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A Tribute to Barry Sullivan

Any reader of the tributes in the pages that follow will understand that Barry Sullivan brought extraordinary professional skills and experience to the deanship of the Law School. He came to Washington and Lee as a highly respected legal practitioner, with service in both the public and private sectors. He came as an accomplished scholar, a rare status in the demanding world of contemporary legal practice. He came as a lawyer who had taught law, even as he practiced it. And he came as one who was committed to and had lived out the ideal of a lawyer's responsibility to serve society, particularly its members who are marginalized and defenseless. In short, he arrived at Sydney Lewis Hall as the consummate legal professional.

But to understand what Barry brought with him is, of course, only the beginning. The heart of the story lies in how he used the accumulated wisdom of his experience and his exceptional personal qualities to lead the Law School forward in the challenging environment of American legal education at the close of the twentieth century. He found Washington and Lee in good shape and he left it in far better. Broad and deep academic values guided every decision he made. His commitment was to make the Law School for its students, faculty, staff, and alumni as good as it could possibly be. He worked tirelessly to ensure that outstanding students would be attracted to Washington and Lee and would have the financial resources to attend. He vigorously recruited high quality and diverse new members of the faculty to join a community of engaged and productive teacher-scholars. He brought new focus to professionalism studies in the curriculum and expanded the opportunities for clinical education. And he symbolized, particularly for alumni, the essential connection between the academy and the bar.

To note in such general terms some of the central elements of Barry's earlier career and his deanship, of course, misses much interesting and personal detail. Many of those who know that detail well write below. Only a small part of that detail can be captured in these pages. But even the little that words can capture confirm what those of us who have worked closely with Barry know. He gave fully of himself to make us better and he succeeded.

*Mark H. Grunewald
Interim Dean and Professor of Law*

Joan B. Gottschall*

It is not surprising that we lawyers suffer crises of confidence over the moral value of our work. The law exists, I think we could all agree, for the promotion of justice, just as medicine exists for the promotion of physical health and the ministry exists for the promotion of spiritual health. Many of us chose to become lawyers because we believed that, as lawyers, we could help others pursue justice. But unlike doctors, whose work directly involves the promotion of their patients' physical health, and unlike clergy, whose work directly involves the promotion of their congregants' spiritual health, lawyers are retained by clients to advance their clients' self-interested aims, and lawyers are painfully aware that those aims may not always be congruent with the larger objective of social justice. The disjunction between the pursuit of justice, the moral good which is the object of our profession (and which was the stimulus for many of us to enter it), and the work that occupies our waking hours leaves many of us uneasy about the moral worth of what we do.

Lawyers who become law teachers are not confronted with this problem the way practicing lawyers are.¹ The focus of law teachers' work is the law as it ought to be, not the needs and desires of self-interested clients. Teachers of law are expected to measure statutes and judicial opinions against the ideals which they ought properly to serve. The much-lamented divide between lawyers who practice and lawyers who teach² is regrettable for no reason more than that it divides the profession into those who regularly face the moral

* District Judge, United States District Court for the Northern District of Illinois.

1. See generally Anthony Kronman, *Legal Scholarship and Moral Education*, 90 YALE L.J. 955 (1981).

2. See, e.g., Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34 *passim* (1992).

ambiguity of law practice but lack the philosophical literacy (and perhaps the time and interest) to try to come to terms with it and those who have the intellectual tools and resources to explore the problem, but for whom it is not a matter of pressing concern.³

For those of us who fear that the legal profession is evolving in ways that tend to frustrate, rather than facilitate, its ability to deliver justice, the creativity, courage and wisdom of Washington and Lee University School of Law in choosing Barry Sullivan as its dean was, and remains an occasion for celebration and hope: it represented an extraordinary willingness to think "outside the box" of the conventional disjunctive categories of teaching and practice, and to hold out the possibility that an issue so fundamental to the health of our profession and our society would be addressed by someone who truly understands it and has the intellect and vision to think meaningfully about it. Our hope has not been disappointed.

At the time of his selection as dean, Barry Sullivan was no ordinary lawyer. Early in his career, he served as law clerk to Judge John Minor Wisdom, one of the most admired and heroic figures in American law, and he took much from that experience. He served as an assistant to the Solicitor General of the United States, where he formulated and presented to the United States Supreme Court the position of the United States on significant federal and constitutional questions. In private practice, despite the pressures of a highly successful career as a partner in a leading law firm, he remained continuously engaged in scholarship and teaching. During his years in private practice, Barry Sullivan did far more than his fair share of representing people who would otherwise be unrepresented, but his activities *pro bono publico* went beyond performing professional services for those unable to pay for them. As chair of the American Bar Association's AIDS Coordinating Committee, he led the efforts of the organized bar to formulate a just and dispassionate framework for the resolution of legal issues raised by the AIDS epidemic, thus bringing his skills as a lawyer to bear on a public policy issue of larger scope than the needs of any individual client.

This extraordinary lawyer has proven to be the extraordinary dean we expected and hoped for. He has seen the task of preparing students for careers as lawyers as requiring more than teaching them the technical skills to function competently. Rather, he has seen that the responsible preparation of students to enter the legal profession requires addressing – and helping the students to address – the issue of whether they are being prepared to do something that will or will not promote their own, and their society's, improvement. He has used the resources of his position and the opportunity provided by its rich academic environment to confront the hard question of what it

3. Kronman, *supra* note 1, at 968.

means to practice law well: whether it is possible, as he is fond of asking, to live greatly in the law.

Unlike many of the critics of the legal profession, Barry Sullivan has never allowed himself to become nostalgic for the past. The questions he poses address the struggles of lawyers in the here and now: how can we live useful and satisfying lives in the profession we have chosen. And, although he does not say so explicitly, his writing and teaching manifest a deep conviction, indeed a faith, that the law can be a worthy human enterprise if only we as individuals are up to the challenge. It is possible to live greatly in the law. But it is not easy.

Where does that faith come from? The source of the conviction that we are here to make a positive difference, and that it is our calling and our responsibility to figure out how to do it with the resources we have been given, is impossible to document in the life of any person. As lawyers, many of us owe great debts to those rare teachers who challenged us to see that legal doctrine is not just a matter of technical rules but is an expression of our most enduring values. Barry Sullivan has told us that he found such a teacher in Judge Wisdom:

For generations of young lawyers, Judge Wisdom has been the great teacher. . . . He has taught by his example that one can live a life of rectitude, that one can follow the principles for which this University stands, that one can believe in the duties of citizenship, and that one ought to care about the quality of the lives that others lead.

Judge Wisdom has taught us what it is to be human, and what it means to say that nothing human can be foreign to us. He has taught us to love life, to see the humorous in life (and in ourselves) as well as the serious side of things, to be open to all the possibilities that life brings to us, and, finally, to have faith in ourselves and in what each of us can accomplish in a world that often seems hostile or indifferent to the values that light our way.⁴

With these resources of character, and despite threats, harassment and vilification, Judge Wisdom was able to work with the tools of the law to make the nation more just:

[Judge Wisdom] was steadfast; he has stayed the course; he has written masterly opinions, in flawless prose and informed by a deep sense of history that have become classic statements of constitutional principle. So many of the positions he took during that period seem so obviously correct or inevitable to us today that we tend to forget the strength of the opposition he faced or the strength of character it took to say what he said then.⁵

4. Barry Sullivan, *To See Life Steadily and To See It Whole: For Judge Wisdom in His Ninety-First Year*, 53 WASH. & LEE L. REV. 3, 7 (1996).

