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# LOVE'S LABORS FOUND

*Nicholas W. Allard\**

## I. LOVES<sup>1</sup>

*“Grown men should never confess their love in public, especially when it is the love of an institution; even worse, a law school.”<sup>2</sup>*

SO says the incomparable Owen Fiss in the coda of *Pillars of Justice*, his inspiring, highly personal reminiscences about 13 legal giants.<sup>3</sup> Professor

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\* Professor of Law (2012- ), President (2014-18), and Joseph Crea Dean (2012-18), Brooklyn Law School. Trustee, The Shakespeare Theatre Company, (Washington, DC). This essay is also a love letter to the faculty, staff, students, and graduates of Brooklyn Law School.

1. With apologies to William Shakespeare. Shakespeare's comedy *Love's Labour's Lost*, while unique in several respects, presents several themes encountered by our present selves and discussed in this essay. According to the Washington, D.C. Shakespeare Theatre Company's dramaturg Drew Lichtenberg:

[S]cholars disagree on whether the play was written as early as 1593 or as late as 1595, so it's either among the earliest of the comedies or smack dab in the middle of the “lyric” period when he also wrote *King John*, *Richard II*, all or part of *Edward III*, parts of *Sir Thomas More*, and the Sonnets. [Literary critic Sir John] Frank Kermode maintains [that the commonly used version of the play] was *revised* by Shakespeare in 1597, which would explain why it's so hard to place.

Email from Drew Lichtenberg to Nick Allard (Oct. 13, 2018) (on file with author and the University of Toledo Law Review) (hereinafter “Lichtenberg Email”). Although there has been some debate about the correct spelling and punctuation (use of apostrophes) of the play's title, it is clear that it is a play about overcoming obstacles in the pursuit of ultimately unrequited love. My essay is about finding love educating aspiring lawyers, practitioners, and the public about law. *Love's Labour's Lost* also contains significant commentary about debates of that time about life's purpose, moral compass, and the relative value of bookish learning versus worldly experience and common sense.

2. OWEN FISS, *PILLARS OF JUSTICE* 189 (2017).

3. *Id.* Professor Fiss has written a beautiful, moving depiction of the purpose and possibilities of law through the lens of his own experiences with 13 lawyers who had enormous influence over the past half century. Fiss is ever the teacher. I never before had encountered the word “adumbrated” until I stumbled across it in my former professor's notes to Chapter 2. *Id.* at 197. Now armed with that Fissian word, I should note that my essay here contains ideas, themes, and arguments adumbrated in articles, commentaries, speeches, and other writings of my years at Brooklyn Law School. Many of these earlier materials, in truth most, bore the helpful imprint of Brooklyn Law colleagues such as the talented Clorinda Valenti, Communication Director, the sharp eye and razor pen of Linda Harvey, Chief of Staff and Chief Operating Officer, and the incredible and patient assistance of Librarian, Janet Sinder. The errors in this essay are all my own. A special note of thanks to my long-time executive assistant, Robin Deis, whose intelligence, competence, and patience through countless drafts of this and all my writings is deeply, as always, appreciated. Thanks also to Drew Lichtenberg, our Shakespeare Theatre Company's superb dramaturg for the post-graduate education he has given me about the Bard's and many other classical plays.

Fiss, whose teaching and scholarship shape what I understand and continue to learn about the power of law, was himself unable to follow his own wise advice. So perhaps I can be forgiven for being unable to suppress the simple truth that I loved serving as a law school dean. More specifically, I am head over heels about Brooklyn Law School. I loved every one of those long days and short years on the job (although not quite every minute), and I always will. Actually, this should not be a newsflash since I believe it has been evident in the tsunami of things I have said and written about being a law dean and about our unique school since I was invited to “assume the position,” to borrow a too often heard local expression in some of our neighborhoods.<sup>4</sup>

It is just plain hard to curb my enthusiasm. I am sure this is the case with other law deans all across the country whose support, frequent company, advice, and friendship each of us enjoy as a part of the job’s perks.<sup>5</sup> Certainly, I will continue to brag about Brooklyn Law School and about the contributions of legal education but from a different vantage than I did while enjoying the privilege of being Brooklyn Law’s president and dean. That is because what law schools do is important. We live in a time when our free, democratic, civilized way of life based on law and justice faces severe threats on many fronts. The education of good lawyers from all walks of life, the pursuit of knowledge and critical thinking about law, and promoting better understanding and respect for the rule of law throughout society, has never been needed more.

When I became dean, it was a tough time for law schools everywhere. Even so, it was an especially exciting time to join the best and only law school in the largest, most vibrant, diverse, and international part of New York, particularly during the remarkable resurgence and renaissance of Brooklyn. For me, it was especially meaningful to return to the community where my grandmother (who was the youngest of nine children on a farm in North Carolina) and grandfather (who grew up in a Bay Ridge orphanage long before the Verrazano Bridge loomed over the neighborhood) both served in the Navy; she as a nurse and he as a sailor.

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4. See, e.g., Nicholas W. Allard, *Conventional Wisdom: Choose Brooklyn*, ROLL CALL (July 7, 2014, 12:00 AM), <https://www.rollcall.com/news/Conventional-Wisdom-Choose-Brooklyn-Commentary-234461-1.html>; Nicholas W. Allard, *A Dean Grows in Brooklyn*, 46 U. TOL. L. REV. 273 (2015); Nicholas W. Allard, *A Letter To Tyler’—Remarks to the Brooklyn Law School Entering Class*, in LAW FOR THE CURIOUS: WHY STUDY LEGAL STUDIES? (Curious Acad. Publ’g 2015); Nicholas W. Allard, *The Enduring Power of Law*, PRELAW, Winter 2016, at 11; Nicholas W. Allard, *Civil Education is the Best Practice*, 2 KUTAFIN U.L. REV. 382 (2016); Nicholas W. Allard, *Nonsense You Say*, 48 U. TOL. L. REV. 189 (2017); Nicholas W. Allard, *An Unexpected Trump Effect: Lawyer as Hero*, THE HILL (Feb. 24, 2017, 2:30 PM), <https://thehill.com/blogs/pundits-blog/the-judiciary/321051-an-unexpected-trump-effect-lawyer-as-hero>; Nicholas W. Allard, *Awaken to the Future of Law*, PRELAW, Spring 2017, at 33; Nicholas W. Allard, *Florida’s Student-Survivors: The New Face of Law and Lobbying in America*, THE HILL (Mar. 1, 2018, 12:30 PM), <https://thehill.com/opinion/civil-rights/375933-floridas-student-survivors-the-new-face-of-law-and-lobbying-in-america>; Nicholas W. Allard, *A Prologue to Our Future*, BROOK. DAILY EAGLES, June 20, 2018, at 4.

5. Without being panglossian, every law dean knows the best of all cases for their law school by heart, must believe it, and regularly communicate it effectively and persuasively. If not, it is time to find a new line of work.

My mother was born in the Brooklyn Navy Yard Hospital not very far from the law school.

I believe that our school is special. It is one of the oldest and largest law schools in the country and stands largely on its own feet as an independent institution because it is not part of a university. Since its earliest days Brooklyn always has been accessible and inclusive, a gateway to the profession and to successful careers in private practice, public interest work, government service, business, and many other fields such as real estate, finance, journalism, entertainment, sports, and fashion for anyone with the requisite ability and the willingness to work hard. The school has long been a true pioneer in that regard, as a leader in equal opportunity and diversity. The class photos from its earliest days show women, recent immigrants, and first-generation Americans of Irish, Italian, German, and other European heritages, including many Catholics and Jews, Latinos, blacks and other people of color, as well as students born in China.<sup>6</sup> None of these people had easy access to the profession at the turn of the 20th century when Brooklyn Law opened its doors. In the decades since, its diverse graduates became highly visible, accomplished trailblazers along many career paths formerly exclusive to what I call the members of “the lucky DNA club,” becoming mayors, judges, legislators, police commissioners, prosecutors, prominent trial lawyers, and public interest advocates, managing partners, and other giants in the legal profession. Over the years, our school also earned a deserved reputation as a center of outstanding teaching and, increasingly, as a community of world class legal scholars.<sup>7</sup> These qualities originally drew me to the job.

