SMU Law Review

Volume 47 | Issue 5 Article 5

1994

The Law - More Than Being a Lawyer, the Choice is Yours

Alan C. Page

THE LAW—MORE THAN BEING A LAWYER, THE CHOICE IS YOURS†

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MANY of you may know me only because of my career as a professional football player. And I may have been invited here today largely because of my recent election as the first black Minnesota Supreme Court Justice. But today I would like to talk about something other than what I have accomplished in a former career—and what I have yet to accomplish as a member of the judiciary.

As an attorney, I have represented both private and public clients, plaintiffs and defendants, employers and employees through my work with a private law firm and the Attorney General's Office in my home state of Minnesota. I have negotiated cases and drafted and interpreted legislation; I have counseled clients on preventive law matters and matters in litigation; I have appeared in administrative hearings and courtrooms in every corner of Minnesota. And now I am reviewing appeals on the Minnesota Supreme Court.

Professionally, that is what I have chosen to do with my training as a lawyer. You, too, have the opportunity to choose which direction your training will take you. Tonight, I am here to encourage you to think more broadly about that choice. To give some thought to what greater purpose you can dedicate your skills and knowledge. For me, education has given my life that higher purpose—higher even than the practice of the law. It is how I believe we can all make a difference in the world.

Fifteen years ago, I was an eager, anxious law student. I had come to law school fairly late since I had started playing professional football right after graduating from Notre Dame. After using my head as a helmet rack for more than nine years, I was more than ready for a career change, and law school provided the intellectual challenge and stimulation I was seeking.

I found law school fascinating. I especially enjoyed the learning process, although there was a point during those first few contracts classes when my enjoyment was mixed with sheer terror. Instead of lecturing, the contracts professor [Mark Yudof] believed strongly in the Socratic method, which, as you know, entails asking questions of those who are under-enlightened to help lead them to enlightenment. Even though I always came to class relatively well-prepared and had performed as a football player in front of hun-

† This article is a revised and annotated version of the Murrah Lecture, delivered at Southern Methodist University School of Law on October 21, 1993.

* Associate Justice, Minnesota Supreme Court.

dreds of thousands of people, I was panicked that he would call on me. Making myself small and inconspicuous was not one of my choices. So what could I do?

After surviving the first few days, I began to notice that the professor only called on students who *looked* afraid. He never called on those who had their hands up. So I started raising my hand. For a while, this tactic was rewarded. But then once, when I raised my hand, he called on me. Without thinking, I stood up to answer the question—and my mind went blank. And it stayed blank.

As I scrambled for a cohesive thought, I had momentary empathy for those quarterbacks I had been chasing for a living. And then somehow, it hit me—I had to say something. *Anything* was better than silence. So I started speaking. Whatever I said, it must have been okay. And he never called on me again.

That experience taught me some important lessons. First, that preparation is critical to success. And while good preparation means walking into the courtroom armed with thorough research or as a law student coming to class with your assignments completed, it also includes being able to size up a situation and respond appropriately. Second, I learned that we sometimes create our own greatest obstacles. That our fears—rather than the actual situation—may be what limit us. But, even if your fears cause you to stumble, good preparation will pick you back up.

Whether you believe it or not, there is a method behind the madness called law school. The purpose is to prepare us intellectually, and even psychologically, to work hard, and think critically and thoroughly. However, while law school provides us with the raw skills and some of the knowledge to practice law, I'm not sure it prepares us morally or ethically for the world in which we practice our profession.

There are dozens of reasons why people choose to become lawyers. Maybe you had a parent or an admired role model who was a lawyer. Maybe you believe strongly in peace and justice, and are looking to improve society. Maybe you've got political ambitions, or want a career that has high-income potential. Or maybe as a child you read "To Kill A Mockingbird," or your favorite T.V. show is "L.A. Law." Whatever your reason, whatever your picture of the profession, and regardless of how you use your law degree, young attorneys are thrust into a world that will test their judgment, their beliefs and their moral fiber again and again.

I know when I started law school, I really had no idea what I was committing myself to. Growing up, I had this vision of wanting to be a lawyer, although I did not really know what a lawyer did. As I matured, I had a sense that lawyers solve problems and settle disputes, and I liked the idea. But it was not until I became a Players' Representative for the NFL Players' Association that I actually saw lawyers at work. As I formed my own picture of professional practice, I saw lawyers as people who helped people who could not help themselves. Lawyers were people who fought injustice, who made the world a better place. And that is what I wanted to do.

But it is not quite that simple.