5. *Id.* at 6.

What is required of us, to hold fast to this faith and manifest it in our own work? We know, from what Barry Sullivan has told us of Judge Wisdom, that it requires the willingness to stay the course when our efforts are not appreciated or rewarded, or even worse, when they are vilified. Looking back, we are tempted to say it was easier for Judge Wisdom than for us: that despite the threats he endured and the risks he took, he lived in a time when the line between good and evil – and hence his duty – was clear. But this view, I would suggest, is simply an artifact of hindsight. The right course in those perilous days – and particularly the proper pace of change – was not always clear, even to people of good will. Heroic action always looks easy from hindsight because we project retrospectively our current recognition that the conduct in question was praiseworthy. Figuring out what is the right thing to do, especially in circumstances of resistance and controversy, is always an ambiguous business.

The risks of heroic action differ from time to time, but what remains the same is the necessity for courage to hold the course, and the steadfastness to rely on our deepest values to light our way, even in the face of indifference or hostility. There can be no heroic action without such courage and steadfastness, but such action comes at a price. We, for our part, must be willing to realize that in all times and places, there is the need to be brave, the need to be steadfast and the need to attend not only to the counsel of the marketplace but to the counsel of our own moral center.

What this may mean – and I venture to suggest this is precisely what it means in our time – is to refuse to accept the prevailing wisdom that money is the measure of the worth of what we do, that the highest bidder is invariably entitled to buy our services, that careful reflection on the issues that command our attention should invariably be sacrificed on the altar of efficiency and that if we do highly-skilled legal work competently and without manifest dishonesty we are doing all that is required of us. We must remain alert for occasions on which we have an opportunity to make a manifest difference for our society and to remain equally alert for occasions on which our highest calling is quietly to respond to the needs of a single individual. We must resist the all-too-common excuse that it is not our obligation to worry about the ultimate effects of what we do and to face the fact that the work we do has an impact beyond ourselves. This is perhaps our greatest challenge: to recognize the broader impact of what we do (or fail to do) and accept responsibility for it.

This is the simple yet profound wisdom of which Barry Sullivan repeatedly reminds us. Lawyers are granted authority by our society to mediate between the needs of individuals and the needs of the larger society. That these needs are in tension, and that the proper balance between them is not always obvious, is no reason to despair of our profession. It is, rather, a tension we should embrace as the source of our greatest challenge and our greatest respon-

sibility. It is surely our responsibility, in Barry Sullivan's words, to make real "the right of individuals in a free society . . . to have their problems taken seriously . . ."16 Paying attention when attention should be paid is an ethical imperative that is at the heart of being a lawyer. But it is also our responsibility, again in Barry Sullivan's words, to "strive for that panoramic view, transcending time and place, which is both the aim of liberal learning and a source of moral courage."17 We must, in his words, do our very best "to 'see life steadily and see it whole.'"18

Andrew W. McThenia, Jr.*

Saying Youall in Gaelic

What to say about someone from the coast of Massachusetts whose only real experience south of Newburyport prior to his arrival in Lexington⁹ was to look for his Irish kin in South Boston (not Virginia, but that small region of the Republic of Massachusetts south and east of Fenway Park)? Barry Sullivan really claims an island in the North Atlantic as home. He did spend a lot of years in Chicago, where he had an outstanding career with the firm of Jenner and Block, and he never lets you forget how well he knows Chicago politics. He was not only the first dean I ever knew who voted while presiding at faculty meetings; in fact he generally voted at least twice on all questions. During his tenure as dean there were basically two tracks to a faculty appointment at Washington and Lee; one ran from Trinity College, Dublin, the other from Jenner and Block, in Chicago.

Although he remains an unregenerate interloper, he really did try to fit into this culture. When he was here initially talking about the deanship, I was walking across the campus and saw him talking with then president John Wilson, who also has an Irish heritage. Thinking they might be talking about matters of importance to education (like faculty salaries) I decided to eaves-

6. Barry Sullivan, *A Tribute to Lewis F. Powell, Jr.*, 56 WASH. & LEE L. REV. 16, 18 (1999).

7. Barry Sullivan, *The Honest Muse: Judge Wisdom and the Uses of History*, 60 TUL. L. REV. 314, 355 (1985).

8. *Id.* at 318 (quoting E.M. FORSTER, HOWARDS END 269 (1959)).

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9. I know he spent some time in New Orleans serving as a law clerk to the Honorable John Minor Wisdom, but New Orleans doesn't really count as the south. It is too refined.

drop. What was going on, in fact, was that Wilson, who by then had been nearly fifteen years in Virginia, was teaching Barry how to say "youall" in Gaelic.

Barry did catch on and he gave us five wonderful years of leadership. He brought several important gifts with him to Washington and Lee.¹⁰ He has an incredible sense of professionalism. And I mean professionalism in the best sense of that word. Throughout his distinguished career in the law he has insisted that those of us who make a life in the law recognize the necessity for closer kinship between law and justice – which are all too often distant cousins. His work with the AIDS Coordinating Committee of the American Bar Association, his defense work in capital cases, his championing of individual rights and responsibilities while maintaining an incredibly demanding law practice say a lot about his life as a professional. His writing on the legal profession reflects the hope expressed by another Irishman:

History says, Don't hope
On this side of the grave.
But then, once in a lifetime
The longed for tidal wave
of justice can rise up
And hope and history rhyme¹¹

A second gift he brought was his rock-ribbed integrity. Most of us try to get through life hoping to hold on to some of our innocence, and that is a terrible trap. We never really figure out where the center is until we get beyond all that and come to know that "[t]he recognition of complicity is the beginning of innocence."¹² In the years I have known him, Barry has had no illusions about that. He never tried to cloak himself in the garb of innocence. He may not always be right, but he is unwaveringly straight. He knows that he came into this world with not much more than his integrity and he has determinedly lived knowing he will go out of it with that intact.

Somehow I think both his professionalism and sense of integrity are related deep down. They come from the same well. And I think the common source is vocation. He knows that his life is not his alone. Some time back I was called on to offer a table blessing at a meal where he was to be honored. It spoke to vocation. And I want to close with it.

May the light of your soul guide you.
May the light of your soul bless the work you do with the secret
love and warmth of your heart.
May you see in what you do the beauty of your own soul.

10. Perhaps the greatest gift to me, beyond his friendship, was coming to know his partner, Winifred Fallers Sullivan, also an erstwhile litigator and a serious scholar of both law and religion.

11. SEAMUS HEANEY, *THE CURE AT TROY; A VERSION OF SOPHOCLES' PHILOCTETES* (1991).

12. ROBERT PENN WARREN, *BROTHER TO DRAGONS: A TALE IN VERSE AND VOICES* 214 (1953).

May the sacredness of your work bring healing, light and renewal to those who work with you and to those who see and receive your work.

May your work never weary you.

May it release within you wellsprings of refreshment, inspiration and excitement.

May you be present in what you do.

May you never become lost in the bland absences.

May the day never burden.

May dawn find you awake and alert, approaching your new day with dreams, possibilities and promises.

May evening find you gracious and fulfilled.

May you go into the night blessed, sheltered, and protected.

May your soul calm, console, and renew you.¹³

Thank you for your years of service as dean and thank you for being my friend.