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6. I learned a great deal about the plight of Chinese and Chinese Americans' quest for inclusion in American legal education and the profession from Dr. Chen Li, a Chinese legal scholar and friend I met during his doctoral studies at Merton College, which is also my Oxford College (see email correspondence between Dr. Chen Li and Nick Allard, on file with author and law review). His dissertation documents the painful history of discrimination against Chinese by the U.S. legal community, including one of Brooklyn Law's earliest Chinese graduates, Chung Jock King. *See* Li Chen, *A History of Chinese Law Students in the United States in the Late Qing Dynasty (1878-1911)* (2015) (unpublished SJD dissertation, Washington University) (on file with the Washington University Libraries). This is a topic receiving compelling attention in New York thanks to the research and initiatives of Hon. Denny Chin (United States Appellate Judge, Second Circuit), Kathy Hirata Chin, Esquire, and Hon. Dolores Ling-Cohan (New York Supreme, Appellate Term) among others. The Chin's have co-authored a number of scripts for reenactments of historic Chinese cases. During my time as Dean, Brooklyn Law School continued and expanded its long running relationship with China and Chinese scholars and students, including our annual summer program in Beijing, which has provided an educational experience for hundreds of our students for more than 25 years at the University of International Business and Economics. On several trips with participating faculty and our own Chinese graduates was visited numerous universities and law schools and bar associations. We also ran programs at the school honoring graduates such as Thomas Sung '64, founder of Abacas Bank and his lawyer daughters, including Judith Sung '03, who were the subject of an award-winning documentary film *ABACUS: SMALL ENOUGH TO JAIL* (Mitten Media 2016) (comparing Sung to George Bailey, Jimmy Stewart's character in the classic film *IT'S A WONDERFUL LIFE* (Liberty Films 1946)). Hannah Cao '04, now the General Counsel of China's Silk Road initiative, was honored as Alumnae of the Year in 2018. I also participated in the reenactment at our school of *THE TRIAL OF VINCENT CHIN*, authored by former Hastings Law School Dean Frank H. Wu.

7. Professor Brian Leiter's well-regarded ranking most recently listed the Brooklyn Law faculty at 44th in the Nation. While always risky to enumerate what inevitably will be an incomplete

Even so, as someone who never before had been a full-time academic I did not anticipate fully how exquisitely stimulating and satisfying the experience would be, and the sheer joy of being immersed in a dynamic community of students, teachers, and scholars devoted to the life of the mind and the pursuit of learning about subjects both professionally practical and seriously academic. I can honestly say that the time I have spent learning from my faculty colleagues, and often learning from our students, admiring their achievements and activism, supporting research and scholarship (while enjoying the humbling experience of teaching alongside my faculty colleagues) has been so far the most fulfilling work of my life. Yet, as a prominent elected official recently said upon deciding not to see re-election: “This has been the job of a lifetime, but it is not a job for a lifetime.”<sup>8</sup>

For me, what makes a legal career worth loving for a lifetime is how law provides endless opportunities for public service. Recently, when asked at what point in my life I decided to devote time and attention to public service, I answered:

I cannot remember a time when I did not want to be a lawyer. There were no lawyers in my family, but my parents and relatives respected the profession and encouraged me to pursue it from a very young age. It may sound hokey, but I vividly remember being at the drive-in movies, sitting between my parents in the front seat of our car with my siblings sleeping in the back, and seeing Gregory Peck playing Atticus Finch in *To Kill a Mockingbird*. It was a thrilling moment for me and it solidified my decision to be a lawyer... I have always believed—and I have seen this to be true over the years—that the public and private roles of lawyers are [both] honorable and provide limitless opportunities to serve others.<sup>9</sup>

Speaking of love, students are our purpose, not our excuse for having a law school. I truly love our students: who they are, their aspirations, how they grow and learn, how they deal with adversity, what they accomplish, and their restless desire to use their legal education to improve the world. I love every one of them—well maybe not five or six of them, and they know who they are—but almost all of them. Seriously, law students, at least in America, are in the vanguard of a trend that is attracting people to study law. They desire to be active on the issues of our

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list, when I mention even a few towering Brooklyn Law School academics like Roberta Karmel, first woman SEC Commissioner; Neil Cohen and Aaron Twerski, who each have more lifetime honors and achievements than Meryl Streep; Alex Stein who now sits on the Supreme Court of Israel; Larry Solan who is one of the world’s great legal linguists; Ted Janger, Michael Gerber, and Jim Fanto in insolvency, corporate re-organization, and regulation; Susan Herman, the President of the ACLU; Maryellen Fullerton who literally wrote the books (plural) everyone uses teaching immigration law; Dana Brakman-Reiser, Bill Araiza, Joel Gora, who are all leaders in their fields; Heidi Brown who in my opinion is the most forward looking champion of legal research and writing; Janet Sinder, one of the truly pre-eminent law librarians on the planet; while just warming up, and before getting to the rest of our faculty, including our new and rising stars; well, people tend to agree. It may be impolite, but it’s not bragging if you can back it up.

8. Rahm Emanuel, ‘*This Has Been the Job of a Lifetime*’, DAILY HERALD (Sept. 4, 2018), <https://www.dailyherald.com/news/20180904/emanuel-this-has-been-the-job-of-a-lifetime>.

9. *Public Interest Law Profile—Nicholas Allard*, PUB. INT. L. POL’Y UPDATE, Winter 2017-18, at 6.

day and do not wish to wait to complete their studies to do so. They want to, often passionately, use and practice what they are learning in the classroom in the outside world. In recent years increasingly our school has,<sup>10</sup> as have schools throughout New York State<sup>11</sup> and across the United States,<sup>12</sup> supported students' ability to join the good fight outside our walls on myriad issues such as immigration, disaster relief, affordable housing, economic growth through entrepreneurship, legal needs of developmentally-challenged adults, sports and entertainment, human trafficking, and criminal justice, to mention a few compelling areas of practical legal work engaging current students with faculty supervision.

Law students are an epicenter of concentric circles of influence. Law school transforms and improves their own lives, and, in turn, to good effect, they influence their families and the larger circles of neighbors, communities, the nation, and

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10. Like many if not most schools, Brooklyn Law School has sent dozens of students in the past few years to work at detention centers in Texas, support hurricane relief efforts in Puerto Rico (as well as lingering effects of Katrina in New Orleans) and work with public defenders in Miami. More locally, Brooklyn Law School students have volunteered to support criminal justice reform efforts through bail fund projects and cleaning up rap sheets. Students also support pro se litigants seeking assistance with family consumer debt and foreclosure matters. In a typical year, Brooklyn Law School students will volunteer 80,000-100,000 hours of their time to serving the public good. The law school has a Public Service Law Center that actively supports and promotes these pro bono opportunities through programming, a bi-weekly newsletter and social media. Student pro bono efforts are buoyed by the New York State Pro Bono requirement which requires students to have completed 50 hours of pro bono service to be admitted to the New York State Bar. Brooklyn Law School's Public Service Law Center, ably run under the direction of Danielle Sorken, brings together under one umbrella the many facets of the dynamic public service community at the Law School. Among the activities supported by the center are 28 ongoing pro bono projects, counseling students and alumni on internships, clinics, and fellowships, and the student programming. The center fosters community and intellectual life, offering skill-building programs, panels, reading groups and workshops, as well as liaising with community partners throughout New York City. The Center provides the law school community with a bi-weekly newsletter called *In Your Interest* that promotes public service and pro bono activities in the school and community.

11. Recently for example, a Columbia Law student organized students across the country to go to Puerto Rico for disaster relief work. Students also work through the National Lawyers Guild to organize different pro bono projects, including Legal Observers of Protest and the Parole Preparation Project. In New York City, there are citywide projects such as the Suspension Representation Project and Unemployment Action Center that are student-run pro bono projects. Sanctuary for Families coordinates with several schools on their pro bono projects that work with survivors of domestic violence. There are also citywide CLARO programs to assist pro se consumer debtors. The courts themselves run Access to Justice programs that students, recent graduates, and alums volunteer across the city. In May 2012, New York State Chief Judge Jonathan Lippman directed that all individuals admitted to the New York State bar would need to complete 50 hours of pro bono service. Since then, all law students who are seeking admission to the New York State Bar have worked in the public sector helping nonprofits government agencies and judges service the public whether in clinics, externships, or pro bono projects.

12. I doubt that there is any law school in the country where students are not performing significant service outside the school with faculty and alumni support and supervision. In the last few years each Brooklyn graduating class has been recognized for, at a minimum, 80,000 hours of volunteer work. When you consider that there are well over 200 law schools in the United States, and if you assume that students are similarly engaged in law schools everywhere, it is possible to appreciate that students are doing quite a large amount of work in the interest of others while honing their skills before the official start of their careers.

sometimes even the world. Through these interrelated circles the benefits of a legally trained mind can ripple through society as a whole.

