

50th Class Reunion

University of Denver College of Law

May 22, 2010

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Fifty years is a long time. As Norm Crosby would say, “That’s a lot of water over the bridge.”

Most of us have either retired or are thinking about retiring. I know I’m trying to slow down and take fewer cases on the draw. As I look around I realize we have more in common today than we did in law school. We are all invited on a daily basis to join AARP — or we have already surrendered and joined. We all collect social security, we are all eligible for Medicare and we all get senior discounts wherever we go.

Some things haven't changed. I still sit in a courtroom and watch lawyers, but two things are different now: First, my main interest is not learning how to try a case, but wondering what some nut will say next. Second, this time I get to grade the papers.

The court has been very good to me. My hearing is shot and I thought I would have to retire, but the courtroom microphone system has been equipped with an FM transmitter that transmits directly to my hearing aids and I can hear a lot more than the lawyers realize — including when they mutter about my questionable ancestry.

Outside the courtroom I can't hear a thing, but most of us at this age are in the same boat. I'm reminded of the three guys our age who met to have lunch. As they walked to the restaurant one

said, "It's windy." One of the others said, "No, it's Thursday" and the third one said, "Me, too. Let's get a beer."

I really don't like to go to banquets anymore, or to receptions, funerals, weddings, swearings-in and evening events.

First of all, most of these occasions run past my bedtime and, more to the point, I can't hear anything except the background noise and the busboys clanking dishes. This reminds me of the British writer David Lodge's most recent novel, "Deaf Sentence" in which a hard-of-hearing professor in his early 70s reluctantly accompanies his wife to a wine and cheese photography exhibit at his university's faculty club.

He is standing near a wall with a piece of cheese and a cracker in one hand and a glass of cheap wine in the other, trying to avoid conversations he can't hear when an attractive young

woman comes up and starts talking. He doesn't catch her name — something like Flax or Fax or Axe, but she has a lovely smile and he likes the attention. Every now and then she pauses in her chatter and he says something banal in response, like "Oh, yes!" or "Of course." He should say, "I'm sorry, I didn't catch your name and I haven't understood a word you have said. I'm deaf as a post and my hearing aid battery has quit." But he doesn't. He continues to slurp the wine, smile, nod and munch on his cracker.

The next day his secretary says, "I thought you were retiring after this term." He says, "I am. I've sworn off classes, seminars and minding students. I'm going to finish my book and take it easy." "Not so fast," she says. "Last night you agreed to spend the next four years sponsoring a grad student in writing her dissertation." He says, "I did no such thing." His secretary replies, "Well, she's already notified the Chairman of the Department that

you agreed. Her name is Alexandra Jensen and she left her number so you can call her yourself and tell her you lied.”

Oops.

I’ve done much the same thing, smiling and saying, “Yes, of course” when I couldn’t hear a damn thing and learning later I had agreed to take on a class action from another judge, or worse, to preside over a case in Utah.

We are at the age when all of us are asking three primary questions:

1. When do I get out of here?
2. How do I get out of here?

and

3. What do I want to leave behind when I go?

I want to spend a few serious minutes commenting on our common legacy. About what we have learned and can pass on. About what a lifetime as lawyers enables us to share with the next generation which graduated today.

These young people are called the Millenium Generation. They don't have it easy. I'm not suggesting we did, but their's is a different world. Maybe that's why the Millenials seem to differ so greatly from any generation that came before.

I wish I had a better grasp of the issues, but this newest generation seems to possess an entirely different set of values. They are more concerned with lifestyle than clients or causes.

We thought hard work and perseverance would eventually lead to a partnership in a firm and it was an unusual event when a partner left one firm and joined another. That kind of dogged loyalty is a thing of the past. The Millennials are at home with an ersatz, ever-present and inescapable on-line “community” of Facebook followers and fellow tweeters instead of real, non-technology driven relationships.

