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FINDING YOURSELF IN LAW SCHOOL¹

JOEL JAY FINER²

Congratulations on your acceptance and your decision to enter law school. Some might say after reading this commentary that it was more appropriate for a commencement address. But stop to think. Commencement means beginning. This is your commencement, the beginning of your legal career. And if the values to which I refer are not somewhere in your thoughts during your law school education, when you can begin to see how your technical skills can be put to use in service of whatever justice goals you personally find most meaningful, it may be more difficult to make the connections later on. So without embarrassment or apology I will refer to you, the novice lawyer, as moral agent, as social activist, and as pursuer of justice in the larger senses, as well as in the routine of daily practice.

Before discussing the journey on which you are embarking, and the more noble and inspiring aspects of the profession you've chosen to join and the career you will be pursuing, I offer a few remarks about adjusting/coping with law school.

How do you survive this ordeal?

You are probably going to feel some stress in law school. Many students handle the pressure of law school quite well; indeed, you may find that you thrive on the intellectual challenge, the excitement, and even the inspiration of the process. But if you are like most students, you are probably going to experience some stress during your law school tenure.

Stress comes from uncertainty. Uncertainty about the future, about what is expected of you, about how you are doing. It comes from not knowing whether you are on the path out of the land of the lost or going deeper into the darkness. It comes from the strain that law school puts on your family and social life.

There are ways of dealing with this stress, ways that do not involve substance abuse. Learn some basic stress reduction techniques that businesses employ: breathing techniques, muscular relaxation techniques, visualization techniques, quieting techniques, yoga and meditation. These tools can save your cardiovascular system, your sanity and your academic performance.

At times of stress, remember that almost everyone else is going through the same thing. Try to work out ways to be in contact with other members

¹ This Commentary was originally prepared and delivered by Professor Joel Jay Finer, Cleveland-Marshall College of Law, as a convocation address to the entering class at Cleveland-Marshall College of Law, on August 17th, 1989. Some minor changes have been made to render this work more suitable for reading. Specific data regarding Cleveland-Marshall College of Law has been omitted in the interest of furthering the general appeal of this commentary to all law students.

² B.B.A., City College of New York (1959); L.L.B., M.A., Yale (1963).

of your class, such as periodic study groups; it will help alleviate anxiety and also help you learn through shared experience.

Treat the law school community as your home away from home—the place to have a bite to eat, some coffee or coke, a conversation. Socialize. Law is a very social, as well as an intellectual, profession. Be here as much as you can. Use the library; explore and expand yourself intellectually. Discuss ideas with fellow students. Attend social functions and lectures. Relate, connect, and make the law school community your community. There is no “us” and “them”—or “us” and “we.” We are all the same “we.” Indeed cognitive therapists tell us that learning to say “we” in speaking of the school instead of “they” or “it” can make a difference in our attitude, our emotional state and thus our performance. To this end, make a point of connecting with your professors also. While most are not trained in psychology, they can lend a sympathetic and caring ear, and perhaps offer some advice on how to deal with the uncertainties and succeed in law school. Call on professors, not only when you think you might need help, but for conversation just because you want to explore and pursue an idea with them. Invite them for a cup of coffee. They might even pay for it. Remember, professors sometimes find it lonely in the so-called ivory tower.

It would be a mistake to cast your lot to the likes of a first year law student who believes that “a law professor’s power seems equal to that of God, but far more visible”³ and tangible. That student received a C—because he failed to notice some important distinctions:

- 1) “God is full of loving kindness, even to the third and fourth generation; a first-year law professor dismisses incorrect answers with a withering glance;”⁴
- 2) “God waits for Man, yea, until the day of his death; first-year law professors wait about twenty seconds before they give up on one student and call on someone else.”⁵
- 3) God forgives repentant sinners; law professors never change a grade.
- 4) God made light out of darkness and chaos; law professors make darkness and chaos and insist that students find their own light.
- 5) God’s gentle rain falls on the just and unjust alike; law professors are very ungentle with those who show up unprepared.
- 6) God will reign forever and ever; law professors, having tenure, stick around longer than that.
- 7) “God loves all his creatures equally. First-year law professors grade on a curve.”⁶
- 8) God grows mushrooms by keeping them in the dark and feeding them a lot of bull; law professors grow lawyers that way.

³ M. LEVIN, *THE SOCRATIC METHOD* 102 (1987).