So, restless as I am myself, I will now—as law faculties have been doing so well for students in Brooklyn and elsewhere—seek new ways and platforms to encourage and support students to begin to contribute to society while engaged with their formal studies and to continue doing so early in their careers upon graduation. With respect to law students, they can, they should, begin before graduation to prepare for lives of service fulfilling the dual private and public roles of our profession. It is a job for a lifetime which, at its best, is noble. I enthusiastically join those many colleagues who seek to help students gain for use after graduation, the life-long learning skills and ability to pursue wisdom and to be wise; to equip them with the intellectual firepower, knowledge, and experience needed to be people of substance who make a difference throughout their lives.

## II. STAKES

Good, socially responsible and engaged lawyers are needed as much as ever in history. New generations of lawyers can use the power of law to good effect in the harsh and disruptive struggles playing out every day before our eyes and ears. All across America, and throughout the world, people are fighting over nothing less than the future of democracy, the future of humanity. We are involved, for example, in historic battles over justice, freedom, equality, globalism, and the environment. The outcomes of these struggles will determine whether the fundamental values, norms, and institutions which are vital to empowering people and improving the human condition will continue to evolve and endure, or instead, whether we will fall into a dark dystopian world dominated by power, violence, privilege, immorality, and serendipitous happenstance. If you believe this is hyperbole, then you have not been paying attention. Complacency is out of order.

Lawyers have much work to do because the rule of law is under assault, and they recently have been doing their part to fight back. This was made clear vividly by the inspiring words and examples recounted by American Bar Association (“ABA”) President Hilarie Bass and several other speakers addressing the attendees at the recent ABA annual meeting in Chicago.<sup>13</sup> Usually, the convention is a summer professional ritual which is considerably more pedestrian, but it seemed different this time. In the exceptionally hot summer of 2018, during what seemed like an endless winter of discontent, the occasion of the ABA annual meeting was refreshingly uplifting and an urgent call to action for members of our profession.<sup>14</sup>

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13. *See, e.g.*, Hilarie Bass, President, Am. Bar Ass’n, Address to the House of Delegates at the ABA Annual Meeting (Aug. 6, 2018) [https://www.americanbar.org/news/abanews/aba-news-archives/2018/08/annual\\_meeting\\_20185/](https://www.americanbar.org/news/abanews/aba-news-archives/2018/08/annual_meeting_20185/) (highlighting work of lawyers-helping immigrants at the border, storm victims of violent hurricanes and tsunamis, and research on retention and advancement of women in the profession).

14. *See 2018 Annual Meeting*, AM. BAR ASS’N (Nov. 7, 2018), [https://www.americanbar.org/groups/state\\_local\\_government/events\\_cle/2018-annual-meeting/](https://www.americanbar.org/groups/state_local_government/events_cle/2018-annual-meeting/). The agenda included compelling speeches by Deputy Attorney General, Rod Rosenstein, Tina Tchen, Founder of the Times Up Legal

It is neither grandiose nor new to expect lawyers to rise to the challenge. Lawyers can advance the public interest in myriad roles as architects of economic opportunity, peacemakers at home and abroad, builders of bridges over chasms of differences no matter how wide and deep, and defenders of liberty and equal justice for all. Their intellect, strength of character and instincts to lead also enable them to serve as educators and role models for young lawyers everywhere who, in turn, become the new guardians of democracy. A worthy challenge for 21st century legal educators is to continue to lead the way in raising the bar; to seek and promote improvements, relevance, and the usefulness of legal education and the profession in a rapidly, continuously, dramatically changing new world of law.

That the study of law has been one of the most successful paths for participating in governance and democracy is hardly surprising. Civilization has endured and progressed, at least since Greco-Roman times, by communities living according to rules of civility, common decency, and commerce; rules which enable people to rise from chaos and live cooperatively in harmony despite their differences. These principles have been absorbed and recorded in the tenets of all faiths, such as the great, most universal commandment: Love thy neighbor as thyself.<sup>15</sup> And we live today with vivid memories of many epic reminders of the role that law plays in saving mankind from its worst nightmares, and how it helps us reach for our dreams.

In 2015 we observed the 800th anniversary of the Magna Carta—old small pieces of vellum containing obscure Latin abbreviated phrases—whose concepts of freedom and due process are like ancestral legal genomes found now in the DNA of each of our own respective national birth certificates and jurisprudence.<sup>16</sup> In America, for example, there are bits of the Magna Carta, over the centuries, which have been repeatedly rewritten, reissued, reinterpreted, and repopulated into the very code of our Declaration of Independence, our Constitution, and the Bill of Rights, reinforcing the principle that no person is above the law. Today these algorithmic lines are still found in the legal software of our digitally interconnected, increasingly borderless world.

Nor can we—and nor should we—ever forget that it is now more than seven decades since the liberation of the Nazi death camps and the start of the Nuremberg trials that began to hold the villains of the Holocaust accountable for their crimes against the human race. To this day, victims are still recovering through legal

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Defense Fund, and Bryan Stevenson, author of *Just Mercy*, not to mention President Bass' own moving description of her visit to help immigrants at the border.

15. See *Matthew* 22:34-40; *Leviticus* 19:18. This admonition generally is also known and practiced as "the Golden Rule." "Love thy neighbor as thyself" becomes "Do unto others as you would have them do unto you."

16. The ABA was deeply involved for more than a year in a trans-Atlantic observance of Magna Carta, including holding its 2015 Annual meeting in London and a ceremony at Runnymede in the presence of HRH Queen Elizabeth II and U.S. Attorney General Loretta Lynch. I was proud to serve and assist the ABA's Standing Committee on the Law Library of Congress in its efforts to create an educational traveling exhibit about the Magna Carta which was on display in London during the Annual Meeting, and also viewed by the public throughout the country and at Brooklyn Law School and Brooklyn Borough Hall, and it still appears at different locations throughout the U.S.



process some measure of their losses.<sup>17</sup> It is within that same span of time when the idea that every person is entitled to four freedoms: Freedom of speech, of worship, from want, and from fear were first proposed and then incorporated into a legal charter for all mankind.<sup>18</sup> And, in the United States, it is now more than 50 years since enactment of the Civil Rights Act, the Voting Rights Act, the march on Selma, and other milestones of the pivotal historic social movement that brought us closer together toward the still not yet fully realized goal of racial justice.<sup>19</sup>

Yet much work remains to be done by new lawyers. Just as in the text of the Magna Carta, and in the language of the United States Constitution, the full benefits of the rule of law were not—and still have not—been extended universally and equally. The struggle for equal rights continues. We see the shocking rise again of anti-Semitism in the United States and Europe, and the spread of violence and anarchy in the name of religious extremism around the world.<sup>20</sup> We also see the disturbing reappearance of nativism and xenophobia as the heartbreaking, haunting plight mounts for homeless and nationless migrants and refugees. Sadly, in America we are experiencing violence erupting with alarming frequency, in communities across our country, with distrust, fear and injury, sometimes pitting people against protectors and neighbors against each other. All Americans, in reality share the same common desire for opportunity, respect, dignity, and safety. All too often we feel the pain of gun violence wreaking mayhem in homes, schools, theaters, churches, clubs, and all types of public places. And we witness the growing economic gap between those of means and those with serious needs.

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17. See, e.g., DINA GOLD, *STOLEN LEGACY: NAZI THEFT AND THE QUEST FOR JUSTICE AT KRAUSENSTRASSE 17/18, BERLIN* (2015). The riveting book is an epic, multi-generational story written by the former BBC investigative journalist about her passionate search for justice and compensation for Nazi misdeeds that devastated her family, appropriated its property and Berlin office building, and stole the family's fortune. It is a story spanning the gilded era of the late 19th and early 20th century through the First and Second World Wars, the birth of Israel, the Cold War, the fall of the Berlin Wall and reunification of Germany, and up to the continuing crusades by Gold in pursuit of justice those who harmed her family.

18. The Four Freedoms were fundamental principles set forth by United States President Franklin D. Roosevelt on Monday, January 6, 1941 in his annual State of the Union Address. He declared that America was founded upon these four essential freedoms which we should strive for ceaselessly. The four freedoms evolved into the Atlantic Charter declared by Sir Winston Churchill and President Roosevelt in August 1941; the United Nations Declaration of January 1, 1942; and after his death they were included in the Universal Declaration of Human Rights adopted by the United Nations in 1948 through the advocacy of Eleanor Roosevelt. *FDR and The Four Freedoms Speech*, FRANKLIN D. ROOSEVELT PRESIDENTIAL LIBRARY AND MUSEUM, <https://fdrlibrary.org/four-freedoms> (last visited Jan. 24, 2019).