Maureen B. Cavanaugh*

[S]ee life steadily and see it whole . . . [only] connect.¹⁴

As a new member of the Washington and Lee Law School community, having joined the faculty only in the fall of 1998, it seemed most unlikely that I would be able to provide a comment adding much to those written by long-time faculty members for the *Washington and Lee Law Review* tribute to Dean Barry Sullivan. For example, I cannot comment on the entire tenure of Barry's deanship, having enjoyed only the last year; nor can I compare the law school under Barry with the law school under any of the previous deans. However, because my recent arrival does not allow me to take for granted the distinctive nature of the Washington and Lee Law School community, I can call attention to a community marked by a particularly noteworthy and palpable collegiality. If this community does not owe him the origin of this very collegiality, at least its current and continued health is attributable to Barry's stewardship. Equally remarkable to me is the vibrancy of its intellectual atmosphere, again not due solely to Barry,¹⁵ but certainly fostered by his active encouragement of that

13. JOHN O'DONOHUE, *ANAM CARA: A BOOK OF CELTIC WISDOM* 200 (1997).

* Assistant Professor of Law, Washington and Lee University School of Law.

14. E.M. FORSTER, *HOWARDS END* 269 (1959). The addition of [only] makes reference to the article with a title of that name. See *infra* notes 40-43.

15. Credit is surely also due to the vibrant role of the Frances Lewis Law Center for bringing occasional speakers, sponsoring Scholars-in-Residence, and for hosting symposia on a wide range of topics.

environment, whether through his own personal participation or through the enriching panoply of outside speakers brought by Barry from every discipline.

Thus to write of Dean Barry Sullivan requires discussion not only of the felicitous years of Washington and Lee University School of Law under Barry's leadership,¹⁶ but also discussion devoted to issues central to American legal discourse today: lawyers' professionalism; the role of legal education in the preparation of lawyers; and even what membership in a civil society requires of us as both lawyers and individuals. These are all issues that require us to look not only to the future, but also to the past.

Barry, as dean and as professor, is "not unmindful of the future"¹⁷ nor unmindful of the past. As such he recognizes the pride that the Washington and Lee community shares in its history and traditions.¹⁸ More significant, however, is his inference that the University's motto urges us, while looking back for guidance, to focus clearly on the challenges ahead.¹⁹ This admonition is not an idle one. Barry views, I think correctly, the law school as participating in the development of lawyers and individuals who will go forth to take their place as leaders in society, ready to address the important issues of the day.²⁰ As such they require more than mere technical competence; both those

16. The choice of the word "leadership" is intentional rather than customary. See Ronald A. Heifetz and Riley M. Sinder, *Political Leadership: Managing The Public's Problem Solving*, in *THE POWER OF PUBLIC IDEAS* 179, 193 (Robert B. Reich ed., 1990) ("The functions of authority are associated with specific formal and informal positions in a social system. The functions of leadership, in contrast are never defined by a position."). "Leadership" requires, in the view of Heifetz and Sinder, shifting the primary locus of the work of defining the issues and the solutions back to the group; going beyond or against the expectations inherent in one's authority and devising policies or taking actions that serve as catalysts of work. ("In managing the identification and resolution of difficult issues, a leader will be managing community processes of learning: assessing current situations, questioning previous assumptions, learning the different points of view embodied by opposing interests, inventing frames for defining problems that take in a sufficient breadth of those interests, implementing solutions by adjusting actions and attitudes as a community Each of these tasks consists of learning.") *Id.* at 201.

17. See Barry Sullivan, "Not Unmindful of the Future": *Some Reflections on Stability and Change*, 52 WASH. & LEE L. REV. 323, 324 n.1 (1995) [hereinafter *Not Unmindful of the Future*] (citing Christopher J. Lonsbury, *The W&L Coat of Arms: An Explanation and History*, W&L (Washington & Lee Univ., Lexington, Va.), Winter 1992, at 28, 29).

18. "[T]he University's motto is a very good motto. . . . We should be grateful to Horace for first uttering these words and to the Lee Family for bequeathing them to us." See *id.* at 324 (noting significance of University's motto).

19. See *id.* at 330-31 (noting commonality between constructive actions taken by General Lee following Appomattox and those taken by southern judges following *Brown v. Board of Education*). "[T]hey all had confidence in their ability to take strength from the traditions of the past, without becoming blind to the faults and shortcomings of the past." *Id.*

20. "But the problems that our society faces – and those that you will help us solve – are not problems that can be solved by saying that you vote for change or stand for tradition. The real challenge for the leaders of our society – and by that I mean to include all of you – lies in

within the law school community and those in society at large need to recognize life in all its complexity. No simple choice for change or stability will suffice.²¹ "conserving what [is] good from the past, and yet dealing effectively with the challenges of the future"²² is quite simply what is required.²³

One of the challenges facing the law school and its members, both teachers/scholars and students on the cusp of joining the profession, is to define the appropriate role of the lawyer, as an individual, as a member of a learned profession and as a member of a civil society.²⁴ As both dean and professor,²⁵ Barry has been instrumental in engaging the law school and its members in this larger national, even international, discussion.²⁶ To this discussion Barry has brought a perspective broadened not only by his years as a successful practitioner, administrator, and academic, but by a rich historical perspective. Barry reminds us that this is not a new debate; indeed, in some ways it can be seen as a continuation of a long-standing one going back to the Revolutionary War²⁷ and certainly to the 1830s when Tocqueville equated lawyers with the intellectual aristocracy of the new democracy.²⁸ Above all

having the wisdom to distinguish between what needs to be conserved and what needs to be changed, having the confidence to listen to the view of others, and having the courage to act." *Id.* at 332.

21. "Change and stability. These are words capable of suspending the usual operation of our analytical powers. . . . Our relationship to change and stability is more ambiguous than that; the world and its problems are more ambiguous. And, I might add, the past and the future are themselves more ambiguous than that." *Id.* at 327.

22. *Id.* at 330.

23. As he noted elsewhere, "[a]daptation that is faithful to the values of the past is a possibility, but restoration is not." Barry Sullivan, *Professions of Law*, Book Review, 9 GEO. J. LEGAL ETHICS 1235, 1289 n.237 (1996) [hereinafter *Professions*]; see also JOHN HENRY CARDINAL NEWMAN, AN ESSAY ON THE DEVELOPMENT OF CHRISTIAN DOCTRINE 40 (1900) ("In a higher world it is otherwise, but here below to live is to change, and to be perfect is to have changed often.") (quoted in *Professions, supra*, at 1266 n.130).

24. "Justice is the end of government. It is the end of civil society . . ." FEDERALIST NO. 51, at 358 (James Madison) (Benjamin Fletcher Wright ed., 1966).

25. Barry Sullivan is currently Chair of the Professionalism Committee of the American Bar Association Section of Legal Education and Admissions to the Bar, 1999-2000, and has participated in discussions of professionalism occurring among members of the bar both here in the United States and abroad, most notably in Ireland.

26. See Sullivan, *Professions, supra* note 23, at 1289-95 (noting absence, from both current discussion and writings in area, of any cognizance of centrality of this issue internationally and within United States across professions and suggesting utility of seeing what broader context of these issues, i.e., both endogenous and exogenous factors, might suggest for our understanding and solution of the problems).

27. See *id.* at 1240 n.16 and accompanying text (discussing period following American Revolution which saw lawyers as source of current problems, not simply their solution).