⁴ This “God and Law Professor” joke is from Levin’s novel. *Id.*

⁵ *Id.*

⁶ *Id.*

Some of you may scoff at the suggestion of an accessible faculty and even dare say that the faculty lives in an Ivory Tower. *Au contraire*. Here, students come first. The faculty realizes that it is here primarily for the students and most faculty would put down what they are doing, or make an appointment in the near future, to help a student with a genuinely considered concern. When they are busy, working on their research and writing, they are also teaching and learning themselves. They could not teach you well if they did not involve themselves in the teaching and learning that is going on in the legal profession. And working with students is part of that process.

Students are the greatest gift teachers have been given, for you allow teachers to do the work of showing you the gifts within yourselves. You are about to be a beneficiary of the faculty's wisdom and activities, for one way or another a fair portion of the sophistication and vision gained by your faculty in its lifetime at the law will be transmitted to you, the next generation of attorneys. In the process you will discover the gifts within yourselves. At certain times [e.g. finals week] you will wonder whatever possessed you to go to law school in the first place. At other times you'll come to appreciate why you chose the law [e.g. when you help a tenant recover a wrongfully withheld security deposit]. At all times you should be discovering things about yourself which will form the foundations of your legal career.

Discovering yourself in the process

There is more to law school than learning legal reasoning, legal writing and the substance of the law. While you are here the most important thing you find will be yourself. What will you find? Certainly changes will have occurred in your value system as legal and professional values become part of your personal moral code.

You will learn to have deep respect for the Latin maxim, *audiatur et altera pars*—let the other side be heard,⁷ a rule of conduct often violated in personal life. Consider your readiness to listen to malicious gossip without giving its target a chance to be heard. Remember the value of open-mindedness and cultivate a readiness to change your mind should new evidence have a rationally persuasive bearing on your original conclusion.

Another significant value in the law is equality under the law, or the principle of reciprocity. The principle of reciprocity was pronounced as long ago as 100 B.C. by Rabbi Hillel, who taught what has come to be the first law of medical ethics: "Whatever is hateful to you do not do to your neighbor."⁸ One hundred years later the greatest moral teacher, and

⁷ Teller, discussing his beliefs in *THE COURAGE OF CONVICTION* 220 (P. Berman ed. 1985-86). See also the words of Justice Frankfurter, in *Caritativo v. California*, 357 U.S. 549, 558 (1958): "*Audi alteram partem*—hear the other side!—a demand made insistently through the centuries"

⁸ *Shabbat* 31a, quoted in *JUDAISM* 109 (A. Hertzberg ed. 1961).

much more than that to many, propounded a similar rule when He said, "Inasmuch as ye did it unto one of these my brethren, *even* these least, ye did it unto me."⁹

Think of that the next time you hear that accused drug pushers or accused murderers should have no rights. It would also mean that accused securities defrauders or public officials caught with their hand in the till should have no rights either. Time after time throughout your law school experience, you'll learn to appreciate the interplay between the concept of "justice" and the idea that the rights we afford to the most despicable of our citizens will determine the rights received by the most admirable.

You will learn that being a good lawyer means being a good teacher: a teacher of clients, colleagues, witnesses, juries, judges, the media, the legislature, society. The first responsibility of a good teacher is to listen. Listen with genuine attentiveness and intellectually active receptivity to the substance and the emotional context of the speaker's or writer's message. Listen to the judges you read; listen to the learned commentators; listen to your teachers; listen to one another; and listen to your own questions from the voice of your own intellectual curiosity. Hopefully you will come away as an independent thinker; ready to question authority; to make up your own mind, after careful reflection, about the issues that confront you in your professional and personal capacities.

You will learn, one trusts, that a professional sees a client as a whole person that cries out for caring and compassionate concern. A professional will isolate the client's legal problem, as she or he must, but will also pay the client deep respect as a person. The client is not merely plaintiff or defendant or customer or case, or, as doctors sometimes say, "the kidney in room 113," but a living, breathing, human being suffering in one way or another.

It has been the fashion in intellectual and academic circles to disdain the teaching of values. Value-neutrality has been the perceived wisdom. Educators and others ridicule the idea that values could or should be conveyed in classes; even ethicists in their teachings claim to be value neutral. This has always struck me as absurd, both as an ideal and as a practical possibility. Without values and ideals, men and women might as well be animals or Skinnerian machines. Being human, it is impossible to live without values, ideals and a sense of the meaningful. For teachers, being human, it is impossible to teach without conveying, at least between the lines, one's own values, ideals, and sense of the meaningful.

Professors rarely convey their values explicitly in class because they get in the way of the technical aspects of legal education, diverting attention from the analytical tasks and reasoning skills that must be mastered. Paradoxically, although law professors often keep their personal values to themselves, the law itself demands not only rigorous analytical capacities but an understanding of the basic social policies underlying legal doctrines.

