in the wine of life and law — the fun of living. Life with absolutely no problems would be a total bore. I propose to visit with you for these few moments about two different but related problems. The first is seen in the legal profession’s crying, desperate need for your love. The second is the threat to traditional values present in the onrushing juggernaut of technology.

I have had, thank the Lord, a wonderful life. I wouldn’t change a moment — yet I would trade places with you in a minute. Technology will enable you to work among the stars, and in your homes that Toffler calls “electronic cottages.” It can enable you to live longer, healthier,

* Chief Judge, United States Court of Appeals for the Federal Circuit.

more interesting — and — if you play your cards right — happier lives than any human beings have ever lived. Playing your cards right includes, first, putting more lovin' in your lawyerin' and, second, assuring that the law keeps technology your servant and not your master.

There is no question that love makes the world go; the only question is, "which way?" If our families, our society, and the administration of justice be the objects of our love, we can help move our part of the world toward sunlit uplands of peace and harmony. If money, power, and winning be the sole objects of our love, we move the world back toward the caves.

It is sad but true that the role of love gets little attention in legal circles. As far as I know, there are no law school courses entitled "love and law —the lawyer as peacemaker." Yet I put it to you that nothing is more important to the continued life of the legal profession. For the legal profession is not an abstraction. It is people. As my distinguished colleague Chief Judge Re would say, "I have never seen the administration of justice. All I have seen is people."

What will be your daily, constant attitude toward clients, adversaries, partners, judges, magistrates, professors, witnesses, secretaries, clerks, and all the other people with whom you must work as you practice your profession? Can you abhor the act, and still love the actor? If you all answer "no," I cannot be sanguine about the continued life of the profession, and I would hope you will go into something else.

A lawyer with no philosophy of life and love is but an empty shell — a tinkeeper with scraps of law that may come along. If you be such, I can't imagine why you want to be a lawyer. You could certainly get more elsewhere with less effort.

Disputes are indigenous to a free society. So lawyers are seen — and many see themselves — as advocates, gladiators, champions of clients' causes, dealing daily in an adversary process and environment. Unless you bring a spirit of love into your practice, therefore, the limit lines of lawyering will not be clear to you, and you will find it hard to tell when you are exceeding the zenith of zeal. Indeed, you may fall victim to the false assumption that law is mainly litigation, and your attention may be diverted from the far more important functions of counseling, constructive planning, and preventive lawyering.

Many of you came to law school because you viewed the legal profession as a means of expressing your care and love of people. Your studies have emphasized appellate case law — an objective approach without discussion of the effect on the clients' lives. I am here to suggest that you return now to your original views — for the profession in your hands can be all you first thought it was.

We don't need even one more lawyer who is impolite, intemperate, insulting, and purely combative. We need not one more lawyer who can-

not disagree without being disagreeable. We need not one more lawyer to whom the law is but a sport, to whom winning is the only thing, to whom success is measured only in dollars.

Putting love in your practice is not a matter of emotion or spontaneous demonstration. Nor is it just a matter of religion or goodness. You should bring your love to your practice because it *works*. You can, with diligence, care, and effort, bring that love which alone can enable you to make a difference, can alone enable you to help preserve your families, your freedom, and your society against the forces tending to destroy all three, can enable you to nudge the world toward the place of grace and peace you want it to be.

Think not that bringing love to the law would be of no practical value. On the contrary, a legal profession starved of love must die and it will deserve to die if it continues to exchange that fine advice, "love thy neighbor" for "sue thy neighbor."

To be truly a lawyer is to be different, to carry a special responsibility. Where cynicism is rampant, you as lawyer must hold and exemplify ideals. Where patriotism and love of community is passé, you must show dedication and love to your fellow citizens. Where the easy life and the fast buck are goals, you must serve unstintingly the jealous mistress of the law. Where the rip-off and the slick grab are admired, your dedication to principle and love of others must stand out as a constant rebuke. When your client says, "don't just stand there, sue somebody," you must in proper case counsel restraint.

