

Why I Don't Tell Lawyer Jokes

Wallace R. Hoggatt¹

Twenty-seven years ago, when I was the Cochise County Public Defender, the local church I belonged to asked me to attend a meeting of the regional organization one Saturday in Tucson. I'm not entirely sure why my church sent me, and I'm even less sure why I went, because I suspected – correctly as it turned out – that the meeting was being held solely to satisfy someone's bureaucratic notions. Hey, we have a Southern Arizona region; we're supposed to be doing something; so: let's have a meeting!

Fortunately, the meeting's organizers gave us recesses every so often. (And because we were meeting at a school,

¹ Keynote speech for Law Day 2012: Cochise County Courthouse, Bisbee, Arizona.

“recess” is the correct word.) During one recess, as I was drinking a cup of not-very-good coffee, I fell into conversation with a well dressed, well-mannered, pleasant lady. We introduced ourselves, and after she told me she was a retired widow originally from Ohio she asked me what I did for a living.

I told her I was the Public Defender for Cochise County. “Public Defender,” she repeated, and then asked, “What’s that?” I told her that it was my job to defend people charged with crimes if they didn’t have the money to hire lawyers for themselves. “What kinds of crimes?” she asked. I told her that the charges could be anything from murder to child molesting to armed robbery to burglary to drunk driving and all points in between. “Oh,” she said, and she seemed troubled. Just then the bell rang – we were at a school, remember, and the bells were actually in use – and we had to go back into session. “Well,” said the lady to me as we headed inside, “it

was nice talking to you, and I hope someday you get a *good job.*”

Ouch. “*Get a good job.*” Why didn’t she just give me a nice paper cut and pour lemon juice on it? “*Get a good job.*” That’s what you tell your twenty-year-old nephew who wants to hitchhike to New York to become a street performer. *C’mon, kid, get a real job – work for the post office or join the Navy or something. Starbuck’s, even.* But she was a nice lady and I didn’t tell her how insulted I felt. I just told her it was nice talking with her, too.

But her parting shot got me thinking: why does she think that way? My best answer is that she has a problem with the whole concept of advocacy. Not all advocates are lawyers, of course, but just about all lawyers are advocates, assuming they really are lawyers and not just corporate or government functionaries. Advocates speak on behalf of someone else; they can and often do speak on behalf of the rich and powerful –

advocates have been known to follow the money, after all – but I’m going to focus on those who speak on behalf of the poor, the powerless, and the despised.

Even under the best of circumstances, with the nicest of clients, the demands of advocacy may cause lawyers to act in ways that the rest of society may not like – by special pleading, splitting hairs, and making arguments that make no sense in any rational universe. But beyond that, lawyers act as advocates for people and causes that are often unpopular if not actually detested; and lawyers are disliked as a class because of their clients. Imagine yourself as a lawyer appointed to represent someone accused of some ghastly torture-murder, and you can get an idea of what I’m talking about. The lady at the meeting probably had a low opinion of me because of the company she thought I was keeping.

Most of us, regardless of background, would agree with certain fundamental values that should be recognized and

upheld in human society: the basic worth and dignity of every person; the need for justice, fairness, and compassion; and the goals of peace and freedom throughout the world.

These values don't come with a guarantee; we're not assured of achieving them, now or in the future. The inherent worth and dignity of a great many of our fellow human beings are ignored routinely; justice, equity, and compassion in human relations are frustrated and denied; and the goal of world at peace that extends liberty and justice for all is mocked as a matter of course. But sometimes our values are advanced – and those advances require the work of advocates, and neutral courts, independent courts, where advocates can do their jobs.

During World War II, most Japanese Americans were denied basic rights to live where they wanted and to travel where they wished. They were shipped to internment camps. I grew up in central Los Angeles in the 1950's and 60's, and in

my neighborhood and my public schools we had many Japanese American kids. And for almost all of them, their parents and grandparents and uncles and aunts had been in those camps. *That had to have been true.* But I only remember one occasion that a friend of mine mentioned that her parents had been in the camps. So many just didn't talk about it, like it was some kind of shameful family secret. The camps were shameful, it's true – but the prisoners weren't the ones who should have been ashamed.

