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GOALS IN LIFE WORTH PURSUING

HARRY T. EDWARDS*

One of the truly memorable occasions in my life was graduation from law school. It not only marked the completion of twenty consecutive years of schooling (and ensured that I would never again have to take another law school examination), but it also signalled the beginning of an exciting new career. Those of you who are in your third year are probably now beginning to feel the same sense of excitement and anticipation that I felt 18 years ago as I packed my bags to leave Ann Arbor, Michigan, and to enter the legal profession.

For many of you, however, I suspect that law school has, at times, been a trying experience. Despite the excellence of your legal training, the educational process in law school always has been a bit distasteful for some students. I was recently reminded of this phenomenon when I heard the following story:

Two law students spent part of their summer vacation on a camping trip in the Rocky Mountains. One night, after they had pitched their tent and were ready to retire, they heard the fierce growling of a grizzly bear. Not surprisingly, both law students were petrified.

As the bear approached the tent, and doom seemed imminent, one of the law students grabbed his sneakers, put them on, and quickly began to lace them up. His companion — incredulous — said: "What are you doing? You surely don't expect to outrun that bear."

His friend smiled, and then replied: "Of course I don't expect to outrun the bear. But I don't have to . . . all I have to do is outrun you!"

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Although this story is told in jest, there is a tasteless quality to it, at least for someone still in law school. This may be because, too often, law students perceive their legal training merely as a race against their peers, with imagined professional success as the reward for the winners. Do not misunderstand my tone of disdain, for I do not mean to denigrate academic achievement. Rather, I mean to ask you whether, in your race to achieve, you have developed a distorted notion of success?

Prologue

A chapter entitled "Beyond Bread and Butter" in Karl Llewellyn's classic, *The Bramble Bush*, eloquently pierces the veil of the problem to which I allude:

To me . . . there comes again the thought: for too much law, more law will be the cure. If law makes blind, more law will make you see.

But more law of what kind? More of the bread and butter kind, of the straight trade dope? That turns, I fancy, on how you conceive your trade. . . .

It all depends on what you want of law, what law can offer you. That turns, in turn, on what you want of life.

There is a brand of lawyer for whom law is the making of a livelihood, a competence, a fortune. Law offers means to live, to get ahead. It is so viewed. Such men give their whole selves to it, in this aspect. Coin is their reward. Coin makes it possible to live. Coin is success, coin is prestige, and coin is power. Such lawyers, I take it, reflect rather adequately the standards of our civilization. . . .

I have no quarrel to fight out with this way of life. . . . Single-heartedness simplifies choices; choices are most uncomfortable business. And if the coin-chaser does achieve his goal at forty-five, he has achieved a happiness that few can rival. Happiness after all is a balance between desires and fulfillment. He whose desires have shrunk to meat and drink and income tax evasion, to bowing butlers and the bejewelling of his wife — he has his happiness if he can gain the coin. I would not say that "more law" had brought him vision. But neither do I see that he desires vision, or could use it.¹

Llewellyn then adds the following advice for law students:

1. K. LLEWELLYN, *THE BRAMBLE BUSH* 141-42 (1930).

As at the bar, so in your schooling. You can do nothing but the law, and of that content yourself with [the bare] bones [of legal technique]. Grubbing of rules today, grubbing of dollars tomorrow. Or you can divide your time into the dirt and the delight; do what you must with law, and do it well, but leave the real hours of living for your reading, for social contacts, and for Toscanini.

There is a third course I would put before you: to wed the unity of the one way with the perspective of the other. To make of your law a study of the way and the working and the wonder of this curious higher primate known as Man.²

I will use these observations from Llewellyn as the prologue to the brief remarks that I will make to you tonight. I trust that you will indulge me as I offer some occasionally random ideas and concerns of particular interest to me. Although I have entitled my presentation "Goals In Life Worth Pursuing," my comments are intended to be more reflective than prescriptive.

