

"Sweet Surrender": On Finding Something  
To Do with Your Life.

By Hon. Katharine S. Hayden

*Note: On July 18, 2006, NAWL awarded its annual Arabella Babb Mansfield Award to Katharine S. Hayden, a United States District Court judge for the District of New Jersey. She gave a stirring address to the 1,000-person strong audience, which is reprinted here:*

Dazzled is what I am. There's no other word for it. I'm New York City born and raised, and this hotel has always been my favorite. I went all the way through Marymount School, 30 blocks away from here; I love Lexington Avenue; I love Bloomies; I love standing right here, right now! You make me so very happy with the unexpected, treasured honor you've given me.

Thank you, Cathy Fleming and the selection committee. To be in such company as the other award winners and to be thought of as having something to offer is splendid. Thank you my friends, some especially close to me, who are here today: my former law partner Lynn Newsome; my colleagues on the bench, some of whom have traveled distances through this heat wave to get here; law clerks, past and present; and the many practicing lawyers who practice law so hard and so well that their presence today is a sacrifice I am humbled by. And up

front I acknowledge my husband Joe Hayden. Tomorrow we'll be married 19 years. Every day his good judgment, great good sense, and example remind me of how hard it is to be a good lawyer, and how magnificent.

Knowing for months I'd be at this podium, I employed my usual preparation tricks over the past week: cooking food, petting and talking to my cats, and listening to pop music. Not all at once, but each very intensely. And in singing up a storm at the wheel of the car the other day, I was blown away by the lyrics of an old John Denver song that struck me as so very poignant when I really listened to the lyrics. And so interestingly applicable, it occurred to me, to us.

As I recite the lyrics – and I'll try to refrain from bursting into song – see if you spot the chorus coming. As Joe says, our songwriters are our poets, and this is a lovely lyric:

Lost and alone on some  
Forgotten highway  
Traveled by many  
Remembered by few,

Looking for something that  
I can believe in,

Looking for something that  
I'd like to do. . . with my life.

There's nothing behind me and  
Nothing that ties me to  
Something that might have been  
True yesterday

My life is open  
Right now it seems to be  
More than enough  
To just be here today . . . . and I don't

Know what the future is  
Holding in store --  
I don't know where I'm going  
I'm not sure where I've been

There's a spirit that guides me  
A light that shines for me  
My life's worth the living  
I don't need to see the end.

## Sweet Sweet Surrender

Live, live without care

Like a fish in the water – Like a bird in the air.

Okay, now, when you hear that song, you just *know* what the singer is talking about. Chucking it all and becoming a raft guide on the Colorado River, or a ski bum, right? And my sisters at the bar, what did we do when we were in the grips of that poignant yearning? How did we express that “Sweet Sweet Surrender?”

We signed up for law school! We were:

Looking for something

That we could believe in

Looking for something

That we’d like to do with our life.

So we “screw[ed] our courage to the sticking place” (from Macbeth, not John Denver’s Greatest Hits) and we rejoiced when we got accepted, and we tucked into three or four beastly hard years. Heaven forfend that the something this crowd wanted to do with their lives was floating around on the rapids or swooping down trails. No, not us – we

wanted civil procedure, and five-hour exams, and the Uniform Commercial Code, and cross-examination, and – so my point is, we willingly took the hard way and probably, because we are lawyers, and because we are women, we always will.

I remember when circumstances made the decision for me to go to law school. My kids were little – under three and under five – I was hosting a reception for the debate club of Seton Hall University, where I was teaching part time. The team showed up, bringing with them a few law students who were coaching them, and after a few minutes of conversation with these brand new lawyers-in-the-making, I said to myself, “Hey! I can do that!” And stopped cold my half-made plans to continue toward a doctorate in English, and applied to Seton Hall Law School, and sat my family down and we talked about what was going to happen.