During the war native-born American citizens named Minoru Yasui, Gordon Hirabayashi, and Fred Korematsu fought against various aspects of their treatment in court. They were separately tried in three federal district courts on the west coast. They lost their trials and lost again in the U. S. Supreme Court in 1943 and 1944, in three infamous decisions. In the 1980's Japanese Americans as a group were vindicated in part; Congress authorized small payments to victims of the

internment camps and President Reagan signed the legislation. It wasn't enough, but it was something. And specifically, with regard to Korematsu, Hirabayashi, and Yasui, they were able to reopen their cases decades after their rights as American citizens were stripped from them. And who made sure this happened? Certainly *they* did; they showed great courage to stand up for their rights, in the 1940's and decades later when they authorized the reopening of their cases. But also: Lawyers were essential to reopening the cases.

A scholar who had done research into the internment of Japanese Americans during the war recruited a team of lawyers who successfully reopened the three cases. Many members of the legal team were children of Japanese Americans who had been in the camps. A society that didn't recognize and protect the role of advocates in the justice system wouldn't have produced the lawyers who were able to take these cases back to court. And honest, independent judges

in three federal district courts were available to grant relief in these cases. A society that did not recognize and protect the independence of the judiciary wouldn't have had those judges – or, if it did, wouldn't have allowed them to enter the orders that they did.

The preservation and protection of valuable rights depend on lawyers and on courts. It's not popular to say it, and it wouldn't make the tellers of lawyer jokes happy to hear it, but it's still true.

By the way, I never tell lawyer jokes, and if you want to know the reason, it's a simple one: *they're not funny*. And I'll let you in on a little secret: *they're not supposed to be funny*. In fact, they're effective *because* they're not funny: any hint of genuine humor would get in the way of what really is going on. They are designed to allow people to say, "I hate lawyers," over and over and over and over.

People who tell such jokes might imagine life to be better in a world suggested by the title of a 1977 book called *Law Without Lawyers*,² about the Chinese legal system. The title captured the idea that in China a lot of disputes that would be resolved with aid of lawyers and courts in America would be handled much differently in China. Not only was the author describing law without lawyers, but he also thought he was describing justice without courts.

Now, China has lawyers and China has courts, but they haven't had the influence or importance there that they have here – and their failures of justice will serve as proof of that. I thought of *Law Without Lawyers* in June 1989 when I heard the news of attacks by government troops against unarmed protesters in Beijing. Even today, no one outside of the Chinese ruling class knows how many protesters were killed.

² Victor H. Li, *Law Without Lawyers* (Stanford: The Portable Stanford, 1977).

Article 35 of the Chinese Constitution declares (as it declared in 1989): “*Citizens of the People's Republic of China enjoy freedom of speech, of the press, of assembly, of association, of procession and of demonstration.*”³ The protesters may have thought they had the right to do what they did, and the right not to be shot to death for doing it. But they didn’t have a means of enforcement. There weren’t lawyers sufficient in number or training to take effective legal action, and there weren’t independent courts in which any cases like that could be presented. And if you *think* you have a right but you can’t enforce it when it’s violated – well, then, you don’t really have the right, do you? You just have words on a page.

Law Without Lawyers. That’s Tiananmen Square.

