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## “DAYTON LAWYER” – TITLE OF DISTINCTION

*Frank P. Geraci, Jr.\**

In September 1974, 165 newly enrolled law students were seated in the Boll Theatre to listen to Dean Richard Braun welcome the ambitious assembly. A new law school and faculty anxiously waited. Tension filled the air when it was casually announced that only two of every three students were expected to survive what was promised to be a challenging curriculum. Three years later, on Mother’s Day, 1977, approximately ninety of us were fortunate to step forward and receive a degree that read Juris Doctor. The torturous hours of reading, analyzing and briefing cases had paid off. There were ninety new Dayton lawyers headed to various states throughout the country, onward for their respective bar exams. Were we prepared? For me, a few days before Christmas 1977, the answer was contained within an envelope. The letter, read to me over the phone and starting out with the words “We are pleased to inform you . . . ,” brought a sigh of relief. A cold day in February was the date set for an admission to the New York State Bar, a joyous event at the Eastman Theatre.

My initial reaction on writing a reflective essay about the University of Dayton School of Law (“UDSL”) and the impact it had on my career was one of concern that such a paper would have little value. Upon further consideration, I began to understand that the principles and values espoused by UDSL have served as a driving force for many of the decisions that I have made throughout my career. The instruction received at UDSL provided me with the confidence and ability to tackle complex legal situations. Finally, I realized that the ability to share those experiences presents an opportunity to express gratitude to the law school and hopefully to act as an inspiration to some aspiring attorneys.

Thankfully, Monroe County District Attorney Lawrence Kurlander, who had just recently ousted the long-term incumbent, decided to take a chance with a newly admitted attorney. The start of a career as a trial attorney did not exactly get off to a stellar beginning. In my very first trial, appearing before Rochester City Court Judge Arthur B. Curran, I proudly announced at the end of the prosecution’s proof that the people had proved each and every element of the charge of Disorderly Conduct and that the court should find the defendant guilty. The court agreed that I had indeed proven each and every element of the charge of Disorderly Conduct, however, there was a problem; the defendant was charged with Harassment not Disorderly Conduct. There was no time to pout as the court announced the not guilty verdict; it was time to prepare for the next case. Often five or six

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\* Monroe County Court Judge, State of New York. J.D., 1977, University of Dayton; B.A., 1973, University of Dayton.

bench trials would be conducted in a single day, allowing only minutes to interview and prepare witnesses.

Initially, the cases assigned were not very significant. It was not unusual to prosecute a case involving an unleashed dog violation or snagging fish illegally. However, I soon became responsible for the prosecution of career criminals and handled matters involving robbery, rape, gambling, prostitution, narcotics, organized crime and homicide. While serving as Chief of the Driving While Intoxicated Bureau, one of my responsibilities involved responding to the scene of serious injury and fatal motor vehicle accidents. One September evening, upon arriving at the curve of a quiet city street, there was an eerie silence in the air and blinding lights were flashing from emergency vehicles. One half of a car was embedded into the base of a tree; the other half laid several hundred feet away. Four bodies were scattered on the roadway. Four young lives ended that night because the driver failed to negotiate the curve while traveling ninety miles per hour after consuming a large quantity of alcohol and marijuana. Two brothers, fifteen and seventeen years old, and two other friends, both sixteen, were dead. Four families were destroyed that night - the victims' and the defendant's. The manslaughter charges that resulted required presenting expert testimony involving accident reconstruction, forensic pathology and toxicology. The defendant, only seventeen years old, also needed to be treated delicately. Four of his best friends were dead and he was headed to state prison. Emotions were extremely high throughout the proceedings.

Another case I handled involved a woman who had just turned twenty-one and who made the mistake of her life by accepting a ride from a stranger to meet up with her friends. Near their destination, the driver diverted to a back road. As the victim protested, the operator punched her in the face and eventually secured her with rope and duct tape. After raping and sodomizing her, he beat the woman to unconsciousness. Thinking that she was dead, he dumped her from his van into a field and drove away. Fortunately, the victim regained consciousness, crawled to a nearby house and reported the details to the police. The trial was traumatic as the victim needed to relive the experience and describe the details to a roomful of strangers. Sensitive handling of the young woman, coupled with a skillful cross-examination to dispel the defendant's absurd version that this was a consensual activity, helped send this three-time sex offender to prison for twenty-five years.