My first case after graduation was a dispute involving two large corporations: The Pillsbury Company and Southern Railway Company. Was it a landmark case with millions of dollars and important legal precedents on the line? No. It was a small-claims court squabble over a damaged shipment. So much for righting the wrongs of the world.

That experience was the beginning of my realization that, although law is about righting wrongs, it is also often about money. Although law is a profession, it is also a business. And as a business, the practice of law is built on selling time to clients. In other words, making sure clients get all the justice they can afford. The bottom line is the more time you bill, the more money you make for yourself and your firm.

Money is not something that law schools talk much about. Yet once you are in the practice, money often becomes a consuming concern. One reason for this is that the demand for what lawyers produce is not a basic human need like food and shelter. People do not just get out of bed in the morning and say, "I think I'll go shopping for a little legal advice today." Meanwhile, law offices, support staff and BMW leases cost money.

Because of this, many lawyers feel a push to sustain the demand for their services. And one way to do this is by creating litigation or issues that have to be dealt with through the law. Unfortunately, not all of this litigation adds much value to society. And some of it actually takes from society, and from the people we as lawyers are hired to protect.

As graduating law students go out to practice, many find that their peers are engaging in practices that are okay from a legal standpoint, but questionable or wrong from a moral, ethical standpoint. Consider, for example, the employment discrimination case in which the plaintiff's claim is worth no more than $3,000, yet the lawyer encourages the client to sue for $90,000 to ensure that the case makes money. Or a civil suit in which a lawyer drags out a weak case to inflate his or her fees.

Law schools also neglect to mention the pressure put on lawyers to maximize their billable time. At most law firms, lawyers are required to *bill* 1600 to 2000 hours per year. Even the most productive people cannot bill more than eighty percent of their time. That means, just to meet their quota, the *best* people have to work the equivalent of six days a week, every week—with no holidays, no sick days, or even a day of vacation. Put simply, most lawyers must work seventy-five days more each year than the average American worker. Under pressure like that, it is easy to start cutting corners and to lose sight of what you really came there to do.

Beyond the money issue, part of the ethics problem is that the law inherently encourages us to turn black and white into shades of gray. Or conversely, to turn shades of gray into black and white. To create good guys and bad guys. Winners and losers. From the start, lawyers are trained to look for ways to divide a problem into two arguable sides. But the world rarely provides us with situations that can be categorized so cleanly.

And that kind of thinking can lead to rewarding cleverness over rightness.

It is the kind of thinking that led to the downfall of Attorney General nominee Zoe Baird, who, after all, consulted attorneys before and after making the decision to hire undocumented workers. Beyond her merits—and beyond the particulars of her case—she became both a victim and perpetrator of legalistic thinking. She thought it was all right to respond to questions and deal with issues in a way that may be factually correct or legally defensible, but does not reveal the fullness of what we know to be right.

Although your law school experience may have taught you to think like lawyers, out in the world is where you have learned to behave like lawyers. Many people view lawyers as only slightly better than pond scum. Lawyers make attractive targets because the practice of law, by its nature, involves some unsavory practices: defending someone who has done wrong or attacking someone who has not, and making lots of money in the process.

At the same time, society increasingly expects that the legal and judicial systems can and should solve all of society's problems. Just lock up the troublemakers, and everything will be fine. So while we look *at* lawyers as a cause of some problems in society, we are also looking *to* lawyers to solve society's problems. No matter what we have chosen or plan to do with our legal education, we practice in a world that is fraught with problems: violence, crime, drugs, greed, poverty, homelessness, hunger, discrimination, abuse. All these problems are serious. They must be addressed. But the legal system by itself cannot correct this incredible array of ills.

Even if we can catch criminals and convict them, we cannot build prisons fast enough to hold them. Even when we can afford to build new prisons, we cannot afford to run them. According to the Bureau of Justice Statistics, the number of state and federal prisoners grew by more than 48,000 during 1991, bringing the total number of prisoners in America to 823,000. That's about the population of Atlanta and St. Louis combined. And it does not include those held in city and county jails! At this rate, the Brookings Institution estimated that more than half of America will be incarcerated by 2053.[1]

And for what benefit? None, it would seem. There is no evidence to support the notion that incarceration in any way reduces violent crime. In fact, it may be just the opposite. California, for example, is ranked number one in the nation for prison populations with more than 104,000 people incarcerated; yet California still ranks third as far as violent crime rate. I suspect Texas is not far behind. Prison does not seem to deter crimes of opportunity either. Michael Milken was not worried about going to jail. And threat of prison did not stop Charles Keating or others implicated in the looting of savings and loans.

