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## The Company I Keep

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## ARTICLE

### THE COMPANY I KEEP

LAUREL BEELER\*

San Francisco is a city of obvious and subtle charm. Its beauty is immediate and reveals itself over time. San Francisco is filled with microclimates, where summer can change to winter in the space of a mile. It is a city of neighborhoods. Mine is Potrero Hill, the Brooklyn of San Francisco — with its views of tall towers and city lights, and the feel of a small town. My branch library lends books *and* seeds. Yes, seeds, from plants: borrow Hayes Valley cucumber seeds, grow them, return the seeds. The local grocery hires local kids: good food and a good cause. I know my neighbors.

My neighborhood is also the Tenderloin, where I've worked my whole career. It — like San Francisco — is full of contradictions. There is beauty, and there is misery: homelessness, open drug use, sadness. It is fitting, because as a judge, I'm in the misery business. No litigant comes to see me in a happy place. I'm a fan of the Peter Weir film *The Year of Living Dangerously*, and many of us in the justice system live this quote from the Billy Kwan character: "Do whatever you can about the misery that's in front of you. Add your light to the sum of light."<sup>1</sup> It is as true for civil litigation as it is for criminal. Something is broken, people cannot fix it themselves, and they come to the courts to resolve it. There are no perfect outcomes: somebody wins, somebody loses, and somebody else decides. And winning can be temporary — there are appeals — and it might not address the entire controversy or restore a relationship. Litigation may resolve a dispute, but it can be a terrible way to solve problems.

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\* The author is a former federal prosecutor and now is a United States Magistrate Judge in the Northern District of California. She surrounds her desk with quotes. Editor's Note: Judge Beeler has been a mentor and an inspiration to an entire generation of Golden Gate University students. Her unique style of lawyering, now put to excellent use as a judge, is a mainstay in San Francisco and the Northern District of California, and she is an integral part of the San Francisco legal community.

<sup>1</sup> THE YEAR OF LIVING DANGEROUSLY (MGM/UA Entm't Co. 1982).

Still, the process is optimistic because people believe in right answers. It is beautiful in its way, because every day, people show up, and they work hard to do a good job. Beauty exists too in the body of law devised to solve legal problems. It is awesome. The work is fun: investigating a case, conceiving a strategy, counseling a client, arguing for an outcome, persuading an audience, making a difference. And the work is important: as a federal defender said to me, early in my career as a prosecutor: “Every decision we make has consequence for the people we touch.”

The company is terrific. I use the word *company* purposefully. To paraphrase Aesop, a person is known by the company she keeps. Or from John Donne by way of Nick Hornby, no man is an island. I am the company I keep: attorneys, judges, other colleagues, agents, and parties, plaintiffs and defendants. I am surrounded by people who care.

What, then, is justice, at least in the federal courts. Sometimes — often — it is what you expect: a judicial resolution of a legal dispute by way of summary judgment, or a trial if there are material disputes of fact. But equally, it can be a collaborative process, something that the Northern District of California does well.

Take our Alternative Dispute Resolution unit. Many cases resolve through mediation, with insights and results that are not possible within the confines of a traditional judicial process. In contrast to the litigated dispute, where the lawyers argue and clients are largely absent, except at trial, mediation includes the parties. And parties’ interests can be different from the outcomes available through litigation.

In an era of vanishing trials, mediation can be the main event. It can be a proxy for trial, an opportunity to be heard, and a process to engage with the loss that often precedes litigation. In a case involving a stressful (and ultimately mistaken) arrest, the police officer told a plaintiff, “I come to work every morning trying to help people. I am sorry that I caused this terrible experience for you.” The plaintiff responded, “I have hated you for three years. I wish we’d had this conversation earlier.” While mediating a dispute between investors and executives, a conversation revealed more about the dispute — and a path to resolution — than the score of depositions that preceded it.

Collaborative problem-solving does not end with mediation. As one judge said to me, every hearing is an opportunity to mediate cases. In a motions hearing in a patent case, the parties confessed their fatigue with their battle, and they agreed to mediate and settled their case. Another business dispute resolved during a summary-judgment hearing.

And collaborative problem-solving is not confined to civil litigation. The District’s collaborative criminal courts — staffed by judges, prose-

cutors, federal defenders, probation officers, and treatment providers — use treatment models to address needs, create opportunities for meaningful work, and reduce recidivism for participants on federal supervision. Participants often suffer from trauma. Trauma-informed approaches address the symptoms of trauma such as substance abuse, depression, and anxiety. Many lack job and life skills, and a criminal record poses further obstacles for housing and employment. Approaches to these needs include classes on job skills, critical thinking, parenting, and anger management. A coordinator works with community providers to identify housing, education programs, and job training. Personal responsibility, courage, hope, redemption — all are at the program’s core. Participants learn the skills they need to return to their communities, not only to survive, but also to succeed.<sup>2</sup>

Justice isn’t always what you think. Sometimes it’s adversarial, and sometimes it’s collaborative. Sometimes people need to go to jail, and sometimes they need a second chance. Some disputes require airing through public litigation, and others are better addressed through reconciliation.