19. See Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241 (1964); Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437 (1954); ROBERT SCHENKKEN, *ALL THE WAY* (2014), (which is a dramatic and, according to several friends who worked in the Johnson White House and in the civil rights movement, accurate depiction of the events of the times, focusing on President Lyndon B. Johnson's efforts to maneuver Congress to pass the landmark legislation). ROBERT SCHENKKEN, *THE GREAT SOCIETY* (2017) (Schenkken's sequel). See generally FISS, *supra* note 2 (especially part one); Karen Grigsby Bates, *The Books That Bring the Civil Rights Movement to Life*, NPR (Aug. 25, 2013, 5:44 AM), <https://www.npr.org/sections/codeswitch/2013/08/25/215377849/the-books-that-bring-the-civil-rights-movement-to-life> (discussing 13 of the best histories of the movement).

20. Nicholas W. Allard, *Intolerance Must Not Be Silently Tolerated*, TIMES OF ISRAEL (Mar. 18, 2017), <https://blogs.timesofisrael.com/intolerance-must-not-be-silently-tolerated/>.

Meanwhile, innovation and economic growth stretch the very fabric of traditional commercial regulation to its limit. New legal fields rapidly emerge ranging from health to financial compliance, from privacy to cyber security, from policies to power the earth to those to keep its environment in balance, from rules for driverless vehicles of all kinds, to rights for nationless people, and concerning debates about whether robots deserve rights and will eventually overtake and replace humans. In truth, the opportunities to lead and serve as lawyers are boundless.

These are neither small responsibilities, nor simple tasks for future lawyers. Whether peace or war, safety or violence, freedom or constraint, liberty or domination, right or wrong, faith or despair, plenty or want, love or hate become the exception or the rule, are outcomes which will all be in the hands of newly minted lawyers around the globe, individually and collectively working to make the world a better place with the critical thinking tools and intellectual weapons honed by their legal education.

America's constitutional system of democratic, limited self-government is based on the rule of law. Unfortunately, there is hard, sad evidence that we cannot take that foundation for granted. For example, according to a detailed study by the *World Justice Project*, the United States ranked only 19th out of 113 countries in 2017-2018, down one point from the previous year, and lower than several countries with far less economic wealth and institutional infrastructure.<sup>21</sup> Alarming, the trend line is downward, driven by a decline in "constraints in government powers" and low marks for the United States criminal justice system which is disproportionately dominated by expenditures for incarceration.<sup>22</sup> This data is shocking. At least it is for anyone who believes America is and should be a paragon of "equal justice under law," the words emblazoned atop the entrance of our Supreme Court. The too often heard and experienced public disregard and disrespect for law and the legal process, the attacks on the competency and integrity of judges and other officials along with verbal and physical threats, and the sharp leanings toward autocracy, all of which can be ripped from the headlines every day could, if unchecked, make matters far worse.

### III. HONORIFICABILITUDINITATIBUS

Our students and graduates are in the state of being able to achieve honors. In a word, a very long word used by Shakespeare in *Love's Labour's Lost*: honorificabilitudinitibus.<sup>23</sup> Simply put, our students and graduates can be and are

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21. WORLD JUSTICE PROJECT, RULE OF LAW INDEX 2017-2018, 7 (2018). The report was the subject of a major presentation at ABA 2017 Annual Meeting on Saturday, Aug. 4, 2018. *See also* Carol Morello, *Freedoms on Decline Under Trump, Report Says*, WASH. POST, Feb. 5, 2019, at A2.

22. WORLD JUSTICE PROJECT, *supra* note 21, at 153.

23. Lawyers penchant for accumulating distinctions and accomplishments that add to the length of their resume is aptly captured by the medieval Latin word "HONORIFICABILITUDINITATIBUS." The word is used to comedic effect by William Shakespeare in *Love's Labour's Lost*, act 5, sc. 1, lines 39-42, in THE RIVERSIDE SHAKESPEARE 199-200 (G. Blakemore Evans et al. eds., 1974), which is the only time the Bard uses the word in any of his plays. It is the longest word he ever uses, and in fact, the longest word in English featuring only

needed to be courageous heroes, to be teachers of public virtue, and to be civil, which is to say good, informed, active citizens contributing to the well-being of others.

### A. Courage

We live in a time begging for new heroes. The new generation of lawyers can step up and take on responsibility for the imperfect world we are living in and that its own children will, in turn, be handed in the near future. This newest wave of lawyers can remind us of the classic qualities of the heroes we long have admired; qualities such as selflessness, modesty, perseverance, respect, and adherence to core principles, while avoiding a sense of entitlement to accolades and privilege. You might have heard the old quip about the has-been, someone who failed to meet expectations and make good use of their education and opportunities: “Someone who once had a bright future.” Our graduates do not want to become that person. Instead, they can pursue and joyfully embrace how legal work can be meaningful and helpful to others, while resisting the temptations of self-righteousness, self-importance, and self-satisfaction.

Recently, we have seen how people themselves can mobilize, focus attention, raise awareness, and change perceptions. One only has to look at how citizens have organized to take back control of their lives through movements such as Black Lives Matter, #MeToo, and Time’s Up. Like these initiatives, the Parkland Strong movement against gun violence once again “woke us.”<sup>24</sup> This megatrend is building, but outcomes are far from certain. Pointedly, they are but the tip of the iceberg of causes begging for action—from climate change to world health, from poverty to oppression and violence, from ignorance to bigotry and intolerance, from unfair and inequitable treatment at work to economic disparity. It seems brave and heroic just getting involved at all when thinking of the magnitude and intractable nature of these problems. So, it may help to consider Edmund Burke’s observation that nobody made a greater mistake than to do nothing, because they

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alternating consonants and vowels. *Love’s Labour’s Lost* also includes Shakespeare’s longest speech, (act 4, sc. 3), and longest scene (act 5, sc. 2). Any similarity of the play and this essay or its footnotes in that regard is unintended and unwelcome. Nor have I made any attempt to rhyme the sentences in this essay. According to Drew Lichtenberg, “66% of the lines in [*Love’s Labour’s Lost*] are in rhyme, by far the most of any Shakespeare play (the next closest is *Midsummer Night’s Dream*, at 52%). Lichtenberg Email, *supra* note 1.

24. In March, 2018, the Parkland Strong movement swept into Brooklyn with peaceful marches and demonstrations by large numbers of primarily students of every age and teachers at several different locations. Our law students and many faculty joined in at a very large rally on the plaza between Borough Hall and the courthouses across the street from our school. I will never forget the stirring images of battalions of high school students and elementary school students arriving from different points marching and chanting and singing as they moved into position like soldiers on a battlefield. Somehow a group of impossibly small seeming second-graders stood with, and became mixed in with, our much taller law students who had gathered around our school banner in front of the high steps of our grand Borough Hall. I leaned over and asked a little boy, “Would you like to go to law school?” “No!” He screamed and ran to his teacher’s side. My students laughed uproariously. One wise guy quipped, “Some recruiter Dean, he thinks you wanted to abduct him.”

believed they can do only a little.<sup>25</sup> Even so, I firmly believe that law students and graduates have the innate empathy, the blessed impatience and vigor of youth to drive them forward. They and students of all ages and in all fields can be determined and fearless about taking on the well-heeled, formidable redoubts of the status quo and the tired, cynical complacency of their elders. Most of all, they genuinely want to make the world better. They should go for it and “stay woke.”

There are multiple kinds of courage. Lawyers may need physical courage, which, as we have seen in countless examples, can come to people when least expected. One of the remaining living heroes of the struggle for civil rights, Rep. John Lewis (D-Ga.) is an exemplar. As a young man, he chaired the Student Nonviolence Coordinating Committee and was a leader in the forefront of the civil rights movement. He faced and overcame indignities, hardships, and violence in the fight for racial justice.<sup>26</sup>

Our students and graduates will also need social courage—the courage of convictions and the willingness to stand up for the right thing even though they may be criticized or ostracized. Too often we see these days people of good faith who are excoriated on social media—but they persist nonetheless by communicating and doing what they genuinely believe is right in their dedication to creating a better future for us all.<sup>27</sup>

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25. As Edmund Burke noted, “Nobody made a greater mistake than he who did nothing because he could only do a little.” Similarly apt, is: “The only thing necessary for the triumph of evil is for good men to do nothing.” Although often attributed to Burke, there are no records of him actually saying or writing the well-known aphorisms, which likely are amalgams of his and others’ writings. We all can “[s]tart by doing what is necessary; then do what is possible; and suddenly [we will be] doing the impossible,” which is widely attributed to St. Francis of Assisi (e.g., 152 Cong. Rec. 6260 (2006) (statement of Rep. Pelosi)). It is good motivating advice even though the Saint himself probably never said it.