Because I knew, I knew very well it was going to be different. My mother, who was the best legal secretary in the world, looked me dead in the eye and said, “You *know* what this means.” We both did: my father was a lawyer here in the city, a tax specialist. His schedule was such that until I was 11 or so, I believed the world ran like this. Kids worked five days a week, going to school. Grown-ups worked six days a week – stores were open six days a week and grown-ups worked in them, and my father worked six days a week doing law. He often took me with

him on the Saturdays or Sundays when he went to the office, and I drew on yellow pads, and when we walked outside I loved looking up at the tall buildings that kept the narrow streets downtown perpetually in the shadows.

As I knew it would be, work was six or seven days a week during law school and as we know, pretty much thereafter. But oh boy, God was so good and I knew within the first days of law school that I was where I was meant to be. The knowledge hit me so hard I almost lost my breath during the first hour of civil procedure. Not that I liked or did particularly well in the course, mind you. But that I was where I was meant to be:

Something that I could believe in

Something that I'd like to do with my life.

Now I promise you, some women out there are looking politely at me and having a tough time not blurting out, "Yeah, right. Lucky for you. When's that going to happen to me?" I am not saying that I floated on a pink cloud of knowing from that moment on; far from it. After I got my degree, I clerked for a wonderful judge, Robert Clifford, who was my first mentor as a lawyer. Then I joined the U.S. Attorney's Office and got my first taste of being a lawyer. And really, I did not shine. It didn't all come together. I didn't have the knack, and I didn't

have the savvy to figure out how to get better, and I didn't ask for help. But by being there, I worked alongside other Assistants, made friends that I kept, and ultimately formed a law practice with three of them. Also, all these years later, I have a special understanding of what the young U.S. Attorneys doing the job I once did are going through. And I think I'm a better judge for that.

So the four of us struck out from the U.S. Attorney's Office with no cases, supportive working spouses, and lots of hope. We established a general practice in a quiet suburb, and because I was the only woman, we assigned me the matrimonial work. I had never, ever taken – never *considered* taking – a family law course. But such is the journey – I might as well have been singing “I don't know where I'm going/ Not sure where I've been.” But harken – fate, God, providence stepped in. There was “a spirit to guide me/ A light that shined for me:” Just before I left the U.S. Attorney's Office, clueless about my debut as a divorce lawyer, I was waiting to see the federal magistrate judge and struck up a conversation with a woman also waiting on another case. As women will, we immediately got to the essentials: she didn't know anything about federal procedure, and there she was about to make a fool of herself because her specialty was matrimonial law. Well, of course you know I fell upon her neck, almost sobbing with relief, and I got her through her federal appearance as well as I knew how, and she had a

package of books and forms and sample complaints on my desk within a couple of days. And she remains a friend and beacon of light to her clients and her colleagues: Patti Voorhees.

I remember that I sent her my first divorce complaint to critique. She called me when she got it, laughing at it – “Katharine! It reads like a novel! You don’t have to put in all of *that!*!” Well, what did she expect from an English major whose favorite, favorite job in the world was editing the fiction in *Good Housekeeping Magazine*? Right away I loved all the stories, the wonderful stories my clients told, and I loved the opportunity to present those stories to the judge and use what I knew about storytelling to get things for my clients. And right away, the wisdom of my boss and mentor at *Good Housekeeping*, Naome Lewis, hit home. She told me, when we bought and edited a story, always to think of our ladies who would read it: to respect their sensibilities; to honor and respect the duty we had to them because of the trust they put in us when they bought the magazine and read it. Naome was deadly serious and right, too. So the ladies I labored for as a junior editor at a magazine became the clients I labored for as a practicing lawyer, and now they have become the litigants whose causes I sit on and the persons that I sentence as a judge.

I was a successful family lawyer, in part because it was a smart business decision then to put the girl on the team into that position. But

I look back and wonder why I liked the practice – it was tough, the demands were ferocious, there was not a lot of acclaim given to family lawyers, it was always hard to get paid. Judges could be irritable, and sometimes the level of advocacy didn't exactly soar. But there was such satisfaction out of some of the assignments, particularly guardian *ad litem* appointments, and during those years I was heavily involved in bar association activity, moving up the chairs, going to conferences, making wonderful friendships with other lawyers, getting things done on a statewide level. That was nourishing me more than I knew, and while I wasn't "living without care," there were times when I felt the practice of law suited me like a fish in the water and a bird in the air.

