

ON POLITICAL QUESTIONS

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As the new dean of a law school, recently arrived, entirely inexperienced, and almost a total stranger to the community, I received one afternoon a telephone call from a man whose name I had never heard before. He asked me to indorse one side of a minor question of a political, controversial, and faintly legal nature, which for a short season has engaged the attention of the press; and he wanted to make public use of my name in support of that position.

It is, I think, quite immaterial to what follows who the man was, or what group he represented, or what the issue was, or on which side of it he stood. It is also, I think, quite immaterial what my own political views may be, or on which side of that particular question I should find myself if I were required to decide; or indeed whether I have any opinion whatever on that question, or had ever heard of it before. All that follows is in no way affected by these matters; and if no more is said about them, it should be possible to narrate the conversation without treading on the toes of anyone, or arousing the indignation that is inevitably felt toward anyone who is so biased, unintelligent, corrupt, or altogether perverse as to be on the other side.

After my unfamiliar caller had completed his rather lengthy explanation and request, there followed a bit of cross-examination, which I offer for the consideration of some future Francis Wellman. It is necessarily quoted from memory, but it is sufficiently accurate to give both the substance and the flavor of the conversation.

Q. I beg your pardon, sir, but do I know you?

A. No.

Q. Do you know me?

A. No, but—

Q. Have you ever seen me?

A. No, but—

Q. Did you know that I have just arrived in the state?

A. No.

Q. Do you know where I come from?

A. No.

Q. Do you know anything about me except that I am a dean of a law school?

A. Well, of course, I know your writings—

Q. What writings?

A. Well, uh—

Q. Do you mean my books?

A. Yes.

Q. What books?

A. Well, at the moment I can't—

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Q. My book on Conflict of Laws?

A. Yes, that's it.

Q. And my book on Admiralty?

A. Yes.

Q. I regret to say that those books have not yet been written. Can you tell me one single thing that I have ever said or done or written?

A. We-e-e-e-ell—

Q. May I ask when you first heard my name?

A. Well, I don't know. I think it was—

Q. Wasn't it today?

A. Oh no, I don't think so.

Q. Come now, be frank with me. You asked for the name of the new dean, and as soon as you found it out you picked up the telephone and called me. Isn't that right?

A. Well, yes.

Q. Then you are asking for my opinion as the dean of a law school rather than as an individual?

A. We are asking for both.

Q. If I were not the dean of a law school, you wouldn't give a tinker's damn for my opinions?

A. Oh no, that isn't true. We are approaching a group of distinguished legal scholars—

Q. What made you think I was a distinguished legal scholar if you never heard of me until five minutes ago?

A. Well, any dean—

Q. On behalf of the fraternity of deans I thank you. All of them will be flattered. What makes you think I know anything about this question?

A. We felt that any distinguished—

Q. For the last twelve years I have been working almost entirely in the fields of torts and bills and notes. Do you think that work qualifies me in any way to have any better opinion on this question than any other lawyer?

A. No, I suppose not.

Q. Have you any reason to think that I know anything about the facts on which you are asking me to express a public opinion?

A. It's all been in the papers.

Q. Other members of the bar read the papers. How many of them are you calling?

A. We are only asking a group of distinguished—

Q. Then if I were not distinguished by being a dean you would not call me. Isn't that right?

A. I guess it is.

Q. So you want my opinion as a dean and not as a person.

A. We want both.

Q. Will you publish a statement from the dean of this law school without mentioning me by name?

A. Well, yes, if you want it that way. Of course we'd rather—

Q. Will you publish my personal statement without referring in any way to the fact that I am the dean of a law school?

A. Oh no, we'd rather not do that. We want people to know who you are.

Q. Then what you want is a statement from the office and not the man.

A. You put it so unfairly—

Q. Isn't it true?

A. No.

Q. What's wrong with it?

A. (No answer).

Q. The dean is the head of the law school. When you ask for a statement from the dean, you are really asking for a statement from the law school, aren't you?

A. We are only contacting a group of distinguished—

Q. There are a number of professors on the faculty of the law school. Some of them would certainly disagree with any opinion I might offer. Do you think I am entitled to speak for them?

A. Surely your position qualifies you—

Q. How?

A. (No answer).

Q. Have you called any other members of the faculty?

A. I shall be glad to if you will give me their names.

Q. You don't know their names?

A. No.

Q. Then again what you are after is a statement from the office and not the man?

A. Look here, I don't think you have any right to ask me all these questions. We are trying to enlist support in a worthy cause, and if you don't want to help, say so and we'll let you alone.

Q. Please bear with me. I don't mean to be unreasonable or unfriendly, but I'm new at this job and this is the first time I have run into anything like this. I'm only trying to get it all straight in my own head. Will you please, as a favor to me, answer a few more questions?

A. Well, all right.

Q. If I take a vote of the law school faculty, and it comes out ten to one against you, will you undertake to publish it?

A. You can't expect us to do that.

Q. Why not?

A. We are trying to enlist support in a just cause. They can publish their own statements.

Q. But so far as what you publish yourself is concerned, you would take my statement in support even though it might be in a minority of one?

A. Yes, we would.

Q. You would publish it because I am a dean and because the public would think that I represented the school?

A. We would publish it because you are a distinguished—

Q. Really, now, I thought we had that settled. Don't you think the rest of the faculty might be justified in resenting it if I used this position to sound off on my own personal opinions on the issues of the day?

