

Bernard E. Witkin, Esq., Award Acceptance Speech

by Charles R. Dyer

Annual Bernard E. Witkin, Esq., Awards Dinner

Law Library Justice Foundation

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[Biographical introduction was by Ronald Styn, Judge, San Diego County Superior Court.]

Thank you, Judge Styn, for your kind words. Since 1995, I saw the Bernard E. Witkin Award presented and accepted by some of San Diego's finest lawyers, judges, and educators. Their stories were always inspirational, and I always left the dinner feeling very good about the profession and the San Diego legal community. I am deeply humbled by being included in this group of civic leaders.

My service to the San Diego community could not have been possible without the support of the trustees and staff of the San Diego County Public Law Library and the support of the trustees and donors of the Law Library Justice Foundation. I thank you sincerely.

I would also like to thank the bar and the judiciary generally for their support of the Law Library. In 2004, when the Public Law Library won the San Diego County Bar Association's Distinguished Organization Award, I remarked that folks had asked me if I thought the Law Library should have a friends group, and I said that it already did, as the local bar associations were already acting in that stead, providing both financial and political support for the Law Library whenever we asked. Of the many groups who did so much, I would particularly like to thank the North County Bar Association, which has taken on the North County Branch as a cause worthy of continuous support. And the Superior Court has not only cooperated in several programs with the Law Library, it helped the Library get several grants for very good programs. Lastly, I would like to thank the San Diego Volunteer Lawyer Program, which created the Law Library Clinic.

Receiving the Bernie Witkin Award is also very pleasing to me because I got to know Bernie as he came to lecture at the Law Library about every two years until he died a few months after the first Witkin Award was presented. Of the several Bernie stories that I have, one of my favorites is the time that I invited criminal defense attorney Matt Lees to a luncheon with Bernie. Matt is a friend whom I invited on a whim simply to fill a vacant spot, as one of the bar association presidents cancelled at the last minute. Bernie spent some time talking to Matt, and Matt told me later that the luncheon was one of the highlights of his life.

When I first went to law school, I had just completed a Masters in philosophy. I had studied ethics and philosophy of law and had come to realize that the professors who made the most sense to me were those who had a law degree, as well as the Ph.D. My original plan was to return to a Ph.D. program after law school. Instead, while in law school, I worked in the law library as a work-study student. By my third year, I was in charge of hiring and assigning the

other student employees. I found I had a penchant for administration and a love of libraries. So I was encouraged to go on for my Masters in library science, and I began my career as an academic law librarian and law professor.

I went to law school in the early 1970's, and the prevailing jurisprudence at the University of Texas was legal process theory, which held that the law is self-contained and the problem for judges is mostly to interpret the law. Some profs still espoused progressive legal realism, which incorporated sociological jurisprudence, meaning that judges could look to societal circumstances and outside evidence in making decisions. In other words, the debate was whether the courts should be proactive in forming new law. While in school, we had the Watergate hearings and *Roe v. Wade*. Since I personally supported *Brown vs. Board of Education* and *Roe*, I had a hard time listening to my administrative law professor rail on about how bad the *Roe* decision was. But I did not have a philosophy that could counter his arguments.

Later, while I was a law professor at the University of Missouri at Kansas City, postmodernism began to take hold of some of the brightest of Ivy League law professors, in the form of critical studies and also law and economics, but at UMKC faculty still had difficulty trying to devise a philosophy that would support a results-oriented jurisprudence. It seemed the only successful ones were those who chose natural law, which was really a conservative religious based form of law as they applied it. Yes, there were results from that, but not the results I favored. Those professors were in the minority and they left for places like Oral Roberts University. Other professors, who understood postmodernism, left for Ivy League schools. I decided to leave, too. But mostly, I left because the Law Library was not well supported, as the administration was always pitting its funding against faculty salaries.

On my wife's advice, I looked at other types of law libraries as well as academic. One thing I really liked when I interviewed at the San Diego County Law Library was that the board of trustees were all volunteers who chose this service, instead of faculty members stuck on the library committee. The relatively independent funding of a civil filing fee was also appealing. Working with people who actually practiced law was another appeal. After working in academic administration for ten years, the politics did not scare me. In fact, much to my pleasure, I found working with the County and state government and the courts to be easier. They would tell you flat out you don't have the political pull to get that. At least I knew where I stood and could learn what to do.

