

DOING OURSELVES JUSTICE: (RE)COMMITTING TO A LIFE OF THE LAW

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INTRODUCTION

It is wonderful to see so many former students and folks that I admire in this room. I can't help but start this talk, not with a lawyer joke—I actually hate lawyer jokes—but with a funny story that only lawyers can appreciate.

This story was told to me by my Civil Procedure professor. She claims that there was a law professor walking through the subway station in Boston when she saw a homeless man asking for money holding a sign that said “Out of work lawyer.” So the professor stopped and asked, “How do I know you are really a lawyer?” The homeless man started to quote the usual well-known cases: *Brown v. Board of Education*, *Miranda*, *Roe v. Wade* . . . The professor responded that anybody would know those cases and started to walk away. The man then shouted out, “*Pennoyer v. Neff!*” She promptly went back and gave him ten dollars. Doesn't that bring back memories of your first year of law school?

Now, I have to admit that I feel a little bit like an imposter in the Temple being asked to speak with a group of real lawyers. My daughter really does tell people that her mommy is only a lawyer on TV. If you'll allow me to use the analogy between baseball and the law made famous by Chief Justice John Roberts at his confirmation hearing, if judges are the umpires, and the practicing bar are the players, then the law professors are the George Will's of the game. We are the pundits. We pontificate and speculate and don't hesitate to throw in our two cents about every aspect of the game even though we probably couldn't hit the ball on the easiest pitch.

In other words, like George Will, I'm a wannabee.

But, also like George Will and his love for the great American sport, I have a deep love and appreciation for the law. It is my life. I even play what is called “fantasy SCOTUS,” where, like fantasy baseball, you predict the outcomes of votes on the United States Supreme Court. If you are a law nerd like me, you'll think this is the greatest game ever invented.

But more importantly, I don't just love the law, I love lawyers. I have the greatest admiration and respect for what you do. Now, that is not to say

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that we don't have problems in the profession with what I might call "virtual doping." You all know what I am talking about and we ought to do a lot more to get those folks out of the game. But, it is my humble opinion that the law, and those who practice it, are among the most important elements in our democracy.

But, I have been very disturbed lately by what I see as unjustified attacks on the profession. From the Keep America Safe video questioning the patriotism of Justice Department lawyers, like Neal Katyal, who had previously represented detained terror suspects, to the lawyer-bashing we saw in the debate over comprehensive health care legislation, to the endless character assignments of judicial nominees. At least from where I sit, as one of the game's biggest fans, I can appreciate that, like Kermit the Frog's lament about the color of his skin, it's not easy being a lawyer.

To that end, Todd asked me to give an inspirational talk. I am not sure that I can do that, but as a professor, I can give you homework. In the medical field, there is something that is called the model of the "reflective practitioner." The premise is simple: professionals who intentionally reflect upon what they do and why they do it learn in more profound ways and express greater satisfaction with their profession. Doctors are being trained to actively engage in professional reflection as part of their medical education. However, law schools have not done a good job of implementing similar training for lawyers, and thus, lawyers often don't have the tools or guidance to become reflective practitioners, and, as a result I think, often experience greater ambivalence about the legal profession and their role in it.

So, I would like to introduce some concepts about intentional reflection to you and give you some tools to use to try to become reflective practitioners with the hope that you will do yourselves justice and find more meaning in your professional lives.

Assignment 1: Tell Your Own Story about Your Path to the Law

We learn about ourselves through the stories that we tell and so in your first assignment as a reflective practitioner, I want you to tell your own story about how and why you became a lawyer. And to encourage you to do that, if you will indulge me, let me tell you mine.

One of my earliest memories was going with my mother to the local Montgomery Ward store to shop for clothes for the start of first grade. We had picked up things that six-year-olds would love. It was 1972 and Mod Squad clothes were all the rage. We took the clothes to the check-out counter and my mom handed the woman her credit card. Some of you may

remember that, in those days, the salespeople would call someone to get an authorization for the card. The woman came back and said that my father had cancelled the credit card. My parents were in the process of divorcing and my father had cut off all of my mother's access to cash and credit. The saleswoman then took out some scissors and cut up that card in front of my mother and me. Then she took back the clothes and looked at my mother with disgust in her eyes. I just stood there, on the verge of tears.

