

USING YOUR LAW DEGREE PROUDLY*

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My text is my title—how to use your law degree *proudly*. To act proudly is to act in accordance with your own needs and goals, and to do so in a way that, looking back, you will feel satisfaction in what you have wrought. I propose to make a few suggestions to help you to feel this satisfying pride.

First of all, pass the bar examination. This will definitely make you feel better. It will also make your clients feel better. Second, be a successful lawyer. This also will make you feel better, and not only you but your family and friends. Most people like to know a successful lawyer. The problem is, what is a successful lawyer? Naturally, you want to make enough money. But how much is enough? A professor recently told first-year law students that if after graduation you are prepared to earn \$50,000 to \$75,000 a year in current dollars, you can have the most wonderful career doing everything you want. But if you want to work for a large corporate law firm and earn a quarter of a million dollars or more, then you will have to make some compromises with your life.¹

Attending law school can be a heady business. In an astonishingly brief period a neophyte can be transformed into a professional, often with offers of lucrative jobs or prestigious judicial clerkships as preludes to careers combining fortune, security, public influence, and even fame. While social mobility is among the attractions of the profession, a consequence is sharp competitiveness among law students. This striving is widely deplored, but it is inevitable. There are hungry law students, like hungry athletes, and society rewards those with energy and desire.

But competition can get out of hand and impair personal relation-

* This article has been adapted from a commencement address delivered by Professor Dorsen to Western New England College School of Law graduates on May 17, 1985, and from an essay published in the N.Y.U. LAW SCHOOL COMMENTATOR, February 1, 1985, p.7, entitled *Three Perennial Issues of Legal Education*.

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1. Dershowitz, *Advice from Counsel*, Harvard Law School Bulletin, Winter/Spring 1985, p. 39.

ships and integrity. It can also lead students—and lawyers—to ignore, in a quest for conventional success, values and norms that should be the concern of every decent person.

Law students must keep hold of their individuality and ideals, not just try to get ahead, not just try to be better than the next person. They must not let the Watergate notion—that nothing counts but winning—corrupt attitudes and objectives. It is of course no disgrace to strive for money and success, but you will find that they are not enough, whatever you may think today. According to the old joke, happiness can't buy money. But the reverse is also true, at least for most people. Well, what *does* buy happiness . . . and pride?

Initially, I would suggest that you will derive great satisfaction out of doing a good job for its own sake, out of old-fashioned craft skills. The best statement of this ideal is not by a lawyer but by the novelist Joseph Conrad, who wrote as follows:

. . . [T]he moral side of an industry . . . is the attainment of the highest possible skill. . . . Such skill, the skill of technique, is more than honesty; it is something wider. It is made up of accumulated tradition, kept alive by individual pride, rendered exact by professional opinion, and, like the higher arts, it is spurred on and sustained by discriminating praise.²

In recent decades the concern for craft has declined among lawyers. Partly this is because we are all so busy there is no time to do the exact job. In addition, the current generation of lawyers has recognized that an arid concentration on craft often excludes moral values and social concerns. Craft, after all, is a tool that can serve any master.

But that does not mean one should embrace the other extreme and reject the values extolled so movingly by Joseph Conrad. Craft values will help you to be a more successful lawyer and a prouder one. You will win more cases, please more clients, feel better, and *be* better. Rigorous attention to detail and a willingness to work and rework one's product remain the lawyer's indispensable allies. I agree with Justice Holmes, who said, "The mode by which the inevitable comes to pass is effort."³

How can you know if you have the proper attitude toward craft? One way is to evaluate your own law school experience. Did you take

2. J. CONRAD, *THE MIRROR OF THE SEA*, 36-37 (1906).

3. Quoted in J. Monnet, *Felix Frankfurter*, in *FELIX FRANKFURTER: A TRIBUTE*, 33 (W. Mendelson ed. 1964). I have also discussed the importance of craft more fully in Dorsen, *The Role of the Lawyer in America's Ghetto Society*, 49 *TEX. L. REV.* 50, 61 (1970).

your responsibilities as a law student seriously? For example, in the classroom, preparation is essential; it is difficult to learn more than superficially if assigned reading is not completed before class. In addition, students must participate. I do not refer merely to oral participation when called on or as a volunteer. Such contributions are valuable to the student and help to assure a stimulating, lively class for the benefit of all. But more important is a student's "silent participation"—thinking hard in class when a question is asked and answered. Is the question unclear or tangential, or the answer wrong or incomplete? What alternative responses are possible? What new questions does the answer raise? How does the assigned reading fit in? Silent participation is a crucial part of the learning process because it means that a mind is in gear and continuously engaged and stretched by the minds of other students as well as the instructor's.