26. Rep. John Lewis, a lawmaker, but not a lawyer, has set an example for us all. Throughout his life he has demonstrated all forms of courage, including physical bravery. From being the youngest speaker at the 1963 March on Washington to serving more than three decades in Congress, he has deeply influenced the course of civil rights in America. On March 1965 he was severely beaten leading a group of peaceful marchers seeking voting rights across the Edmund Pettus Bridge in Selma, Alabama. Fifty-eight people, including Lewis, were hospitalized and treated for injuries. It was not the first or only time he was beaten including an incident on May 9, 1961 in Rock Hill, South Carolina when he, as one of the original 13 Freedom Riders, was beaten by a Klu Klux Klansman. See Fiza Pirani, ‘Get in the Way’: The Story Behind the John Lewis Monument in Selma, Alabama, ATLANTA JOURNAL-CONSTITUTION (July 30, 2018), <https://www.ajc.com/news/local/get-the-way-the-story-behind-the-john-lewis-monument-selma-alabama/XIYmoIQjgDeriTCUb411EL/>. History is full of courageous lawyers such as Sir Thomas More, Alexander Hamilton, Abraham Lincoln, Mohandas Ghandi, Nelson Mandela, Thurgood Marshall, Sandra Day O’Connor, Ruth Bader Ginsberg, and not to mention all of those who we each have known in our lifetimes who rarely if ever receive much public notice for their brave service. Personally, I am thinking of Hon. Patricia M. Wald, and my Brooklyn Law faculty colleagues Prof. Stacy Caplow, Prof. Elizabeth Schneider, and Prof. Linda Feldman with whom I have had the privilege of working.

27. Our own faculty were sometimes viciously and verbally assaulted on-line in screeds that I will not dignify or publish further by citing here. Every day trolls and others on social media attack people. See, e.g., Brooke Lefferts, *Chelsea Clinton Fights Cyberbullying by Answering Trolls*, AP NEWS (Oct. 3, 2018), <https://www.apnews.com/23cad2a6b4b34f4c9387bdfd8b133f3b>. Indeed, First Lady Melania Trump has adopted anti-cyberbullying as her personal initiative.

Perhaps the most difficult and powerful form of bravery is existential courage—the courage to act, to move forward, and to maintain hope in the direst situations—to stare open-eyed into the possibility that one’s life and work might be meaningless.<sup>28</sup> In fact, the author Barbara Ehrenreich coined this term writing about her won battle with cancer.<sup>29</sup> It is about facing the abyss, the prospect that what you do or feel may not matter, and still to keep going. It is the famous “to be or not to be” question. Many of us have seen this courage in loved ones facing serious illness. And we see it daily in stories about refugees and immigrants who risk their lives to give their family a better life. Throughout history, we have seen lawyers—the real-life Atticus Finch’s like Thurgood Marshall and John Doar stand up for the unpopular, the outnumbered, the different, and the disadvantaged against overwhelming odds. It is the kind of courage that can change history.

Law students are now in school amidst much tumult here at home and around the world, feeling uncertainty about the future, and experiencing a recent marked rise in protest among young people. Sound familiar? This was the world facing law graduates decades ago in the 1960s and 1970s. Future generations will again, as Professor Fiss did in *Pillars of Justice*, look back at how lawyers acted in the present pivotal moment in history. Or, in the lyrics of a song from a certain popular Broadway musical that ring true to new lawyers today: “History has its eyes on you.”<sup>30</sup>

### B. *Virtue*

Our newest lawyers are also needed to teach the lessons of virtue, often by example. Today, all of us, young and not so young, are engaged in a teaching moment that links generations with a mutual chance to learn from one another. It is not easy for movements seeking disruptive change or innovative solutions to succeed against determined, entrenched, self-perpetuating beliefs and interests. The Arab Spring<sup>31</sup> and Occupy Wall Street<sup>32</sup> movements are recent examples of

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28. I am indebted to David G. Bradley, the owner of Atlantic Media, for sharing his insights on the nature of courage, informed by existentialist Philosopher and Theologian Paul Tillich. Bradley offered these insights in his magnificent eulogy for our mutual friend, Admiral Stansfield Turner at the United States Naval Academy (Annapolis Maryland May 1, 2018). He later kindly sent me copies of the books, PAUL TILlich, *THE COURAGE TO BE* (1952) and DAVID BROOKS, *THE ROAD TO CHARACTER* (2015).

29. BARBARA EHRENREICH, *BRIGHT-SIDED: HOW THE RELENTLESS PROMOTION OF POSITIVE THINKING HAS UNDERMINED AMERICA* (2009).

30. *History Has Its Eyes on You*, on HAMILTON: AN AMERICAN MUSICAL (Atlantic Records 2015).

31. A phrase describing the series of protest and demonstrations across the Middle East and North Africa that started in 2010. See, e.g., Amanpour, *Reliving the Arab Spring’s Promise, and Disappointment*, CNN (Aug. 3, 2018), <https://www.cnn.com/videos/world/2018/08/03/arab-spring-david-kirkpatrick-amanpour.cnn>; *What Happened to Egypt’s Hope Since the Arab Spring?*, PBS NEWSHOUR (Aug. 14, 2018, 6:25 PM), <https://www.pbs.org/newshour/show/what-happened-to-egypts-hope-since-the-arab-spring>; Fora-TV, *Technology’s Role in the Arab Spring Protests*, YOUTUBE (July 8, 2011), <https://www.youtube.com/watch?v=rZwNb11n9zk>.

32. A progressive protest movement that began on September 17, 2011 in New York City’s financial district, which received global attention and became part of a wave of unrest and protest

how hard it is to structure and sustain revolutionary networks. More often than not, student movements fail, at least at first. Yet the impact of the Parkland Strong pro-gun control movement remarkably initiated by the high school students of Marjory Stoneman Douglas High School in Parkland, Florida has, in a short time, spread nationally and won significant changes.<sup>33</sup> In our own lifetime, there have been several notable movements led by students which resonate with us, usually involving college students, some which succeeded.<sup>34</sup> The Greensboro sit-ins of the 1960s, nationwide university protests in 1968, the anti-apartheid divestment campaign of the 1970s and 1980s, protests in Tiananmen Square in 1989, and the Velvet Revolution that same year in Prague are some precursors.<sup>35</sup> Law students especially, are well prepared to teach others about how to harness their collective power effectively, how to persevere, and what needs to be done to turn ambition into reality.

It is very common to hear about millennials' and generation Z's great interest in networks and mentors. Commonly, that interest is transparently careerist and self-centered concerning what a network or mentor can do for you. Still, law students can be uncommon. They can be catalysts that strengthen and help networks effectively advance with purpose against stubborn, self-perpetuating adversaries. Virtue is infectious. The virtue of lawyers can become viral.

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about worldwide economic inequality, political corruption and corporate influence. *See Occupy Wall Street: The Story Behind Seven Months of Protest*, THE GUARDIAN (Apr. 13, 2012), <https://www.theguardian.com/world/video/2012/apr/13/occupy-seven-months-of-protest-video>; Alan Taylor, *Occupy Wall Street*, THE ATLANTIC (Sept. 30, 2011), <https://www.theatlantic.com/photo/2011/09/occupy-wall-street/100159/>; Fox News, *Whatever Happened to Occupy Wall Street?*, YOUTUBE (Dec. 22, 2017), <https://www.youtube.com/watch?v=prSbalAYvaA>.

33. Moriah Balingit & Sarah Larimer, *Generation Parkland Heads to College*, WASH. POST, Oct. 3, 2018, at 1. If you perform an online search for "Parkland Strong," you initially find pages of information about ordering all sorts of t-shirts, posters, refrigerator magnets, and other gear bearing the movement's name, which is, one can suppose, some measure of the momentum of the cause. *See also* Nicholas W. Allard, Opinion, *Florida's Student-Survivors: The New Face of Law and Lobbying in America*, THE HILL (Mar. 1, 2018, 12:30 PM), <https://thehill.com/opinion/civil-rights/375933-floridas-student-survivors-the-new-face-of-law-and-lobbying-in-america>. Of particular interest in recent research at the Oxford Internet Institute ("OII") concerning the political impact of new media and findings that challenge conventional thinking by suggesting that the popular notion that new media contributes to partisan polarization is wrong. Professor Phil Howard, Research Director at OII spoke on this topic at the Oxford University alumni weekend in San Francisco, April 6-8, 2018. Also relevant is the historical analysis of Niall Ferguson about successful and unsuccessful networks. *See generally* Niall Ferguson, *Networks and Hierarchies* (June 10, 2014), <http://www.niallferguson.com/journalism/miscellany/networks-and-hierarchies>.