The Challenges That Lie Ahead

It is a real pleasure for me to share with you this Tenth Anniversary celebration of the *Law Review*, and to commend you on your academic achievements. As I praise you today, however, I want to remind you that your real tests lie ahead. I am not referring to final examinations yet to be taken, or seminar papers yet to be written, or a bar examination yet to be passed, or even your first job yet to be secured. Rather, what I mean to say is that the proof of your worth will come in 15 to 20 years, as we enter the twenty-first century. It is then that you will have a chance to observe the fruits of your education; it is also then that you will begin to understand whether you have remained faithful to the commitment to excellence that has brought you here today.

In another decade or two, you will be among the leaders of our society. You will help to decide our educational, environmental and energy policies; you will run or counsel our major businesses; you will control our local, state and federal governments; you will find the ways to join nations in peace; you will assist in the development of programs to feed and house the poor; and you will be the protectors of freedom and liberty in this land. You should be able to meet these challenges because you have been trained to identify

2. *Id.* at 144.

questions of importance; to be skeptical of quick answers; to probe alternatives; to persist in the face of difficulties; to remain broad in your thinking; and to act without sacrificing quality and compassion. You have already demonstrated these traits and, soon, you will put your skills to use as contributing members of our society.

While it is true that our forebearers faced many extraordinary challenges, you may need to call upon intellectual skills, senses of justice and morality, and creative genius even greater than theirs to overcome the problems of modern society. The experiences that I have faced during my three years as a judge have brought this point into sharp focus. It has become strikingly clear to me that, as the available economic and environmental resources in this country continue to diminish, and as the number of claimants continues to grow, the competition for resources will become more intense — and sometimes even bitter.

My colleague, Judge Patricia Wald, has described the problem from the perspective of a judge who must review complex administrative agency cases:³

On the U.S. Court of Appeals for the District of Columbia Circuit, we typically pass on agency actions that vitally affect the air we breathe, the water we drink, the conditions of our workplace, and the price we pay for fuel, medicine, telephone calls, and national political elections. These cases frequently involve complicated technical material. One recent example, *Sierra Club v. Costle*, [657 F.2d 298 (D.C. Cir. 1981)], involved judicial review of a 45-page, 3-column, single-spaced rule setting the permissible limits on sulfur dioxide and particulate emissions from coal-fired electric utility plants. The "record" — that is, the official record of the treatment of the problem by the agency was about 100,000 pages long. . . .

Neither I nor the law clerk who worked with me on the case had a technical background in antipollution equipment or coal mining. As a result, we spent endless hours trying to decipher innumerable designs showing how electrostatic precipitators and baghouses worked. . . . Frankly, at times we were overwhelmed and insecure, isolated in two rooms surrounded by mountains of documents. In the end, the EPA's rule was upheld, but I like to think the exercise was worthwhile, for the agency was put on notice that, within the limits of an irritable generalist, its decisions

3. Wald, *Judicial Review of Complex Administrative Agency Decisions*, 462 ANNALS 72 (1982).

were being monitored.⁴

I had a like experience with the so-called "air-bag" case,⁵ involving the requirement of passive restraints in passenger automobiles.

Although these cases pose difficult technical issues, they are significant more because of the underlying struggles over important social issues. For example, I have had to decide cases in which proposals for structural changes in the environment have caused environmentalists and conservationists to fight to preserve clean air, clean water, rare animals, and historic buildings; the same cases have prompted industrialists and urban scientists to advocate other positions designed to promote cheaper production costs, fuller employment, less governmental regulation, and more and larger production sites. To complicate matters even more, various members of the public-at-large have simultaneously decried the potential, in various of these options, for unemployment and pollution, the extinction of endangered species, excessive tax burdens, problems of health and safety, and the decay of our neighborhoods. Unfortunately, the solutions for certain of these problems are the causes of others.

Even when the lines of opposition are clearly drawn, the proper resolution of competing claims is far from apparent in some cases. This is particularly so in litigation involving capital punishment, abortion, sex education and religion in public schools, euthanasia or other like issues that affect very personal and deeply-held moral beliefs. As you know, the courts have struggled — often with great difficulty — in seeking to deal with these complex and major social issues.