In addition to corrective measures, we must also address prevention. We may not be able to prevent people who have no moral compass from turning to crime. But we can prevent people from breaking the law simply because

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1. *See* John J. DiIulo, *Conflicts of Criminal Interest*, L.A. TIMES, Oct. 1, 1989, at 3 for a more detailed discussion on these findings.

they do not believe the world offers them a choice. And the earlier we can reach people, the better.

We must reach children before they have given up on the system, and before the system has given up on them. Before they lose the hope that the future can be different—and better—than today. I believe that the best way to reach these children is through education. And I believe it is up to people like me—and people like you—to make sure that every child is given the opportunity to learn.

There are still plenty of opportunities for people who are prepared for them. The challenge is to help our young people see opportunities for themselves and then keep them engaged with learning long enough to be prepared for those opportunities; because without preparation, opportunity is an empty promise. We must make sure that our childrens' education does not become one of those empty promises.

If we fail to educate all our children—African-Americans, Native Americans, Latino/Chicano/Hispanic-Americans, Asian-Americans and European-Americans—we will all pay the price: In continued deterioration of our central cities; in more crime and fuller jails; in apathetic voters and a less vigorous political process; and in declining tolerance for one another. If we tend to the education of only the haves, and exclude the have-nots, then we are all disadvantaged. If we nurture only the suburban schools and neglect the schools in our inner cities and rural areas, then we all live in ghettos. If our community does not take responsibility for raising its children, then we had better be prepared to take responsibility for dealing with adults who do not want to play by our society's rules.

Education prepares young people to take advantage of the opportunities they will meet in life. That seems so simple and self-evident. But for many young people today, it may sound like a cruel joke. The "opportunity" to go to college or to find a meaningful job is so remote from their own experience that it might as well not exist. Why prepare for a nonexistent opportunity, when the street offers plenty of opportunities, and requires a lot less preparation?

This is one of the most challenging problems facing our society today. And because the problem is so complex, we tend to think in terms of complex solutions. For example, we talk about international competitiveness and the fact that many job applicants can't demonstrate the basic reading or math skills that they'll need to perform the job.

Big problems, think global solutions. We could require national competency tests for graduation. That should wake up the kids and shape up the schools. Of course, national testing will not affect the 700,000 kids—too many of whom are Black—who dropped out this year without graduating. It will not help the other 700,000 kids who graduate and cannot read their diplomas. They do not need more tests to tell us they are not learning. They need more hope that what they learn will make a difference in their lives.

Testing is an indirect, end-of-the-pipeline approach to correcting what happens much earlier in school. Testing occurs too late to help many of those who need it most. We have to start with the academically curious first, second, third and fourth graders, who have not lost their desire to learn.

Another example: poverty and the related drug abuse and crime afflicting our cities. We have spent the last decade closing schools. Is it only a coincidence that we cannot build jails fast enough? The people who can afford to move are fleeing the inner city, and the educational resources follow. As a result, the gap between the affluent and poor schools widens. And more children face a "trickle down" into a permanent underclass.

I am against big solutions. Clearly, we need some sweeping economic, political and social remedies. But I believe that some solutions can be less complicated. We need some simple—not simplistic—solutions. We must work toward the education of our children one school at a time, one classroom at a time, one child at a time.

Children are the future. And the future is mostly about hope. Yet for many students in our schools today, there has never been so little hope. They come to school hungry. For many of them, school lunch is a gourmet meal. At home, they have no quiet place to study, maybe even no place to sit and read. They get no encouragement from peers, parents or other adults. They are passed unprepared on to the next grade level, and if they are well-behaved, nobody notices—until they are unemployment statistics. Or until they get involved in crime. Or until they are captured for the nightly news by a video camera.

Where do these children—who are disproportionately children of color and poor—see opportunity? Where can they find hope? Hope comes when you feel you have a choice—about which direction your life will take and where you will end up. Each one of us here tonight can represent choices—and hope—for those children who do not think they have any choices.

I am not sure when children start to lose hope. But I have seen it happen. Over the past 15 years, I have spent a lot of time with inner-city schoolkids of all ages. And I have seen the cloud of resignation move across their eyes as they travel through school, without making any progress. They know they are slipping through the net into the huge underclass that our society seems willing to tolerate. At first, these young men and women try to conceal their fear with defiance. Then, for far too many, the defiance turns to disregard for our society and its rules. It is then that we have lost them—maybe forever.

And the fact is, right now we are losing the battle. We can see it in the sharp rise in gang involvement during the past several years. Every day, kids are being asked to decide whether to play by the rules of a system that seems stacked against them or to fight it. And they are choosing to fight.

