

FRANCIS A. ALLEN

*Terrance Sandalow**

Writing a brief tribute to Frank Allen, a man I admire as much as any I have known, should have been easy and pleasurable. It has proved to be very difficult. The initial difficulty is the occasion for the tribute. Frank's decision to take early retirement from the University and to resettle in a warmer climate deprives the Sandalows of frequent contact with two of our favorite people. The act of writing requires an acceptance of that loss that I have not yet achieved. A second difficulty is that Frank has been an important influence in my life for thirty years, first as teacher, later as colleague and friend. The pages of a law review are not a suitable vehicle for reflecting on that influence, but private thoughts intrude, complicating the task of writing for public view.

I first met Frank when he joined the Chicago faculty during my last year of law school. At the beginning of that year, I elected a course he was offering because I was interested in the subject. The following term I elected another, though not particularly interested in the subject, because it was apparent that I had much more to learn from the man. After all these years, the details of those courses are hazy, but one incident still stands out clearly. As I walked out of one of his exams, I thanked Frank for having put questions that were all variants of cases that, for reasons unrelated to the course, I had thought about a great deal. Without a moment's hesitation, he responded that he had done so because he thought I needed the help.

Frank's quickness and wit contributed significantly to his success as a teacher, but they were not the most notable characteristic of his classes. Of greater importance was what he taught us about law and about the intellectual opportunities that the study of law offers. In Frank's classes, difficult problems were never made to seem easy. Class discussion demonstrated that the enduring problems of the law endure because they are genuinely difficult, and they are difficult because they reveal tensions among legitimate and generally commendable human objectives. Students came to understand that such problems are not solved merely by analytical virtuosity or clever verbal formulations. With that understanding, the object of class discus-

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sion changed. The effort was no longer — or at least not just — to develop winning arguments, but to achieve understanding of fundamental human problems. Alternative and opposing arguments came to be seen as ways of exposing the complexity of an issue and the full range of values relevant to its resolution.

Frank thus conveyed to us that the study of law is, as he put it many years later, “a path to the world.”¹ One studies law for the same reason that one studies poetry or anthropology, as a means of acquiring a better understanding of the human condition. Law differs from these, of course, because its practitioners are not only concerned with understanding, but are required to make decisions. It is that characteristic that so often leads students to conceive of arguments as moves in a game, moves that will, if they are sufficiently clever or sufficiently powerful, vanquish an opponent. In redefining the purpose of argument, Frank taught students to appreciate that arguments might be thought of quite differently, not as moves in a game but as the materials of judgment.

Nearly a decade passed before I began to know Frank from a perspective other than that of an admiring student. In the summer of 1966, we both came to Michigan, he as dean of the Law School and I as a relatively junior faculty member. Our simultaneous arrival at the School was not coincidental. Frank had recommended me to the faculty during a visit to Ann Arbor to discuss the deanship, a fact I did not learn until some years later and from which I still derive considerable pleasure. Several months thereafter, he telephoned to tell me that he had just accepted the deanship, a call that strongly influenced my decision to accept the offer that I had in the meantime received from the faculty. Membership on the Michigan law faculty has been the most rewarding experience of my professional life. Frank’s part in bringing it about is one of the many debts to him that I have incurred over the years.

In the winter of 1966, when the Regents appointed Frank dean of the Law School, the anger, unreason, and turmoil that were to dominate university life during his tenure were not yet in prospect. Although the Free Speech Movement had erupted at Berkeley more than a year earlier, it still appeared to be an isolated occurrence. Perhaps if the faculty had been more prescient, it would not have recommended Frank to the Regents. He differed in many ways from those to whom academic institutions tended to look for leadership when student militancy emerged as the dominant issue of campus life. The

1. Allen, *The Law as a Path to the World*, 77 MICH. L. REV. 157 (1978).

faculty turned to Frank for quite different reasons, because he symbolized the School's intellectual aspirations and because he promised leadership that would help it to realize those aspirations. Yet, in retrospect, the faculty could not have chosen better if it had deliberately selected a dean to lead it through the difficult period it was about to enter.

The years of Frank's deanship were marked not only by student unrest, but by widespread skepticism about the worth of the ends that are the university's *raison d'être*. Frank's commitment to the educational and scholarly mission of the university and the eloquence with which he defended that mission helped to foster an understanding among students and faculty that enabled the School to hold to its highest ideals despite the skepticism. At faculty meetings, in statements to students, in speeches, and in dean's reports, he reminded us of the central values of the university. Eloquent and elegantly, he expressed the uses of knowledge and reason in the conduct of human affairs, the importance of dispassionate reflection, the responsibility of educated men and women for the language they use and, crucially, the central place of the university both in cultivating those qualities and in maintaining their precarious hold in the culture.²

Frank's success in guiding the School through the turmoil of the late sixties was attributable not only to his ability to articulate the importance of the intellectual virtues, but to his embodiment of them. Time and again, I watched him suppress an initial negative reaction to one or another student "demand," withdraw to think about the issue, and then return with a response that recognized both the legitimate elements of the demand and the importance of maintaining the School's intellectual integrity and political independence. Throughout those troubled years, Frank never fell victim to the reaction that overtook so many who shared his commitments. The assault upon the university and the values it represents cut very close to the core of Frank's deepest beliefs, but in responding to it he did not forget that those engaged in the assault often had legitimate grievances. He understood, and he taught the rest of us to understand, truths that especially bore repeating during those years: The existence of injustice does not justify incivility or a flight from reason, but neither should incivility and irrationality dim our awareness that injustices exist and ought to be remedied.