28. See Barry Sullivan, *The Honest Muse: Judge Wisdom and the Uses of History*, 60 TUL. L. REV. 314, 314 (1985) [hereinafter *Muse*] (describing earlier era of legal education where

this is a debate challenging us to consider the proper role of lawyers in our contemporary society.²⁹

Awareness of the lawyer's unique status is not for Barry, although it might be for others, a matter of arrogance. Rather it is to recognize the "lawyer-statesman ideal"³⁰ as one with continuing utility as we try to formulate a "professional ideal appropriate to the circumstances in which we now find ourselves."³¹ That we are members of a profession both frequently derided for its parasitism yet with the potential for doing enormous good³² should not be surprising. As Barry reminds us, law is a profession defined by conflict and ambiguity: owing an allegiance to individual clients and society at large and requiring the balance of disparate responsibilities to both, while simultaneously seeking to satisfy the very real needs of the individual herself.³³

ideal lawyer clearly possessed a "liberally educated mind") (quoting ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* 285-86 (P. Bradley ed., 1945)).

29. See *id.* at 314 n.2 (quoting Tocqueville's discussion of favorable nature of democracy, where political power is not exercised only by the noble or the wealthy, to the rise of lawyers since they are "the only men of information and sagacity"); *infra* note 32 (discussing J.B. White's similar sentiment). Sullivan also cites R. FERGUSON, *LAW AND LETTERS IN AMERICAN CULTURE* 12 (1984) (noting that well before Tocqueville's statement American lawyers had already claimed that status for themselves). See Sullivan, *Muse*, *supra* note 28, at 314 n.2.

30. See ANTHONY T. KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* (1993) (discussed in *Professions*, *supra* note 23, at 1273 et seq.).

31. See Sullivan, *Professions*, *supra* note 23, at 1288 (noting that lawyer-statesman ideal is based on belief in lawyer's usefulness to her clients and to society at large because of independent judgment that she may bring to whatever problems are encountered).

32. See *id.* at 1274 (noting that ideal of lawyer-statesman provides not only source of satisfaction for lawyer herself but for society at large).

On the centrality of law to the resolution of matters of most importance in our society, Sullivan quotes James B. White:

For in our culture law is the central medium for the articulation and resolution of the gravest social and ethical questions. . . . [I]n the immensely pluralistic American world the law is the institution above all others through which we work out our definition of ourselves as a nation. . . . Both lawyers and judges are thus constantly called upon to maintain and reform the central institutions of our society.

Id. at 1273 n.166 (quoting James B. White, *Law Teachers' Writing*, 91 MICH. L. REV. 1970 (1993)).

33. See *id.* at 1288 n.236 (describing conflicts in the profession). As Barry succinctly states:

We also define ourselves as a profession by living with ambiguity, beset by conflicts of our own, owing allegiance both to society and to our client. But the interests of one often conflict with those of the other, and the middle ground we hold is one that lay people often do not appreciate or understand. Moreover, we are forced to balance these disparate and important responsibilities, not in the disinterested quiet of the philosopher's tower, but amid the bustle of the marketplace, where we must make a living for ourselves and our families.

Id.

Against the usual rather bleak view, both within and without the legal community, of the state of the profession, Barry has noted that there is "much cause for pride . . . in the legal profession today,"³⁴ including work done by individuals³⁵ outside the law school and dedication within the law school to clinical courses.³⁶ Because the legal profession is a profession "peculiarly concerned with the interaction between the world of the mind and the world of problems to be solved,"³⁷ in a sense law is a profession where the bar and the academy should be better able to complement each other,³⁸ clearly one of Barry's goals in fostering discourse on this intensely important yet intractable problem. And such is the hallmark of many thoughtful discussions, ranging from the metaphysical to the intensely practical, while Barry was dean.

While any discussion with Barry Sullivan is likely to return to questions of professionalism, it is equally likely to range freely across history, poetry, politics and religion.³⁹ In short, conversation with Barry can only lead to the

34. *Id.* at 1256 n.89. His positive reflections bear reporting:

Many lawyers do recognize and heed the claims that society makes on us. Many lawyers in large firms in large cities devote some of their time to the problems of the poor, work on law reform, and willingly provide counsel to people associated with popular causes. So too do lawyers in smaller firms and in smaller cities. Many sole practitioners cling to the old ideal, and many excellent lawyers choose to work for the government and in public interest law offices for less than they could make in private practice.

Id.

35. Barry Sullivan's own work to bring legal services to those already victims of discrimination should not go unnoticed. See Barry Sullivan, *AIDS: Law, Public, Policy, and the Continuing Work of the American Bar Association*, 27 J. MARSHALL L. REV. 273, 277 (1994) (written as member of AIDS Coordinating Committee established by American Bar Association and urging members of bar to reflect on Justice Frankfurter's observation that "the bar has not enjoyed prerogatives; it has been entrusted with anxious responsibilities").

36. See Sullivan, *Professions*, *supra* note 23, at 1268 n.138 (describing *inter alia* commitment made to clinical programs at Washington and Lee University School of Law by committing senior faculty resources to programs).

37. *Id.* at 1299; see also *id.* at 1243 n.28 (quoting James B. White, *Law Teachers' Writing*, 91 MICH. L. REV. 1970, 1970 (1993) ("Much of the life of the law in fact lies in the constant interaction between the particular and the general, between the practical and the theoretical. The danger to watch out for may accordingly be the turn of the mind that focuses on theory alone, dismissive of mere details, or on particulars alone, dismissive of mere generalization.")); Barry Sullivan, *Not Unmindful of the Future*, *supra* note 17, at 328 & n.6 (quoting NORMAN MALCOLM, LUDWIG WITTGENSTEIN: A MEMOIR 39 (1962) ("[W]hat is the use of studying philosophy if all that it does for you is to enable you to talk with plausibility about abstruse questions of logic . . . and does not improve your thinking about the important questions of everyday life.")).

38. See *Professions*, *supra* note 23, at 1240-44 (discussing complaints of bar and academy regarding current problems of the profession).

39. See Sullivan, *Muse*, *supra* note 28, at 316 (discussing John Quincy Adams and tradi-

conclusion that he is that rare "liberally educated person." The importance of this description is best captured in the words of William Cronon:

More than anything else, being an educated person means being able to see connections that allow one to make sense of the world and act within it in creative ways. Every one of the qualities I have described here – listening, reading, talking, writing, puzzle solving, truth seeking, seeing through other people's eyes, leading, working in a community – is finally about connecting.⁴⁰

A law school environment that fosters the development⁴¹ of liberally educated lawyers at every level, decidedly rare in itself, is ultimately about "exercising our freedom in such a way as to make a difference in the world and make a difference for more than just ourselves."⁴² In short, education that fosters human freedom and connections further binds us to communities that both impart and depend on the development of individual freedom.⁴³

tion of legal education in early days of Republic when ideal lawyer was liberally educated lawyer).

40. William Cronon, "Only Connect" . . . *The Goals of a Liberal Education*, 4 AM. SCHOLAR 73, 78 (Fall 1998). For a current thoughtful discussion of what it means to be liberally educated and what the goals of liberal education are, see *id.* at 73-80 (identifying how one recognizes liberally educated people). Liberally educated people (1) listen and hear others; (2) read and understand a broad range of the "wonders that make up the human and natural worlds"; (3) can talk with anyone; (4) can write clearly and persuasively; (5) can solve a wide variety of problems; (6) respect rigor as a way of seeking truth; (7) practice humility, tolerance and self-criticism; (8) understand how to get things done; (9) nurture and empower people around them; and (10) follow E.M.Forster's injunction, "Only connect . . ." *Id.*

41. The importance of recognizing that a liberal education is not an achievement but "a way of living in the face of our own ignorance, a way of groping toward wisdom in full recognition of our own folly, a way of educating ourselves without any illusion that our educations will ever be complete" can not be overstated. *Id.* Once recognized, this may go some measure towards explaining the importance of an intellectually vibrant community at a law school as well as any university.