A. I don't see why.

Q. Have you ever been a professor?

A. No.

Q. The law school is a department of the university. The dean and the professors from whom you are seeking support are created and maintained

by the university. When you ask the law school for support, you are really asking the university, aren't you?

A. Part of the university.

Q. You are not calling the department of entomology?

A. What's entomology?

Q. Insects. Bugs.

A. This hasn't got anything to do with bugs.

Q. If you wanted an opinion on bugs you would call entomology, wouldn't you?

A. Yes.

Q. And let the law school alone?

A. Yes.

Q. And you would think, and you would expect the public to think, that you had the only part of the university that counted?

A. Yes.

Q. And you are now calling the law school for the same reason?

A. Yes.

Q. And you are asking me to represent the law school, and through it the university?

A. We are asking you as a distinguished—

Q. Oh, come off of it. I never have been photographed as a man of distinction. The only reason you have called me, and the only reason you or anyone else would pay the slightest attention to anything I say, is that I am the dean of this law school. Isn't that true?

A. Well, yes, I guess it is.

Q. There are several thousand professors around this place, and a lot of them are opposed to your ideas. How do you think—

A. I don't see how any decent citizen could fail to support us.

Q. There seem to be a good many indecent citizens who don't agree with you. How do you think they are going to feel if I take advantage of my position here to start broadcasting my ideas on an issue like this?

A. Well, they might not like it, but—

Q. The university is supported by the taxpayers of the state, and a lot of them won't agree with you either. How do you think they will feel about it?

A. Well, I suppose they won't like it.

Q. Do you think it's going to do the university any good? Or even the law school?

A. Do you mean to say you're not supposed to talk? Haven't you got academic freedom of speech out there?

Q. Certainly. I can say anything I please about this or anything else, as long as I stay out of trouble with the police. So can any man on this faculty. If anyone ever tries to muzzle us I will resign so fast there won't be time to put it in writing. I think the rest of them will too. And that goes for politics or anything else.

A. Then I don't get it.

Q. There is a difference between what a man can say if he insists on saying it, and what he ought not to say out of a decent regard for the proprieties and what other people are going to think. I will speak my piece about anything and say what I like, and no one is going to stop me when

I'm talking for myself. But when you put me in a position where I am to speak for my position in this school and nothing else, and people will listen to me only because I am connected with it, I say it's out of bounds.

A. But what about all these professors who issue all the statements about everything? Do you mean to say that just because they are professors they can't talk?

Q. Of course they can.

A. But they can't mention that they are professors? Is that what you mean?

Q. Of course they can. It's no disgrace.

A. Then I still don't get it.

Q. What I am trying to say is that they can't speak for the school. When they send out manifestoes that sound and are meant to sound and to impress the public as if they were issued on behalf of the university, then I say again it's out of bounds. Personally I wouldn't do it.

A. But why?

Q. At least out of an ordinary, elementary regard for the institution, and for the opinions and feelings of other people in it who don't agree.

A. Can't a law school indorse a cause?

Q. I think that a law school, as distinguished from the individuals in it, has no more business indorsing a political cause than it has indorsing a shaving lotion or a cigarette.

A. What good is your academic freedom if you can't use it?

Q. I don't see that this has anything to do with academic freedom. Academic freedom is the privilege of saying what you please without discipline or interference from the university or the legislature, and without prejudice to your prospects of advancement. I will defend that to the last ditch. This is an individual question of judgment and propriety and good taste. You don't wear a bathing suit to church even if you are not going to be arrested for it. For the same kind of reason I don't intend to use my position as dean of this school to broadcast my personal opinions on public issues when no one would pay the slightest attention to what I think if I didn't hold this job.

A. When you take that position aren't you necessarily speaking for your law school now?

Q. Certainly not. You've asked me a personal question, and I'm giving you a personal answer.

A. What about the rest of the faculty?

Q. Go ahead and call them. If any of them want to say anything for publication they are perfectly free to give it to you. And I mean free.

A. But when they know how you feel about it won't they stop talking? Isn't this kind of personal attitude on the part of a dean as effective a muzzle as any order the school could issue?

Q. I certainly wouldn't expect it to be. When I was a professor I never paid any attention to the ideas of a mere dean. I don't think anyone on this faculty is lacking in the gumption to disagree with me.

A. How are you going to tell when a man is speaking for the school, as you call it, and when he is just expressing his own opinions as an individual, as you say you are now?

Q. I don't know. I think it's up to his own judgment in the particular circumstances. If he can't make the difference clear there's no law that says

he has to talk. At least in this case it's pretty clear that you are asking for my opinion as dean of this law school, and not as a chessplayer.

A. Can't you give us your opinion as a dis— . . . well, anyway, as a legal scholar?

Q. I don't know anything about teaching Torts that qualifies me to pontificate on public issues. Or Bills and Notes either.

A. You're a lawyer. Won't you give us a statement as a lawyer?

Q. How can I give you any statement that you won't use as coming from this law school?

A. Then your answer is No?

Q. Will you answer me one more question?

A. After all this I guess I can take it. What have I got to lose?

Q. If you were in my shoes would you issue any statement on a thing like this?

A. In so important a cause—

Q. Honest, now.

A. Well, maybe I wouldn't.

Q. Thanks. I won't.

A. Well, Dean, all I can say is, I'll be damned.

When I started to report this conversation I had the idea of offering a few comments on it. Now I find that I have none to offer. Perhaps someone else may have.