Whether by twixing, tweeting, or I-phoning, they need to be in constant contact with others. The idea of sitting alone in silence and thinking is anathema to them. For them meditation is a group exercise. One young person saw a photo of me in a yoga class and asked me who I meditated with. In a recent essay, a Yale professor reported a student of his said she was unable to write a term paper alone, that she had to have someone physically at her side.

That same professor, William Deresiewicz, also described the Millennials as follows: “What we have now are the greatest technocrats the world has ever seen, people who have been trained to be incredibly good at one specific thing, but who have no interest in anything beyond their area of expertise. What we don’t have are leaders. What we don’t have in other words are thinkers.”

Perhaps an even more graphic description is found in an article by Jenna Wortham in the May 14 edition of the New York Times. The article dealt with the increasing use of cell phones not to actually talk to other people, but to send text messages. Some cell phone users, she writes, “say talking on the phone is intrusive and time-consuming, or seem to have no patience for talking to just one person at a time. They prefer to spend their phone time

moving seamlessly between several conversations, catching up on the latest news and updates by text and on Facebook with multiple friends, instead of just one or two.... Even though in theory it might take longer to send a text than pick up the phone, it seems less disruptive than a call. You can multitask between two or three conversations at once.”

Disruptive to whom, one might ask? The sender who prefers to engage in unlimited simultaneous communications? Or the recipient who might actually have to answer the phone and engage?

Other reports show members of this generation sending out over 1000 text messages a day. Most of these messages, of necessity, have no substance at all. For example: “I’m going to Starbucks.” Or, “I’m driving to the grocery store.” Well, whoop de

do! There is no sense to this, but there must be a reason why someone feels compelled to share this drivel.

There is increasing evidence that growing up with technology has literally changed the hard wiring of the brain. The explosion of undifferentiated data at the fingertips creates the illusion of connections between ideas — arguments I hear in court are not formulated on the basis of reasoning or cause and effect, but merely by juxtaposing unrelated ideas in a series of non-sequiturs resulting not just in a lack of originality but downright incoherence. This bombardment of data has destroyed the prospect of original thinking because it leaves no room for reflection, no room for solitude.

Ten days ago the Bureau of Labor Statistics reported that the American “legal industry,” as it is now called, lost another

1,100 positions in April marking the second month in a row of quadruple digit job losses. In the last year the legal industry has lost more than 28,000 jobs. The White House Council of Economic Advisers says the labor market is healing and that's a sure sign that the economy is recovering from the recession, but it will be years before the recovery visits the legal sector.

Think of these young people who graduated here today. At least half of them don't have jobs to go to — and many of them are saddled with student loan debts exceeding \$100,000. The law schools have become profit centers for the universities and they are churning out law graduates at the rate of 40,000 per year without regard to the economy's ability to absorb them.

Many law firms are no longer hiring first, second or third year associates because clients are refusing to pay for them. What

general counsels are looking to hire, both in-house and out, are lawyers not trained to think like lawyers, but like businessmen. As one such general counsel said recently, “The greatest asset we look for is the ability to read a spreadsheet.” One look at the Wall Street fiasco should tell him that is the last thing he should be looking for. He should be looking for wise counsel from someone who understands the value of history and the caution that should accompany every opportunity. We need to ask, however, if that is what the law schools now are purporting to teach.

Even if new graduates can find employment in the private sector, the social contract with law firms has completely eroded. What rewarded the Baby Boomers is no longer available to the Millennials: they have almost no chance of making partner, with the attendant financial security and status that was the quid pro quo

for the client-service centered work ethic. What do they have to fall back on?

The economic pressures they face are so powerful, it must be nearly impossible to give priority to client service above self-interest. We were taught to the very marrow of our bones that as a matter of honor and professional integrity, service to the client and to the law came first. The key to success was the strength of our character and reputation and come hell or high water we would not abandon a client. We stayed up all night getting ready for the next day while the client went home to sleep.