To many of these kids, a gang represents a support structure—a group of friends—and a common purpose that they do not see anywhere else around them. Kids join a gang for the same reasons they join a football team, or a band, or a school play: They are looking for leaders and a place to belong. We need to give them a place to belong other than gangs. We need to start outmarketing the competition.

We cannot continue to abdicate our responsibility to represent other options, and let street gangs fill the void. We have the need to provide alternatives, we have the ability to provide alternatives; now we must decide whether we have the will. And we must look at the impact of some of those alternatives. We must make sure we are not just applying band-aids to problems that make *us* feel better, but do not help the people who are actually hurting.

For example, I have never understood the emphasis that is placed on summer jobs programs. We put a great deal of energy, time and money into trying to create summer jobs programs for urban children of color. But what do we really accomplish? Not even the best programs provide jobs for everyone who needs one. And even if they did, a summer job only gets you one place: to the end of the summer. A summer jobs program is nothing more than a day care option for high school students. Keep them off the street until we can herd them back into school.

Each of us who has benefitted from our education [especially men and women of color] can represent choices for the children who do not think they have any choices. We can help them see that people who are willing to prepare can succeed at anything they set out to do. But we have to catch them now.

I understand the temptation to doubt that what you do, as an individual, can really make a difference. But I believe that educating our children is one way we *can* all make a difference. Next to love, education is the most powerful and lasting gift we can give to our children. My work with the Page Education Foundation has proven that time and time again. Four years ago I started the Foundation in an effort to increase the number of choices available to young men and women of color.

During the past four years, the number of scholarships the foundation has given out has increased from 10 to 30 to 105 last year. And this year, we presented more than 180 scholarships to students of color interested in extending their education past high school. All told, nearly 400 children have been given not only money, but encouragement, and hope, and a whole new world of choices. And it started with just one person, believing in the power of education.

Education gives children choices. It puts them in control, and gives them the tools they need to handle the challenges they face everyday. If kids are not educated—if they are not prepared to handle opportunities when they arise—they are often forced to let someone else make choices for them—whether it is a gang, an employer who exploits them or a system that is more interested in putting them in jail than helping them succeed. Some would argue that these problems are too big, too complex, too remote from our own comfortable lives. But if we are willing to put our hearts and minds and bodies to test, we can begin to create solutions.

What can you do as law students and young lawyers with bills to pay and careers to start? Because the problems facing our society are complex, we tend to think in terms of complex solutions. As a result, individual effort seems insignificant, especially if it is part-time. But I believe that the steps we take as individuals can be significant. We just need a place to start.

Each of you is sitting at the apex of the education pipeline. That is quite an accomplishment, and you should feel proud. However, as we achieve success in life and move further away from our early educational experiences, we may have a tendency to undervalue the role our education played. To think we did it all ourselves. To forget the support we had from parents, teachers and other adults in the community. And to find reasons why the education of other people's children is none of our business, and certainly not our responsibility.

But if it is not our responsibility, whose is it? Some of you may think it is okay to rely on a new President who promises a national policy that encourages education. Or to assume that you need to be a Supreme Court Justice, or a distinguished attorney in order to make change happen. But that is not true.

On an individual level, it is time for us to get out of our classrooms and courtrooms and into elementary, junior high and high school classrooms. If you are a parent, work with your children. Not just to develop their hook shots or their throwing arms, but to develop their reading and their thinking abilities. Insist that your children take school seriously, then encourage them, reward them and praise their academic accomplishments.

Those of you without children can show your commitment by supporting schools and the teaching profession instead of complaining about them. Honor students and teachers who excel with the same rewards and recognition that we give to our athletes and coaches. Visit schools and spend time with students. Talk about your career and how you got to where you are. Tutor a child who is struggling to read or write. All it takes is the individual conviction that children are worth the investment of our time and effort.

Anyone can make education work for our kids. Everyone here has the ability and the opportunity—and I believe the obligation—to be involved in educating children. Robert F. Kennedy once said,

> Each time a man [and I would add, a woman] stands up for an idea, or acts to improve the lot of others, or strikes out against injustice, he sends forth 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.[2]

Education has lifted every one of us here. With our help, education *can* lift society.

We cannot wait for federal aid to the cities. We cannot wait for a new administration to create and enact education policies. We cannot wait for more riots, more gang warfare, more pain. Now is the time to act. The choice is yours. My challenge for each one of you here today is to choose a school. Choose a classroom. Choose a child. And make some ripples of your own.

2. Robert F. Kennedy, Speech at the University of Cape Town, South Africa (June 6, 1966).

Comments