



# DOING GOD'S WORK IN THE COURTHOUSE

*Douglas P. Woodlock<sup>†</sup>*

**F**RANK LLOYD WRIGHT, an experienced professional with a rather high self-regard, was once approached for advice by a young architect. “Mr. Wright,” the young architect said, “I would like to show you my portfolio, and I would appreciate any comments you may have.” Mr. Wright gravely responded, “You will have them.”

The young man brought out his portfolio. He spread it before Mr. Wright. Mr. Wright looked through the portfolio, and then there was an awkward silence, which lasted for five minutes but seemed to the neophyte a lifetime.

Finally, the young architect turned to Mr. Wright and said, “Mr. Wright, what do you think?” Mr. Wright responded: “Young man, it is clear that you and I are both doing God’s work, you in your way and I in His.”

Similarly, I think it is my responsibility on this occasion to tell you how I think some judges of this court, who are also professionals with rather high self-regard, believe you ought to go about doing God’s work in this courthouse.

I undertake that responsibility because you are coming to this court at a critical hinge point in its history. When I came here first as a law clerk in

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1975, it was a six-judge court and none of those judges was a woman. The court now has 13 authorized seats. President Obama has appointed six of those judges and the seventh of his nominees has been voted favorably out of the Judiciary Committee; she and we await confirmation by the full Senate. At the end of his term, then, President Obama may have had the opportunity to appoint a majority of the judges in active status on this court; the full complement of 13 active-status judges would as a consequence include five women.

So it is probably useful to acquaint you with the sensibility that will undoubtedly continue to suffuse this New Jerusalem. I will suggest an appropriate approach through several ascending spheres,<sup>1</sup> beginning at the most practical moving through the tactical before arriving at the aspirational.

When I came to the Bar of the Commonwealth, the Massachusetts Supreme Judicial Court held attorney admission ceremonies in the courtroom itself, and newly minted Massachusetts lawyers had the opportunity to hear preliminarily from the Clerk and then one of the Justices would appear to give the featured remarks. At that time, the Clerk was John E. Powers, who had been the President of the state Senate representing South Boston before ascending to the office of Clerk of the Supreme Judicial Court for the County of Suffolk, an elective position.

Clerk Powers had a very robust, if decidedly feudal, view about constituent service and the reciprocal obligations of constituents to their public servants. When he met with the new members of the Bar before they were sworn in, he offered brief remarks to emphasize that view.

“We are here to help you,” he told us. “You have to understand that the Clerk’s Office is at your service. If you have a problem, you should come to the Clerk’s Office, ask questions, and we will do whatever we can.” Then he said, “you are about to hear from Justice Quirico, who is a very learned man, a wonderful judge. But there is something very valuable that I think I can tell you before you hear from him, something that you should keep in mind when you practice in the Courts. And that is this: while the judge may hurt you, the Clerk can kill you.”

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<sup>1</sup> Cf. John Ciardi, *Introduction*, DANTE ALIGHIERI, *THE DIVINE COMEDY XVI* (John Ciardi trans., W.W. Norton 1970) (describing Dante’s plan for *The Paradiso* by which “the soul draws closer to God, level by level, though the nine spheres”).

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Now, in recounting Mr. Power's guiding principle, I am not suggesting homicidal tendencies in our own – or any – court's Clerk's Office. But I do want to underscore that the Clerk's Office here – and in most courts – is populated by people you ought to get to know, people who can affect the ways by which and the speed with which you meet Judgment Day.

I want to emphasize that our Clerk's Office is as good as it gets. They are people who are prepared to do whatever they can to make the system of justice work, and that includes giving newly initiated counsel – and seasoned veteran attorneys – advice, direction, and encouragement.

Judges generally believe that they are acting in more or less the same way. That is not necessarily so. It is important for you to figure out how the judge before whom you will appear functions, and the way in which you can do that most effectively and efficiently is to talk to people in the Clerk's Office.

Judges, like other human beings, are fallible. They sometimes differ. It is not infrequently the case that things that you may view as very peculiar occur in their courtrooms, and the best practical advice I can give to you to avoid being startled is to restate – although not in quite so minatory a manner – an observation that Mr. Powers made. Get to know the people in the Clerk's Office. If you have a question, call them up, or better yet go into the office and talk with them directly. That is the best practical advice that anyone can give you about appearing in the courts. As a matter of fact, I think I can say that you will be engaging in malpractice if you do not talk to the clerks to get a sense of what is actually going on *de facto* with the various judges in the various courtrooms.