34. *See* Maggie Astor, *7 Times in History When Students Turned to Activism*, N.Y. TIMES (Mar. 5, 2018), <https://www.nytimes.com/2018/03/05/us/student-protest-movements.html>. Usually student movements are liberal and anti-establishment. But, not always. *See* Marc Wortmon, *The Forgotten Antiwar Movement*, YALE ALUMNI MAGAZINE, July/August 2016, <https://yalealumnimagazine.com/articles/4331-the-forgotten-antiwar-movement> (describing the Yale student founded national organization, which 75 years ago opposed America fighting Hitler).

35. Astor, *supra* note 34.

In *The Road to Character*, writer David Brooks talks about two kinds of virtues: the resume virtues and the eulogy virtues.<sup>36</sup> The resume virtues are the skills you bring to the marketplace. The eulogy virtues are the ones that are talked about at your funeral. Lawyers typically have impressive resumes listing the breadth of their accomplishments, including the sparkling jewel of a JD and perhaps an LLM. Sometimes the lawyer's C.V., our honorificabilitudinitatibus, can verge on self-parody.<sup>37</sup> But, what will be a lawyer's eulogy virtues? What are the virtues relating to others and the community that we should embody and involve the work to which we should aspire? No one ever made a deathbed declaration that they regretted not billing more time. Especially the lawyer at the pearly gates who told St. Peter he was too young to die. "Not according to your time records," replied St. Peter. Earning resume virtues is important, often straightforward and marks significant personal achievement. Bravo. Eulogy virtues are of even greater value and are a person's lasting legacy.

### C. Civility

Finally, new lawyers need to be civil. By that I mean "civil" in the full sense of the word. Civility has come to be synonymous with "courtesy" and "good manners." I believe it is self-evident that we need more of that in our public and private lives. We could use a lot less vitriol, rancor, and extremes in every facet of social discourse. Enough said. Yet, the Latin root word for civility, "civis," means much more because it literally means "citizen." As Bard College classicist,

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36. BROOKS, *supra* note 28, at xii. *Loves Labor's Lost* contrasts behavior that is practical, immediately satisfying, and self-centered versus moral conduct that is lasting, involving selflessness and sacrifice. A chilling study of these competing themes can be found in OSCAR WILDE, *THE PICTURE OF DORIAN GRAY* (1880), or the 1945 film of the same name, which features an amazing cast and in my opinion is the best film version of the sad story.

37. Indeed, Shakespeare uses the absurdly obscure mouthful of a word to skewer the pedantic pretenses of a teacher and the snobbish scholar's lawyer friend. The comical rustic Costard uses to "H" word in a remark to the witty servant Moth after overhearing a pompous conversation between the schoolmaster Holofernes and Sir Nathaniel, Esquire. According to Drew Lichtenberg:

[M]ost scholars agree that the play bears the marks of Renaissance humanist culture, with many of its opaque references and the whole absurd notion of the four men founding a Platonic symposium seeming to come out of the world of the courtier-poet Sir Philip Sidney, of which Marlowe, Nashe, and others were members. (Sidney's *Arcadia* was published in 1598, the same year as the Quarto of [*Love's Labour's Lost*]). Samuel Johnson was the first to note that Holofernes was "borrowed from the Rhombus of Sir Philip Sidney who, in a kind of pastoral entertainment exhibited to Queen Elizabeth, has introduced a schoolmaster so called, speaking 'a leash of languages at once' and puzzling himself and his auditors with a jargon like that of Holofernes." There is also a reference to the great French grotesque novel *Gargantua and Pantagruel* by Rabelais, in which Thubal Holofernes is Gargantua's tutor and a garbler of Latin phrases. Sidney denounces the wise-seeming schoolmaster in *Defence of Poetry* and the play itself is a series of variations on the theme of bookly learning vs. worldly learning. I would compare it to Frank Wedekind's *Spring's Awakening*, which though a more tragic play, similarly sets the world of adult education and adolescent romance against the backdrop of seasons changing (the song at the end of Ver and Hiems, i.e. Spring and Winter). Shakespeare having a much lighter touch than Wedekind, he ends his play not with teen suicide but with the news that the princess's father has died and all the marriages must be put on hold.

Lichtenberg Email, *supra* note 1. Holofernes would be proud to call this footnote his own.

Professor Daniel Mendelsohn explains, to be civil is literally to engage in a deeply important activity.<sup>38</sup> It is to behave appropriately and conscientiously, fulfilling the duties of a free citizen by committing oneself to speech and action, duly sensitive to the needs of one's fellow citizens.<sup>39</sup>

Students need to get outside of themselves, get out of the library, classroom, coffee shop, off the sofa, and away from earplugs and keyboards on small screens to participate in the grand civics exercise now underway nationwide and worldwide at the very moment that most of them are beginning their careers. They can start by discussing publicly the issues of the day, voting and encouraging others to do the same, while protecting the right of we the people, all of us, to vote. (Elections matter. Don't you think?)

#### IV. CHANGES

If the most recent years have been difficult for legal education, the next 20 should be exciting.<sup>40</sup> That will likely be because of an ascendant recognition of the fundamental role of law and lawyers in our lives, and because it will be a period of revitalization and reinvention of how law is practiced, taught, and learned. Business as usual will not be an option. However, change should be for the better rather than for the sake of change.

Lawyers are notoriously late adaptors, perhaps more so than any other learned profession. Legal education has traditionally been even slower to change. There are many very good reasons why this is so. Among other things, those schooled in the law give credence to evidence and we value the probative value of give-and-take argument, which both take time to develop. We are comfortable with precedent and understand that departures from general established principles and practices can be disruptive, can have unintended consequences, and it can be unfair; especially to those who may have relied on the status quo. In the admirable

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38. Daniel Mendelsohn, James Madison, the Classics, Civility—and Cell Phones, James Madison Lecture Medal Lecture at Princeton University (Feb. 24, 2018), <http://alumni.princeton.edu/learntravel/lectures/videodetail/index.xml?videoid=513>. Mendelsohn also points out that the root word of “idiot”, comes from the Latin “idiotes”: “A person who acts in public as if they were still in private.” A pretty good description of a lot of mobile phone users.

39. *Id.*

40. See Nicholas W. Allard, What Every Lawyer Will Need to Know and Be Able to Do in the 21st Century—Continuity and Changes in the Education of Future Lawyers Everywhere, Keynote remarks at the Opening Plenary Session of the Seventh St. Petersburg International Legal Forum (May 18, 2018). My remarks were made on stage with Russian Prime Minister Dimtry Mededev and Justice Minister Alexander Kononov, and were published at Paul Caron's TAXPROFBLOG as Paul Caron, *Allard, The Future of the Legal Profession*, TAXPROFBLOG (June 30, 2018), [https://taxprof.typepad.com/taxprof\\_blog/2018/06/allard-the-future-of-the-legal-profession.html](https://taxprof.typepad.com/taxprof_blog/2018/06/allard-the-future-of-the-legal-profession.html). Many of the Speakers throughout this forum were darkly pessimistic and there was, for example, much debate on whether robots would replace human lawyers. The optimism of my predictions was in contrast very popular (e.g., in 20 years there will be more lawyers making more money serving more clients, many of which will be robots seeking enforcement of their legal rights. I also predict the rise of a race of humbots—part human, part machine). The Prime Minister, who speaks impeccable English and was himself a Law Professor, spoke after I concluded my remarks. He generally agreed with my observations and wryly added that after hearing me he was convinced that no robot could out talk a human lawyer. I will take that as a compliment.



pursuit of excellence, educators, in particular, are wise to be skeptical about the pedagogical “fad d’jour.” Transitions to new programs also can be very difficult because of the endless loop of the academic calendar with its continuous cycle of new school years, restarting the cycle each year-end: Our schools cannot put our curriculum or admissions efforts in drydock to scrape off barnacles and retrofit. Instead, we must make change while operationally underway in the very competitive and uncertain markets in which we operate. All the same, we should be open, we should push ourselves continuously to consider prudent change. Two very simple, powerful questions are helpful. First, “Why?” “Why are we doing what we are doing the way we are doing it?” Second, “Can we do better?” In answering these questions in the pursuit of excellence and improvement, we will often encounter very good justifications for the status quo. At the same time, it is good to challenge ourselves to question whether it is really unimaginable to do things differently.

