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**A "MORE EXCELLENT WAY":  
MORAL IMAGINATION & THE ART OF JUDGING**

LELAND P. ANDERSON\*

The jury box is filling up again. That's where the prisoners sit awaiting arraignment, pretrial dispositions, or sentencing. The Deputy Sheriffs roll the prisoners from a door to the right. That door leads to a small vestibule, three holding cells, and an elevator which descends to the tunnel beneath the courthouse. The tunnel leads to Post 5, another holding area, equipped with its own elevator which bears prisoners upward into the heart of the jail. The system is designed to segregate prisoners from the general populace. As the prisoners are led in and out of the courtroom, they are hand-cuffed. The ones who have caused trouble at the jail, tussling with the guards or spitting at them, shuffle into the courtroom with leg shackles and belly-belts in addition to the handcuffs. I have seen belly-belts on gang-bangers and a variety of other "clients with attitude" who pose a flight risk. Even if someone entertained the forlorn hope of breaking for the double doors at the back of the courtroom, they would not get far. Short of leaping from a fifth floor window (not likely), the only way to the ground floor from Division 2's fifth floor courtroom was a bank of public elevators. The deputy-sheriff-sponsored welcoming party at the Lobby level would discourage all but those attempting SBC.<sup>1</sup>

I have never figured out how a person in custody could escape this courthouse. The in-custodies wear bright international-orange colored jumpsuits, making them highly visible targets either in the bubbling stew of the courthouse or in the vacant outlands beyond. The courtrooms are under continual surveillance. The deputies in charge of security have a sixth sense

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1. "SBC" is street parlance for "suicide by cop."

for trouble. To the best of my knowledge nobody required to stay on the premises has succeeded in averting those obligations.

I emphasize these matters because in the first instance, a courtroom is a place of restraint, a place where movement is restricted, where freedom is curtailed, where human desire is discouraged. It's a compressed place, a place of diminished action, diminished choices, and to a certain extent diminished vision. In a place such as this, a premium is placed on safety, restraint, and efficiency. To a far lesser extent, does the judicial system give ground to wisdom, passion, and creativity? In such an environment, restraints on movement and freedom are translated into constraints on deep understanding and imagination.

The total number of cases assigned to my division was between three and four hundred. The system pressure was enormous. Cases gushed into Division 2 as if the valves on both faucets were broken. The unstated goal was to push the cases downward toward the drain, to force them toward resolution, so as to avoid filling the public tub to overflowing. The judge had to keep an eye on "the numbers," the number of open cases on the docket. If "the numbers" got away from a judge, lawyers were likely to run into a thirty-minute voir dire and a fifteen-minute closing argument. Otherwise, the chronic state of overflow in a Division's docket would invite scrutiny by the bean-counter stat-heads on the judicial performance commission.

On this particular morning, my tub was looking dangerously full. The courtroom was packed with deputy district attorneys, public defenders, probation officers, prisoners, and spectators. I felt as though a vast parade of clowns, hooligans, drummers, and buglers had been funneled into my courtroom to rupture the pipeline at the joints. Felony docket day in a busy metropolitan courtroom can be anything but austere and decorous. At best it resembles organized chaos. At worst, it is chaos. The public defenders were huddled with the deputy district attorneys trying to work out last minute deals. Private defense counsel hovered in the background awaiting their chance to intervene, to get a little time with the prosecutors. Only the most pushy and aggressive private counsel dared to step between the public defenders and the prosecutors. With the most ridiculous caseload in the courthouse and the least amount of time to meet their clients and secure a deal, the public defenders required first shot at the Deputy D.A.s and the judge. They worked feverishly with the prosecutors in hushed and not-so-hushed conversations. In the cramped intensity of the moment, fingers would point, files would be slapped down hard on counsel table, and fists would begin to

curl as the slithering monster docket began to uncoil itself and rattle with fury.

Spectators in the back of the courtroom watched the hissing flood of activity before them in dumb silence. Some of them were on bond, waiting to meet their public defender for the first time. Others were family members or friends of the prisoners crammed together in the jury box. A few were simply curious, the people I call courtroom rats, who spend their days wandering from one courtroom to another looking for the vicarious excitement of someone else's misadventures with the law.

In addition to being a place of physical restraints, the courtroom is a time-constrained environment. Time is the stubborn creature stalking the docket minute by minute, pointing insistently at the clock. How much time do we have? How many cases do we have left? I glanced toward the clock on the wall at the back of the courtroom. I had been waiting twenty minutes for counsel to reach last minute agreements. Already 1:30 P.M., and I still had not called the first case of the afternoon. I felt a rush of anxiety. I tried to breathe slowly, knowing that once I started calling the docket I would be in for five to six more hours of intensity trying to move the cases forward and give counsel and the parties their five-minute "day in court." I expected I would go through three cups of coffee and a quart of water before it was over. In the end, when I stood to leave the bench, my knees and back would groan and squeak like rusted steel as I stepped down to go to chambers. I wanted to push hard through the afternoon, get it done. I doubted my reporter would get a mid-afternoon break despite the ache in her arms from the immense effort of reporting a ninety-case docket. I would again watch her shake out her hands and arms between case calls trying her best to hang in there.

The afternoon docket was off to a slow start. The lawyers were not ready, fumbling with their papers, scrambling to broker last-minute plea-deals. I knew if I pushed it too fast, the lawyers would beg for more time, and the case might be set over to jam another day's docket. If I waited too long, I would be working into Monday evening. I had been through the routine innumerable times. I know many judges hammer the lawyers and bristle with impatience if the lawyers aren't ready when the case is called. I was never that kind of judge. I just didn't have it in me to fight the time-battle with lawyers. I figured if I was going to demand precision timeliness from them, I would have to demand it of myself. I was a fairly prompt judge, but when I left the Marine Corps I swore I wasn't going to be ruled again by a life of military-like precision. I also knew realistically that if every

judge in the courthouse demanded exacting timeliness from counsel, the system would virtually explode. The public defenders and deputy D.A.s were often scheduled simultaneously in two or three different courtrooms. Not even the most creative trial lawyer can be two places at the same time. The system requires a safety valve, a couple judges who were willing to relieve system pressure by patiently waiting for counsel to complete their business in other courtrooms before appearing in the judge's own courtroom. I had no desire to compete with my colleagues for some combat-commander award in the courthouse. I elected myself to the job of relief valve. Attorneys understood they would not face the hot breath of judicial hell if they arrived a few minutes late in my courtroom or needed an extra few minutes to talk with opposing counsel. I suppose some would argue my ship wasn't tight enough because I endured tardiness and allowed counsel to open their briefcases on counsel table. I was more interested in throwing energy into solving problems than thinking of new ones the attorneys would have to solve. I excused my lassitude by bragging that we ran a user-friendly courtroom. No doubt more than a few people have concluded I was merely "used."