In yet another case I handled, while investigating a fatal accident, it became apparent that no one could testify to seeing the suspect operate the car at the time of the accident. During the briefing with the investigating

officers, one suggested a solution to this problem; he may have seen the suspect driving the car earlier. This repulsive suggestion to falsify information initiated a report to the District Attorney and appropriate disciplinary action was taken against that officer. Putting notches on a belt must never be a goal.

In 1983, I was fortunate to be offered a position with the Department of Justice to serve as an Assistant United States Attorney. While working with the Federal Bureau of Investigation, Drug Enforcement Agency, Internal Revenue Service and Secret Service, it became evident that the federal government's enormous resources brought tremendous investigative power. In one case, involving a prison escape conspiracy, we were able to coordinate simultaneously an investigation that included search warrants, eavesdropping warrants and surveillance by foot and aircraft in the states of California, Tennessee, Florida, Pennsylvania, Washington, Arkansas and New York, all from a small office in the federal building in Rochester, New York. The case ultimately resulted in the arrest of six individuals, including members of a notorious Philadelphia organized crime family. The calculated intervention of law enforcement agents prevented the escape, which was to include, if necessary, the slaughter of dozens of prison guards by machine gun fire. Planning, coordinating and strategizing were essential to the success of this mission.

Working with various law enforcement officers on eavesdropping warrants quickly disclosed the tremendous intrusion that such warrants authorize. Understanding the impact of this invasion of privacy, the law in New York requires minimization of such intrusions. It takes only a few days of listening to a household's telephone calls to learn the family's routine. Who is home? When are they home? What's for dinner? Who is sick? These questions and others can be learned while intercepting telephone calls. On one occasion, while I was visiting the wire room stationed in a hotel, a roomful of eavesdropping police agents overheard the target complain about the post office stating that the government just didn't listen. If he only knew.

With such authority comes a great responsibility to see that it is not abused. As a prosecutor, it was my responsibility to assure that the government adhered to the limits of the warrant as set by a neutral magistrate. Adherence to the rule of law is essential for the integrity of our system of justice.

After five years as a federal prosecutor, a decision was made to join with another Assistant United States Attorney and to form our own law firm. It was a nerve-wracking time as we exchanged a secure weekly salary for the unknown. Starting a new law firm with no clients had a tendency to make

our wives a little nervous. Everything worked out well, however, because I was fortunate to have a very bright and capable law partner, Jonathan W. Feldman, now a United States Magistrate Judge. Our reputation as trial lawyers in the community caused referrals to come fast and furiously to the point that it became necessary to reject criminal assignments.

Being a defense attorney was initially quite an adjustment after ten years as a prosecutor. The skills developed while serving as a state and federal prosecutor, however, were instrumental in presenting a competent defense for our clients. We had no difficulty responding to those comments about our "getting the guilty off" because we knew well our role was to protect the system from abuse by requiring the state to prove its case. Holding the prosecution to any lesser standard jeopardizes the rights of every citizen – for injustice to one invites injustice for all.

Upon arrival at the Monroe County Jail, after a judge assigned me to represent a sixteen year old that was in custody for theft of a car, I was astonished with how young the boy looked; he appeared closer in age to twelve than to sixteen. It turned out that this young man stole a car in the State of Pennsylvania and drove it across the border to New York, ultimately being arrested in Rochester. He was under the impression that he would be considered a juvenile, because in Pennsylvania he would have been so treated. As I advised him that at age sixteen he was an adult in New York State and faced up to seven years in a state correctional facility, he began to sob like the child he was. Fortunately, we were able to work out a disposition of his case which resulted in his return to his family in Pennsylvania.