It has also been asserted that the courts are burdened with *too many* cases. On this latter point, Justice Lewis F. Powell, in a recent article entitled *Are the Federal Courts Becoming Bureaucracies?*,⁶ argued that

[W]ithin the federal system[,] reforms . . . seem long overdue. If we continue to encourage a litigious society in which an ever-widening spectrum of claims is asserted only in courts and particularly federal courts, judging itself necessarily may become

4. *Id.* at 77.

5. *State Farm Mut. Auto. Ins. Co. v. Department of Transp.*, 680 F.2d 206 (D.C. Cir. 1981), *cert. granted*, 51 U.S.L.W. 3353 (1982).

6. Powell, *Are the Federal Courts Becoming Bureaucracies?* 48 A.B.A.J. 1370 (1982).

bureaucratized.⁷

It may be that we have reached a stage in our history requiring some "new thinking" in these substantive and procedural areas; a redefinition of the problems, perhaps, or a better, clearer understanding of the conflicting forces that impact on the problems. Moreover, we must recognize that the best solutions to some of these problems may lie somewhere other than at the point of the precarious equilibrium struck among competing interests. In other words, politically salable solutions may not be just or correct. It will be up to you to develop some "new thinking" and to come up with some new approaches to deal with these issues that lead to better and more workable results.

In grappling with these difficult issues, I hope that certain lessons from law school will remain with you. In particular, I would hope that your legal training has impressed upon you that the pursuit of excellence involves seeking to understand and apply general principles and ideals; it compels working within analytical frameworks; it includes exercising sensitivity and compassion; and, most importantly, it requires courageous actions pursuant to principled convictions.

Progress Includes Holding Secure Principles of Equality

In calling on you to recognize a need for some new responses to existing problems, and to undertake the task of developing those responses, I do not mean to suggest that the generations before you have been idle. Apart from the monumental scientific advances that we have seen during the past fifty years, we have witnessed critically important advances in human rights. For example, my generation, and the generations of my parents and grandparents, have been responsible for producing extraordinary progress in the causes of anti-discrimination and equality. As recently as thirty years ago, Jim Crow assigned to black people a permanent seat "in the back of the bus" in all spheres of social and economic activity in this country. It took the leadership and courage of Martin Luther King, Thurgood Marshall, John F. Kennedy, Lyndon Johnson, and others like them, to overthrow the reign of legalized bigotry.

Equality, at least as a principle, has finally gained recognition in our country. Unfortunately, as we have faced a recessionary economy with high unemployment in recent years, it has become more

7. *Id.* at 1372.

difficult to implement principles of equality. Implementation of the goal of "affirmative action" has been increasingly endangered by opposition to so-called "reverse discrimination;" job training programs have been lost to a campaign of alleged fiscal restraint; the efforts to achieve equal educational opportunity have been undermined by the growing hostility toward "busing." And so on. . . .

Thus, even in the areas where your predecessors have partially succeeded, many problems remain for your attention. The challenge for you will be to hold onto the principles of equality even when certain specific solutions have failed to produce a desired goal.

Avoiding "Quick Fix" and Short-Sighted Solutions

The converse of this last point is to caution you against the superficial lure of "quick fix" and short-sighted solutions to difficult social problems. In recent years, it has been common for special interest groups to promote bills in Congress to limit the authority of federal courts in cases involving highly controversial issues, such as abortion rights, school prayer, and desegregation. In most instances, the legislation has been sought to neutralize or reverse Supreme Court decisions construing and applying the Constitution. The problem with these efforts is that they reflect myopic viewpoints. It seems an understatement to me to say "[t]he notion that courts should be guided in constitutional determinations by public sentiment, and curbed by legislation if their decisions conflict with popular will, is of most serious concern. . . ."⁸ In particular, "[l]egislation premised on this critical misunderstanding of the role of courts would radically reallocate authority in our system of checks and balances, and would eliminate vital protections against government abuse of the rights of citizens."⁹

For some, the counter to this argument is to propose constitutional amendments in place of "quick fix" legislation. The attraction of this approach is that it is plainly permissible under our constitutional scheme of government. A principal drawback, however,

8. Citizens Commission on Civil Rights, *"There is No Liberty . . ." A Report on Congressional Efforts To Curb the Federal Courts and To Undermine the Brown Decision* i (Oct. 1982). The Report describes the Citizens' Commission on Civil Rights as a bipartisan group of former high federal officials that monitors the federal government's enforcement of laws barring discrimination on the basis of race, sex, religion, ethnic background, age or handicap.