I sat with my elbows propped on the bench, my hands folded under my chin. I waited for the clamor of conversation between lawyers, probation officers, police officers, and witnesses to die down, signaling that deals have been struck or final lines drawn in the sand. Now began the long lamentation of the law. As the high priest in the sanctuary, I commenced to advise the mangled masses of their constitutional rights. In liturgical fashion I uttered the constitutional formulations covering a bewildering assortment of crimes. The criminal charges encompassed an even more bewildering range of human behaviors which could only cause one to conclude, "What were they thinking?"

Bundles of case files were shoveled up to the bench. The first cases were called, and the attorneys entered their appearances, after which I asked, "How do you wish to proceed?" We began the long march into the afternoon. Lawyers fidgeted and paced at the back of the courtroom, impatient to be on their way. I sensed their urgency as they were required to listen to the sleep-inducing recitation of rights and warning given to each accused as pleas were taken or speedy trial rights waived.

One person in the courtroom seemed oblivious to it all. She sat in the jury box with the other prisoners brought from the jail. I noticed her from the corner of my eye. She was leaning forward, looking around as if she was about to call for help, but she remained silent. Her face was red, and tears were falling down

her cheeks. She made no noise, not even a snuffle. No one paid attention to her. Tears are not uncommon in a courtroom. The wheels of justice grind inexorably forward regardless of tears. She sprawled backward in her chair, and finally stared without emotion at the blank wall on the far side of the courtroom. No one wipes another's tears in the jury box. She wiped her own and sank into her own thoughts. That was a good sign. Tears threaten decorum and order. They create imbalance. They can cause delays. With a ninety-case docket, two to three minutes per case is the best you can afford if you want to get home for dinner.

By mid-afternoon, I was almost to the point of physical suffering. I had taken a dozen pleas, each one meticulously and carefully scripted to assure a reviewing court the defendant's plea was free, voluntary, and not the result of undue influence or coercion. To the acolytes of the law carrying out their duties in this rough and tumble sacristy, the words suffuse with meaning and consequence. To the uninitiated, including the defendants themselves, the words were so much "mumbo-jumbo." The tedium of the formalities brought world-weariness to the proceedings. As the afternoon passed, however, the deadly monotony was increasingly lanced occasionally by outbursts from one side or another as the lawyers became impatient with each other or with me. They were reaching that point where being a prosecutor or being a public defender was in and of itself a moral error in judgment. *Ad hominem* attacks broke out like back-alley brawls as the docket vaulted into the second half of the afternoon. Tempers flared in flash-bang spontaneity. Ragged-mouth arguments emanating from the bowels rather than the brain exacted a toll on the court reporter who glanced fiercely in my direction as if to say, "Aren't you going to do something about this?"

For whatever reason, I declined to take control. I let it roll, strangely fascinated by the lawyers going at it hammer and tong, risking the chance that in a phrase or a word they might find themselves in custody being booked and printed on a contempt charge. The fierceness of the arguments and raw-gut emotions caused me to allow things go further than they reasonably should. I reached for the peacemaker, an eight-inch-long walnut gavel. I wasn't a gavel judge, but I knew if I used it, the world would stop spinning on its axis, and everything would go to freeze-frame, lawyers stopping mid-word, as the crash of the gavel all but took out the P.A. system in the courtroom. I lifted the gavel, but when I did, the sound and fury of the debate ended as quickly as a summer thunderstorm. The attorneys slunk back to their chairs sullenly, glowering at each other, surrendering to the

clock on the wall, waiting for another day to fully bleed their opponent. They stared defiantly at me, waiting for the censure from the bench.

I did my best to look cold and implacable, saying nothing. I made a fast call on the issue, a shot from the hip, made without reflection, a "ready, fire, aim" call. I locked in the glare of the lawyer against whom I was making the call and delivered the ruling like a straight punch to the jaw, daring him to even think about asking me to reconsider. The lawyer sensed my impatient wrath and retreated like a cuffed dog to the corner. The theatrically cold assuredness of my ruling belied what I felt underneath: an overwhelming sadness, an ache which saturated the tissues of my soul like an ink stain.

The woman prisoner in the jury box stared dully at the wall. I paid little attention to the box of in-custodies. I waited until their case was called and they were yanked to the middle of the courtroom to stand beneath a glaring overhead spotlight and face the judge. Standing beneath that spotlight, I am sure many of them barely understand or even hear the words of their lawyers or the judge. I know many leave the courtroom, hustled back to their jail cells having little or no idea what just occurred in court. They simply throw their trust and future like a heavy sack of groceries into the hands of their lawyer and follow the whispered commands of counsel: "Yes, your Honor;" "No, your Honor." Many of them have no idea why they are saying "Yes" or why they are saying "No." They dread the public spotlight and only wish it all to be done. Ordinarily, in a matter of moments, it is done. In less than five minutes, they have had their "day in court." They are hastened through the door in the wall, back to the jail where they are either bonded out, released to probation, detained for further proceedings, or transported to the penitentiary. Through that process, they may stop to ask themselves, "How did I get here?" That question, however, is rarely asked in the courtroom.

The female prisoner was called from the jury box. Unlike the male prisoners, women prisoners were clothed in fire-engine red jumpsuits. I watched as she left the jury box ambling to the lectern beneath the spotlights. I glanced at the register of actions, taking into account the fact that she had appeared before me more than a dozen times in the past: a jury trial, probation violations, pick-ups on arrests, bond settings, and other matters. She had been convicted of drug possession charges. I had placed her on probation, but she had already busted probation twice and had written me a letter asking me to just send her to prison. She was before me on another probation violation cou-

pled with a new drug charge. The system had given her all the breaks she deserved. Pleading guilty to the new charge, she was looking at serious penitentiary time. She essentially said she had no intention of working a drug program. Her lawyer, sporting a wrinkled suit coat and coffee-spotted tie, stood by her side. I expected him to enter a "not guilty" plea on his client's behalf and move to set her matter for hearing, if for no other reason than to delay the inevitable.

As her lawyer began to say, "Not guilty," the defendant nudged him and whispered loudly, "No." The two of them turned their backs to the bench and huddled a few minutes whispering excitedly to each other. Her lawyer finally turned to me in exasperation and said, "Your Honor, I need a continuance. My client wants to go to prison. She won't listen to me." The defendant looked at me imploringly.

"Judge, I mean no disrespect. You don't have time for this, and I don't either. I just want to plead guilty and get it over. I need to go to prison."

This caused a rumbling from the spectators at the back of the courtroom like someone shaking out a dusty blanket. I silenced them with a wave of my hand, looked at the defendant and said, "Maybe you should take some time to think about this."