Over time, working at the San Diego County Public Law Library took on a different tone for me. In part due to the increase in *pro per* litigants, and in part due to the economic sense it made for the justice system as a whole, providing for the health and continued existence of the Public Law Library became an ethical calling. In 1991, I attended a Conference on the Global Responsibility of Law Librarians and realized that, in most dictatorial countries, the people don't even have access to law books. The very existence of law libraries in a country is a telling measure of the democracy and freedoms available to its citizens.

A couple of years later, Alan Perry and I thought up the motto that the Law Library Justice Foundation used to use on its letterhead, "A good law library is a necessary ingredient for

justice.” Access to legal information should be the right of every American. Access at a decent price is one part of that equation.

At times I would get discouraged because so much time was spent on dealing with those who fall through the cracks, the schizophrenic obsessives who had no case, but still wanted our attention. Then about 1994, during some of our darkest financial times, Stinky came along. Stinky was the nickname the reference staff gave to this homeless person who was so rank you could smell him before you saw him. He kept coming in every day for months. He was angry and obnoxious and very trying. Then one day he stopped coming. We didn't think about it, except to be relieved. Then a few weeks later, a clean-cut man in good clothes came into my assistant's office and asked to see me. Tracy told me she thought it was Stinky, but I said no way. Turns out it was. Stinky, now no longer stinky, had come to thank me and the staff for putting up with him for so long. He had fought for and won, on his own, the return of his Social Security disability benefits and was no longer out on the streets. He had a place and his life back. He said, “You saved my life.” I remembered Stinky through the rest of my career, not so much for the lesson in toleration, but as an inspiration to continue to push for adequate funding and not to give up.

A couple of years ago, I began to notice the signs of burnout in myself, and I began to think that I should plan for a change. This surprised my wife, who thought I would stay forever. I quickly dismissed any idea of changing libraries as the conditions I would require at any new library would be too high to be met. And a whole lot of that was due to the support of the San Diego legal community.

I also began reading philosophy and articles on jurisprudence again. Much to my amazement, it seems that jurisprudential thinking has matured to the point wherein some solid answers are beginning to emerge. Either that, or I have simply matured to the point wherein I can see some answers. And one of them is that, even in this time of computerized and remote access through telecommunications, the need for public law library services will not diminish. I see two points:

First, members of the legal community will need law librarians so that someone within the enterprise is devoted to keeping abreast of the technological developments and the progression of information science as it slowly merges with cognitive science.

Second, end users, and especially *pro per* litigants, will need law librarians to do what they have traditionally done. Most citizens have a developed sense of law and morality, which comes from their cultural roots, their parents and education, their religion, and their own life experience. That knowledge base, or “vocabulary”, using the postmodern term, will give meaning to words that are different from the meaning that the legal community generally gives them and that judges ruling in specific situations would use. A lawyer's job, being well versed in the proper vocabulary, is to represent the client and get the best deal he can, employing the proper vocabulary. A law librarian's job, working with a *pro per* litigant, is to help that person learn enough on his own to develop a sufficient sense of the proper vocabulary so that he can get closer to getting his own best deal. While a lawyer's job for any individual client would take longer and be harder on the lawyer, the librarian's job is psychologically more difficult for the litigant. And the fact that the time is shorter makes it even more so, as indeed many lawyers often try to

help their clients understand what they are doing for them, but at a slower pace. The courts need to know that printed forms and computer kiosks will work only for those who already possess the knowledge and intelligence to make the shift in vocabulary easily. Ultimately, the least served will need human help. Unless and until every person can have his own lawyer, there will be a huge need for public law libraries. And if every person had his own lawyer, we'd still need public law libraries.

In retiring a bit early, I have chosen to try to contribute to the literature in order to help mesh the common points I see in law, philosophy and library science. I also hope to help court systems and law libraries as they work out their planning and programs for self-represented litigants. So let me say thanks to all of you for letting me learn so much and experiment so much while working here. Now that I have grown up, I have decided what to do.

Thank you so much for this award, which says to me that what I have done while here is important in your eyes. This has been my defining role in life, and any voice that I might have in the future is due solely because of the work I was able to do here, and I am so glad you let me do it.