9. *Id.*

is that the amendment approach as a cure for current social problems also often reflects short-sighted thinking. The proposed "balanced budget" amendment to the Constitution is an example of what I mean.

It is fashionable today to bewail the steadily increasing deficits in successive federal budgets. Such "overspending," so the argument usually goes, gives rise to "rampant" inflation and a host of associated economic and social ills. More generally, Congress' apparent extravagance is regarded as vaguely irresponsible and immoral. No person or household would constantly spend more than he or it earns. Why should the government be permitted to behave any differently?

Many of the concerns that underlie this increasingly popular constellation of attitudes are important and merit serious attention. But the ambiguity and complexity of the perceived problems demand a corresponding subtlety in any program designed to correct them. What is needed, in short, is a careful effort to determine what, if anything, is awry in the present system for allocating federal funds and an equally sensitive effort to fashion remedies tailored to the flaws identified.

Insofar as the supporters of a balanced budget amendment entertain any notion of the source of the evil they decry, their diagnosis is simplistic. Thus, it is often said that our present legislative system fosters "logrolling" and pluralistic bargaining. Each legislator votes for the extravagant measures proposed by his colleagues in the hope that they, in turn, will vote for his own spendthrift bills that will enable him to curry favor with his constituents. The cumulative result of such trade-offs is a systemic bias in favor of overspending. This brief sketch of the contemporary budget-drafting process is superficially appealing — especially to the more jaded among us. But each of its premises have recently been called into serious question by sophisticated analysts of the procedure.¹⁰ At a minimum, the foregoing analysis of the root of the "big-deficit" problem is far too crude to warrant a fundamental change in our system of government.

Which brings me to my second, more important point: a balanced budget amendment would suddenly, drastically alter the directions in which American political institutions have been evolving for most of this century. Two broad movements, since at least

10. See Musgrave, "Leviathan Cometh — Or Does He?" Discussion Paper No. 744, Harvard Institute of Economic Research (Feb. 1980).

the 1930's, have characterized the development of constitutional doctrine pertaining to the scope of federal legislative power and of actual exercises of that power. First, there has been a steady reduction of general constraints on Congress' discretionary power. The Commerce Power and the Taxing and Spending Powers have been interpreted ever more expansively — and wielded ever more vigorously. At the same time, fundamental rights of individuals and groups have been accorded more and more protection. The situation we are left with is one in which Congress, in practice, has extremely broad legislative authority *except* where proposed legislation might infringe designated entitlements. A balanced budget amendment would dramatically alter this arrangement of powers and rights. It would establish a new, unique general limitation on how far Congress could go in responding to what it perceived to be social needs.

A number of the manifold dangers of such a fundamental change were identified long ago by Chief Justice Marshall:

The subject is the execution of those great [legislative] powers on which the welfare of a nation essentially depends. It must have been the intention of those who gave these powers, to insure, as far as human prudence could insure, their beneficial execution. This could not be done by confiding the choice of means to such narrow limits as not to leave it in the power of Congress to adopt any which might be appropriate, and which were conducive to the end. This provision is made in a constitution intended to ensure for ages to come, and, consequently, to be adapted to the various crises of human affairs. To have prescribed the means by which government should, in all future time, execute its powers, would have been to change, entirely, the character of the instrument, and give it the properties of a legal code. It would have been an unwise attempt to provide, by immutable rules, for exigencies which, if foreseen at all, must have been seen dimly, and which can be best provided for as they occur.¹¹

Marshall's comments have some obvious implications in the present context. Most importantly, a ceiling on federal expenditures would seriously impair Congress' ability to respond rapidly and flexibly to currently unforeseen crises. But there is a more fundamental insight in this famous passage: at least in the absence of some clearly envisioned, compelling social need, political institu-