She gazed at me with dull shark-like eyes. "I don't need any more time, Your Honor. I know what I'm doing. Nobody's forcing me to do anything."

I gaped at her attorney who stepped back shrugging his shoulders as if to say to me, "She's all yours, Judge. Good luck." Ordinarily, I would have refused a plea from a defendant who seemed at such odds with her own attorney. I would have ordered a continuance for a couple of days as a cooling-off period to give the defendant some time to think about what she was doing. This time, however, at the end of a long and mind-numbing docket, I felt marked sympathy for the defendant's sense of complete resignation and surrender.

"Very well, then. I'm open to taking her plea if that's what she wants to do. Has counsel advised the defendant of her rights?" Her lawyer responded affirmatively. Despite that, I cautiously went through the plea with the defendant inquiring as to her health, education, emotional well-being, and the numerous other inquiries requisite to formal acceptance of a probation violation admission. I accepted the defendant's admission that once again she had violated the terms and conditions of her probation. All that was left was sentencing. I already had a complete pre-sentence report from previous hearings. No further delay was



necessary, and the defendant herself was not only resigned to prison time, she was asking for it.

"Your Honor," she said in her statement of allocution, "I am tired of coming in front of you. I am tired of sitting in courtrooms. I am tired of running. I can't do it anymore. I just want to go to prison and have you all just leave me alone."

Her attorney had little to add to that "inspired" argument. The defendant was an obvious candidate for prison. She had been on the run from probation for over a year. In that time, she had been without work, supporting herself by dealing drugs and living with the head of a local motorcycle gang. I had already sentenced her husband to ten years in the penitentiary, a mandatory sentence imposed by reason of the quantity of drugs he had been distributing. The defendant herself had injected, swallowed, and snorted almost every illicit street drug available and had settled on methamphetamine as her drug of choice. "Meth" had brought her to her knees begging to be warehoused in the penitentiary.

The prosecutor with a broad paternalistic smile recognized that the prey was deep within the trap and all that was required was for the judge to slip the lock through the hasp. He held his hands out as if to say, "What more can I say?" He said little.

"You have no choice, your Honor. Your hands are tied. She brought this on herself and gives you no alternative. It's time we give this defendant a firm message: 'No more.' I know it, you know it, and she knows it. She has been coddled by the system for three years, and she's just snubbed her nose at us. She doesn't believe me. She doesn't believe you. She doesn't believe any of us. Judge, she needs to go away for a long time. She doesn't want to help herself. There's nothing more we can do. It's time to say 'enough.' I know that, and you know that. I'm asking you to send her to the Department of Corrections."

My gaze rolled from the prosecutor to defense counsel. One more card could be played. I inquired if the defendant was requesting community corrections, a community-based half-way correctional facility imposing an initial term of lock-down for inmates but gradually lifting restrictions upon completion of drug programs and other incentives which would allow them to matriculate into the community. The defendant spoke up.

"No way, your Honor. That won't work for me. I can't do any more drug treatment. I'll just be back in front of you on another charge. It's ridiculous. Just let me do some time and be done with all this." Her plea reminded me of the fellow who begged me to sentence him to prison so he could smoke cigarettes and

eat a chicken sandwich. The local jail was a smoke-free environment, and apparently they didn't serve chicken sandwiches. I accommodated him. Now I was on the cusp of granting this female defendant's wish. Most people in the courtroom expected me to give her somewhere between two and four years together with a mandatory period of parole.

I looked at the clock, gripped the handle of the gavel wanting to throw it through the wall of the courtroom. The case had already taken far longer than I had expected. Lawyers were looking at their watches. The court reporter was sighing audibly. Everyone was feeling depleted, exhausted, and bone-weary. I just wanted to get done with the madness. My time and patience were running on fumes. Push her through the door in the wall. Get it done. Now.

In his *Reflections on the Revolution in France*, Edmund Burke described the obliteration of civil society by the revolutionaries:

All the decent drapery of life is to be rudely torn off. All the superadded ideas, furnished from the wardrobe of a moral imagination, which the heart owns, and the understanding ratifies, as necessary to cover the defects of our naked shivering nature, and to raise it to dignity in our own estimation, are to be exploded as a ridiculous, absurd, and antiquated fashion.

On this scheme of things, a king is but a man; a queen is but a woman; a woman is but an animal; and an animal not of the highest order. All homage paid to the sex in general as such, and without distinct views, is to be regarded as romance and folly. . . .

On the scheme of this barbarous philosophy, which is the offspring of cold hearts and muddy understandings, and which is as void of solid wisdom, as it is destitute of all taste and elegance, laws are to be supported only by their own terrors, and by the concern, which each individual may find in them, from his own private speculations, or can spare to them from his own private interests. In the groves of *their* academy, at the end of every vista, you see nothing but the gallows.<sup>2</sup>

Edmund Burke described a country devoid of the wisdom of the ages, a land savaged by violence and passion, a place, but for the absence of bloodshed, similar to courtrooms where I have served for ten years. The courtroom can be a violent place. At

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2. EDMUND BURKE, *REFLECTIONS ON THE REVOLUTION IN FRANCE* 239–40 (J.C.D. Clark ed., Stanford Univ. Press 2001) (1790).

one extreme, I have presided over the state-sanctioned violence of death penalty cases. Other kinds of violence evolve in a courtroom as well. The other kind is less organized, less prescriptive. This is the violence inherent in the metaphor which stands at the heart of the American system of justice: the adversarial system.

At best, the adversarial system implies sportsmanlike competition on a level playing field. At worst, the adversarial system suggests something just short of blood-letting where the combatants seek to destroy the opponent by any means possible inasmuch as the ends are often deemed to justify the means. The courtroom generates the same fight-or-flight reflexes the ancients experienced when confronted by a saber-toothed tiger. The old reptile-brain coils or strikes in fear in reaction to zealous arguments and cunning deceptions.

Though a more quotidian battle than one fought with bullets and bombs, the adversarial process invites and stirs a heightened level of psychic or emotional disruption and violence. The ultimate goal is to vanquish the opposition and achieve complete victory. Litigation and trial-craft are in fact substitutes for blood violence. In *The Iliad*, Homer describes a scene emblazoned on the shield of Achilles. At the center of the shield a man stands before a jury of citizens who must decide the blood price the man must pay for taking the life of another man.<sup>3</sup> In this Homeric passage reflecting incidents occurring three thousand years ago, we learn that humankind has used the trial process as a substitute for blood violence since the dawn of history.

Our adversarial court system is steeped in metaphorical violence. Trials are figurative war zones where adversaries square off in a hostile environment. Lawyers are called "gun-slingers" or "Rambos." Trial preparation rooms are called "war rooms." Lawyers "go for the jugular" with "killer cross-examinations" and "devastating closing arguments." The adversarial model invites the language of war and violence into the courtroom. Humiliation, embarrassment, and disgrace are frequently advanced as laudable goals in trial.