Now, my mother is a lot like President Barack Obama's Chief of Staff Rahm Emanuel. The President once joked that when Rahm lost his middle finger to a meat slicer, it rendered him mute. That is my mother. She had more than a few choice words for that woman that I would not repeat, even in this crowd, and dragged me out of that store with her head held high. I never saw her cry. Of course, at six years of age, I was too young to understand that a married woman could not get credit on her own until the Equal Credit Opportunity Act was passed in 1974, and that my mother was not a victim of a judgmental sales lady, but a casualty of the law.

My mother eventually went to work at Ford Motor Company in what was often called the "pink ghetto." Like many women, she worked in a low wage administrative job where she had to put up with male engineers hitting on her, inappropriate remarks, and plenty of other discrimination because it wasn't until 1980 that the Equal Employment Opportunity Commission recognized sexual harassment as a form of sex discrimination under Title VII.

My younger sister and I were "latchkey kids"—a term I suspect that the media made up to make women feel guilty about working outside the home when, in fact, most women, like my mother, had to work. We would come home after school and let ourselves into the house with the key my mother had me wear around my neck, and then we would call her to let her know we were safe.

I was a news junkie, even as a ten-year-old, and what I did in those afternoons before my mother came home from work was watch the news, and in particular, I would watch the women's movement unfold. I was obsessed with the passage of the Equal Rights Amendment. My mother would come home from work and I would say, "Guess what? There was another march in Washington because another state ratified. Isn't that great?" And she would look at the television and see footage of feminists like Gloria Steinman burning their bras, and she would look at me and say, "Cheryl—those women are crazy! If you want to help women like me, don't protest. Go to law school."

And she would take me over to our World Book Encyclopedia. For those of you as old as me you may remember that encyclopedias were

where we used to look up information before there was the Internet. My mom had bought a used 1969 set, and so any fact about anything I know is limited to what happened before 1969. She would open the Colleges and Universities section and say, "Go to Harvard and be a lawyer and always be sure that you can financially support yourself."

Now, while I appreciated my mother's insistence that I go to law school, I never really believed that I could until the day that Ronald Reagan appointed Sandra Day O'Connor to the bench. By 1981, there were certainly plenty of women lawyers, but I did not know any, nor had I ever seen one. Seeing O'Connor's face on the television that day was one of the most important days in my professional life because being a lawyer suddenly became possible, and by the grace of the universe, I did it.

I tell you this story because I am positive that each one of you has your own story about your path to the law and that, inevitably, part of that story includes having witnessed or been subjected to some indignity or suffering at the hands of injustice. No one in their right mind would take the LSAT and apply to law school if they did not somehow believe that they had to right some wrong. My path to the law started in the Montgomery Ward children's clothing department, but I believe that every good lawyer's path to the law begins at a particular moment in time when you intuitively realize something isn't just.

But the problem with law school, and with our profession, is that it is so easy to forget why we were called to the law, and thus easy to become cynical about our profession.

So, your first assignment is to tell your story. Lawyers are great at telling everyone else's stories, but we are lousy at telling our own. Maybe it's the story you wrote on your law school application, or maybe it has been filed away in your heart for a long time. But tell it out loud to your spouse who worries you work too much, or your child who can't understand why you would want to be a lawyer, or to a young person who might share a similar dream to be a lawyer too.

Now, as we get older, I know that our stories become grayer in detail and grander in metaphor, but who doesn't love a lawyer prone to some slight exaggeration, right? Frankly, I don't even care if your story is really true, or just a fable to remind yourself of the life lessons you have learned. What matters most is not to recount the details, but to understand our own histories, however it is that we make sense of it, and then to make peace with ourselves. So tell your story over and over again, out loud, to someone who matters.

Assignment 2: Assess Your Values and Maybe Make Some Changes

At the end of my first semester of law school, one of my professors gave us this hypothetical: Suppose there is a man who has had a motorcycle accident. He is taken to the hospital but he has lost his identification in the accident and no one knows who he is. He falls into a coma and it takes two months before he recovers and his identity is learned. His health insurance policy says that the company must be notified of any claims within thirty days or it will not cover his medical costs. So the man sues his insurance company.

Assume that you represent the insurance company. What do you do?

As first year law students, eager to try out our new knowledge, we started shouting legal truisms like “a contract is a contract” and “the patient had proper notice.” This went on for a while, and then the professor shouted: “Stop. You’re wrong! You look in the mirror and ask yourself, ‘What has become of me?’” And then she walked out of the room and our first semester of law school came to an end. We all sat there perplexed because we were too young and inexperienced to understand what the point of that story was.