Then in 1991 the appointment to the state court bench, and a chance to be a family law judge. That was the one time in my life when I took up a job that felt familiar from the first day because while I didn't know anywhere close to what I thought I knew about being a judge, I certainly did know family law. "Sweet Sweet Surrender" time – I lived, lived without care. When I rotated into criminal and started sitting on jury trials, oh boy did I become a fish out of water and a road kill bird. And the learning curve that faces every federal judge is, honestly, just as bad as when each of you began practice. The single difference is that they treat you better!

I share all of this with you as, I hope, a comfort. I have been

singularly blessed with a career that has led to this wonderful job. That I did it with no particular birthright other than parents who, like so many of yours, stressed education and never let me slack off, is a gift I'm not worthy of. It means that with luck, good people in one's life, health, and freedom from disaster, hard work does pay off. To me what is important is that what I do every day finally pretty much jibes with who I am underneath. Like every human being, coming to know who we are underneath is a life process, and as you see, the trajectory of this human being's career was not exactly like a soaring eagle's. Hanging on, switching gears, fighting panic and accepting zones of discomfort – it's not pretty. But surprising things do happen.

All of that took, I would say, a mere 40 years to come together so that I can say I am comfortable – within the bounds of the discomfort that a challenging job requires – doing what I do for a living. That's not depressing, really. Think of John Denver's song. "My life's worth the living/ I don't need to see the end." I really do believe that what got me through is the structure and certainty and identity that being a lawyer gave me. Never had a clue that it would end this way; never made a career move with something like a judgeship in my head.

This profession is elastic. Law is the second chance career. If we didn't major in math and science and we are in senior year of college, we can go to law school. If we're competitive and at wit's end about

earning money, we can say as I did, “I can do that!” and dive in. I didn’t know for sure when I stuck out my hand for my degree about where I would go or who would have me. I just knew that there was something out there for me, and I believed in my innate ability to do the work.

Freud was asked what the emotionally healthy person ought to be able to do well. His cryptic answer was "*lieben und arbeiten*" – to love and to work. A practicing psychologist, Jerome Travers, has interpreted *lieben und arbeiten* as follows: in a balanced life we love our work, and work at our love.

I have learned that to love the work of the law, it is critical to be doing stuff that nourishes me. Depending on where I am at, that can look like watching Lifetime Television for Women shows starring Meredith Baxter Birney. It can also be a terrific judicial conference or teaching trial advocacy. I am stuffing those holes that get punched into my soul by the rigors and pains of judging with these other aspects of work that are instantly fulfilling and rewarding. And the net result is that I can honestly say I love my work. And I am not close to burnout.

As women, all of us work at our love. It’s our special strength to work willingly at our love – selflessly at our love – whatever that love is.

As I’ve spent these 40-plus years of work-life getting to the point where I love my work, and am working at my love undistractedly, I came to learn something else. The rewards of asking for help. My

word, that is tough. But I had a breakthrough a few years ago when I got reversed on a summary judgment decision. Not only was I wrong, I was really wrong, the Third Circuit pointed out in grim detail – never cruelly, but you can be sure I took it personally. I skimmed the decision and got mad and ashamed and miserable. And I went home.

In the middle of the night I woke up and went downstairs and there in the kitchen I read the decision carefully, between 2 a.m. and 3 a.m. Those Circuit judges were right. The next day I went and saw a judge with many more years on the bench, and asked that judge to read the decision, and told the judge how awful and stupid I felt. And that judge shared a story from the past about a time like I was going through, and said that really, the mistake wasn't that bad. And that in the future, probably if it takes that long to explain why one is granting summary judgment, one might consider that the decision isn't very bulletproof. And so on.

I chose the person I went to, not only for wisdom but because I knew that judge is kind. And I learned nothing I didn't already know from having read the decision carefully, but I experienced something I had been avoiding. Having the humility to ask for help and admit my vulnerability and confusion and anger and shame. Being, God help me, like my clients and my litigants.