At the center of this struggle, the judge orchestrates the war clothed in the black robes of the Law. In truth, I abhor conflict and controversy. I was raised in a home where arguments and conflict were discouraged. I was to "avoid fights at all cost" and "stay out of trouble." The ethical imperatives from my religious training were: "turn the other cheek," "forgive seventy times seven," "blessed are the peacemakers." On my first day as a judge,

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3. See HOMER, *THE ILIAD* bk. 18, ll. 478–508 (Rodney Merrill trans., Univ. of Michigan Press 2007).

I taped a small quotation to the bench, visible only to myself, as a reminder of who I was and what I believed. The quotation was from I Corinthians, chapter 23: "[A]nd yet shew I unto you a more excellent way."<sup>4</sup> I cannot say that I knew or understood how to show anyone a "more excellent way," but I wanted to challenge myself to seek a more excellent way in my comments and demeanor on the bench.

After ten years on the bench, I question whether I managed to discover or demonstrate a "more excellent way" in the course of my work. Perhaps the challenge I posted for myself was one largely within the confines of my own heart. Nevertheless, I found myself pushed daily into circumstances where in Edmund Burke's words, "[a]ll the decent drapery of life [was] rudely torn off," and I was left with nothing to cover the defects in my own "naked shivering nature" to resolve the multifaceted hatreds and deceptions springing from the cloying appeals of lawyers and the fleeting glimpses of truth snatched from the witness stand. I felt paralyzed in the face of the "cold hearts and muddy understandings" which accompanied the so-called "pursuit of truth" in the courtroom.

At times truth itself was on trial, a myth to be "exploded as a ridiculous, absurd, and antiquated fashion," and beneath the bright overhead spotlights humankind was exposed as little more than an animal, "and an animal not of the highest order." I winced as I saw lawyers roughly advancing the application of laws "by their own terrors," people following laws not because they comported with age-old notions of human dignity and moral understanding but simply because the laws threatened restraint, graduated levels of force leading eventually to the ultimate sanction of death. Laws then were to be obeyed not because they reflected a common understanding concurrent among a community of citizens but because they threatened the individual with particularized forms of oppression and duress.

Burke complained, "[L]aws are to be supported only by their own terrors, and by the concern which each individual may find in them, from his own private speculations, or can spare to them from his own private interests."<sup>5</sup> In this sense, the Law represents little more than an exercise in power, and the judge is empowered in the end to act with coercive force, obliging litigants to pay penalties, to pay fines, to pay judgments, to pay with their lives if the circumstances warrant. If a miscreant disobeys the law, a judge may order the person hand-cuffed, taken from

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4. 1 Corinthians 12:31.

5. BURKE, *supra* note 2, at 240.

the courtroom, and transported to live for a term of years in the stone and steel of a penitentiary. This is the subtext of power, physical and psychic violence which underlies the American system of justice, every vista ending in an act of coercion or force.

In searching for "a more excellent way," an approach whereby the vista does not necessarily end in acts of coercion or force, the Law offers few options. What if we were to reach into Burke's wardrobe of the "moral imagination" and find robes cut from different cloth? Russell Kirk suggests the "moral imagination" is that "which informs us concerning the dignity of human nature, which instructs us that we are more than naked apes."<sup>6</sup> In Burke's words, without moral imagination, we are "cast forth . . . from this world of reason, and order, and peace, and virtue, and fruitful penitence, into the antagonist world of madness, discord, vice, confusion, and unavailing sorrow."<sup>7</sup>

I know that the Law is premised in the first instance on reason and order, but as a refugee from the front-lines, I would modestly suggest that the Law's reasons and orders are often rationalizations and justifications where a targeted end result supplants concerns about how that result is achieved. The so-called moral and constitutional imperatives of the Law become more on the order of "muddy understandings" when lawyers or judges become enmeshed with the results of the litigation instead of the process by which the ends, whatever they may be, are achieved.

The public ordinarily perceives the ideal judge as one who is quite capable of discerning truth from falsity, right from wrong, and good from evil. I doubt this has ever been the case, but in our postmodern, post-Woodstock judiciary, I suspect that I am no different from most of my colleagues in sharing a seeming indifference to classical wisdom and literature. From this indifference springs a disability in apprehending stoic-inspired Roman *jus natural* or the contributions to notions of justice contained in works such as Aquinas' *Summa Theologica* or canons of thought such as those of the School of Salamanca. T.S. Eliot said, "The number of people in possession of any criteria for discriminating between good and evil is very small," but that "the number of the half-alive hungry for any form of spiritual experience, or for what offers

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6. Russell A. Kirk, *The Moral Imagination*, 1 LITERATURE & BELIEF 37, 38 (1981).

7. BURKE, *supra* note 2, at 261.

itself as spiritual experience, high or low, good or bad, is considerable."<sup>8</sup>

My years on the bench taught me that distinguishing good and evil, right and wrong, has been freeze-dried to looking at the black-letter of legislative or constitutional law, and in cartoon-like simplification claim, "They means what they says, and they says what they means." In anyone's strict construction of the law, can right and wrong be read plainly from the text? Human conduct in its multiple expressions defies, at times, the black-letter exposition of the law. Words are incapable of completely defining the vagaries of human behavior, thought, and intent. As Lewis Carroll notes, "'The question is,' said Alice, 'whether you can make words mean so many different things.'"<sup>9</sup> Many issues as well as behaviors fall between the black lines of the law into the white void of interpretation and imagination. In that thin, flat, white void judges have often found themselves at the mercy of the public, the press, and the internet blogs wherein moral imagination is narrowed to the view of the gallows.

Russell Kirk instructs that "the end of great books is ethical—to teach us what it means to be genuinely human."<sup>10</sup> I would like to believe that is the end of the Law as well, to teach us what it means to be genuinely human. In my mind, to be genuinely human, moral imagination should inspire us to see at the end of Law's vista something more than coercion, force, and obedience. On the other hand, the Law should not embody the contrary contemporary ethic implying that one may do as one pleases, as long as it doesn't hurt anyone else. Our laws should embody a vision larger than one of self-righteous narcissism. The positive law is drained of ethics inspired by the wisdom of the sages and the truth of the ages. This dearth of deep ethical reflection in the law leaves many who seek justice in the courtroom "half-alive hungry for any form of spiritual experience" in the process. I have seen many people trapped by the jaws of addiction, poverty, and educational disability. In most instances, I suspect that the root cause of their problems is spiritual in nature. Courts, however, are not equipped to provide "spiritual" assistance. Spiritual wisdom, nevertheless, lies near the heart of the moral imagination, and moral imagination is essential to define our humanity, "to teach us what it means to be genuinely

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8. T.S. ELIOT, AFTER STRANGE GODS 66–67 (1934), *quoted in* Kirk, *supra* note 6, at 39.