I can take this to another sphere with a parable that I offer whenever lawyers ask me how long their closing arguments should take. It involves a President of Yale in the nineteenth century who was asked more or less the same question by visiting preachers at Battell Chapel: "How long should my sermon last?" His stock response (which is mine as well, by the way), was: "You should remember that there are no souls saved after 20 minutes."

I want to sharpen that point a bit more by recalling the senior-most judge on the First Circuit when I was appointed to the bench. His name was Bailey Aldrich. He had been appointed first by Dwight Eisenhower to this court and then again by President Eisenhower to the Court of Appeals. Judge Aldrich had an arresting phrase to describe the kinds of lawyers

judges fear most. He referred to them as “counsel [with] an instinct for the capillaries.”<sup>2</sup> They are attorneys who have a tendency to go for superficial nicks and cuts without getting to the jugular of an issue.

There is probably no more important tactical advice that I can give you when you face a judge than to go right for the heart of the matter and remember not to take more than 20 minutes if your intent is to save souls, your client’s and your own. The judges of this court, and those within the judicial system generally, believe that they are very busy. The courts themselves sometimes appear to be suffering from institutional sclerosis. If we do not have lawyers who are prepared to get right to the point, then things get bogged down; judges get frustrated and, perhaps even worse, irritable and cranky. So, I encourage you to get right to the point.

Taking my advice to a more demanding sphere, let me offer another parable about preaching. One of the very best preachers during the twentieth century was William Sloane Coffin, Jr. In an aside, I should note that while he was Chaplain at Yale during my undergraduate years he was convicted in this court, together with the renowned pediatrician Dr. Benjamin Spock and others, of encouraging draft evasion.<sup>3</sup> The case was overturned on appeal – in an opinion by Judge Aldrich<sup>4</sup> – and the Department of Justice, understandably, declined to retry him. Coffin’s first wife was the daughter of the great pianist Arthur Rubinstein. After his initial meeting with his future father-in-law, Coffin’s future bride told him that her father had told her he “didn’t want Billy Graham as a son-in-law.” Coffin thought for a moment, and then he responded, “you can tell him that I don’t want a Liberace as a father-in-law.”<sup>5</sup> I offer that parable to emphasize that there are craft values involved to which we in the legal profession – like preachers and pianists – all aspire.

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<sup>2</sup> *Stack v. United States*, 368 F.2d 788, 790 (1st Cir. 1966) (“Some of the matters . . . raised here are so insubstantial we are led to observe that counsel has an ‘instinct for the capillaries.’ The duty owed to a client does not extend to making clearly pointless claims.”).

<sup>3</sup> I have recorded elsewhere some personal observations regarding the Coffin prosecution and its effect on my own views about accommodating the tensions between substance and process in the law. Douglas P. Woodlock, *Bullies and Martyrs: John Dos Passos and Adventures of a Young Man*, in *AMERICAN GUY: MASCULINITY IN AMERICAN LAW AND LITERATURE* 225, 234-35 (Saul Levmore and Martha C. Nussbaum, eds., Oxford U. Press 2014).

<sup>4</sup> *United States v. Spock*, 416 F.2d 165 (1st Cir. 1969).

<sup>5</sup> WILLIAM SLOANE COFFIN, JR., *ONCE TO EVERY MAN: A MEMOIR* 126 (ATHENAEUM 1977).

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The most succinct statement of the aspirations of our work is the one that flows from the inscription on the entablature over the entrance to the Supreme Court of the United States: "Equal Justice Under Law." The vision of equal justice can call to mind a variety of things in a variety of contexts; it is the responsibility of the lower courts to attempt to implement that larger vision in particular cases and controversies. I suspect you got involved in this profession to implement that vision with the greatest craftsmanship you can muster, something that reflects being more as a lawyer than Liberace undertook as a pianist.

As you walk down Old Northern Avenue to the entrance to this courthouse, you encounter a series of granite plaques with carved inscriptions. They present observations by people from Massachusetts concerned with the law. They are themes and variations on the aspiration for equal justice under law. All of them are important. They are meant to create a conversation about what should go on within this building.