Now, I know what you’re thinking: Tiananmen Square. That’s *so* 23 years ago. Well, let’s talk about something closer in time. For the past year, Syria has been waging war against

³ See english.people.com.cn/constitution/constitution.htm.

its own people. And I mean that literally: there is a war in which the government of Syria is shooting and bombing its own people. It's always hard to estimate such things, but as of mid-December 2011, about 5000 had been killed, at least according to the United Nations.⁴ Extrapolate out, and make allowances for the increase in violence, and you might get to twice that number today. Although it is true there are armed rebels fighting against the government, mostly what's happening is this: The government – which can best be described as a “thugocracy” that the current thug-in-chief acquired a dozen years ago from his father – is fighting its own ordinary citizens who might want to complain against its policies. Syria isn't the only country in the Middle East (or elsewhere) that's been doing that sort of thing recently, but it seems to be among the more brazen. By the way, recently they

⁴ “Arab League delegates head to Syria over ‘bloodbath,’” www.usatoday.com/news/world/story/2011-12-22/syria-arab-league/52159302/1. See also <http://answers.yahoo.com/question/index?qid=20120212091214AAToOSo>.

were supposed to have had a cease-fire,⁵ but a cease-fire only works when people *cease firing* – and that hasn't been happening.⁶

Like China, Syria has a Constitution. In fact, it has a nice new Constitution, hot off the printer this year: although in many ways the new constitution and the old one it replaced are pretty much the same. The new Constitution, like the old one, contains some promises of personal rights and freedom.

Article 42 gives citizens freedom of belief and speech and expression, whether in writing or orally or any other means; Article 43 grants freedom and independence of the press and other media; Article 44 gives “[c]itizens...the right to assemble, peacefully demonstrate and to strike from work...” Now, many of these principles come with a built-in back door, as in: you have the right to assemble *but the law regulates the exercise*

⁵ “Syrian crackdown is now ‘interolerable,’ UN chief says,” *The Arizona Daily Star*, April 28, 2012, p. A22.

⁶ “Syria slams UN chief’s remarks blaming it for truce violations,” *The Arizona Daily Star*, April 29, 2012, p. A23.

***of that right.* That’s a little like saying that you have the right to assemble and demonstrate against the Syrian government until the Syrian government says you can’t.**

The Syrian Constitution, in both its new and old versions, *claims* to establish independent courts. Their constitution *says* that it is guided by the rule of law.⁷ It also in fact establishes various courts, and it *says* that its courts and judges are independent.⁸

But what guarantee does the Syrian Constitution offer that there will actually be independent courts? “[T]he President of the [Syrian] Republic insures this independence assisted by the Supreme Judicial Council.”⁹ And the guy in charge of Syria is also the guy who is in charge of the Supreme Judicial Council. And so the guy whose army is waging war

⁷ Article 50.

⁸ Article 132: “The judicial authority is independent...” Article 133(2); “The Supreme Judicial Council insures the provision of the guarantees necessary for the independence of the judiciary.” Article 134(1): “Judges are independent and there is no authority over them except that of the law[.]”

⁹ Article 132 of the new constitution; Article 131 of the old one.

against his own people is the same guy who runs the Syrian judiciary. And if the supposed guarantor of the independence of the courts is the one person they most need to be independent from – well, then, they aren't all that independent, are they? They have no independent courts; they have no true justice; they have no real liberty. What they have is words on a page.

Here, of course, things are different. Article III of the United States Constitution and Article 6 of the Arizona Constitution set up court systems. Within our American political and historical values, we recognize and support independence in our judicial systems – that is, that courts not be controlled by the political bosses of the hour. Politicians don't get to tell judges what to rule, and they don't get to retaliate against courts for rulings that the political bosses don't like.

We live in strange times, when political zealots all over the spectrum have been in a rapidly-escalating game of outdoing their political enemies in attacking the courts. It isn't easy these days to support the court system – especially when the rules of judicial ethics often mean that when we're attacked, we're not allowed to fight back.

But Americans who truly understand and appreciate our civic virtues – who are not just *patriots in name only* – know that advocacy, and neutral and independent courts where advocacy can be presented, are essential to the American Republic.

Our Constitution means something. For it to continue to have meaning – and in particular, for it to accomplish its own stated purpose of establishing justice and securing the blessings of liberty to ourselves and our posterity – we must continue to have independent courts, and to protect them against all enemies, foreign *and* domestic. That way the

Constitution of the United States, and the Constitution of the State of Arizona, will never be turned into the functional equivalents of the Syrian Constitution. They will never merely be words on a page.