9. LEWIS CARROLL, THROUGH THE LOOKING GLASS (1871), *reprinted in* ALICE IN WONDERLAND, at 163 (Donald J. Gray ed., W.W. Norton 1971) (emphasis added).

10. Kirk, *supra* note 6, at 40.

human.” The task then is to explore those avenues whereby moral imagination may be accessed in the courtroom, despite our postmodern predilection to divorce legal validity from ancient notions of morality and justice.

The term “moral imagination” has been variously used to signify a number of different things.<sup>11</sup> Among the gifts described in connection with “moral imagination” is the ability to see more than meets the eye. Vigen Guroian describes the moral imagination as “a power of perception, a light that illumines the mystery that is hidden beneath visible reality: it is a power to help ‘see’ into the very nature of things.”<sup>12</sup> Paul Lederach suggests the necessity of the creative act in moral imagination, “the capacity to give birth to something new that in its very birthing changes our world and the way we see things.”<sup>13</sup> Lederach is deemed by many to be one of the world’s foremost experts on peacebuilding and reconciliation.<sup>14</sup> Lederach offers that “moral imagination has a quality of transcendence. It breaks out of what appear to be narrow, shortsighted, or structurally determined dead-ends.”<sup>15</sup> Lederach does not posit that the moral imagination is the “commodity or exclusive realm of a particular religious belief, much less religious establishments or systems,”<sup>16</sup> and he cautions against morality becoming “prescriptive dogma, creating moral stasis.”<sup>17</sup> On the other hand, he explains moral imagination as

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11. See, e.g., DALE C. ALLISON, *THE SERMON ON THE MOUNT: INSPIRING THE MORAL IMAGINATION* (1999); SUSAN E. BABBITT, *IMPOSSIBLE DREAMS: RATIONALITY, INTEGRITY, AND MORAL IMAGINATION* (1996); CHRISTOPHER CLAUSEN, *THE MORAL IMAGINATION* (1986); VIGEN GUROIAN, *TENDING THE HEART OF VIRTUE: HOW CLASSIC STORIES AWAKEN A CHILD’S MORAL IMAGINATION* (1998); JOHN PAUL LEDERACH, *THE MORAL IMAGINATION* (2005); CAROL A. NEWSOME, *THE BOOK OF JOB: A CONTEST OF MORAL IMAGINATIONS* (2003); MARTIN PRICE, *FORMS OF LIFE: CHARACTER AND MORAL IMAGINATION IN THE NOVEL* (1983); *THE MORAL IMAGINATION: HOW LITERATURE AND FILMS CAN STIMULATE ETHICAL REFLECTION IN THE BUSINESS WORLD* (Oliver F. Williams ed., 1997); Kirk, *supra* note 6. Interestingly, few authors have addressed the concept of the “moral imagination” in the courtroom. This author believes legal scholarship and philosophy should embrace the hope and vision of moral imagination to restore public confidence in our system of justice.

12. GUROIAN, *supra* note 11, at 141.

13. LEDERACH, *supra* note 11, at 27.

14. Lederach is Professor of International Peacebuilding at the Joan B. Kroc Institute of International Peace Studies at the University of Notre Dame as well as Distinguished Scholar at Eastern Mennonite University’s Conflict Transformation Program.

15. LEDERACH, *supra* note 11, at 27.

16. *Id.* at 28.

17. *Id.*

the capacity to imagine something rooted in the challenges of the real world yet capable of giving birth to that which does not yet exist. In reference to peacebuilding, this is the capacity to imagine and generate constructive responses and initiatives that, while rooted in the day-to-day challenges of violence, transcend and ultimately break the grips of those destructive patterns and cycles.<sup>18</sup>

The problem with the young defendant who appeared before me on that Monday afternoon docket was that, like so many others shuffled through the justice system, she was caught in the grip of Lederach's "destructive patterns and cycles." She did not have the capacity to "imagine and generate a constructive response" to her situation other than to resign herself to the penitentiary. She was firmly rooted in the day-to-day challenge of violence within her own soul. She was unable to envision any redemptive solution to the problem at hand. The same could be said of her lawyer, the prosecutor, the probation officer, and myself. We were all trapped within the hard, black lines of the law where positive reason and logic compelled us to conclude that the system had done as much as it could for this woman. The reasonable and logical response to her circumstance and repeated refusals to comply with terms of probation was to shelve her in a penitentiary, thereby ostensibly placing her out of harm's way. This was a blatantly false and forlorn hope in that we all knew she would likely be exposed to illicit drugs in prison and most likely would never emerge clean, straight, and sober from the department of corrections with her overnight pass to the Y.M.C.A. in hand. Positive black-letter law blankly presumes that illicit drugs and alcohol are not available in prison, but this is one more fairy tale people choose to believe for lack of broad moral vision.

Lederach proposes that moral imagination begins with the capacity to imagine ourselves in a web of relationships that includes our enemies.<sup>19</sup> Though I hardly viewed this young defendant as an enemy, I am certain from her standpoint, I was something akin to an enemy. In my hands rested her future. I symbolized the system which had reduced her sense of individuality to a common jumpsuit, her sense of liberty to steel manacles about her wrists, her sense of hope to a stint in a medium-security facility. To think of myself in a web of relationships that included a woman who partnered with a motorcycle-gang leader and recklessly used and sold dangerous drugs in the community

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18. *Id.* at 29.

19. *Id.* at 5.



required no small degree of humility and introspective self-regard. Such humility and personal inventory is what Lederach suggests is a prerequisite to enlivening the moral imagination.<sup>20</sup> Moral imagination requires me to see something of myself in the broken person standing before me, to see myself as being just as broken, and just as limited by my own lack of vision. Further, I must see myself in relation with the frustration experienced by her attorney and the smugness demonstrated by the prosecutor. I was tangled in a web of relationships that included all. Some saw me as a threat. In return, I saw them as a threat. They would likely assign a variety of descriptions to my decision dependent on the outcome: nuts, liberal, hard-hearted, wishy-washy, pandering, soft-on-crime, etc. All of us seemed only concerned about the end-result, not the process by which the result was to be achieved.

Looking within, I recognized that I did, in fact, feel angry toward this young woman because of "her" failures to comply with probation, "her" refusal to abide by the rules I had set, "her" weakness in just saying "no" to drugs. My impulse was to dispatch her firmly and quickly in consequence of her seeming lack of respect for my authority. I wanted to punish her for disappointing me; I wanted to show her where real power lies; I wanted to limit her vistas to exactly what she had earned. I took a deep breath preparing in my mind the litany of rationalizations for my decision.