Justice can be speaking truth to power. I clerked for U.S. Circuit Judge Cecil Poole, who lived that principle. I think of him often, and not just because his pictures hang throughout my office. Here’s a line he wrote in *United States v. Rodriguez*, holding that agents lacked reasonable suspicion to stop a truck: “The opinions of this court have put the nomenclature of reasonable suspicion into the public domain. We must not allow ourselves to be seduced by the reassuring familiarity of its echo.”<sup>3</sup> It’s embossed in my memory; I see his yellow pad, with his particular script, and his other beautifully crafted sentences. Or this, from his days as the U.S. Attorney, during the Vietnam War protests, when — as he told me — he reminded agents that there was a little thing called the First Amendment, in response to their proposal to arrest protestors.<sup>4</sup> I have a picture of him, cigar clamped in mouth, with a police officer in the background, from one of the East Bay protests. As the first African-American U.S. Attorney in the United States (save the U.S. Virgin Islands), he was a protector of civil and individual rights, even as he prosecuted and imposed individual accountability for bad acts. He understood

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<sup>2</sup> U.S. Dep’t of Justice, *Roadmap to Reentry*, <https://www.justice.gov/reentry/roadmap-reentry> (last updated Apr. 25, 2016).

<sup>3</sup> *United States v. Rodriguez*, 976 F.2d 592, 596 (9th Cir. 1992), amended by *United States v. Rodriguez*, 997 F.2d 1306 (9th Cir. 1993).

<sup>4</sup> See CECIL F. POOLE, CIVIL RIGHTS, LAW, AND THE FEDERAL COURTS: THE LIFE OF CECIL POOLE, 1914-1997, at 92 (Carole Hicke, ed., The Bancroft Library 1997), [http://content.cdlib.org/view?docId=hb4779n9p8&brand=calisphere&doc.view=entire\\_text](http://content.cdlib.org/view?docId=hb4779n9p8&brand=calisphere&doc.view=entire_text).

best the people who lacked his moral compass.<sup>5</sup> I see his other experiences through how he recounted them to me: why he became a lawyer, how the ABA initially refused him membership and later recruited him to head the individual-rights section, his education, his military service, how he met his wife, his move to California, his job as an assistant district attorney, his service as Governor Pat Brown's clemency secretary, and his unexpected joy as a lawyer at the Coblenz law firm, where he represented Bill Graham, Janis Joplin, Jefferson Airplane, the Doobie Brothers, and Santana, among others.<sup>6</sup> Their platinum and gold records hung in his chambers, near pictures of Bobby Kennedy and Dianne Feinstein. He is why I became a prosecutor and a judge.

As Aristotle said, the whole is greater than the sum of its parts. I'm not sure what the whole of this life is, here in the City by the Bay, at least yet. I'm still working on the parts. But I see more of the whole than I used to. My seat on the bench gives me a wider perspective than my seat as a prosecutor. I see more of my community. And along the way, I've learned a few things. A man must have a code.<sup>7</sup> If we don't talk with each other, and listen, we will perish together as fools.<sup>8</sup> We need to collaborate more and fight less. If old approaches to problems don't work, we should try new ones, and if they don't work, we should try something else.

What makes justice possible, as U.S. District Judge D. Lowell Jensen said on his last day on the bench, is this. The system is difficult, but it works, because it depends on men and women of good will, working together to reach a just result.<sup>9</sup>

A hailstorm rolled through as I came to work today, in early March. In the space of two miles, the clouds lifted, and the sun shined hot. Summer in the light, and winter in the shade.<sup>10</sup> Now, the fog spills towards

<sup>5</sup> See William K. Coblenz, *Introduction to POOLE*, *supra* note 4.

<sup>6</sup> POOLE, *supra* note 4, at 8–12, 19–28, 30–84, 154–56, 183–90; James Haskins, *Cecil Poole: A Life in the Law* 112–14 (Ninth Judicial Cir. Historical Soc'y, ed., 2002); Obituary, *Cecil F. Poole*, 83, *a Legal Leader for Blacks*, N.Y. TIMES (Nov. 16, 1997), <http://www.nytimes.com/1997/11/16/us/cecil-f-poole-83-a-legal-leader-for-blacks.html>.

<sup>7</sup> E.g., *The Wire: The Wire* (HBO & Blown Deadline Productions 2002 — Bunk); *The Wire: Unto Others* (HBO & Blown Deadline Productions 2006 — Omar Little); *Game of Thrones: Two Swords* (HBO 2014 — Sandor).

<sup>8</sup> Martin Luther King, Jr., Commencement Address For Oberlin College: Remaining Awake Through A Great Revolution (June 1965), <http://www.oberlin.edu/external/EOG/BlackHistoryMonth/MLK/CommAddress.html>.

<sup>9</sup> See D. Lowell Jensen, U.S. District Judge, Retirement Ceremony Remarks 32-33 (Oct. 30, 2014) (transcript available at the United States District Court, Northern District of California Library); see also Steven Kalar, *Case O' The Week: Ninth Sour on Swisher's Sweets – Swisher, First Amendment, and Criminalization of Speech*, NINTH CIR. BLOG (Nov. 2, 2014), <http://circuit9.blog.spot.com/2014/11/case-o-week-ninth-sour-on-swishers.html>.

<sup>10</sup> CHARLES DICKENS, *GREAT EXPECTATIONS* 471 (Estes & Lauriat 1881).

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me from the ocean. It's the grandest city I know, and it breaks my heart every day. The beauty, immediate and subtle. The misery, entirely immediate. What then must we do?<sup>11</sup> Whatever we can. Add our light to the sum of light. They are words to live by.

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<sup>11</sup> *Luke* 3:10 (also quoted by Billy Kwan in *THE YEAR OF LIVING DANGEROUSLY*, *supra* note 1).