Practicing in a small firm sometimes causes the giants in the legal field to badly misjudge the ability of such a firm to zealously represent its clients' interests. One client requested that I approach a major corporation in Rochester about its breach of a contract. After a few brief conversations, the corporation counsel suggested that if we dared to file suit he would "crush us" because of the corporation's unlimited resources. Undaunted, the next day, I filed a summons and complaint. Shortly thereafter, the arrogant corporate lawyer offered my client a settlement figure that was three times greater than the figure for which my client was willing to settle. So much for Goliath.

After five years in private practice, an opportunity to run for a City Court judgeship arose. A successful campaign resulted in securing a ten-year term as a Rochester City Court Judge. The partnership of Geraci and Feldman was dissolved shortly after I took the oath of office and, subsequently, my former partner was appointed as the first Federal Public Defender for the Western District of New York.

It was a strange feeling when I first walked from my new chambers down the hallway wearing my new robe. I remember passing a man in the hall who called me "Judge" and I wondered how he knew, because I forgot the outfit I was sporting. The first day in court was relatively uneventful and soon I began to get more comfortable as the unfamiliar became the norm. In City Court, each judge handles six thousand cases per year. In such a sink or swim environment, I chose to swim.

Being a judge is considerably different from practicing law. You no longer advocate for a client. You are an advocate for justice. The job of a judge is clear. Like an umpire or a referee, it is the judge's duty to see that the playing field is level and to assure that everyone plays by a defined set of rules. A judge must be prepared to punish those who violate the rules of society, but always temper that power with a sense of fairness.

While serving as a judge for the past nine years, I have observed some of my colleagues get caught up in an air of self-importance. After all, when you walk into a room people rise. You are called "Your Honor" and everyone sporting the robe has the same first name, "Judge." I have to admit that once when a defendant from Sudan referred to me as "Your Lordship," I thought that it had a nice ring to it. My bubble burst when I got home that night and my wife told me that it was Tuesday and therefore I needed to take the garbage out to the street for pickup in the morning. I didn't think it would do much good to inform her that Lords don't take out the garbage.

During my tenure as a City Court Judge, my focus was on attempting to determine reasons for the criminal conduct and addressing those issues at the time of sentence. A great number of criminal matters involve substance abuse and mental health issues. Consequently, being a proponent of the Rochester Drug Treatment Court and Rochester Teen Court was a natural extension of this philosophy. There is nothing liberal about that posture. Prevention of the next criminal act also means that there will be one less victim in the community.

The Drug Court has become a model for the nation. Hundreds of individuals involved in prostitution, burglary or theft have been redirected and given a new lease on life once they have been able to shred the evil of substance abuse. Eighty percent of the Drug Court graduates have remained arrest-free after five years.

As a City Court Judge, I was fortunate to work on a collaborative effort which resulted in the formation of one of New York's first Teen Courts. Rochester Teen Court is a diversion program, which engages teens to act as jurors, attorneys and court staff in judging cases involving their peers. The teens impose a sentence directed at helping the defendant teen's first

contact with the criminal justice system be his or her last. Like the Drug Court, this program has been highly successful, slowing the revolving door of criminal activity. Only twenty-four percent of Rochester Teen Court participants re-offend.

A serious overcrowding situation in the County Jail presented an opportunity to develop some innovative programs which would allow individuals to engage in counseling and treatment programs while they await disposition of their cases in exchange for their release from jail. As a member of the committee responsible for developing solutions to this situation<sup>1</sup> and working with a group of dedicated community leaders, we created contact supervision, enhanced diversion and a Day Reporting Center as alternatives to incarceration.

In 1998, after seven years as a Rochester City Court Judge, I was fortunate to be elected to the Monroe County Court. The responsibilities in this court have proven to be quite different from those in City Court. While City Court handles primarily misdemeanors and violations, the County Court handles almost exclusively felony matters such as robbery, rape and murder. While local court presents the opportunity to redirect first time offenders charged with minor offenses, County Court matters often require state incarceration. Because one County Court judge handles cases that can be easily resolved, the remaining five County Court judges are engaged in trial. The serious nature of the offenses involved in County Court often attracts the interest of the community. Such interest may be articulated by the presence of interested parties including family members or friends of the defendant or victim. The court needs to distance itself from sometimes subtle and sometimes not so subtle pressures to rule in a particular way. Determinations of legal and factual issues must be made in a non-compassionate fashion in order to assure that the rule of the law is applied.

