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The Purpose of Law--A Trial Judge's View

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COMMENT

THE PURPOSE OF LAW — A TRIAL JUDGE'S VIEW

As editors we realize the extensive preparation requisite to submitting a lead article to a law review. In the course of our solicitation for such articles, we discovered that many practitioners and members of the judiciary in West Virginia simply do not have the time or the necessary research materials to perform such a task. Nevertheless, there are many who have views as to the state of the law or special knowledge of particular areas of the law that merit a forum.

As an example, we are publishing the text of a letter received from the Honorable Robert M. Worrell, Judge of the Twenty-Seventh Judicial Circuit at Pineville, West Virginia. Although unable to submit an extensive lead article, Judge Worrell offered these thoughts as the basis for further development in our law review by the student writers.

It is the thought of the Board of Editors that the West Virginia Law Review should be responsive to the bench and bar of West Virginia and should attempt to publish shorter legal writings without being strictured by the normal requirements for a lead article. Our intent is not to elicit responses to this particular letter or to establish a readers' forum. Rather, we seek to make our law review available periodically for the publication of legal writings that are shorter in length than the normal lead article. In so doing, we hope to be of more service to the legal profession in the State of West Virginia.

West Virginia Law Review

In July, in response to a communication from you, I agreed to give you some thoughts which have occurred to me over the past many years and which you might use as a basis for the preparation of a law review article. I do not believe you can read this material without, perhaps, reorganizing or reevaluating your thinking on some things you have read while students in the College of Law. In any event, I submit these rather rambling observations that did not occur as a major revelation overnight.

The basis of all law is probably to provide for an orderly society. An orderly society implies freedom from fear and a safe place in which to live. The unfortunate part of our legal system is that the courts have lost sight of this basic fundamental truth.

In the course of World War II, while the United States Third Army, under the command of General George S. Patton, Jr., was driving across France, General Eisenhower became concerned about the rapidity of the advance and called on General Patton in his headquarters. In reviewing the situation, General Eisenhower asked General Patton about his flanks, which they both knew were not secured. General Patton's response, as I recall it, was "[s]ome stupid son-of-a-bitch said 'Protect your flanks', and military men have been worried about it for centuries. Let the other stupid son-of-a-bitch worry about his flanks. I am not worried about mine." This typical language of General Patton contains a basic truth, and that is — simply because somebody said something once does not necessarily make it true. What might have obtained in a particular set of circumstances under a particular economic and social structure would be totally unrelated to what would obtain fifty or one hundred years later, under entirely different circumstances. The doctrine of *stare decisis* is used to either justify, rationalize, or evade a difficult situation under totally different circumstances and creates more problems than it solves.

Variance from the basic purpose of the law, rather than *stare decisis* or novel legal theories presents the real problem however. This is exemplified by the recent United States Supreme Court case of *New York Times v. Sullivan*. In that case the Court held that a newspaper had a license to comment on the life of any public person, more particularly an elected official. This new doctrine has been broadened since that time to include law enforcement officers and almost any person in public life. Previously malice could be presumed in libel cases from the particular language used in the libelous publication. That doctrine was reversed and a license was granted to make any comment that the newspaper cared to make. Now in order for an individual to recover for libel, he must prove actual malice. Proving actual malice is not an easy task. The result of that decision is simply this: A newspaper may publish defamatory remarks about selected individuals and those individuals have no recourse. As a result, some may resort to violent self-help because there is no effective legal right of redress for a wrong committed. Here is an example where the Court has lost sight of basic fundamental truth.

The courts have, in the past, had long discussions in their decisions about the theory that punishment for a criminal act would serve as a deterrent and have added to that observation the thought that prisons should be used to rehabilitate criminals. The simple truth of

the matter is that the public is afraid of a dangerous person. The public is afraid of a man who will commit an act of violence on another individual or lose control of his mental faculties through the use of drugs or alcohol. When the fear in the minds of the public is great enough, that individual will be separated from society and placed in a position where society does not have to fear him any further. The courts can talk about rehabilitation, deterrents, cruel and inhuman treatment, or anything else that might occur to them in the preparation of an opinion, but sooner or later they must come to the realization that there will ultimately be in society some method of segregating dangerous people. When they turn a dangerous individual loose because of some alleged violation of a constitutional right, even though the individual is guilty, they are weakening the structure of an orderly society and placing the public in a position of fearing not only a dangerous individual but also a dangerous legal philosophy. This may ultimately lead to an overly strong system of government that exists in some of the other countries of the world. Incarceration of dangerous individuals does not mean that they should be treated cruelly or inhumanely. I believe that work for prisoners, conjugal visits, and a fairly wholesome environment would meet with complete public acceptance as long as the individuals are not allowed to run at large and constitute a menace to the freedom from fear that the public is entitled to.

If the judges of the appellate courts would spend a few days each year with the average man in the coal mines, in the factories, or on the streets and learn the true feeling of the average citizen, they would find some manner of rationalization more consistent with the needs of the public and the fears of the public. Unfortunately, they are so far removed from the pulse of society that they are not capable of understanding the feeling of the vast majority of people that make up the nation. No change will come about unless the attention of the law enforcement concept is redirected to basic fundamental truths.

*Robert M. Worrell,
Judge of the Twenty-
Seventh Judicial Circuit of
West Virginia*