The lesson is, of course, that as lawyers we are terrible at asking

for help because it exposes us as not being the very thing that attracted us to the profession: the strong one, the smart one, the one in charge with the answer, the rescuer, the hero, the savior. The big cheese. Sitting back in the chair and recovering from the agony of asking for help, however, is very strengthening. You give advice differently from then on. You don't get as mad when your advice is not followed, because you remember how you didn't even listen to the advice you sought, you were so consumed with the situation that led you to seek the advice. But you remember forever the sensation of being soothed and being told you are just wonderful and not alone. Because you simply made a mistake. You are the star you thought you were all along. At least that's what happened to me, and all that judge had to do was to be kind and give me those mentoring moments I sought.

So how does this apply to what this fabulous organization has in store for you this year, when the focus will be retention and advancement of women in law firms? Just this: there's a fighting machine out there in this women's bar association that is giving women a shot at loving our work and working at our love. Through books like Lauren Rikleen's *Ending the Gauntlet* and Holly English's *Gender on Trial* and her columns, attention is being paid to serious, hidden and ignored issues that cost this profession some talented, brave lawyers. And in the brilliantly conceived *Creating Pathways to Success* put out

by the Women's Bar Association of the District of Columbia, practical solutions and initiatives are being offered that firms can swallow and get very healthy from. And we are saying out loud that there are counter-intuitive aspects to the business part of the profession and we want to know how to get good at those parts. And we are willing to shed our naive belief that just being smart and working hard is the trick for success. And something really dear to my heart, as someone whose career began after my children were born, are the programs being launched to bring back women who have taken a time out. The picture of some women attending a training program that was published in *The New York Times* in May is one of the loveliest photos I've seen in a long time: the focus, the drive, the sense of being back home, all reflected there on those faces. Wonderful!

Now to benefit from all of this, I think that being willing to ask for help is critical. And being realistic about how one's life will change is also important – we aren't talking about plastic surgery, we are talking about realistic assessments of what's wrong that can be fixed by others, and what's wrong that we can fix ourselves by doing things we love to do, and by screwing up the courage to do what we're afraid of. Taking a NITA course in trial advocacy to address the secret fears we harbor; asking for mentoring and being a mentor; throwing oneself into bar association work; making very sure that what we hate about our work

isn't what we're afraid of in our work. I can honestly offer that every time I've been kind, sometimes in the face of what was expected of Her Honor the Judge, or done something I was very fearful of but secretly wanted to try, I've been nourished far beyond what the effort took and always loved my work more.

One of the most affecting scenes in the movies occurs in *The Silence of the Lambs* after Jodie Foster, playing FBI agent Clarice Starling, walks inside the terrible house where the killer lives and does his killing. Remember her face and her breathing? She is so scared, and she is so, so brave. All of us have felt that way, and all of us have been Clarice Starling, full of fear but bravely, stubbornly walking forward because it's what the job required. Remember what the moment was when you felt that alive as a lawyer, and examine every inch of it. In what you find out, I think, lies the answer to becoming the fish in the water and the bird in the air.

My warmest good wishes to your leadership in NAWL; through these women we have the power to make the life of a lawyer proud and fulfilling. And thank you Arabella Babb Mansfield of Iowa for being brave, and I promise to follow that bravery in my next years. And thank you, dear sisters at the bar, for this honor.

The Hon. Katharine Sweeney Hayden entered law school after working as a fiction editor and then as a teacher of

college English. After graduating from Seton Hall University School of Law in 1975, she clerked for New Jersey Supreme Court Justice Robert L. Clifford, and then served as an Assistant United States Attorney for the District of New Jersey. Thereafter she entered private practice, eventually specializing in family law. She was elected by her peers as a Fellow of the American Academy of Matrimonial Attorneys and as a Fellow of the American Bar Foundation.

Judge Hayden was appointed to the New Jersey Superior Court in 1991, and served as a trial judge in the Family Part and Criminal Division. In the latter assignment, she established the Drug Court for Essex County, New Jersey, and served as its first judge. In 1997, she was appointed to the federal bench for the District of New Jersey, Newark vicinage. Since 2003, she has been a member of the adjunct faculty at Seton Hall Law School.