Today, in most states, including Colorado, client services can be unbundled. There is no obligation to the purchaser of an unbundled service other than an implied warranty of fitness. In

New York just last month that Bar approved a change in its ethics rules to permit lawyers who offer unbundled services to remain anonymous so no professional liability or personal responsibility to the court, so-called clients or third parties can attach. In the simplest of terms, clients have become customers. So it can be said, "Here's a district court summons and complaint for \$100 bucks. For another \$50 you can have a probate kit. Have a nice day."

Most of us here, maybe all, have achieved levels of affluence and comfort unthought of two generations ago. Most of us have never had it so good, but we can't safely envision the same reality for today's graduates. They have been raised in a material affluence that is heading downhill. Probably because our parents were young in the Great Depression, they put us on the track to pursue gain as the measure of success. Financial security is

most important when you don't have it. The closed circle of pure materialism, however, is clear to us now — aspirations become wants, wants become needs and self-gratification becomes a bottomless pit. That is not a legacy I want to leave.

I want to tell this next generation that the philosophers were right; that St. Francis, Buddha, Muhammad, Maimonides — all spoke the truth when they said the way to serve yourself is to serve others. And that Aristotle was right, before them, when he said the only way to assure yourself happiness is to give happiness. And while I'm at it, I want to tell them to read books instead of the computer screen. As the CEO of The Onion, that incomparable organ of informed satire, said to the New York Times when asked his advice for prospective employees: "They should start with Plato. He was a very practical man."

It was very hard to keep this in mind when we were caught up in the struggle to earn a living with all the sweat and tears of frustration — and the joy of small triumphs. It is very easy to forget it all until we begin to look back — to look back and see that the new cars, the bigger houses, the club memberships, the foreign travel and the conveniences of affluence were not the prize, but that the character and integrity we have paid an enormous tuition for is. Our legacy is our service to others.

It would be disingenuous and unrealistic not to recognize that the world as a whole and the U.S. in particular are profoundly changed from the graduating year of 1960. We no longer lead the world in basic industries such as autos, steel, glass, electronics and rubber. We are not providing jobs, schools or a tax base sufficient to maintain the physical plant of our cities and we are creating a permanent underclass of the undereducated and the

under-skilled who have no realistic hope of participating in the future of our country.

For the first time in history, the United States is faced with doubts about its destiny. In less than fifty years since our graduation from this law school we have gone from the American century to the American crisis — a crisis in which we recognize that our grandchildren will not have the opportunities and security we received from our parents.

I don't envy the Millennial Generation. In fact I don't think they are equipped for the hard going that lies ahead of them. Change will come what may and their challenge will be to innovate as well as to adjust to it. Technology provides them with mountains of instant data, but all that technology and data are useless without

judgment. Judgment, like thinking, is a process that must be introduced and internalized, nurtured and practiced. If judgments are to have value, they must reflect deeply held beliefs and be made by habit rather than by utilitarian calculus. Once the crisis is clear, it is often too late to act. That is the dilemma. Is this young generation, weaned as they are on video games and the internet, equipped to meet such challenges? There is much ahead that they need to know and we need to tell them, to reduce as much as possible the pain of learning only from their own blunders — and their world will not be nearly as forgiving as ours.

What is our legacy? How do we transmit our values? What lessons do we want to leave?

The lesson for us was that the need for service never stops. We have served our clients. We have served the law. We have

sought to keep the world we found in balance and to restore balance when it was askew. If this is our legacy, how can we leave it?

We can leave our legacy by participating in mentoring programs, by becoming active in volunteer programs and the Inns of Court, and by having simple one-on-one conversations. The next time a friend or relative tells you that his or her grandchild is thinking of going to law school, what message will you impart? How have you lived your profession? Wasn't the service you gave to others the source of your satisfaction? Our obligation is to tell them just that.

That is a legacy worth leaving.