And then, something seized me unexpectedly, a still, small voice from within, a restless disturbance of the conscience. Let there be no mistake. I was not actually hearing voices. I just sensed something in the nature of hoof-beats, of something pursuing me quietly and relentlessly. My breathing stopped, and in my imagination I saw myself sinking to my knees beside a great shore. I was fleeing along the shoreline, my hope for escape limited by a wild tangle of woods to one side and the crash of waves to the other. I felt pursued and helpless in that imaginative moment.

On the shoreline of my imagination, with my head bowed on my knees, I became aware of the fact that my own decisions in the past had contributed to the problem before me. When the defendant violated probation in the past, I served up punitive jail sentences in lockstep fashion and added additional exacting terms of probation. In so doing, I made her recovery efforts more onerous, more expensive, and less effective. My decisions and her choices led her to abscond from all probation supervi-

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20. *Id.* at 35.

sion and go on the run for months without assistance, aid, or support. During that time, she came close to death on more than one occasion. On the barren shoreline of that morally imaginative beach, I realized that I had failed as much as she. I was part of the pattern, and my choices had contributed to the outcome.

As she stood before me, my curiosity deepened. The hour was late. We had but a few minutes to say a few words before I would remand her to the sheriff's custody to be transported to the penitentiary. On that barren shoreline, I felt the pursing beast begin to gnaw at the bones, opening the core structure of things. I turned to see its face and saw nothing. I looked toward the defendant, feeling an immediate and overwhelming curiosity, a desire to know more about this person, more than what I could surmise from the pre-sentence reports, criminal records, and words of the lawyers. What struck me viscerally was the fact that I knew so little about this person whose liberty I was about to secure for a term of years. How did she get to be here? How did it come to this? What forces brought this woman before me, standing in the "rag-and-bone shop" of her soul, while I, perched on high in my flowing black robes, stared down at her like an insect to be swept from a window sill. Why was I sitting there and she standing before me? The answers in the pre-sentence report were unsatisfactory. Little or nothing was reported about her personal and family background. For all I knew, she could have been raised in a family very much like my own. Plainly, our paths at this point in our lives were widely divergent, though I strived to embrace the fact that we were two different souls whose paths had now intersected in time and space. Though the lessons for each of us were perhaps different, we both had been exposed to human failing, misery, guilt, rejection, and sorrow in our lives. Yes, though they would hide such sorrows within the folds of their robes, even judges have experienced such things. I tried a kindly, non-judgmental, inquiring voice.

"How did you come to be here?"

She struggled with her thoughts, began to say something, and then held back refusing to return my gaze. She said nothing. I changed my approach, again avoiding an accusatory tone.

"How did *we* come to be here?"

By that question, I meant to subtly convey to her that I perceived myself as an accomplice in her difficulties, that I, myself, had made decisions which contributed to her misery, and that I felt as confused and frustrated by the outcome as she did.

She looked up at me, nodded her head, and said, "That's a very good question."

She paused a moment, then said, "It's not your fault."

I shrugged my shoulders as if to say, "I'm not so sure about that."

Thereupon began a dialogue where we shared together the journey of her choices and my decisions. She confessed mistakes on the street, and I apologized for misjudgments on the bench. I invoked the possibility that each of us tried to play the hands we were dealt, and in many instances we may have played the cards wrong. This was an exercise in humiliation for me. I was the one person in the room expected to have all the answers. Now we began to dialogue on more even ground, each squarely facing the other, the defendant and her judge, alternately offering to bear responsibility for contributing to the breach in the web of relationships, the web of mutual understandings that ensures the fabric of society remains whole.

*Curiosity* suggests attentiveness and continuous inquiry about things and their meaning. Etymologically, it rises from the Latin *curiosus* which is formed on the word *cura*, literally meaning "to take care of" and having to do with both "cure" and "care," as in spiritual and physical healing.

From this we get terms like *caregiver* and *curator*.<sup>21</sup>

Of course Lederach is not referring to morbid, snooping curiosity which causes people to inquire after their neighbor's comings and goings. The curiosity of which he speaks is a curiosity founded in the first instance on caring for another person, desiring to know and understand the other so as to care more deeply. In this manner, what is not immediately perceived may become known. This is a key to accessing the moral imagination. As I inquired more deeply about the defendant's circumstances and choices as well as my own complicity in the outcome, a sense of caring emerged.

As we dialogued together, I began to sense my curiosity was transforming into a desire to care for her, to see her to well-being and success. Ironically, the more I inquired about her life and background, the more I learned something of my own heart. At some point along the way, I passed from simply making the decision to caring a great deal about making the *right* decision. The clock on the courtroom wall ticked through the minutes incessantly. The gears of justice groaned, but the desire to seek redemption, both my own and that of the defendant, surpassed my concerns about the clock and the docket. Beneath our words, I knew we shared a joint, deeply human curiosity, a passion to

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21. *Id.* at 36.

discover the truth not only about whom we were but also about whom we were meant to be. This required each of us to suspend previous judgments about one another. I had to move beyond seeing her as a "felon on the run." She had to move beyond seeing me as the gatekeeper to the penitentiary. We must move into a different sphere of understanding.

This different sphere of understanding is the moral imagination where solutions other than the most apparent emerge. This sphere invites acts of imagination, creativity, and risk. I asked the defendant:

"What do you suggest I do? What would you do if you were me?"

Embarrassed by the question, the defendant sputtered, "Well, you gotta do what you gotta do. I guess I'm goin' to prison."

"I'm not so sure," I said in response.

Then I waited silently, awaiting not only her response but more the response from deep within me. In my Christian spiritual tradition, I happen to believe in the existence of a great parade of saints who have gone before, and whose cumulative wisdom may be drawn upon at any given time. It is simply available for the asking. Science informs us that carbon, the essential ingredient of life on earth, comes in the first instance from the stars. The carbon in the bones of the saints was made from stars, and like the saints, I too come from the stars. So also did this broken woman who stood before me. She came from the stars. We are all born of stars. Sucking star energy into a courtroom on a Monday afternoon near the close of a ninety-case docket seems like nonsense. But the restraints and constraints of that courtroom bespoke pending acts of violence, violence to the human spirit, to human life. I was on the verge of casting away a life. At core, violence is anti-life. Here in the courtroom, one encounters a type of clamped-down, time-slaved, metaphorical violence. I envisioned the two of us, both the defendant and myself now, standing together on that barren shoreline between the tangled thicket and the pounding surf, back-to-back, looking outward, holding anti-life forces at bay.

At the periphery of my vision, I saw restless attorneys, anxious for their cases to be called, impatient with my oblique dialogue with the defendant. I felt the pressure of time, but I needed space and silence, a moment to be alone with the stars and the saints. In the rush of that hell-bent, Monday-afternoon docket I understood Edmund Burke's lament at the loss of those "superadded ideas, furnished from the wardrobe of a moral

imagination.”<sup>22</sup> If I could only reach into the closet, just this once, what would I find in the wardrobe of moral imagination?