What are the consequences of a failure to prepare for class? Consider the difference between a well-schooled student of music and someone who is unaware of the implications and subtleties of theme, counterpoint, rhythm, and meter. The latter will say she is "enjoying the music," but the former will have far greater understanding of what she is hearing. An English student who is reading a novel that refers to the Bible or to Greek myths and who is unaware of these sources may enjoy the plot but surely will not appreciate its richness or nuance. Similarly, a law student who reads an assignment beforehand and has reflected on it will best understand what is happening in class. It is not easy to understand a problem if you have not read or do not remember a point made in an assigned opinion, and often you will not even know you do not understand. Most of us fall short from time to time, but we cheat ourselves if it becomes a habit.

These lessons will apply with equal force throughout your professional career. Preparation and a sense of personal responsibility are essential for effective representation of a client whose property, liberty, and even life may hinge on how well you do your job.

Another way to find pride is through good works. What follows will not be a sermon, although I suspect that some of you are gearing up—or hunkering down—to listen to exhortations on behalf of civil liberties. Indeed I praise the graduates of this school and other law schools who choose to become full-time public interest lawyers—not just for civil liberties but for consumers, the environment, the poor, and other causes that badly need legal talent. But not every good lawyer or good person can be a public interest lawyer, and not every good lawyer or good person *should* be a public interest lawyer. It is not a lifestyle or a life for everyone.

Further, it is possible to do much public good without working full time at it. Indeed, most pro bono work is performed by government lawyers and especially by lawyers in private practice.⁴ Private practitioners generally concentrate on the problems of their clients and on their own lives. That is natural, and a legitimate source of pride when done well. But it is possible to enhance that pride by making a contribution to the lives of others. There is no formula. One can serve on a school board, represent a poor defendant, advise a struggling charity, become a director of legal aid, or write a brief for a civil rights group. We do these things because we all take pride in our communities, our legal system, and our country. We are a part of them, and they are part of us. We have a duty to our neighbors and our society to help out.

Helping out includes service. It also includes criticism, preferably of the kind that stimulates reform rather than rancor, the criticism of a friend rather than an adversary. Criticism, after all, is what started this country, and what has kept it growing in size and given it moral strength over two centuries. It is in that spirit that I draw attention to certain actions by our government that do not make me proud because they are inconsistent with the rule of law.

— It is not a source of pride that we are witnessing an erosion of the exclusionary rule under the Fourth Amendment, which, if consummated, would excuse police lawlessness.

— It is not a source of pride that our government denies visas to foreign scholars and lecturers on the ground that they are “dangerous,” when in fact all they propose to do is speak and listen.

— It is not a source of pride that our State Department lawyers who lost the Nicaragua case in the International Court of Justice refused to submit to the jurisdiction of the Court and instead went home.

— It is not a source of pride that the Executive Branch bypasses the legislative process by attempting to make laws through executive orders.

When I utter these words as a lawyer and citizen, I do so with genuine regret because I want my country to do right. I also do so with the knowledge that many people, including some of you, may not agree with one or more of my criticisms. And I certainly do so with full knowledge that government error is not confined to one administration or one political party. Even the greatest of our presidents, act-

4. See Riley, *The Challenge of the New Lawyers: Public Interest and Private Clients*, 38 GEO. WASH. L. REV. 547 (1970).

ing under the pressures of their times, violated the law of the land. Jefferson sometimes winked at violations of civil liberty, Lincoln suspended habeas corpus, and Franklin Roosevelt tried to pack the Supreme Court.

One must therefore be tolerant as well as judgmental, understanding as well as outraged, self-critical as well as critical of others. All over the world we see the fruits of intolerance, and they are bitter indeed. Regrettably, intolerance exists within our shores as well, and there are signs that it is increasing. I urge you to reject all who counsel racial and religious superiority, or who would persuade you that there is one Truth for everyone. Let no official or leader prescribe a single way of life for our people. Permit each individual to live by his or her philosophy, by his or her religion, or by no religion at all. These are matters for the individual conscience. We must never forget, as Justice Frankfurter once remarked, that the United States "has been built on trial and error, distrusting all absolutes. . . . The mark of a truly civilized [person] is confidence in the strength and security derived from the enquiring mind."⁵ And what is true of a person is also true of a society.

