

11-1-1985

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Recommended Citation

Martin A. Feigenbaum, *Can Retreads Be as Good as New?: Reflections on the Value of Law as a Second Career*, 40 U. Miami L. Rev. 397 (1985)

Available at: <https://repository.law.miami.edu/umlr/vol40/iss1/19>

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Special Issues and Topics

Can Retreads Be as Good as New?: Reflections on the Value of Law as a Second Career

MARTIN A. FEIGENBAUM*

"The truth, the truth which cries out, is that the good work, the most effective work, of the lawyer in practice roots in and depends on vision, range, depth, balance, and rich humanity . . ." Address by Karl Llewellyn, Dedicatory Celebration, University of Chicago Law School (April 30, 1960).

I. INTRODUCTION

Now, why was it again that the sharks ate everyone except the lawyer? Professional courtesy. Unfortunately, for many this tired old joke contains more truth than humor. A recent public opinion poll ranked lawyers far below other professionals in honesty and ethical standards. Only twenty-seven percent of those surveyed gave lawyers high marks in these two areas whereas physicians and clergymen rated fifty-eight and sixty-seven percent respectively. (Source: Gallup Poll, July 1985). Are there good reasons to hold lawyers in low esteem, or is the public's perception of them misguided? The first comprehensive study of career satisfaction/dissatisfaction among lawyers reveals substantial unhappiness. Twenty-five percent of all lawyers plan to change jobs within the next two years, and of those in private practice who plan to change, almost one third are considering non-legal positions. Hirsch, *Are You on Target?* 12 *Barrister* 17, 18 (1985). Is there something about the practice of law which necessarily causes this estrangement, or have many attorneys simply chosen their careers improvidently? The need to answer these questions is compelling. If law is the glue that holds together a free society, then a society that loses faith in those who administer its laws may eventually

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come apart. If lawyers are dissatisfied with, or worse, disinterested in their solemn charge as "officers of the courts," then they may also be hastening the day when law will no longer reign as the civilized substitute for private vengeance.

Lawyers are the witchdoctors of the layperson's legal rights. The client tends to view the attorney with a mixture of awe and scorn. He needs the magic potions which the lawyer can cook up to cure his legal ills, but he resents the fact that the lawyer is the only one who holds these secret formulas. There will always be resentment against professionals who possess specialized knowledge and can charge dearly for it. What distinguishes the practice of law from other professions and makes it more susceptible to resentment is that it is more an art than a science. The physician and engineer must operate according to scientific principles which limit their courses of action. The attorney is not so constrained by the laws of nature. He is free to creatively shape his work product from a vast array of information and tactics. Within very broad limits, there are no particular choices which are innately correct. The law can never be expressed in absolute terms because it is constantly evolving, reflecting society's changing values. As Cardozo once put it: "Law never *is* but is always about to be. It is realized only when embodied in a judgment, and in being realized expires."

It is the opportunity for creativity and the perpetual uncertainty inherent in our legal system which are largely responsible for the public's perception of the legal profession as self-serving and secretive. Were this perception the only cause for holding lawyers in low esteem, the sole remedy indicated would be to better educate the public about the complex and dynamic nature of our legal system. But are there other reasons which can account for the derogatory label which the public has affixed to the legal profession?

A review of statistics available from the Florida Bar, for example, shows that the number of complaints lodged against attorneys has risen dramatically over the past few years. In 1984, there were 5,514 complaints filed against attorneys with the Bar compared to 3,350 in 1979. But a closer examination of the data shows that the number of serious disciplines issued, compared to the total number of complaints filed, was extremely low and remained fairly constant over the same period. For the years 1979-84 the number of serious disciplines imposed averaged only between three and four percent of the total number of complaints filed. In absolute figures, there were only forty-one more serious disciplines issued in 1984

than in 1979, while the total number of complaints had increased by more than two thousand. Disbarments, suspensions, and reprimands meted out to a handful of lawyers do tarnish the image of the legal profession. On the other hand, the vast majority of complaints must have their origin in something other than attorney misconduct. The fact of the matter is that most complaints are brought by clients who are simply acting out of the frustration of having been neglected by their attorneys. The American Bar Association recognized this problem a decade ago when it reported that "the experience of those involved in the discipline of lawyers shows that most complaints could be prevented if lawyers realized that the unintentional grievances they may unwittingly cause, or fail to prevent, are potential pitfalls they can avoid." ABA Standing Committee on Professional Discipline and the Center for Professional Discipline, *Avoiding Unintentional Grievances* 5 (1975). Clients most frequently complain that the lawyer "hasn't done anything." The ABA recommends that, to avoid this type of complaint, the lawyer should forward the client copies of pleadings, briefs, memoranda, and relevant correspondence, as the matter progresses.