Lederach instructs that the skill of an “artist” is required to breathe the possibility of life into a barren and desolate landscape. He admonishes those seeking to access moral imagination to “[b]e attentive to image. Listen for the core. Trust and follow intuition. Watch metaphor. Avoid clutter and busy-ness. See picture better. Find the elegant beauty where complexity meets simplicity. Imagine the canvas of social change.”<sup>23</sup> Acts of creativity and intuition necessarily involve risk. The art of judging is all about risk, conceptualizing problems and issues in a manner few others understand, paying attention as much to the periphery of one’s vision as to what is directly in front of one’s eyes. The process involves listening more than anything—listening not just to words but also to one’s own heart. That is a risky business in a court of law, one perhaps contemplated by the fathers and mothers of our country who envisioned the dissolution of political relationships in their earnest bid for freedom. In so doing, they did not simply invoke the strident black-letter laws of man, but they referenced in their great Declaration of Independence the “laws of nature and of nature’s God.”<sup>24</sup> These restless and risky visionaries contemplated a country with spiritual vision, and I question whether they intended to suspend such vision in their courts of justice.

Lederach’s treatise on the moral imagination cautions us about the risk of ventures into that realm.

The final discipline at the essence of the moral imagination can be described simply but requires heart and soul and defies prescription: the willingness to take a risk. *To risk* is to step into the unknown without any guarantee of success or even safety. Risk by its very nature is mysterious. It is mystery lived, for it ventures into lands that are not controlled or charted. People living in settings of deep-rooted conflict are faced with an extraordinary irony. Violence is known; peace is the mystery. By its very nature, therefore, peacebuilding requires a journey guided by the imagination of risk.<sup>25</sup>

As I meditated on the defendant’s life and future, I thought about the risks. Perhaps she would be killed as a result of my decision. That could occur whether I sentenced her to the peni-

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22. BURKE, *supra* note 2, at 239.

23. LEDERACH, *supra* note 11, at 74.

24. THE DECLARATION OF INDEPENDENCE para. 1 (U.S. 1776).

25. LEDERACH, *supra* note 11, at 39.

tentiary or placed her closer to the streets. The chances were good that if I allowed her near the streets again she would die. She confessed this to me herself. She was riding a rocket-sled to oblivion and making pretty good time. The penitentiary, in many ways, would be a safer choice. Perhaps she would sort things out behind bars. I sensed that was the general consensus of the room.

But something from within prompted me to eschew common "reason" and the "logical" choice. I began reciting the facts supporting my decision, all of which led inexorably to a department of corrections choice. Then suddenly, I found myself switching direction as I spoke, telling the defendant that I refused to give up on her, that I refused to bend to those forces that prompted her to beg that I place her in the penitentiary. I told her that despite all that she had done, I believed she still desired to discover the truth of her life, the truth about herself, and that the truth about whom she was meant to be. I tried to explain that the desire I sensed within her transcended all the tragic mistakes and misjudgments that had brought her before me at the end of that rowdy, crowded afternoon. I told her that at some deep level, I simply trusted her to find her way through the thickets and brambles so she could begin creating her life anew in accord with the dignity due to one born of the stars.

No doubt most people in the courtroom that day were baffled, and I would have shrunk in embarrassment if I had heard comments about me in the courthouse hallway beyond the doors of the courtroom. I also knew, however, that a human life was at stake, and I had this overwhelming sense that this person was as desperate as I in her search for peace and truth in life. I was also hoping this would result in an act of redemption near the end of that rancorous and unforgiving afternoon. I refused the prosecutor's request to send her to the penitentiary. I sentenced her instead to a community-based corrections program where she would again, despite her previous refusal to participate, be given the opportunity to enter a drug rehabilitation program. I understood the decision involved risk, the risk that I may have handed down a virtual death-sentence to this young woman, death through a self-inflicted drug overdose or death at the hands of those other desperados who supplied her needs on the needle-infested streets.

As she was led from the courtroom to begin her sentence, I silently whispered to myself, "Our Father, who art in Heaven . . . ." She looked at me curiously, confused as she was being led through the door in the wall into the holding cell and elevator which would take her to the jail and her eventual place-

ment in community corrections. Her glance was unnerving, as if to say, "You idiot, do you have any idea what you are doing?" I felt a great discomfiture. I had just broken almost all of the unwritten rules.

When Edmund Burke spoke of "the moral imagination" he decried the loss of civilization at the hands of those who had no respect for the rules. He excoriated revolutionary rule-breakers. Burke was not about breaking rules. I feel the same, and I even felt the same that auspicious day. I recognize the importance of the rule of law and routinely lecture prospective jurors on the importance of the rule of law. I also understand that the rule of law goes only so far. What is a judge to do in those white-hell spaces between the lines, those margins between the structures, where the prescribed solutions are not so obvious as black letters on white paper. I submit that in those liminal zones, if one is open to risk and creativity, something in the moral imagination may find air to breathe in a court of law. Those moments may not be planned. They are a creature of art as much as logic. The moral imagination is serendipitous and spontaneous. One must be willing to take the risk without a great deal of forethought or reflection. The moments do not last for long. When an opportunity presents itself, one must act swiftly or they will lose the opportunity in an instant.

Much more can be said about this topic. I welcome the reader's review of the burgeoning body of literature concerning "the moral imagination."<sup>26</sup> I doubt that any one source may be relied upon to clarify thoroughly and competently the meaning and implications of moral imagination in the new millennium. I have chosen to rely on Lederach's work because I believe I see analogies between his work as a peace-keeper in the world of international conflict and a judge's work in the conflicted, adversarial zone of a courtroom. I praise Lederach for his vision, reflecting as noble and civilized an impulse as any I have known. His actions and his words lend dignity to Burke's phrase, "the moral imagination." My own contribution to the literature on this subject is nothing more than the splash of a small pebble on the surface of a great, blue sea—the sea of moral imagination. I commend each of you to seek what lies near the borders of the structures that be, the accepted notions of the way things are. I commend you to listen closely to the silence, to wait, to watch, and to respond fearlessly when the moment arrives. Therein, I trust, you will find a more excellent way.

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26. See *supra* note 11.

## EPILOGUE

Four years following the date of the incident described above, I was sitting alone at the bench in Courtroom 5A, Division 2, Jefferson County, Colorado. The morning's activities had been concluded, the lawyers had left, and I was quietly straightening up the bench before leaving for lunch. I heard someone pushing the double-door latch at the back of the courtroom. Looking up I saw a door swing open and a young woman walk into the courtroom. She was dressed modestly but professionally in business attire, and her hair was perfectly coifed. She walked confidently down the center aisle without saying a word, her chin held high, looking directly at me. I stared back impatiently, neither smiling nor greeting, so as to convey the message that she should mind courtroom boundaries. She seemed, however, at ease in the surroundings, holding my gaze steadily, undaunted by the prospect of confronting a sitting judge who was in the "do not disturb" mood. I presumed she was a lawyer bent on asking an *ex parte* favor. I remained on guard.