At his retirement in December 1997, New York State Supreme Court Justice Francis Murphy<sup>2</sup> captured what should be the goal of every judge when he said,

A judge, in the main, is not a scholar, nor an intellect, nor a philosopher. He is an ordinary human being carrying the ordinary baggage of the good and the bad. His only hope for distinction is that, in the end, when he puts down that baggage and looks back, he

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<sup>1</sup> This committee was known as "The Jail Utilization System Team."

<sup>2</sup> Justice Murphy is now in private practice with the firm of Kelley, Drye and Warren, New York, New York.

will not see that his shadow is that of a coward or a hypocrite. He will see that though his robe has become worn, his oath is as strong as the day he took it. Having had fear of no one, and having given favor to no one, he closes the courthouse door behind him, and if he's Irish, walks up the avenue with a skip and a smile.<sup>3</sup>

From the first day at UDSL, it was emphasized that we were entering a profession, a very honorable profession. We would be privileged to become members of this organization, but that membership carried great responsibility.

Winning or losing a trial was not important. Representing a client's interest zealously was expected. Developing the skills to present a highly competent presentation was essential. United States District Court Judge Walter Rice,<sup>4</sup> while teaching trial practice, drilled us on the importance of laying a proper foundation for the admission of evidence. The skills developed in his class have paid dividends over the years. Sometimes, when I see attorneys struggling while attempting to get evidence admitted, I appreciate how lucky I was to have been required to participate in Judge Rice's drills and pity those who did not have that opportunity.

Professor Michael Katz's classes on Constitutional Law did not just emphasize the rules and principles articulated through the decisions of the United States Supreme Court, rather they emphasized that it was our responsibility as lawyers to assure that the rights and privileges extended to all citizens were protected. We are the guardians of freedom. During practice as prosecutors or defense counsel, attorneys protect the rule of law. The integrity of our entire system of justice is at stake if we lose sight of that goal. Thus, prosecutors have a responsibility to see that the order of a neutral magistrate is fully complied with. That is why defense counsel needs to pursue the suppression of evidence he or she thinks has been illegally seized.

In supervising our Moot Court arguments, Professor Dennis Turner assisted his students in developing the skills necessary to research legal issues, analyze cases on point and articulate their positions in a manner that would be convincing. These tools proved to be invaluable throughout a legal career.

UDSL's emphasis on clinical work and internships presented an opportunity to understand quickly that lawyers represent people who trust and depend on those retained to represent their interests. Sensitivity and

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<sup>3</sup> Peter McDermott, *Murphy's Law*, IRISH ECHO, March 11-17, 1998, at 30.

<sup>4</sup> Judge Rice is the Chief Judge for the Southern District of Ohio.



basic human understanding were as important as technical skills. Mutual respect needs to be experienced between attorney and client. The competence and confidence developed through UDSL has often led to the resolution of disputes for clients simply because of the willingness and ability to advocate on their behalf.

As a judge, it has been my responsibility to see that the playing field is level, the rule of law complied with and that the powers inherent in such a position are tempered by a sense of fairness. Civility and dignity must be the rule, not the exception, in our courtrooms.

When established in 1974, UDSL was determined to be much more than just another law school. Rather, it set as a goal to become one of the best legal institutions in the nation. Over the last twenty-five years, UDSL has reached that lofty goal by becoming a leading national, Catholic institution which effectively teaches the values and technical skills needed to be a good lawyer, producing lawyers who understand the human element present in the practice of law.

It is an honor to be one of the first graduates of UDSL, an institution that produces distinctive graduates. Being a Dayton Lawyer is truly a title to be proudly claimed.