You might respond, "I didn't come here to be indoctrinated but to learn the skills I need to be a good attorney." My response is that you, the law

⁹ *Matthew* 25:40 (American Standard 1901, 1929).

student, are indeed ultimately responsible for the values you take from your experience. But an experience as prolonged, as intense, and as filled with moral, ethical, social, political, and interpersonal conflicts and dilemmas, as is law school, cannot but have *some* impact on the values you hold. There is no way you can come out of an experience such as law school without being changed.

It has become a matter of embarrassment to ask the great questions: *What am I doing, with what moral implications, benefitting, helping, ignoring or harming what vital interest of my fellow man and society?* If there ever was a time for lawyers to ask some of the deepest ethical questions about how lawyering is practiced it is now, for lawyers and lawyering are being challenged from many directions, as amoral if not immoral, as without either social conscience or moral vision. This hasn't always been the case.

I could quote extensively from many great and eloquent statements about the law—but I'll save that for the Dead Jurists Society,¹⁰ a group to read and listen to, appreciate and celebrate the great and inspiring judges and advocates throughout history and in drama and literature; for the poetry, the power and the persuasion of it; for the dramatic value of it; and for the sheer joy of being moved by great words. One hopes you would form such a group, a group that would find passion and inspiration in words such as those of the preeminent jurist, Oliver Wendell Holmes:

A man may live greatly in the law as well as elsewhere; that there as well as elsewhere his thought may find its unity in an infinite perspective; that there as well as elsewhere he may wreak himself upon life, may drink the bitter cup of heroism, may wear his heart out after the unattainable.¹¹

The words of a far less exalted figure, however, have struck me as exemplary of the finest of our profession. They came at the time John Lennon was murdered and Mark Chapman had been arrested for the killing. Out of the crowd of police, journalists and onlookers, a man stepped forward and walked up to Chapman. A reporter asked, "Who are you?" The response?

*"This man is in trouble. He needs help. I am an attorney."*¹²

All the nobility of our profession is reflected in that statement, which ought to be engraved on the portico of every courthouse:

"This man is in trouble. He needs help. I am an attorney."

These inspiring words should be remembered with regard to major issues of social justice, as well as the justice issues that will come into your office every day in the guise of ordinary people and businesses with seemingly ordinary legal problems.

There is, in a sense, no such thing as a small-scale injustice. Your client may have been defrauded; paralyzed by a drunken driver; betrayed by a non-performing building contractor; libeled; wronged by a runaway hus-

¹⁰ Based on the wonderful film *The Dead Poet's Society*.

¹¹ O.W. HOLMES, *The Profession of the Law*, in THE HOLMES READER 67 (J. Marke, ed. 2nd ed. 1964).

¹² Author's recollection of television broadcast.

band who failed to pay court-ordered alimony and child support; wrongfully sterilized by an incompetent physician; left an empty and filthy apartment by financially irresponsible tenants three months behind in their rent; or blinded by an exploding coke bottle. Each time you use the skills mastered in law school to prevent or rectify an injustice you will be serving the ideals of our profession. Such a lawyer will be living up to the ideals of an excellent lawyer, Attorney General, and profound moral leader, Robert F. Kennedy, who observed as he spoke to students in Cape-town, South Africa about the evils of Apartheid:

Each time a man stands up for an ideal, or acts to improve the lot of others, or strikes out against injustice, he sends a tiny ripple of hope, and crossing each other from a million different centers of energy and daring, those ripples build a current that can sweep down the mightiest walls of oppression and resistance.¹³

DeToqueville, a great student of American life, pointed out that America is a nation run by lawyers; that there is hardly any question of any social import that does not become a lawyers' question; that there is hardly any great social issue of justice or fairness or equality or distribution of power, that does not sooner or later find its way to the courts and ultimately to the Supreme Court of the United States.¹⁴ Today that is as true or truer than ever.

Many of the great failings of this nation are, to a significant degree, the fault of lawyers. Being the best organizers, the most creative legislators, the most articulate citizens, the most sensitive to constitutional issues of injustice and inequality, lawyers have played a key role in every aspect of the American system of justice, and thus bear much of the responsibility for failure to alleviate many social evils. That is why, as I list some of the profound moral issues of our day, I can relevantly address them to you as future lawyers. For, like it or not, these moral issues will become your issues.

As I relate some of the areas of grave injustice today, keep in mind that the everlasting pursuit of justice is man's noblest enterprise on this earth. "Justice—justice you should pursue,"¹⁵ Deuteronomy reminds us. Yet how can justice come, until those who are not hurt by injustice feel as wronged as those who are, until we realize that were justice and righteousness to perish, human life would no longer have any value in the world?