#### *A. Balance*

A very common question that arises in the context of appropriate change for law schools, and it is a question inevitably posed by faculties interviewing would-be law deans is: “What is the proper balance between practical education and scholarship?”<sup>41</sup> Or, put slightly differently, “What is the proper balance between teaching and scholarship?” In my view, the best answer is that you need both. Indeed, it may seem counterintuitive to employers and alumni in general, but it is precisely because almost all students will not become academics that resources are needed to promote legal research and scholarship. That is because for most law students, their law degree is their terminal degree and earning it will be their last time completely immersed in a community of scholars and in such an intensely intellectual environment. If they are to be able to be most effective throughout their careers, they need to have the ability to learn and solve tough problems during their entire professional lives, rather than only gain knowledge about what the law is at a particular point in time and know enough about how to be good lawyers to secure

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41. Another question inevitably asked of decanal candidates, especially those who are, as I was, characterized as “nontraditional” or “outside the box,” because we come from the private and public sector rather than academia, is something like: “Well, you have had a great deal of management experience—tell us about the management techniques that worked for you in the past that you believe are the most applicable to our law school.” This is usually not a friendly question. When asked this question, you can almost see the “cartoon thought bubble” over the questioner’s head with the words blinking: “Okay big shot, go ahead and hang yourself.” Sometimes I responded this way: “The very first thing I would do, if lucky enough to become your dean, is to insist, not mandate, that every single faculty member record and describe their working time daily in six-minute increments.” Usually this drew an appreciative laugh and I moved on as quickly as possible to the next question. As an aside, I have often wondered why search committees spend so much time writing search announcements and developing long lists of desired qualities and criteria—only to lump candidates into different category boxes, rather than simply evaluating how each candidate stacks up against the carefully chosen criteria. Still, I am sure if anything remains unchanged in legal education, it will be this phenomenon. Indeed, *Love’s Labour’s Lost* reflects upon the debates of Shakespeare’s own era 400 years ago about the proper balance and value of different types of learning. *See generally* BROOKS *supra* note 28.

their license after graduation. By no means can practical education be ignored. On the contrary, law schools everywhere are emphasizing it, and rightfully so. Skills and experience are essential for effectiveness, success, and certainly for getting jobs. Excellent legal communication is paramount to learning how to be an excellent lawyer.<sup>42</sup> All the same, in response to any questions about balance, I would say it is not an “either-or” proposition, and both scholarship and practical learning are powerful dual engines to drive legal education forward in the 21st century.

### B. Openness

Precisely because legal training is a major pathway to leadership, we also must work tirelessly and relentlessly to assure that access to the profession is inclusive and accessible. If talented, qualified, and motivated people from every diverse sector of our communities are not able to become lawyers, we deny them and those who they would serve access to justice, and we undermine the legitimacy of the rule of law in the eyes of the underrepresented.<sup>43</sup>

It is possible to remove unacceptable barriers to becoming a lawyer by addressing students' understandable concerns over affordability, accommodations for diversity, providing effective support for achieving educational success, and for being able to secure a meaningful job upon graduation. Law schools should address ways to increase the value of the curriculum while reducing tuition and costs. They also should experiment conscientiously and responsibly with admissions policies which enable them to take in the full measure of an individual beyond mere simple arithmetic formulas based on test scores.<sup>44</sup> They should be improving instruction for verbal and written legal communications taking into account the varying backgrounds of new students and changing the way people communicate.<sup>45</sup> They can and should overhaul the curriculum in many ways to make it more useful and relevant as a pathway to the profession, including strengthening practical training, and using technology to improve how students learn, such as the exciting prospect of developing the potential of virtual reality

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42. Nicholas W. Allard & Heidi K. Brown, *The Future of Training Powerful Legal Communicators*, N.Y. ST. BAR ASS'N J., Sept. 2018, at 10.

43. See TASK FORCE ON THE FIN. OF LEGAL EDUC., AM. BAR ASS'N, REPORT at 3 (2015) (“Without a robust system of legal education that is open and accessible by *all* segments of American society, the profession withers and looks less and less like society itself.” (citing MODEL RULES OF PROF'L CONDUCT Preamble (AM. BAR ASS'N 2018)); *Grutter v. Bollinger*, 539 U.S. 306, 332-33 (2003) (describing law school as a “proving ground for learning and practice” and diversity being essential for the legitimacy of the legal system (quoting *Sweatt v. Painter*, 339 U.S. 629, 634 (1950))). See also Nicholas Allard, Brooklyn Law School President and Dean, Statement on the Adopted Resolution and Report of the ABA Task Force on the Financing of Legal Education (Aug. 4, 2015), <https://www.brooklaw.edu/newsandevents/news/2015/08-04-2015?cat=>.

44. I will not here address the movement to use the GRE in addition to the LSAT in evaluating candidates, based on among other things, the breadth of academic disciplines in the 21st century that offer relevant training for 21st-century lawyers, the larger pool of candidates who would be excellent lawyers who take the GRE, and the number of studies already performed establishing the reliability of the exam for law school admissions.

45. Allard & Brown, *supra* note 42, at 13.

and artificial intelligence to offer powerful, cost effective learning experiences for all types of advocacy, negotiating, and communications skills.<sup>46</sup>

Such innovations, which are already underway in most law schools, will amount to a new, rich, and wonderful beginning for aspiring attorneys and are of even greater long-term importance for people everywhere. The fact is we need more highly-qualified new lawyers to meet unserved needs and solve new legal questions that the world has never seen before. We will need lawyers who are free to practice the type of law that serves their heart-felt interests as well as the needs of their fellow citizens, without the influence and constraints brought about by unmanageable student debt that forces them to only seek the highest paycheck to find relief. Unless law schools do what they can to make legal education more affordable and more useful, they will continue to price themselves out of business for many students, contribute to the high cost of legal services that most people need, and widen the growing gap in access to justice.

### C. *The People v. Legal English*

“Watch your language” is the age-old admonition that all of us in the U.S. legal profession need to heed carefully. As the brilliant lawyer, founding father, and President John Adams said years ago in his successful defense of the accused British soldiers in the Boston massacre case: “Facts are stubborn things.”<sup>47</sup> So are the words we use. Today we need to take care especially that their heft and weight do not anchor legal English to the past and adversely affect our testing, teaching, training, and licensing of new lawyers. I do not suggest for a moment that we abandon educating lawyers who can read and write exceptionally well and clearly. This, for many reasons may require more effort than in the past. Nor am I

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46. Technology as a tool can, if used properly, enable both teachers and students to do more and do it better. Innovations which are extraordinarily exciting involve combining architectural design of learning spaces with both virtual reality and artificial intelligence. This type of learning environment, for example, is being developed and used at Rensselaer Polytechnic Institute for Engineering and Business Simulations. It has tremendous potential for training students to be better advocates, negotiators, client counselors and even job interviewees. Still the resistance to new technology can be fierce and stubborn. I participated in a panel at the Seventh St. Petersburg International Legal Forum on the Future of Technology in Legal Education. The opening speaker on the panel, an English law professor resident at an Italian Law School, proclaimed: “I do not use new technology, I do not understand it, but I know it is no good for teaching.” Not a rare sentiment even in this digital age.

47. “Facts are stubborn things, and whatever may be our wishes, our inclinations, or the dictates of our passion they cannot alter the state of acts and evidence.” John Adams, *Argument in Defense of the British Soldiers in the Boston Massacre Trials* (Dec. 4, 1770), <http://www.john-adams-heritage.com/quotes/>. Adams was likely paraphrasing two French writers, Tobias Smollett and Alain-Rene Lesage. President Ronald Reagan famously said “facts are stupid things.” Am. Bar Ass’n, *Presidential Showcase Program: The Geography of Race in Elections: Color-Blindness and Redistricting*, 14 J. L. & POL. 109, 135 & n.92 (1998) (citing Richard Cohen, *The Unpleasant Facts of the Matter*, WASH. POST, Oct. 20, 1988, at A23 (quoting Reagan’s slip at the Republican National Convention)). The current occupant of the White House and his regime seem to have taken this view to the extreme. I have previously addressed the importance and advantages of truthful, legal, ethical and moral conduct. See Nicholas W. Allard, *The Competitive Advantage of Legal, Ethical and Moral Conduct In International Business (and Politics)*, Mendelsohn Lecture on International Relations at the Brooklyn College School of Humanities and Social Sciences (Nov. 10, 2016).

suggesting that we diminish the importance of legal English at a time when English is critical to conversations about law the world over. In fact, English is used commonly even in discussions where no one in the room is a native English speaker. No, instead I am urging us to push ourselves to better train good legal communicators for the new world of law; and to do so for students who have different language skills than law students of previous cadres.