Despite the diversions from customary academic pursuits that plagued Frank's tenure as dean, the School was greatly strengthened

2. See F. ALLEN, *LAW, INTELLECT, AND EDUCATION* (1979).

during those years. Appointments were made and programs begun that significantly broadened its intellectual foundations. The School began to chip away at the barriers that traditionally had separated law schools from the intellectual life of their parent universities. Frank would be the first to insist that no one person can be credited with the achievements of an institution. Other faculty members played an important part in these developments, and institutional tradition also played a role, but Frank's leadership was critical — in attracting new faculty members, in supporting intellectual initiatives and, perhaps most significantly, in advancing a vision of legal education rooted in the central purposes of the university. Although he served as dean for only five years, directions that were charted under his leadership continue to influence the School's development and seem certain to do so for many years to come.

Frank's term as dean was fruitful for the School, but it was not a happy time for him. Much of the hostility that so many students felt toward established institutions was directed against the most prominent institution in their lives and the target most readily at hand, the Law School. As dean, Frank bore the brunt of that hostility. One measure of how wearing he found the experience is that he often describes his five-year term as having lasted for fifteen years. It was, therefore, with considerable relief that he returned to teaching and scholarship. Relief was, however, coupled with anxiety as he anticipated classrooms filled with students very different from those he had taught before becoming dean, students who might be unreceptive to the patient exploration and elaboration of ideas that are so central to his teaching.

In the event, a new generation of students responded to Frank as warmly as its predecessors had. An abrupt change in student mood may help to explain the response, but the deeper reason is that the qualities of mind that he brings to his classes could not fail to engage students as good as those to be found at Michigan. And, of course, they were engaged, many very deeply. In talking to Frank's students, one senses that their admiration for him goes beyond the respect generally accorded faculty members who are regarded as good teachers. They seem to recognize in him a model for their aspirations, a person in whom learning and judgment are brought to bear in the service of humane values.

Student response to Frank is marked not only by respect and admiration, but affection. Within a few years of his return to teaching, Frank's birthday became the occasion of an annual celebration in his criminal law class. The unvarying theme of these celebrations was his

fascination with *Dudley & Stephens*,³ the famous lifeboat case. Frank devotes a good deal of class time to that case, from which he has said he could teach most of the criminal law course, but the eagerness with which students focused on its gorier elements suggests that he must have conveyed to them an interest in its dramatic as well as its intellectual potential. I don't know what led students to begin the custom of celebrating Frank's birthday, but they could not have found a better way to express their regard for him. Rather surprisingly for a somewhat reserved and very private man, Frank likes birthday parties, especially his own. He is the only person I know, adult or child, who regularly has had three birthday parties — one given by his students, another with his family, and a third with a small group of friends.

The guests at the latter party each year were the participants in a book discussion group that met regularly for nearly a decade, ending only with the Allens' departure. Although restricted only by an understanding that books involving the participants' professional interests would be avoided, the group read mostly contemporary fiction. The book group is worth mentioning here for what it reveals about Frank: He would have been a wonderful literary critic, at least in the days before literary criticism gave way to literary theory. The facility with language that he demonstrates in writing is also reflected in his sensitivity as a reader. For Frank, as for those in the critical tradition that extends from Matthew Arnold to Lionel Trilling, literature is continuous with life. Literature is, one might say, a path to the world. But the world is also a path to literature. What one draws from literature depends upon what one brings to it. Frank brings an openness to the variety of human experience, an appreciation that life cannot be reduced to theory. His resistance to theory is not, of course, evidence of latent anti-intellectualism. Frank is very nearly the last person against whom such a charge might be leveled. The point, rather, is that his reading of novels is informed by general ideas, not dominated by them.

Frank approaches literature much as he approaches the problems that have engaged him as a scholar. Others are more competent than I to comment upon his scholarly contributions, but I have read each of his books and many of his articles, enough to appreciate that the mind at work in the scholar is the same as the one I observed as a student and have come to know better in a colleague and friend. In *Howard's End*, E.M. Forster wrote of a character that "she saw life steadily and she saw it whole." I first read those words while Frank was dean and was struck by how well they fit him. In the years since, as I have come

3. *The Queen v. Dudley & Stephens*, 14 Q.B.D. 273 (1884).

to know him better, they have seemed even more apt. The combination of qualities they describe is rare, among academics no less than in the larger population, at least in part because the qualities are not purely intellectual. They are also manifestations of character.

That coalescence of character and intellect is the root of the many contributions that Frank has made — to his students, to the law, to the Law School, and to his friends. Happily, Frank will continue to educate young lawyers and to add to our understanding of law despite his retirement from the University of Michigan. Those contributions will merely continue in Gainesville rather than in Ann Arbor. But the University of Michigan will miss his counsel. And his friends at Michigan will miss that and much more.