11. *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 415 (1819).

tions are best allowed to change through "adaptation" and evolution. Sudden, drastic reforms are likely to be more disruptive than remedial, to create more problems than they solve.¹²

This observation is especially telling when, as here, one can readily imagine much more modest reforms that would meet all of the needs identified by the proponents of an amendment. A systemic bias in favor of overspending (if one indeed exists) could be corrected through a combination of specific legislative changes — e.g., limitation on particular kinds of lobbying, a revamping of the manner in which bills are presented to the House, designed to reduce the power of committees, etc. The availability of such alternatives should make us pause before altering our charter of government.

A Special Problem: Legal Services for the Poor

Many in society believe that the fundamental problems of our time will remain with us despite our efforts to eradicate them. Therefore, the refrain goes, it is better to "tend to your own shop" and leave the world as you find it. The danger of this attitude is that it generates self-fulfilling prophecies. If you indulge it, then you and your peers will lead a "silent generation" of faceless technocrats.

About two years ago, in a speech at the John Marshall Law School, Senior Judge David Bazelon posed what I viewed as a challenge. He said: "Legal services funds 85% of the civil legal assistance in this country. What will happen if the program is abolished? Some suggest that the private bar will close the gap. I suspect not."¹³ I read his challenge as involving two questions, both of which are still relevant today: One is whether you will permit the destruction of the Legal Services Corporation? The other is whether you will act to fill the void in the event that the Corporation is substantially reduced or abolished. As Judge Bazelon so eloquently observed:

The opportunity to enter a court of law and seek redress is perhaps the most powerful statement we can make to the poor that, notwithstanding their plight, they have a stake in our society. . . . Legal assistance for the poor embodies our commitment

12. Cf. U.S. Const. amend. XVIII ("Prohibition") (1919, repealed 1933).

13. Address by Senior Judge David Bazelon, "Of Rights and Charity: The Legal Services Controversy," The John Marshall Law School Distinguished Service Awards Luncheon 14 (May 6, 1981).

to the rule of law. It displays our confidence in the fairness of our social institutions by permitting all of our citizens to subject them to scrutiny. Most important, it gives meaning to our social contract. If the essential responsibility of citizenship is to obey the law, surely the most important right of citizenship is access to the legal system.¹⁴

Think about these matters and consider what role you might play in the resolution of important issues once you have embarked upon your legal career.¹⁵ I firmly believe that it does make a difference whether you involve yourself in the critical issues of your day. I also believe that the current debate over the survival of the Legal Services Corporation is a powerful example of such a "critical issue."

The Courage to be Heroic

As high-achieving students, you will no doubt have access to the security, prestige, and status of the upper echelons of our society. Some of you will embark on careers which, if you do not muddy the waters of the status-quo, will reap for you lucrative rewards. But it is my hope that you will discover early on that it is the *self-preserving* nature of many professions that sometimes causes inquiry to be confined to certain well-defined and well-trodden paths. Professionals tend to reaffirm their past glories, and perpetuate themselves as models, by conserving the tenets of the system that defined their successes, and imposing those tenets as standards to be met by future generations. In other words, there will be great pressure on all of you to be "clones" of those who have been identified as "successful" in your fields.

I say this to you not to persuade you to rebel against prevailing wisdom merely to be able to say that you have not followed the beaten path; rather, I say this to you to urge you — as you progress through your careers — to maintain an open, probing mind, alert to the changing conditions around you. Be vigilant in pursuing opportunities for reform, and have the courage to act on what you see. I do not seek to discourage or frustrate you as you try to make some sense of the world beyond the gates of your law school. Instead, it is my hope to impress upon you the great necessity for

14. *Id.* at 15.

15. See McGowan, *Private Lawyers and Public Responsibilities*, 80 MICH. L. REV. 183 (1981).

you to establish goals in life that are truly worth pursuing.

In thinking about my message to you today, I was struck by a particular passage from Victor Navasky's recent book, *Naming Names*,¹⁶ recounting the McCarthy era hearings, in which he describes a noted author who "reached beyond" the prevailing wisdom, and refused to testify before the House Un-American Activities Committee. In his description, Navasky says:

The most important thing is never to forget that here is someone who knew how to act when there was nothing harder on earth than knowing how to act.