Clients who are not regularly informed about the progress of their litigation are bound to feel that they are nothing more than pawns in the legal chess game. The attorneys who do not return their calls, but whose bills unfailingly arrive on time, merely confirm this suspicion. The reservoir of ill feeling toward the legal profession appears, then, to have been filled to a great extent, not by errant, but rather by uncaring lawyers. Misconduct and incompetence are within the scope of the disciplinary machinery of the Bar, simple courtesy and genuine concern are not. But is there anything to be done about these latter phenomena which seem to impact so greatly on the reputation of the legal community? Enter the Retreads.

II. TEACHING AN OLD TIRE NEW TRICKS

Retreads are law students who begin their legal education after already having had another career. To retread, says Webster, is "to put a new tread on (a worn pneumatic tire), especially by cementing, molding, and vulcanizing a whole new rubber tread on the bare underlayer of fabric." Vulcanization is defined as the process of treating the rubber at a high temperature which greatly increases the strength and elasticity; "the degree of hardness varies directly with the degree of heat and amount of sulfur used." Most

Retreads have been around the block a few times. They are slightly worn. For any number of reasons they have decided to go to law school for retreading. The analogy is perfect.

Immersion in substantive and procedural courses begins cementing fundamental legal concepts in the minds of the entering Retreads. The Socratic method, case analysis, and moot court start molding the mind of the uninitiated to "think like a lawyer." Vulcanization completes the process. Many Retreads, especially those in evening programs, hold down jobs. A good number have spouses and children. Life as a Retread begins heating up to incredible temperatures, and the Retread sweats profusely as the pressures of school, work, and family rise to seemingly unbearable limits. For each Retread, the degree of heat he endures and the quantity of sweat he expends to manage all this will directly determine both his academic and personal toughness. If the process of law school vulcanization is successful, the Retread will have attained great strength and elasticity.

A survey of the Retreads at the University of Miami School of Law reveals that they bring with them a broad range of skills and experience. We count among ourselves an economics professor, an environmental scientist, a professional football player, and a physician. We have officials from city and county government. Many already have had substantial exposure to the law as paralegals and several have been administrators in law firms. One Retread helps run a court-sponsored alternative-dispute-resolution program. A good number of Retreads have extensive business training, and some have been entrepreneurs. There is a significant contingent of certified public accountants. We have Retreads with experience in aviation, banking, computer science, health care, import and export, insurance, law enforcement, marketing, securities, and teaching.

Retreads possess useful, and oftentimes very specialized, knowledge from having worked in other careers. But in whatever field a Retread has worked, he has more likely than not gained invaluable life experience. Life experience is the acquisition of knowledge distinct from academic learning. This knowledge is the aggregate of a number of components, among which are insight into human nature, open-mindedness, sensitivity, and commitment to a value system which rewards the individual in the long as well as the short run. Law school can offer the tools of a legal education but not the apprenticeship of life experience. Retreads who have been in business have developed an appreciation for the long-term

benefits of fairness and honesty and the need to demonstrate a sincere interest in their customers. Retreads who have served in government have learned skills in cooperation and responsiveness. Many Retreads, for example our certified public accountants, already abide by professional codes of conduct. Retreads have seen things go wrong and have learned from their mistakes and those of others. Goodwill is an asset which cannot be written off in accounting, and Retreads know that it should not be written off in any real-life endeavor.

Experience also teaches Retreads that intransigence and near-sightedness are counterproductive. Flexibility and reasonableness are two of the necessary ingredients for success in the real world. The development of our legal system mirrors this logic. Our notion of ordered justice has been carved from principles which we have perceived will most successfully resolve society's conflicts. This is nothing more than self-preservation, for law is our substitute for destructive private vengeance, and to endure, the law must evolve in a way which accurately reflects society's fluid values. It is not surprising, then, that two of our most important legal concepts are "reasonableness" and "balancing." Most students begin the study of law within ninety days after receiving their undergraduate degrees. This does not leave much opportunity for meaningful life experience. Happily, the life experience which a Retread takes with him to the practice of law meshes perfectly with these critical notions in our legal system.