Upon reflection, it was not a trick to get us to stay away from insurance defense work, although I know that there are plenty of people who have no love for insurance companies. Rather, that was our professor’s way of alerting us to one of the biggest challenges in our profession. Because of our ethical duty to zealously represent our clients, lawyers have a harder time than many other professionals living in a manner that is consistent with their values. And as a result, as lawyers, we often find ourselves advocating for positions that run contrary to our own deeply held beliefs. This gives plenty of fuel to the lawyer-bashers, and often leads us to question our profession and our commitment to it.

Bill Grace, who runs the Center for Ethical Leadership, has people do an exercise where he has them identify their core values. We do this at the Snelling Center for Government in our Vermont Leadership Institute. We, of course, all value many, many things—family, security, integrity, influence—but Grace asks people to narrow down the list of those things we truly value to only two. At your core, what are the two things that are most important to you? You can easily do this exercise so you can answer that question.

Then, after you identify those two core values, look at your calendars and look at your checkbooks because the way to tell if you are really living your core values is to see where you are spending your time and your money. If what you really value is justice and you are at work all the time,

there is no shame in that. But if you really value family and you haven't made it home for dinner in a month, you've got a problem.

Grace then recounts that when he did this exercise with some business leaders, he asked them, "When you made decisions that were inconsistent with your values, what did it cost you?" One person said it cost his job. Another said it cost her marriage. Another said it caused his cancer.

That is the root of the word disease. It is *dis*-ease with one's life. We have too much disease in the law, in part because of the professional challenges that we face to live consistently with our values and because it is so easy to lose sight of what is really important to us in the daily grind of life.

That was the moral of my professor's story: To thine own self be true.

Our primary duty as lawyers is not to the law, but to ourselves. Your duty is to you. Therefore, I give you permission to put the law aside and put your own sense of self first.

Take stock of your values. Look at your checkbook and your calendar and ask, "What has become of me?" If you are in a state of ease, celebrate!

But if you are in a state of *dis*-ease, you have to make changes to your personal or professional life, which I know is not easy, but it is necessary in order to sustain a meaningful legal career. Knowing when you need to make a change in your life is imperative for the reflective practitioner.

Finally, Assignment 3: Be Grateful

Admittedly, this assignment is the hardest one, at least for me because, by nature, I am not a grateful person. I learned this the hard way on the morning my board of trustees granted me tenure. I was driving to graduation on a beautiful May day—a day just like this one, so happy that I had crossed the River Jordan into the Promised Land of tenure. But I was busy looking ahead to my next achievement rather than just appreciating where I was at that moment. I pulled into oncoming traffic. I totaled my car and hurt myself. Luckily, the other driver was not injured. I thought this was some sort of sign that I had made a mistake, and I fell into what I call my post-tenure depression.

I suppose that this is similar to post-partner depression, or post-big-jury-verdict depression, but all of us, at some point in our professional career, wonder if we have made the right choice to pursue the law.

So while I was wallowing in my own self-absorbed self-pity, a friend insisted that I watch this Oprah episode. On the show was a woman who had written a book on gratitude, which she claimed was a learned skill. To

learn gratitude, she suggested that each day you write down five things for which you are grateful and that you never repeat anything on the list.

Now, I thought that this sounded like a stupid waste of time, but my friend insisted that I do it. At first it was easy to think of the obvious things: friends, family, Ben and Jerry's Ice Cream, strong coffee, and red wine. But after a while, you really have to think about what it is you have to be grateful for. And then you start to notice things in your world that are easy to overlook.

I ended up doing this gratitude exercise for a whole year, and I encourage you to try it. I really became most grateful that I have never had to suffer the indignities that my mother did, which is why I will forever be grateful to lawyers who fought those battles so that I and other women didn't have to. Doing that exercise helped me really re-commit to the law in a far more profound way than I had ever imagined I would.

Even just starting with some simple vocabulary change can help: you don't *have* to take a deposition Monday morning—you *get* to take a deposition Monday morning. You don't *have* to appear before that judge. You *get* to. There are millions of people in the world who will wake up Monday morning and not have food or shelter, or who have the smarts and the will to be a great lawyer, but not the means to do so. You have chosen to be a lawyer: be grateful for that choice.