Shortly before our front door, you encounter a quotation from President Kennedy. It is from the speech he gave in 1963, just months before he was assassinated. It was the speech that introduced one of the important pieces of civil rights legislation whose 50-year anniversaries we have recently been celebrating, the Civil Rights Act of 1964. What President Kennedy said, as quoted on the granite in the wall near the front door, is, "We are confronted primarily with a moral issue. The heart of the question is whether we are going to treat our fellow Americans as we want to be treated."<sup>6</sup>

The Golden Rule provides the touchstone for what your practice should be here in this court: fulfilling the vision of equal justice under law with craftsmanship by conducting yourself in a way that, from discovery disputes to arguments over instructions, reflects the courtesies and civilities that people who undertake to participate meaningfully in a learned profession ought to observe. As aspirational advice, let me urge that you ask yourself

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<sup>6</sup> John F. Kennedy, *The Peaceful Revolution* in "LET THE WORD GO FORTH": THE SPEECHES, STATEMENTS, AND WRITINGS OF JOHN F. KENNEDY 1947 TO 1963, 192, 194 (Theodore Sorensen, ed., Delacorte Press 1988). A video of President Kennedy's speech can be found online at the website of his Presidential Library. President John F. Kennedy, Report to the American People on Civil Rights, (June 11, 1963), available at [www.jfklibrary.org/Asset-Viewer/LH8F\\_0Mzv0e6Ro1yEm74Ng.aspx](http://www.jfklibrary.org/Asset-Viewer/LH8F_0Mzv0e6Ro1yEm74Ng.aspx).

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at every point in your practice in this court, “Am I acting in the way I would like others to act toward me and my client?”

That brings me to the final point: All of us who practice in the courts hope to be the very best of courtroom performers, whether lawyers or judges, and I suspect that you would not spend a bit of your afternoon over here looking for a certificate suitable for framing if you did not want to do that in this court, where you can demonstrate your craftsmanship fully. But I want to offer a cautionary observation.

There are, of course, some cases that simply cannot be resolved except in the courtroom, and presumably it will be done effectively and efficiently and fairly by you – with great craftsmanship and civility – when you practice here. There is another plaque as you come into this building, however, that should give you pause. It is the last plaque that you see before you pass through the magnetometers and get on the elevators to come to the courtrooms. It contains a quotation from Barbara Jordan.

Barbara Jordan was an African-American Congresswoman from Texas who served on the House Committee that voted Articles of Impeachment against President Nixon. She was also an alumna of Boston University Law School. Shortly before she passed away in 1995, Congresswoman Jordan gave a short talk to a group of Boston University Law School alumni about what it means to be a lawyer. She expressed the thing I think all of the judges of this court would like you to be thinking about before you finally come into the pit that is the courtroom itself. She said: “We live in community and each of us is not an atom of self-interest. What each of us does has an impact on the rest of us. Therefore, the need for thoughtful judgment and wise counsel is always paramount.”

That sentiment mirrors some comments that Learned Hand made at various points during his more than a half-century as a federal judge. Early in his career as a judge he said that, “[a]s a litigant I should dread a lawsuit beyond almost anything else short of sickness or death.”<sup>7</sup> Later he put that personal observation in a larger context when he delivered the keynote at the 250th Anniversary Dinner of the Supreme Judicial Court of Massachusetts in 1942. There, he observed that litigation in the courtroom really cannot solve all of our problems. He said, “. . . a society so riven that the

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<sup>7</sup> GERALD GUNTHER, *LEARNED HAND: THE MAN AND THE JUDGE* 146 (Alfred A. Knopf, 1st ed. 1994).

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spirit of moderation is gone, no court can save; a society where that spirit flourishes, no court need save; that in a society which evades its responsibility by thrusting upon the courts the nurture of that spirit, that spirit will in the end perish.”<sup>8</sup>

What is “the spirit of moderation?” Hand asked. And then he answered: “It is the temper which does not press a partisan advantage to its bitter end, which can understand and will respect the other side. . . .”<sup>9</sup>

So, if you follow those instructions from President Kennedy, Barbara Jordan, and Learned Hand, you will — as Frank Lloyd Wright might have put it if he were now a judge of this court among its recently changing complement of judicial officers — be doing God’s work in this courthouse. In Her way.



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<sup>8</sup> Learned Hand, *The Contributions of the Judiciary to Civilization* in LEARNED HAND, THE SPIRIT OF LIBERTY 172, 181 (Irving Dillard, ed., Alfred A. Knopf 1952).

<sup>9</sup> *Id.*