There is so much darkness in the world; in people's lives; and sometimes clouding people's deepest potentials for good. As lawyers you will have the power and the capacity to do much to lift the darkness, for there are many locked in prisons to which only law and lawyers have a key.

Many blacks in the American South were locked in intellectual and social prisons until law and lawyers found the key in *Brown v. Board of Education*.¹⁶ And many in the North. Yet the problems of racism in our

¹³ Reported in N.Y. Times, June 7, 1966, at 10, col. 1.

¹⁴ See A. DE TOQUEVILLE, *I DEMOCRACY IN AMERICA*, 281, 283, 284, 290, (passim) (trans. by Henry Reeve, 1899).

¹⁵ Deuteronomy 16:20, (New World Translation).

¹⁶ 347 U.S. 483 (1954).

society have hardly begun to be solved. There are still millions of our fellow citizens to whom the promise of *Brown v. Board of Education* was a cruel hoax. They live desperate lives and fight a seemingly never-ending battle against impoverishment, educational deprivation, and housing that would be substandard in Bangladesh. They perceive that they have little hope of gaining any real stake in the system.

There are hundreds of thousands of mentally ill in this country who live in awful prisons, be they actual institutions or the illusory freedom of the street. The law has failed them badly. Law and lawyers have the keys to helping the institutionalized mentally ill who are still overly drugged and terribly neglected, shunted into warehouse lives beyond even desperation's hidden possibilities for relief. Mentally ill outside of hospitals are even greater in number and live in horrible worlds of terror, delusion and functional debilitation without access to even the most rudimentary medical care.¹⁷

Likewise, the law has shamefully failed the homeless who exist in a vast invisible prison. Every day the homeless must deal with random and unpredictable violence, hunger, uncertainty of a bed for overnight, the humiliating inability to find the fundamental amenity of a restroom, and the scorn of "respectable" people. Lawyers could make a difference to the homeless if they would but care more about unlocking such prisons than about distancing themselves from the inmates.¹⁸

Consider, too, the prison of actual and potential physical pain and disablement suffered by over 37 million Americans who have no access to medical care in our society. Imagine—we are the most advanced civilization in history with the world's most sophisticated levels of medical technology and yet we cannot find the way to provide basic medical care to 37 million of our fellow citizens who lack health insurance.¹⁹ What kind of social justice is that?

And the darkest and most oppressive of prisons—those that hold the prisoners. Our jails and prisons are the most shameful remnants of atavistic vengeance and inhumanity that future anthropologists are likely to find when they dig deeply into our mortal sins. We seem to have forgotten that the legitimate and lawful purpose of imprisonment is *only* to deprive of freedom and most amenities of freedom. Instead we have allowed our prisons to become places of horror, where violence, rape, extortion, and other unspeakable cruelties unauthorized by the law occur with frightening regularity.

Lawyers have capacities to improve the lot of many of these oppressed—to assure them their entitlements, to redress some of their grievances, to litigate for systemic reform, to draft and promote legislation and to ed-

¹⁷ "[T]here have been estimates of the total number of homeless people in the United States ranging from as few as 250,000 to as many as 3 million and projections that as few as 20% to as many as 90% of them may suffer from some form of mental illness." *Caring for the Homeless Mentally Ill: Innovative Program has cities competing for funds*, L.A. Times, Dec. 19, 1985, § 5, at 1, col. 3.

¹⁸ One lawyer, Robert Hayes, made such a difference to the homeless in New York. Herman, *Attorney for Homeless Worked in Two Worlds*, N.Y. Times, Aug. 30, 1981, § 1, at 48, col. 1.

¹⁹ Cohn, *The Disgrace of American Health Care: What Bush Can Do, What Congress Can Do*, Wash. Post, Jan. 24, 1989, at Z12 (final ed.).

ucate the public through the media. That lawyers are not doing more, much more, is a disgrace, a moral disgrace. A lawyer who does not give at least a fair portion of his or her time to *pro bono* work or to public interest law is betraying his or her implicit commitment and most fundamental obligation to the responsibilities and ideals of this barely-still-noble profession.

Are all these expectations of you "lawyers-to-be" simply naivete? Do you believe that idealism, deep convictions and high aspirations are incompatible with the most pragmatic, efficient and hard-boiled professional lives? I see no basic inconsistency between legal idealism and realistic possibilities; no separation between the deepest desires of heart and mind and the rational application of lawyers' talents and efforts to solve human problems.