42. *Id.* at 79. "Freedom" here can only be understood in the original context of "liberal" – meaning "free" (Latin, *liber*). Cronon reminds us that *liber* etymologically relates to the Greek (*eleutheros*) (free) and Sanskrit (*rodhati*) (growth). Liberal education thus refers to both freedom and growth. *Id.*

43. *Id.* Barry describes the role of liberal education in fostering a sense of social responsibility:

Education for human freedom is also education for human community. The two cannot exist without each other. Each of the qualities I have described is a craft or a skill or a way of being in the world that frees us to act with greater knowledge or power. But each of these qualities also makes us ever more aware of the connections we have with other people and the rest of creation, and so they remind us of the obligations we have to use our knowledge and power responsibly. If I am right that all of these qualities are finally about connecting, then we need to confront one

Every aspect of a law school thus described would be noteworthy. Although perhaps sufficient, this alone might not account for our abiding respect for Barry Sullivan. To find words for its source, I can do no better than to repeat the words that Barry himself wrote as a tribute to Judge John Minor Wisdom, who played such a significant role for Barry:

Intellectual ability, erudition, integrity, and moral courage undoubtedly are in short supply in our society but these are traits that are shared, at least in some measure, by other men and women who do not inspire our [respect]. There is something else about [Barry Sullivan]. It is less easy to describe than those other attributes, but it may be even more important. It has something to do with humaneness, civility, temperament and good humor. It has to do with a spirit that is always open to the richness and diversity of the human adventure and with a commitment to participating in life to the fullest.⁴⁴

We will miss the daily presence of Barry in his role as Dean Sullivan, but we are better for having known it at all.

Roger D. Groot*

I was a very unhappy camper during the last search for new dean. The previous deanship had not been my cup of tea and I was looking forward to a new dean with real optimism. But, as the President and the Search Committee narrowed the field and began to bring candidates to campus to meet the faculty, my optimism declined considerably. In fact, it plummeted. One candidate withdrew before his campus visit and the first two who did come were completely unsatisfactory to me. When I received the schedule for my visit with the last candidate, I noticed that the signs were right. First, I was scheduled for lunch; I have always thought that to be the best spot. Second,

further paradox about liberal education. In the act of making us free, it also binds us to the communities that gave us our freedom in the first place; it makes us responsible to those communities in ways that limit our freedom.

Id.

44. Barry Sullivan, *Dedication: For Judge Wisdom on His Eighty-Fifth Birthday*, 64 TUL. L. REV. 1341, 1346-47 (1990) (quoted in Joel Wm. Friedman, *John Minor Wisdom: The Noblest Tulanian of Them All*, 74 TUL. L. REV. 1, 37 (1999)).

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it was catered lunch in the sunroom of the Morris house; the worst it could be was a boring time over a tasty meal in a delightful place. Third, my faculty colleagues at the lunch were to be my friends Uncas McThenia and Ann Massie; Uncas can always tell an interesting story and Ann is a brilliant conversationalist, so I figured I was safe even from being bored. The only problem was the candidate – some lawyer from Chicago.

As is the custom, Ann, Uncas, and I went to retrieve candidate Sullivan from his just completed interview with another faculty group. As we walked to the Morris House (actually, three of us walked; Uncas was pushing that infernal bicycle), we exchanged the usual pleasantries about the weather, Lexington, etc. About halfway through salad it began to dawn on me that this guy is REALLY BRIGHT. When the conversation turned to university governance, I learned that Barry had some experience in that area from alumni positions at his college and as a member of the board of trustees of a divided seminary. More important, as he described his activities in those positions, I had an epiphany – this guy has REALLY GOOD JUDGMENT. Then it turned out that he had done some serious, essentially full-time law teaching at Northwestern. Insight number three – this guy REALLY LIKES AND UNDERSTANDS THE CLASSROOM. More conversation; flash – this guy REALLY BELIEVES CLINICS HAVE EDUCATIONAL VALUE. More conversation; double flash – this guy IS ASKING ALL THE RIGHT QUESTIONS.

Needless to say, as Ann, Barry, and I recrossed the footbridge (Uncas had wandered off on that infernal bicycle), I was a much happier man. I had my Dean; my only concern was that the faculty and the President see things as I did. They did so and a wonderful deanship ensued. I can truly say that during Barry's deanship, I never doubted and he never gave me reason to doubt my initial assessments. Did we ever disagree? Certainly. Did I always get what I wanted? Certainly not. But when we disagreed, the disagreement was open and honest. When I didn't get what I wanted, I got the news straight-up, face-to-face, and with a cogent reason behind it. Barry kept all the balls in the air for a long time; he kept them there with grace, honesty, and skill. He gave me the best five years of my thirty year teaching career. Ellen and I will always be grateful to him for that.

But that time is past and we move on. I just want Barry to do one more thing for me – please stay and be my colleague.

Daniel R. Murray*
 Robert L. Graham*
 Jeffrey D. Colman*

Prophet of the Profession

For those who care about the health and well being of the law as a "learned and noble" profession,⁴⁵ now is a particularly bleak moment. Spurred by a preemptive salary increase announced by a law firm in Silicon Valley, California, some large law firms in New York City and around the country have rushed in the past several months to match the starting salaries of first year associates.⁴⁶ At the same time, some law firms have raised both the so-called "target" or "minimum" billable hours requirements and attorney billing rates charged to clients in an effort to minimize the impact of the cost of the new compensation structure on their profitability.⁴⁷ Ironically, the spread of the

* Member, Jenner & Block, Chicago, Illinois.

45. Barry Sullivan, *Professions of Law*, 9 GEO. J. LEGAL ETHICS 1235 (1996) ("Many lawyers in this country think of themselves as members of a learned and noble profession, whose history and culture are marked by great deeds and high ideals.")

46. See, e.g., *The New New Math*, AM. LAWYER, Mar. 2000, at 17-22. The events leading to the salary raise and billable hours increase began on December 21, 1999, at the law firm of Gunderson, Dettmer, Stough, Villeneuve, Franklin & Hachigian in Menlo Park, California, when that firm's partners called a meeting in late afternoon to make a dramatic announcement. Attorneys at the firm had found themselves so busy that they had stopped taking virtually any new business. Their plight was worsened by the departure of young associates who were attracted to the greener pastures offered by the so-called "dot.com" companies, who paid their in-house counsel and other personnel with materially higher compensation packages (particularly enhanced by stock options and the like). *The American Lawyer* described the scene as follows:

The partners agreed that they needed to make a bold move to attract new hires and hold on to them. So on Dec. 21 they decided to call a 5 p.m. firm wide meeting. About 40 associates piled into an office conference room, with another couple dozen listening on a speakerphone. Name partner Scott Dettmer put up a slide laying out the new compensation packages. And, by the way, he told the associates, we're blowing away the competition: first-year associates will earn \$125,000, plus a guaranteed \$20,000 bonus. Fourth-years will make \$165,000, plus a guaranteed minimum bonus of \$30,000. That's a fat 45 percent raise for first-years and 35 percent for fourth-years.

The associates gave the partners a standing ovation. Then they raced back to their offices to spread the news.