She came to the end of the center aisle, stopping at the well of the courtroom, standing quietly and expectantly, as if waiting for me to say something. I said nothing. I bluntly stared back at her. An awkward silence followed wherein neither of us said anything. Then she asked, "Your Honor, do you remember me?" I have been asked this question hundreds of times over the years. I have heard it in the courthouse halls, on the street, and in stores and restaurants. I always find the question embarrassing because I do not have a particularly acute memory for names or faces. More often than not, I confess confusion and mumble an inept apology. At this juncture, enjoying some peace and privacy at the bench, I was not feeling particularly apologetic. Anxious to get to lunch, I was not in the mood to play memory games with this woman. Something, however, struck me as being vaguely familiar about the woman, something about her eyes, the square of her jaw, that struck a memory chord. I looked closer now, a storm surge of recognition rising from the pit of my stomach.

It was her. Her name, long forgotten or suppressed, suddenly crashed against the forefront of my consciousness. "I know who you are," I said slowly, deliberately, and steadily. Then I pronounced her name. In doing so I felt a certain apprehension. Was I right? Could this be the same person? I felt a twinge of fear awaiting her response. If this was the same person, why was she standing here before me? Had she come to scold me, to tell me how wrong I had been? Was she here to do worse? Instinctively, my hand moved beneath the bench toward the emergency alert



button, the button which would bring at least half a dozen armed sheriff's deputies within seconds. I had only pushed it once in ten years on the bench, and that was when I accidentally pushed it during the course of a trial. That, however, is another story, an amusing one to be sure, but only after the fact.

The woman suddenly beamed at me. "You remember!" she half-shouted, clutching her hands together and raising them as if in spontaneous prayer.

I smiled back at her. "Yes," I said smiling, "I remember you."

"I have something to show you, something I want you to see!"

"Alright," I said unhurriedly, "Let's see what you've got."

She reached into a large purse hanging from her shoulder and produced an oversized envelope. Gripping it in both hands, she inquired, "May I approach the bench, your Honor?"

"Of course you may."

She marched quickly to the bench, stretched forth her hands with the envelope and said, "Look inside."

I opened the envelope, feeling that same old curiosity. Reaching inside, I withdrew a document, a single document on heavy-stock paper. Holding it carefully beneath the soft light of the bench lamp, I found I could hardly breathe. I stared at the document, afraid if I dared to look at this woman I might unjudiciously burst into tears. Even as I write these words, my eyes fill with tears recalling the moment. The seal, the carefully spaced lines, the brilliant black letters on parchment paper, the gorgeous calligraphic swoops and curves of the lettering, the date, the official signatures and titles, all verifying to me the accomplishment of something not merely significant, but something truly heroic. In my hands, I held a Bachelor of Arts Degree diploma from a distinguished state university, and emblazoned on that degree was the name of this erstwhile ex-felon. She stood radiantly before me.

"I don't know what to say," I stuttered, shaking my head in disbelief.

"You don't need to say anything," she replied calmly and evenly. "You did your part, and I did mine. I just wanted to thank you personally." She smiled up at me, and said, "I should also tell you I have been accepted into a Masters in Business Administration program." Her smile widened.

"Oh my gosh," I sputtered, "will you invite me to your graduation?"

She laughed, "Of course I will, but do you have a few minutes before then? I would like to tell you my story."

"My time is yours," I said without hesitation.

She then told me her story, how she had left the courtroom that day in handcuffs to be delivered to the community corrections facility, how she had resented the fact that I had ignored her request to "just send her away," how she had actively resisted the efforts of those in community corrections to get back into drug treatment, and how one day, out of sheer boredom she had finally decided to go to a meeting because the old judge refused to believe she was done with her life. The rest of her story is remarkable, in the truest sense a heroic journey of the heart and will. Her story, like so many others must await another time and place, but having heard her testimony concerning that journey, I can attest to it being a breathtakingly beautiful testimony to the relentless struggle of the human soul for peace, reconciliation, and redemption.

These days we occasionally contact each other through correspondence or telephone chats. We retouch the reality of the past as if to make sure it was not just a dream. She has become a personal friend of my family. Almost eight years have passed since the day when she sauntered into Courtroom 5A, confused and resentful. I am delighted to report that she has achieved an outstanding position in sales with a company whose compassion and generosity in hiring a convicted felon can only be praised. In a state where tight-chested fear has prompted legislation that precludes convicted felons from having their records expunged or sealed, it takes nothing short of moral imagination for a company to welcome as employees people who made mistakes once upon a time, but who have fearlessly moved beyond those choices. I have learned so much from such brave, young hearts over the course of years.

Moral imagination, Lederach reminds us, involves a risk "to step into the unknown without any guarantee of success or even safety."<sup>27</sup> I understand his words. I have lived them. I have taken risks and failed, even failed miserably. I do not consider myself a particularly lucky person, but once upon a time I was a judge. I don't know that I was a particularly good judge. I did, however, dream one day of doing my job in a more excellent way. The path was not always pleasant. I took risks. In some instances I paid the price, but even for this one woman's life alone, all the risks were worthwhile. I have lived the mystery. I have no regrets. I took risks, some of which upon reflection I should not have taken, but none of which I regret. I commend to you the journey, a redemption journey in lands neither designed nor suited for

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27. LEDERACH, *supra* note 11, at 39.

peace or redemption, where the inhabitants thrive on conflict and division. Therein lies the irony; therein lies the moral vision.<sup>28</sup>

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28. To a certain extent I have taken liberties in fictionalizing facts or time-compressing details concerning the events and lengthy legal proceedings involving the defendant and myself. This is necessary for two reasons. First, I wish to protect the defendant's privacy from unwarranted intrusion. As a convicted felon, she faces almost insurmountable difficulties in proceeding through life despite what I deem to be her complete rehabilitation. I have no wish to make her life more difficult than it is by revealing facts which could be revelatory of her identity. Second, the lengthy and involved series of court proceedings leading to the eventual conclusion of her relationship with the criminal justice system requires further compression of time and fact to spare the reader needless and unnecessary details about procedural minutia. I have requested my defendant friend to review this account, and she has granted me permission to submit this story to you. She says, "Yeah, that's pretty much the way it went down." She then smiles, shakes her head and laughs, saying, "Can you believe it?" I am most thankful to her. I have learned so much more from her than I could ever hope to teach her. She has essentially taught me what it means to be a judge.