The lesson . . . is one that has general application, . . . that "there comes a time when you have to go into capital, and be ready to face up to the loss of a lot, because you are wise enough to sense that the alternative is to lose everything."¹⁷

This passage recalls for me the life of Dr. Martin Luther King, and his ceaseless pursuit of equality and justice for all people. It recalls for me the occasion when Professor Archibald Cox, then serving as Special Prosecutor, refused to agree to a spurious compromise of his lawsuit to obtain presidential tapes and documents, and thus helped to expose the fraud of "Watergate." It recalls for me the power and resolve of former Congresswoman Barbara Jordan, when she said:

All we are trying to do is to make this government of the United States of America honest. . . . We only want, we only ask that when we stand up and talk about one nation under God, liberty, justice for everybody, we only want to be able to look at the flag, put our right hand over our hearts, repeat those words and know that they are true.¹⁸

The pursuit of excellence, as much as anything, requires integrity and courage. Dr. King, Professor Cox, Congresswoman Jordan, and others like them, are among the true heroes of our time because they acted with courage, and without sacrificing integrity, to achieve goals that were worth pursuing.

16. V. NAVASKY, *NAMING NAMES* (Penguin Books 1980).

17. *Id.* at 406.

18. National Commission on the Observance of International Women's Year, ". . . To Form a More Perfect Union . . ." *Justice for American Women* 38 (1976).

Goals in Life Worth Pursuing

In my farewell message to the 1979 graduates of the University of Michigan Law School, I reminded the students that they had been accused of being members of a "silent generation," more concerned with vocational training and jobs than with politics, justice, or equality; and that many had suggested that the current generation of students had made no demands on themselves or their institutions in the name of individual responsibility or social accountability. I suggested to them, as I do to you today, that it is easy to turn away from the problems that face us now — the conscience complacent in the misperception that the major inequities of the System were eradicated by the social upheaval of the sixties — and to devote yourselves to narrow professional pursuits. But, you must understand that if you narrow your focus you will cheat us of the benefit of a potentially great mind that might otherwise be available to help deal with the difficult issues facing our society.

I suggest to you, as you begin making the important choices that lie before you, that the challenges to excellence will be great. Your self-doubts may seem overwhelming at times, and your courage may even falter. But be inspired in the knowledge that you are people of demonstrated vision, responsibility, and will. It is your commitment to excellence that will guide us through tomorrow's storms.

Postscript

I end where I began, with a short quotation from Llewellyn's *Bramble Bush*.¹⁹

Go, then, and read — in the law and out. By all means read. Work at your art, your science, your philosophy — work even at your Mencken, if you must, or Heywood Broun. But bring the

19. K. LLEWELLYN, *supra* note 1, at 153.

work home again, and merge it with your law. Read, too, from your own law out. This, in your law — in school and practice — is the one part of wisdom: trade, culture and profession all in one.²⁰

20. On another occasion, I have tried — less eloquently — to express sentiments in the same vein as those offered by Llewellyn:

When you came to law school, each one of you possessed some unique talents and interesting personal traits having nothing whatsoever to do with your legal training. Hang on to these personal possessions. These are the things that make you special. Hang on to your baseball cards; keep on playing or listening to Beethoven; paint your pictures; sail your boats; climb your mountains. In other words, stay in touch with life and with the people around you other than just lawyers.

The one thing that my . . . years as a lawyer have taught me is that we lawyers are often too inbred, too self-involved. In our haste to prepare another case, we sometimes forget to share a kind word or to touch loved ones. I can only tell you (for you will have to learn for yourselves) that in the end analysis, your relationships with your spouse, children, close friends, and parents, will prove to be much more significant than any case that you ever try. I do not tell you this to suggest that you should be inattentive to your work; rather, I am merely urging you to keep a balanced perspective on life.

Edwards, *On Becoming A Lawyer*, 13 MICH. J.L. REF. 1, 9 (1979).