Id. at 20. Subsequently, the increase was matched by a San Francisco law firm with a Silicon Valley office. In rapid succession, large law firms in New York and around the country matched the increase. *Id.*

47. For example, associates at one firm were told that productivity bonuses would not begin until associates had billed 2,100 hours and that the full compensation package would be awarded only to associates who billed 2,400 hours a year. Other firms sought to minimize the impact on their profitability by substantially raising billing rates charged to clients. *Id.* at 19.

massive salary increases which began in Silicon Valley to forestall further attrition among associate ranks to the so-called "dot.com" firms was itself accelerated by the Internet that those firms service. Urging each other on, associates posted hour by hour reports of developments in the "salary wars" on an Internet site aptly called "greedyassociates.com," as visions of dollar signs danced in their heads.⁴⁸ To be sure, the dramatic increase in associates' salaries comes at a time when many law firms in major metropolitan areas are enjoying record profits.⁴⁹ As a result, the gap between the most richly compensated senior partners in those firms and the most junior associates may only modestly close. But the relentless race for higher compensation, which is even more evident at the partner level, once again raises the question of whether the profession has lost its perspective and whether its higher ideals have been left behind in the dust.

The bleak picture presented by ever more avaricious attorneys would leave one with little or no hope for the future, were it not for the example of leaders in the profession who have proclaimed in both word and deed that the law offers worthwhile professional goals other than the mere pursuit of profits. The career of the dean emeritus of the Washington and Lee School of Law, Professor Barry Sullivan, offers a refreshing counterpoint to an otherwise dreary picture.

To be sure, that career began in more conventional paths. After completing law school at the University of Chicago, Dean Sullivan assumed a clerkship with Judge John Minor Wisdom of the United States Court of Appeals for the Fifth Circuit. Thereafter, he began a stint in private practice at a large law firm in Chicago, first as an associate, then as a partner, interrupted by a period as an assistant in the Office of the Solicitor General of the United States. As one would expect, Dean Sullivan was not unaware of the disparity between the compensation accorded a junior associate compared to that paid a senior partner, and therefore of the ultimate rewards private practice offered. Indeed, the following interchange occurred between then Assistant Solicitor General Sullivan and Chief Justice Warren Burger in an oral argument before the United States Supreme Court:

Question: Well, in a law firm, the young lawyers do work that's comparable to what the senior partners do, but they don't do equal work and they surely don't get equal pay. Is that right?

Mr. Sullivan: I have been personally aware of that.⁵⁰

48. See generally *Bulletin Board* (visited March 11, 2000) <<http://www.greedyassociates.com>>.

49. *The New New Math*, *supra* note 46, at 18.

50. Oral Argument, at 48 (March 23, 1981), *County of Washington v. Gunther*, 452 U.S. 161 (1981) (No. 80-429), available in 1981 U.S. Trans. LEXIS 78.

Notwithstanding the financial allure of private practice, Dean Sullivan was never a "show me the money" type lawyer. Indeed, early in his career, Dean Sullivan had a much broader perspective of the rewards offered by the practice of law. Dean Sullivan described a meeting he had with Supreme Court Justice Lewis F. Powell in the mid-1970s:

Justice Powell was interested in hearing whatever ideas I might have had about how I thought my professional life would unfold. What would my first steps be? What were my ultimate goals? Was I attracted to teaching and scholarship? Would I practice law in the public sector or in a private firm? Finally, and most important, what did I value, and how would my choices relate to that?

I have long ago suppressed any recollection of the inadequate answers I must have given to the serious questions that Justice Powell put to me. What I do recall are his questions, the excitement he demonstrated in posing them, and, most important, the intensity and passion with which he spoke about the possibilities of doing good and useful work as a lawyer. It would be difficult to forget the enthusiasm with which Justice Powell talked about lawyers and lawyering, let alone the general persistence with which he expressed the view that lawyering involves a great deal more than the pursuit of personal financial gain.⁵¹

This description of a momentary but nevertheless memorable encounter in a more formative period of his career provides us with a measure of the growth that had already occurred – notably in a clerkship with Judge John Minor Wisdom. Dean Sullivan has observed that "for generations of young lawyers, Judge Wisdom has been the great teacher."⁵² For Dean Sullivan the lessons taught by Judge Wisdom encompassed not only the law itself but also the many facets of human existence.⁵³ He concludes his tribute to Judge Wisdom: "Above all, he has taught us to believe that the profession of the law can be a great and noble one. The debt that we owe to him is one that we can never begin to repay unless it be by aspiring always to meet the standard he has set by his example."⁵⁴

51. Barry Sullivan, *A Tribute to Lewis F. Powell, Jr.*, 56 WASH. & LEE L. REV. 16, 17 (1999).

52. Barry Sullivan, *To See Life Steadily and to See It Whole: For Judge Wisdom in His Ninety-First Year*, 53 WASH. & LEE L. REV. 3, 7 (1996).

53. *Id.* at 7 ("Judge Wisdom has taught us what it is to be human, and what it means to say that nothing human can be foreign to us. He has taught us to love life, to see the humorous in life (and in ourselves) as well as the serious side of things, to be open to all the possibilities that life brings to us, and, finally, to have faith in ourselves and in what each of us can accomplish in a world that often seems hostile or indifferent to the values that light our way.").

54. *Id.* at 7; see also Barry Sullivan, *The Honest Muse: Judge Wisdom and the Uses of History*, 60 TUL. L. REV. 314 (1985). For the sake of completeness, at least two other influences upon the professional life of Dean Sullivan must also be mentioned. During his career in

Dean Sullivan learned much from his "great teacher." And, while the Dean chose some conventional paths, he was never a conventional lawyer or person. As a practicing lawyer, Dean Sullivan demonstrated, day in and day out, a profound commitment to the highest ideals of our profession – integrity, scholarship, civility, commitment to the underprivileged, and respect for everyone with whom he worked, regardless of their status. Dean Sullivan also was – and still is – always ready to fight the tough fight. In the halls (and behind the closed doors) of the law firm, Barry Sullivan endeavored to make the institution more humane and responsive to the needs of lawyers and staff members. As a practitioner, the nature or stature of his clients mattered not one iota to Dean Sullivan; he simply gave his best to every client. His clients included railroads,⁵⁵ universities,⁵⁶ banks,⁵⁷ multinational corporations,⁵⁸ municipalities,⁵⁹ and murderers.⁶⁰ Dean Sullivan's willingness to provide appellate representation to Andrew Wilson, one of Chicago's most notorious murderers, is but one example of the Dean's professional values and courage.

Wilson, a young African-American man, had been convicted by a jury of the murder of two white Chicago policemen.⁶¹ For several days after the shooting, racial tensions in Chicago were heightened; Chicago police engaged

private practice, he worked closely with Albert E. Jenner, Jr. of the Illinois bar, whom he has described as one of the "recent giants of the bar." See Sullivan, *Professions*, *supra* note 45, at 1237. Perhaps less visible, but more pervasive, is the collaboration of his wife and fellow member of the bar, Dr. Winnifred Fallers Sullivan, whose contribution is acknowledged in virtually every one of his major writings. See, e.g., Barry Sullivan, *Historical Reconstruction, Reconstruction History, and the Proper Scope of Section 1981*, 98 YALE L.J. 541 n.* (1989); Barry Sullivan, *When the Environment Is Other People: An Essay on Science, Culture, and the Authoritative Allocation of Values*, 69 NOTRE DAME L. REV. 597 n.* (1994).