What a practical and magnificent contribution you can make to our society's most vital and precious need — justice — if you forego the blind and immediate rush to court — if you refuse to serve merely as a conduit to the nearest courthouse — if you refrain from the legal lunacy apparent in so many of our frivolous cases — if you delay a reach for the gladiator's sword, while you serve first the gloried role of the peacemaker.

Giving love a chance does not mean abandoning vigorous advocacy. Peacemaking is not surrender. On the contrary, it takes a special skill, a thorough knowledge of the facts and the law, first to see that the best true interest of your client lies outside the courtroom, and then to serve that interest as peacemaker. Indeed, peace itself requires advocacy. To grasp the sword is easy. To bring peace between disputants is hard, and requires the highest form of advocacy. Remember that the transcendence, the integrity and majesty of the law can be as well exemplified in a lawyer's office as it can in a courtroom.

So, it seems to me, you have a choice. You can go on making us a nation of nothing but statutes, a law-drenched, legalistic, litigious society. Or you can elect to exercise the lawyer's highest calling. You can become our peacemakers. You can seek always and first the calming grace of settlement. You can help us soften our cutting edges. You can help us recon-

cile our rights and realize our responsibilities. You can place conciliation and consensus before conflict. When all else fails, and you must go to court, you can bring your love to bear against wasteful delay, abuses of discovery, and actions unfair to a just result. You can show that when winning requires abuse of the judicial process, winning isn't worth it — for then everybody loses, including the lawyer who thought he won. You cannot always expect to win but you can remind us daily that if we lose our dedication to justice nothing else will matter.

The lovin' in your lawyerin' can be broad and wide enough to help you solve the second problem. In your increasingly technological world, the individual's need for equality, consideration, and fair procedures — for justice itself — can get more easily lost. The threat is insidious, for it walks on little cat feet of separate, individual denials of the respect due the humaneness of this person here and that person there. Of all the professions, that of the law should be above denying the humaneness of any person. Of all persons, you as lawyers are especially charged with the promotion of human freedom, for as history teaches, only law can save freedom without revolution. However, just being lawyers is not enough. Hitler had lots of lawyers but his technology killed millions and made lampshades of their skin.

As I have said, the problems are related. Your love of the law must include a dedication to its transcendancy. Only law can tame technology. Only law can keep society from being ruled by the cold, hard, inherently valueless, despotic facts of science. Only law can preserve inherently the values of the centuries — the stuff of the law — like mercy, and compassion, and freedom and justice.

Yet mankind's two great servants, science and law, need not be enemies. We need realities in the hand and realities in the heart. We need both the slide rule and the golden rule. Kept in balance, science and law can enable the world and mankind to grow and become what they had never been before. That balance can be readily seen in many court cases in which science, technology, and law are blended into a consistent whole. In the Court of International Trade the most potent witness may be a transistor, an integrated circuit board, or a super-power microscope. In the Court of Appeals for the Federal Circuit, the dramatic advance of technology is reflected in cases dealing with genetic engineering, orbiting satellites, and the cardiac pacemakers. In many court cases the fate of things as different as nuclear power and a new drug may rest on the outcome.

As has been well said, the law deals with all phases of life; but how it deals with technology will greatly effect your lives and the society you will create for your children. How will your law deal, for example, with things like invasions of privacy by modern surveillance devices, surrogate and test-tube births, selection of recipients for human organ transplants, and

technological advances yet unknown?

Unlike the piling of knowledge in the field of technology, man has not yet learned to build on the history of ethics, love, and morals. Every baby starts from scratch. Yet there is hope. For with every baby humanity gets a new start, and today our profession gets a new start with you. If you choose to bring love to the law, to serve the role of peacemaker, that new start can revolutionize our profession; and that new start can assure that our technology does not make us, in Thoreau's phrase, "the tool of our tools."

I end with best wishes that your professional lives be both successful and happy, and that when your time has run and your work is done, justice and freedom will be glad you lived.