What you will do for your life's work cannot be planned with confidence today. Many careers will be the result of unpredictable circumstances, or a chance encounter or opportunity. For almost all of you, your first job will not be your last. The main thing is to be ready for whatever comes your way. Whatever career path you choose, I offer three principles to follow:

(1) My first suggestion is to be committed, to take your place in life with ideas and values of your own. Those ideas do not have to be anyone else's or agree with anyone else's. Stand by them; they are your most precious possession. Whatever your values, whatever you believe, believe in something.

(2) My second suggestion is very different, and may even seem to contradict the first. It is that whatever you believe, always consider the possibility that you may be wrong. It is not easy to hold a strong view and at the same time conceive the possibility of error. It is much easier simply to say, this is what I think and I am not interested in hearing the other side. But hearing the other side is vital to the enquiring mind and generous spirit and ultimately to pride in your own values. Fortunately, law school offers the training to do this. One of the hardest and most frustrating aspects of legal study is learning that there are few if any absolutes.

5. Quoted in Monnet, *supra* note 3, at 33.

One of America's greatest judges, Benjamin Cardozo, commented on the uncertainty [of the law]:

I was much troubled in spirit, in my first years on the bench, to find how trackless was the ocean on which I had embarked. I sought for certainty. I was oppressed and disheartened when I found that the quest for it was futile. I was trying to reach land, the solid land of fixed and settled rules, the paradise of a justice that would declare itself by tokens plainer and more commanding than its pale and glimmering reflections in my own vacillating mind and conscience.⁶

Justice Cardozo sought certainty. Most law students also seek certainty. But they will not find it. They will be unhappy about that and often they will resent professors who expose the futility of the search. But this process is healthy; it helps the student to recognize that the law is unstable and always changing because society changes. According to Roscoe Pound, dean of Harvard Law School for many years, a typical rule of law lasts but one generation.⁷ This does not mean law students should not learn and assimilate rules; it means that simultaneously one must also appreciate that the rule is moving, sometimes visibly and sometimes more like a submerged iceberg.

A positive side effect when students recognize uncertainty in the law is that they are encouraged to seek the reasons for it and to understand when stability is to be preferred and when movement is more appropriate. This complex subject is encompassed by the doctrine of *stare decisis*, which does not merely include, as is often imagined, its literal meaning, "let the decision stand," but rather refers to both movement and stability in the law. When and why one is to be preferred is ordinarily not taught in a systematic way in law school, but it is one of the most important parts of a sophisticated legal education.⁸ Moreover, it is a problem that cannot be escaped. As Justice Cardozo said in another passage:

As the years have gone by, and as I have reflected more and more upon the nature of the judicial process, I have become reconciled to the uncertainty, because I have grown to see it as inevitable.⁹

6. B. CARDOZO, *THE NATURE OF THE JUDICIAL PROCESS* 166 (1921).

7. Pound, *Survey of Conference Problems, University of Cincinnati Conference on the Status of the Rule of Judicial Precedent*, 14 U. CIN. L. REV. 324, 329 (1940).

8. See generally 1 H.M. HART & A.M. SACKS, *THE LEGAL PROCESS: BASIC MATERIALS IN THE MAKING AND APPLICATION OF LAW* 587-620 (tent. ed. 1958).

9. B. CARDOZO, *supra* note 6 at 166.

(3) My third suggestion is, do something! Whatever you think, and however open-minded you are, do not be paralyzed by indecision. Hamlet did little good for Denmark. It is necessary at some point to resolve doubts and act according to principle. Sometimes you will be unsure. Fear not. We all are, even those who seem most confident, unless they are also the most insensitive. Sometimes you will want to reconsider basic premises. Do it. Take time to reflect, take time to attend to your personal lives. Have fun. But afterward do not just sit around. Do something. The world needs you.

Lawyers face many open roads. Any of those roads can lead to rewarding and vital professional destinies. The choice of route rests with each person, who in the last analysis will be guided by temperament, values, and a sense of the times. No speech, no exhortation, no incentive can replace the irreducible character of the individual man or woman. When the December of life approaches, as the psychologist Erik Erikson has written, there are those who will reap the joys of having lived an integrated and useful life, while others will endure the shadow of disappointment and personal despair.¹⁰ I urge each of you, on this great day for you, to reach out for the sort of professional life that will permit you to use your law degree proudly, now and later.

10. E. ERIKSON, *CHILDHOOD AND SOCIETY* 268-69 (2d ed. 1963).