55. See *In re Chicago, Milwaukee, St. Paul & Pacific R.R. Co.*, 974 F.2d 775 (7th Cir. 1992) (Appeal of Washington State Department of Transportation); *In re CMC Heartland Partners*, 966 F.2d 1143 (7th Cir. 1992) (Appeal of CMC Heartland Partners); *In re Chicago, Milwaukee, St. Paul & Pacific R.R. Co.*, 961 F.2d 1260 (7th Cir. 1992) (Appeal of United States of America); *In re Chicago, Milwaukee, St. Paul & Pacific R.R. Co.*, 830 F.2d 758 (7th Cir. 1987) (Appeal of United States of America and Soo Line R.R. Co.); *In re Chicago, Milwaukee, St. Paul & Pacific R.R. Co.*, 789 F.2d 1281 (7th Cir. 1986) (Appeal of CMC Real Estate Corp.).

56. See *Craft v. Board of Trustees of the Univ. of Illinois*, 793 F.2d 140 (7th Cir.), *cert. denied*, 479 U.S. 829 (1986); *Spartacus Youth League v. Board of Trustees of the Illinois Industrial University*, 502 F. Supp. 789 (N.D. Ill. 1980); *McElearney v. University of Illinois*, 612 F.2d 285 (7th Cir. 1979).

57. See *Heritage Bank & Trust Co. v. Abdnor*, 906 F.2d 292 (7th Cir. 1990).

58. See *In re Westinghouse Elec. Corp. Uranium Contracts Litig.*, 563 F.2d 992 (10th Cir. 1977).

59. See *Great Lakes Dredge & Dock Co. v. City of Chicago*, 3 F.3d 225 (7th Cir. 1993), *aff'd*, 513 U.S. 527 (1995); *Barnett v. Daley*, 132 F.3d 1196 (7th Cir. 1994).

60. See *People v. Wilson*, 506 N.E.2d 571 (1987).

61. *Id.* at 572.

in massive stops and searches looking for two African-American suspects.⁶² Five days after the shooting, Andrew Wilson and his brother, Charles, were arrested and charged with the murders.⁶³ Thirteen hours after his arrest, Andrew Wilson allegedly confessed. He later renounced his confession and asserted that he had been punched, kicked, smothered with a plastic bag, electronically shocked, and forced against a hot radiator in the time between his arrest and the time that he gave his allegedly coerced confession.⁶⁴ The trial judge rejected Wilson's claims and denied his motion to suppress the confession. Andrew Wilson and his brother were convicted, and Andrew Wilson was sentenced to die.

Consistent with the teachings of Judge Wisdom, Barry Sullivan agreed to represent Andrew Wilson in his direct appeal to the Illinois Supreme Court. The Illinois Supreme Court unanimously reversed Wilson's conviction and vacated his death sentence.⁶⁵ The court accepted Dean Sullivan's contention that the State had not met its burden of establishing that Andrew Wilson's confession was voluntary,⁶⁶ and the court held that the use of a coerced confession as substantive evidence of guilt is never harmless error, regardless of how overwhelming the proof against the defendant.⁶⁷

As in the *Wilson* case, Dean Sullivan frequently acted as a courageous and heroic advocate. He also has recognized that the day-to-day work of lawyers, of necessity, is far removed from the heroic acts of the most celebrated members of the profession.⁶⁸ He has instructed us, however, that even in its most mundane daily activity, the profession must be "one that is peculiarly concerned with the interaction between the world of the mind and the world of problems to be solved."⁶⁹ As such, it must concern itself with not only its own welfare but the welfare of society as a whole.

Dean Sullivan's prophetic judgment of the state of affairs the practice of law finds itself in today extends not only to the profession itself but to the way

62. See *Brzeczek Pledges to Find Cop Killers*, UPI, Feb. 11, 1982, available in LEXIS, Nexis Library, UPI File.

63. *Wilson*, 506 N.E.2d at 571.

64. *Id.* at 572.

65. *Id.* at 573.

66. *Id.* at 576.

67. *Id.* Mr. Wilson received a new trial. He was convicted once again and sentenced to life in prison. See *People v. Wilson*, 626 N.E.2d 1282 (Ill. App. Ct. 1993), *appeal denied*, 631 N.E.2d 717 (Ill. 1994).

68. See Sullivan, *supra* note 45, at 1238-39 (noting that though lawyers have often thought of themselves in terms of the lives of the lawyers and judges who are their heroes, that picture "has little to do with what most lawyers do – or have done – most of the time. Most lawyers have not fought protracted battles for civil liberties or civil rights, nor have they devoted a substantial part of their time working specifically for the public good.").

69. *Id.* at 1299.

society itself regards the profession. He strongly endorses the conclusion of Sol Linowitz that "we are not rewarding or encouraging the habits of mind that make law a great profession and lawyers great people."⁷⁰ From this he draws the conclusion that

[i]t is not solely the profession, but society as a whole, that is to be blamed for failing to reward or encourage those habits of mind among members of the legal profession. The thought could be carried a step further, however, because one may truly wonder whether we, as a society, are prepared, in any sphere, to reward or encourage those habits of mind and dispositions of character that are capable of enriching human life and making us a better and more just society.

In observing that society as a whole must bear in part the responsibility for distortions that mark the present plight of the legal profession, Dean Sullivan has provided the profession with an insightful diagnosis of its deeper ills, of which the most recent dramatic increase in attorney compensation, hours and billing rates is but one symptom. In other words, to the extent that society continues to reward certain activities of the profession in a way that is disproportionate to the most basic ideals of the profession, not to mention society as a whole, the nobility of the profession is further diminished.⁷¹ As Dean Sullivan concluded in one of his many writings on the profession,

Plato surely spoke truly when he wrote, "So, when wealth is honored in a state, and the wealthy, virtue and the good are less honored And that which men at any time honor they practice, and what is not honored is neglected." The qualities we deem essential to public life must not be practiced at the margin, but at the center and in the midst of things, if they are to be honored. To suggest that those necessary qualities may appropriately be lived and valued only at the margins of the profession is not only to abandon them, but also to abandon the idea of social life itself. One cannot honor the lawyer-statesmen ideal while relegating it to the margins any more than one can pay tribute to Aristotle's view that humans are by nature social animals while choosing to live in solitude. Wherever we are led by further inquiry and reflection, we must be guided by that recognition.⁷²

By honoring Dean Sullivan on the completion of his term as dean with the dedication of this issue, the editors of the *Washington and Lee Law Review* have demonstrated that the seed planted by Dean Sullivan in a lifetime of

70. *Id.* at 1300 (quoting SOL M. LINOWITZ & MARTIN MAYER, *THE BETRAYED PROFESSION: LAWYERING AT THE END OF THE TWENTIETH CENTURY* 138 (1994)).

71. *See generally* DEREK BOK, *THE COST OF TALENT: HOW EXECUTIVES AND PROFESSIONALS ARE PAID AND HOW IT AFFECTS AMERICA* (1993).

72. Sullivan, *supra* note 45, at 1300 (citations omitted).

courageous actions and prophetic reflections on the profession has fallen on fertile ground.

Brian C. Murchison*

When people look back on the deanship of Barry Sullivan, I hope they recognize his contribution to clinical education at Washington and Lee. Unlike some of his counterparts at other schools, Barry was not lukewarm about clinics. He did not look upon "legal services" as lacking intellectual challenge, or as necessary but middling components of a law school curriculum. Rather he viewed clinical programs as crucial to the academic and public-interest missions of a first-rate law school, and he actively worked to make the programs here succeed.