Walk the Path of the Law on Your Feet

In reflecting upon gratitude, let me share with you one final story about one of my students, Erin Woolley. Erin came to law school after she witnessed human suffering at the hands of injustice while volunteering at a local domestic violence hotline in her home state of Maine. Erin became involved with Women's Law Group and Law Students for Reproductive Justice in her first year. The summer after her 1L year she became the first legal intern for Safeline, the domestic violence action network in Orange County. By her second year at Vermont Law School, Erin stood out as one of the leaders in her class. She co-chaired the Women's Law Group, held the secretary position in Law Students for Reproductive Justice, and co-directed the VLS production of the *Vagina Monologues*, part of the annual global V-Day action event to benefit women's anti-violence groups. She held office hours at Safeline and worked their hotline. I was particularly fortunate to have Erin in my Women and the Law class, in which we filed an amicus brief in the United States Supreme Court. I relied on Erin to give voice to the victims that we represented. She did, as Cornel West says the great leaders of the world do: She spoke truth, in love, to power.

In the spring of her second year of law school, on her birthday, Erin was diagnosed with Hodgkin's lymphoma. She was in my Evidence class at the time and needed to undergo chemotherapy. I told her to take a leave from law school, to go home to be with her family. But Erin would say, "No Professor Hanna. You don't understand. I have to be a lawyer." So she would go to chemotherapy treatments in the morning and then come to Evidence in the afternoon, with that big hole in her chest where they pump the chemicals into your body. As the rest of the class complained about mastering hearsay, Erin would cheerfully ask questions even though her skin was pale and her hair was thinning.

After three rounds of chemotherapy, Erin underwent a transplant of her own cells to put the cancer in remission. At the time, she had stopped taking classes but continued to work on her advanced writing requirement with me so she could still graduate with her class. Even though I told her not to worry about the paper, she insisted that she keep working on it. And so as she lay recovering from the stem cell transplant, she would email me drafts of her thesis.

Erin lost that battle to cancer in March. She would have graduated in May 2010.

I simply cannot comprehend the grief that a parent must feel when she loses a child, because the grief I have experienced after losing a student has, at times, been overwhelming.

So as I have been trying to make sense of Erin's death, I was reminded of one of my legal heroes, Charles Hamilton Houston. Houston was an African American and the son of a lawyer. But as a young man, he wanted nothing to do with the law. After he graduated from Amherst College, he joined the Army where he served in an all-black unit in World War I. When he returned, still somewhat adrift, he saw black soldiers, still in uniform, being lynched by angry white mobs in the South. That is where his path to the law began.

He attended Harvard Law School and was the first black editor of the Harvard Law Review. Houston went on to document the indignities of racial segregation in the South with the goal of eventually overturning *Plessy v. Ferguson*. He became the Dean of Howard Law School, where he trained the great civil rights lawyers including Thurgood Marshall. He started the NAACP Legal Defense Fund and was the architect of the case strategy that led to *Brown*.

Yet, Houston had a bad heart and, just as I advised Erin, his doctor advised him to stop working so hard. But Charles Houston used to say, "I would rather die on my feet than live on my knees." He literally died on his feet while working on a case in 1950, just four years before *Brown* was

decided. I take great comfort in knowing that when Erin died, like Houston, she died fighting for justice, and grateful to be travelling the path of the law. There was no other path for her travel.

CONCLUSION

So I leave you with one plea: do not walk the path of the law on your knees. If the life of the law is not truly your calling, then there is no shame in following a different path. If you leave the law, trust me, you will not become homeless and have to beg in a subway with a sign that says “Out of work lawyer.” You are all smart and you will find your way on a different path. But, if you are called to the law, don’t engage in any proverbial doping, don’t laugh at jokes about lawyers because they are not really funny, and don’t ever apologize for the work that you do.

Lawyers are the guardians of democracy. One-third of our constitutional democracy is solely entrusted to our care. We stop human suffering at the hands of injustice. That is hard work, and often thankless work, but is the work we are compelled by our own stories to do. There are few professions in the world that are nobler, or more necessary to the promotion of human dignity, than this one.

So I encourage you to tell your stories, to know who you are, and to bear witness to human suffering at the hands of injustice that we, as lawyers, are compelled to end. And most importantly, I implore you: proudly stand up, so that when you die, because you inevitably will die, you will gratefully and graciously be standing on your feet.