Now is the time to pay attention to the noble reasons that brought our ancestors to these shores. Now is the time to speak without embarrassment, discomfort or self-consciousness of "doing justice, securing liberty and effecting equality for all." Your parents, grandparents and earlier ancestors, whether they arrived at Plymouth Rock or Ellis Island, surely had no self-consciousness in dreaming of America as "the land of liberty and justice for all." Their dream as American to be was not "the bottom line" or success in the power and influence game. I hope that you, as keepers of the eternal flame come to nurture its warmth as well as its light, and to provide it shelter against the howling winds of the dark and icy moment.

I know there are some cynical among you who are seeking a law degree to pursue the big bucks. Were I to wish you ill, I would express the hope that you find what you are looking for. For if that is the way you choose to use the gift of a legal education, with all the capacities, powers, privileges, and responsibilities that go with it, one day, perhaps two hours before you die, you may realize as Ivan Ilych, Tolstoy's tragic lawyer and Magistrate, realized with unfathomable despair as he lay dying, that his whole life had been such a spiritual waste. He spent his life doing well for himself and family, winning promotions, judgeships and applause; but never did he challenge moral outrages or give of himself and his talents for giving's sake.²⁰ For those of you who remain unpersuaded, I offer the words of the poet, Alfred Lord Tennyson:

Ah, what shall I be at fifty
Should Nature keep me alive,
If I find the world so bitter
When I am but twenty-five?²¹

Bear in mind that you cannot accomplish things in the name of justice until you master the law. Hard work; self-discipline; the inevitable pain of learning; rigorous application of reason; and long hours of study, preparation, and participation comprise the commitment you must make before you can hope to acquire the capacities to be effective as an advocate

²⁰ L. TOLSTOY, *The Death of Ivan Ilyich* reprinted in *THE SHORT NOVELS OF TOLSTOY* 409 (1946).

²¹ A.L. TENNYSON, *Maud*, in *POEMS OF TENNYSON* 433 (1929).

or representative of a client. *There is no substitute for assiduous self-application.* Your professors, particularly at this stage in your studies, are not impressed by noble words or high-sounding calls to social justice. At this stage your obligation is to start mastering the craft of the law—it is a very demanding discipline. Nothing less than outright devotion to the law, in terms of time and self-application is expected.

No pianist ever soared the heights of musical eloquence before she or he mastered the technical requirements of his or her craft. Scales after scales; arpeggios for hours on end; practice of fingering techniques and pedaling techniques; repetition after repetition; exercises with little musicality; hour after hour after hour with scarcely a noble theme in sight. So too you will be called on to master the technical aspects of the legal discipline before you can reach for the lyrical of our calling. To put it otherwise, consider the elderly New Yorker's response to a youthful stranger's request: "How do I get to Carnegie Hall?" *Answer:* "Get to Carnegie Hall? My boy, you must practice, practice, practice."

The Greek physicist and mathematician, Archimedes is believed to have said, "Give me a place to stand on, and I will move the earth."²² The grounding you will receive here (no pun intended) in the discipline, rigor, and labor of the law will provide the necessary place for you to stand, so that some day, in some small or large way, you, as an attorney, can move the world.

Concluding Observations

Law school, then, can be an experience you'll remember as the time you thirsted for the meaning of justice and came close to understanding that elusive concept.

Law school, then, can be an experience you'll remember as the time you pushed your intellectual resources to their very limits and came close to realizing your full potential.

Law school, then, can be an experience you'll remember as the time you became fascinated with learning and undertook a lifetime of ever asking questions and questioning answers; realizing that the question is more important than the answer, for answers close doors while questions open them.

Law school, then, can be an experience you'll remember as the time you chose a value system true to your deepest and healthiest self-image.

Attorneys who have returned to the law school community for alumni functions have frequently said that in the hurly-burley of practice, every

²² "According to Pappus it was in connexion with his discovery of the solution of the problem *To move a given weight by a given force* that Archimedes uttered the famous saying . . ." ARCHIMEDES at xix (The Dover Publications unabridged reissue of the 1897 Heath edition). See also "Give me where to stand, and I will move the earth." BARTLETT'S FAMILIAR QUOTATIONS 93 (15th ed. 1980) citing PAPPUS OF ALEXANDRIA, *Collectio*, bk. VIII, prop. 10, § 11.

now and then, they stop and look back at their legal education at this institution to remind themselves what it is all about; why they are pursuing a career in the law; and to put themselves in touch again with the vision that sustains them, consciously or subconsciously.

For if, while you are here, you pay attention to the whole lesson being taught, we will be for you like a "shining city on a hill;" able to guide you in your quest for a life that makes a meaningful difference; a meaningful difference to persons in trouble, and to a society in need of women and men of ability, empathy, courage, compassion, and moral vision.