I know first-hand about one of them. In 1996, the Legal Practice Clinic's volume of work at Western State Hospital in Staunton was declining as a result of a host of circumstances affecting Virginia's mental health system. For years, under the indispensable direction of Mary Natkin, the Clinic had provided a variety of legal services to Western State patients, but Mary knew that the Clinic soon would need a new focus. She and Barry began to explore options with the help of Uncas McThenia, who was then teaching his seminar, "Lawyering for Social Change," an intensive study of the struggle for social justice in the West Virginia coalfields. Uncas invited a number of guest speakers to his class; among them were two federal administrative law judges whose dockets at the Department of Labor included black lung cases brought by coal miners seeking disability benefits from their employers. Unlike social security hearings, black lung proceedings were adversarial, often pitting pro se miners against lawyers from top West Virginia firms representing the coal companies. The judges explained to Uncas's students that miners often had trouble attracting lawyers because financial rewards in black lung cases were small. A dizzying array of federal regulations, agency precedents, and court decisions governed the cases, which often involved complex medical disputes. Under these circumstances, miners were losing well over 90% of claims. The system cried out for legal counsel to assist claimants by developing evidence; drafting interrogatories, motions, and briefs; appearing at depositions and hearings; and arguing appeals.

Barry Sullivan has a wise grasp of human nature, a knack for connecting person to mission; perhaps he suspected that he could draw me into a program of this kind. He started slowly, inviting me for pasta at Il Palazzo with one of

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the judges. The more I heard about the process, the more troubled about the miners' situation – and attracted to the idea of a clinic – I became. Soon enough, Uncas and I found ourselves sailing over Interstate 64 towards Scarbro, West Virginia, where we visited the New River Breathing Clinic and met with the local chapter of the National Black Lung Association, including its president Mike South (a man whose physical disability from black lung disease did not diminish his rock-like resolve to improve conditions) and an inspiring lay advocate, John Cline. Sensing our growing interest, Barry wasted no time dispatching us on our spring break to Carbondale, home of Southern Illinois University law school and its legal clinic specializing in black lung. The sunshine in Carbondale was as scarce as the restaurants, but the trip was a revelation: seeing SIU's intrepid clinic, we could visualize the traces of our own. When we came home, Barry wanted to hear everything. It was easy to see his litigator's mind imagining the challenge of the cases, his educator's soul imagining the benefits to our students. And with Mary at the helm, the new venture at Washington and Lee could not help but succeed.

By the start of classes in August '96, the black lung component of the Legal Practice Clinic was open for business. With administrative assistant Sheryl Salm providing top-quality support, nine students immersed themselves in the small print of the Black Lung Reporter, met the miner-clients in Scarbro and Beckley, learned the jargon of the coal mines, squinted at x-rays of lungs, and prepared for hearings. Throughout this busy time, Barry was central. In word and attitude he was a mainstay. Often he would simply wander into the Clinic – no short walk from his office, I should point out, since the Clinic occupies the very bowels of Lewis Hall. He would pull up a chair at the work table, listen to frustrations and theories, speak about the adversarial system from his own wide experience. Virtually every time we invited a guest to talk about litigation techniques or the history of black lung, Barry attended. And whenever the Clinic scored a victory of even the smallest kind, he sent a handwritten note of congratulations. When he noticed lights burning late as students labored over briefs and double-checked citations, he stopped in with words of humorous encouragement. He spread the news about the Clinic's activities to friends of the school in other ways, many probably unknown to me.

Need I say that this sort of backing was crucial to the success of a new program? Yet it was more than that. Barry's involvement sent a signal to the student body that clinical work was valued and that the individuals served by the clinic were valued. Without the Dean's initiative in conveying this message, the clinic was not likely to realize its potential. Last academic year, thanks in large part to Barry's tenacity, the faculty approved the creation of a clinical professor track at Washington and Lee. This truly important development was another sign of Barry's leadership in recognizing the value of clinical programs and teaching.

Years from now, when the scribes update the history of Lewis Hall, let one chapter be about the integrity of Barry Sullivan and his commitment to public interest work. Let that history tell of the many ways, official and unofficial, in which Barry tried to bring out the best in those who were lucky enough to cross his path. *We learned* from this man – and from his example.

Joan M. Shaughnessy*

One of the first things Barry Sullivan did when he became dean was to send each member of the incoming first year class a copy of Edward Levi's *An Introduction to Legal Reasoning*⁷³ to read for orientation. He wanted to be sure that Washington and Lee students would be challenged academically from the day they entered Lewis Hall. That gesture exemplified one of Barry's greatest strengths as dean – he valued intellectual inquiry and encouraged it in every aspect of law school life.

Barry himself has a ravenous appetite for ideas and learning, as any glimpse of his home or office bookshelves will reveal. He is as at home with history and literature as he is with law. He brings to mind the great nineteenth century advocates who could quote the classics at will to illustrate a point of argument. His writings and speeches during his years as dean were enlivened by grace notes from Yeats and Augustine, Shakespeare and Tocqueville. In this, I think, Barry is much like the mentor and beloved friend he describes in his tribute to Judge John Minor Wisdom.⁷⁴ In that essay, Barry wrote,

Judges and lawyers must bring to bear upon their cases the fullness of their learning, and that learning must be equal to the task. Judges must perceive issues, not as isolated ephemera, but as parts of the larger context – the greater whole – of history. They must at least strive for that panoramic view, transcending time and place, which is both the aim of liberal learning and the source of moral courage.⁷⁵

Barry also has a born-teacher's love of sharing learning with others. One of the spring semester tasks that occupied me when I served as Barry's associate dean was preparation of the class schedule for the following year. Briefing the dean on unfilled teaching assignments often resulted in a wistful tug of

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73. EDWARD LEVI, *AN INTRODUCTION TO LEGAL REASONING* (1949).

74. Barry Sullivan, *Honest Muse: John Minor Wisdom and the Uses of History*, 60 *TULANE L. REV.* 314 (1985).

75. *Id.* at 355.

war – no sooner would I mention the need to fill a writing section of Civil Procedure, to develop a new course in Alternative Dispute Resolution, or to cover for a Constitutional Law professor on leave, than the Dean would volunteer to take on the teaching assignment. If I hadn't yanked away the temptation, I am sure that Barry would have taken on a full teaching load every semester.

Another of Barry's strengths as dean was his devotion to our profession and its values. He came to our deanship with a resume full of distinguished pro bono service – on behalf of AIDS victims, criminal defendants, and others. During his tenure as dean, he spoke and wrote often of the obligation of the profession to supply legal services to those who needed them. One of his favorite stories is the one he tells of John Randolph Tucker's representation of the Haymarket anarchists – unpopular clients by any measure.

During his deanship, Barry strove to keep professional values central to our mission. He worked with our faculty, with state and national bar leaders and with judges on innovative ethics programs. He was also a staunch supporter of our clinical programs. He recognized their great value in instilling professionalism in our students and in providing needed legal services to the community. Barry's own description of professional commitment describes what he sought as dean for Washington and Lee and its students.

Our profession is one that is peculiarly concerned with the interaction between the world of the mind and the world of problems to be solved. It is essential to the profession, and to society, that we recognize that the public's business is our own, and that we nurture in ourselves those qualities necessary to that recognition.⁷⁶

Washington and Lee was immensely fortunate to attract as its Dean a man who exemplifies the finest ideals of the academy and of the legal profession and who worked mightily to bring them to life in Lewis Hall. His work, his values, and his example have enriched us all.



76. Barry Sullivan, *Professions of Law*, 9 GEO. J. LEGAL ETHICS 1235, 1299 (1996).

JOHN RANDOLPH
TUCKER LECTURE