Latin, Sanskrit, old English, middle English, and ancient Greek, are among the world's dead languages that are still worth studying even though now they lack any native speakers. In contrast, the language of law which is the transmission vehicle for our vibrant living society's rules, values, and ethics must continue to change and adapt or lose its relevance for the people it is meant to serve. The language of law should not be exclusive to lawyers, and it should not be at odds with the people who must abide and rely on it.<sup>48</sup>

Ideally, the language of law is dynamic and constantly evolving. However, the language of the law in America and how we as lawyers use it is not keeping up adequately with our dramatically changing world. The world today is digitally inter-connected and global, and in many respects virtually borderless. The world is also diverse, multi-cultural, and increasingly competitive. And it is increasingly populated and led by millennials and generation Zs who are intuitively tech savvy from birth and communicate differently than their parents of only a single generation earlier. The digital natives are overtaking the digital immigrants.

The issue is whether our legal language should—and if so how to best—keep pace with these tectonic shifts. We need to understand and then address the instances where our use of language does not reflect the nuances, practices, and new concepts of our time. If not, our nation's lawyers will be ill-equipped to effectively perform our traditional roles. It is our language that is central to the clarity of our mutual societal understandings, to building bridges to consensus, and it is essential to governing. Three examples come to mind of how our passive inert adherence to established legal English may not be adequately keeping up with cultural and practical change in that it does not account for how the language skills of those who can be terrific lawyers but are dramatically different than those of successful lawyers in the recent past. The language we use in selecting and preparing our future lawyers must carefully adapt now to reflect these changes.

First, undeniably, because the practice of law is thoroughly global, people who can speak, read, think, and even dream in different languages are in demand and are a great asset. I suspect that both the LSAT and bar exams have disparate negative impacts on multilingual test takers—highly intelligent people who may have fewer English words than a traditional English-only speaking candidate but

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48. Throughout history exclusive language, literacy, and even accents, have been used to suppress the rights and privileges of common people. Dramatizations of this are portrayed in Hilary Mantel's wonderful play *Wolf Hall*. See HILARY MANTEL, *WOLF HALL* (2009) (depicting Sir Thomas More's militant opposition to the translation of the Bible and religious and legal texts from Latin to English as a means to keep the rulebook, and thus power away from the people) and of course in the classic Lerner & Loewe Broadway musical, ALAN JAY LERNER & FREDERICK LOEWE, *MY FAIR LADY* (1964). "Words, words, words," indeed.

are highly and exquisitely equipped to succeed in the new world of law. This phenomenon should be studied by authoritative, objective experts.<sup>49</sup>

Second, the intelligence and the savviness to be terrific lawyers are not distributed unevenly throughout the population. In fact, those who succeed in some of the toughest neighborhoods could be expected to succeed as lawyers if given the chance to rise in the profession. Many street-smart, clever people necessarily have great communication and leadership skills, and they are hard-working, tough, and they are quick studies; but, they just lack “the vanilla language skills” that outdated standardized tests are gauging. In brief, they know plenty of words just not the passwords to the (LSAT, bar exam) double-gated, moated castle of law practice. As a result, in the laudable name of maintaining standards, we may be allowing our old-fashioned tests to keep the profession from looking like the diverse faces of America and the world. Yet, our bar associations and courts acknowledge that without diversity the legitimacy of the entire system is eroded.<sup>50</sup> We can and must do better.

Third, newsflash to Baby Boomers: Our students communicate differently than we do. Increasingly so do law clients, especially the most successful new business people. In many ways we somewhat older timers think that millennials—or at least other people’s children—are odd. They take pictures of their food. (They pay manufacturers to rip their new jeans before they buy them?). They use short form texts of less than 140 characters to “talk” to people sitting next to them. They get news on a screen rather than large sheets of newsprint. But have we as a population started to produce less intelligent people? Are there fewer people who are able to be great lawyers? I think not. Indeed, applications to college have skyrocketed.<sup>51</sup> You always hear alumni from every college and law school say, “I’m sure glad I don’t have to apply and compete with these kids.” Applications to law schools increase if we make more of an effort to speak their language. As the ageless song from the old hit “Bye Bye Birdie” asked: “What’s the matter with kids today?”<sup>52</sup> Well, nothing is the matter with kids today. They are just different. Not better or worse. Get over it. Let’s start a hard-headed, open-eyed look on how best to overhaul and improve the way we admit, educate, and test prospective lawyers in a digital world of law. Among priorities we should focus on the new language of law.

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49. People are studying law in English all around the world, outside the United States and British Commonwealth countries: in China, Russia, Italy, Croatia, and Germany, for example, increasingly, their graduates will be competing with our graduates for jobs.

50. *See supra* note 43 and accompanying text.

51. While law school applications fell, the number of applications from first year college students has increased (steadily over 4% over the last year alone), and is expected to continue the long trend of increasing numbers NAT’L ASS’N FOR COLL. ADMISSION COUNSELING, 2018 STATE OF COLLEGE ADMISSION 7 (2018). At the farewell reception for Princeton Admission Dean Janet L. Rapelye who served the University from 2003 to 2018. President Chris Eisgruber noted that in 2018, there was a record 35,370 applicants for the Class of 2022 compared with fewer than 14,000 fifteen years earlier when Rapelye became Dean. Christopher L. Eisgruber, Rapelye by the Numbers, informal remarks at the Princeton University Lewis Center for the Arts Forum (September 28, 2018). *See also Admissions Statistics*, PRINCETON U. (July 15, 2018) <https://admission.princeton.edu/how-apply/admission-statistics>.

52. *Kids, on BYE BYE BIRDIE* (Columbia Masterworks Records 1960).

In New York City, if you travel on the Number 4 subway train—which starts in Woodlawn in the Bronx, and goes through the East Side of Manhattan, past City Hall and Wall Street, on to Brooklyn Heights, before ending in Crown Heights—look at the hands holding on to the poles in each car, the hands of the people getting on and off the subway. You will see the hands of people across the spectrum of races and ethnicities—black, white, brown, the whole rainbow. You see the hands of the people from every walk of life, from the rich to the struggling. Those are the hands of all the people of our own city, our own country, and the world. They are the hands of the people who need good lawyers. And they are the hands of many people who may be well-qualified to be lawyers who can serve society. My worry, however, is that our conventional, albeit improving, system of legal education and licensing new lawyers still is unintentionally precluding many able and motivated people from becoming lawyers. A broad spectrum of good new lawyers can help us, as they have done so admirably in the past, to do better in the future.

#### V. CONCLUSION

Selfishly, I only wish to live long enough to see how our law graduates make the future better for my (so far) six small, very young grandchildren. Even though, on more than a few days, I am filled with sadness and concern about the state of affairs in our crazy world, I am, again, both optimistic and confident they will succeed. First, with respect to the United States, I constantly am in awe of our brilliantly engineered self-correcting, cantilevered system of limited democratic self-government. That gives me faith that we will eventually, if not soon, awake from our new national nightmares. Second, I have confidence in the power of people to overcome even the most intractable problems.<sup>53</sup> An oyster produces a pearl, something new and beautiful, by responding to the unwanted irritation of a piece of grit or sand. Much more impressively, people throughout our country and in countries everywhere, often led by lawyers, are paying attention and getting involved and pushing for alternatives to division, inequality, abandonment of law, autocracy, intolerance, hate, and violence. We need to urge our students: to be heroes who we can hang lanterns over to lead and guide us, to be teachers to show us virtue and how to achieve our worthy goals, and to engage in efforts to benefit more than themselves, in other words, to be civil. They can start by doing what is necessary, then do what is possible, and soon they will be doing the impossible.

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53. See generally E.J. DIONNE, JR., NORMAN J. ORNSTEIN & THOMAS E. MANN, ONE NATION AFTER TRUMP: A GUIDE FOR THE PERPLEXED, THE DISILLUSIONED, THE DESPERATE, AND THE NOT-YET-DEPORTED (2017). See also THOMAS E. MANN & NORMAN J. ORNSTEIN, IT'S EVEN WORSE THAN IT WAS (2016), which itself is the sequel to THOMAS E. MANN & NORMAN J. ORNSTEIN, THE BROKEN BRANCH (2006), followed by THOMAS E. MANN & NORMAN J. ORNSTEIN, IT'S EVEN WORSE THAN IT LOOKS (2012); SHERYLL CASHIN, LOVING: INTERRACIAL INTIMACY IN AMERICA AND THE THREAT TO WHITE SUPREMACY (2017) (arguing that racial harmony will come from the emergence of a coalition of culturally dexterous whites and people of color). RALPH NADER, BREAKING THROUGH POWER: IT'S EASIER THAN WE THINK (2016) (offering a blueprint for how citizens can break through wealth and power and improve democracy).