Another fundamental notion in our legal system is that of predictability. Because the law is constantly on the move, the client's success directly depends on the attorney's ability to correctly predict its location at any given moment. And once the law is found, it must be viewed, not as a separate being, but rather as one which lives and breathes through people. Academic skills are only part of what figures into the equation of predictability. The business deal gone sour due to unnecessary intransigence, the personal injury suit lost at trial when a fair settlement offer should have been accepted, these are the results of lawyer miscalculations. To increase the probability of a client's success, multiply by the factor of the lawyer's life experience.

III. STRANGERS IN THE NIGHT: ON LAW SCHOOLS AND EVENING DIVISIONS

If Retreads come equipped with a good deal of specialized skills and life experience, and if these factors increase the likeli-

hood that Retreads will become effective and caring lawyers, then it would seem only logical that law schools would do everything possible to facilitate their matriculation. Some Retreads do enter law school as full-time students by making the radical economic sacrifice of casting aside their careers. They may rely heavily on their spouses, savings, loans, part-time jobs, or a combination of all of these to see them through the three years of law school. But most potential Retreads simply cannot put together enough financial resources to consider a career in law if they have to forego their current salaries, especially if they have families to support. An evening program offers the only possibility for most potential Retreads to study law. Unfortunately, the view held by a disturbing number of academics and practitioners is that evening divisions provide an inferior legal education.

Barron's Guide to Law Schools states that "(i)f you consider attending evening law school with a view toward obtaining a position with a fancy law firm following graduation, give the matter some serious thought. . . standards are generally lower, and even good grades don't have the same impact as from other schools." Only about one-third of the ABA-approved law schools have evening programs. None of those which would be considered the most prestigious schools have them. Comparing the ratio of law schools to Evening Divisions in several states reveals the following: California 16:5, Florida 6:1, Massachusetts 7:3, New York 14:6, Texas 8:2, and Virginia 5:1. There are twenty-one states whose law schools have no evening programs at all. Schools which do in fact have evening sections may indicate in their bulletins that they strongly urge students to "totally immerse themselves" in the study of law unless financial exigencies make day attendance absolutely impossible. It is true that the evening student who works full-time simply does not have the same number of hours available that he can devote to study as does the day student. But evening students take fewer courses. At the University of Miami, first-year evening students take eleven credits each semester instead of the usual sixteen or seventeen. Torts and Property are postponed until the second year. Admittedly, the conscientious evening student will have to devote his weekends to study. It is not overly burdensome for the committed to invest in sixteen hours of study over the weekend. Nor is it unmanageable to put in an hour or two after classes each weeknight. This means that an evening student can devote a minimum of twenty hours weekly for class preparation of a reduced courseload. Evening students are encouraged to take two summer

sessions and to convert to full-time day their third year. Using that formula, the beginning evening student, just as his counterpart in the day, will graduate in three years.

The Task Force on Professional Competence of the ABA has recommended that law schools should make more use of experienced lawyers and judges for the practical training of students in lawyering skills. ABA Task Force on Professional Competence, Final Report and Recommendations 11 (1983). Not only do evening students partake of the same high quality faculty as do the day students, they may on occasion have opportunities to enjoy adjunct professors, who as practicing lawyers and judges are unable to teach during the day. For the past several years the distinguished Chief Judge of the Dade County Circuit Court, the Honorable Gerald T. Wetherington, has taught the basic course in Torts to the evening students at the University of Miami. His busy schedule makes it difficult for him to teach during the day. Because we have an Evening Division, students can benefit from the vast knowledge and experience of individuals like Judge Wetherington in their regular coursework.

If the quality of evening instruction can be as good as that of the day, and if evening students can adequately prepare for class, then why are evening programs the exception rather than the rule? The reasons are more psychological and social than academic. Night school projects an image of inferiority because, historically, it has been associated with individuals of lower economic and social status. It is trade school. In film and literature, night school is a place where immigrants gather after a hard day at the sweatshop. It is a place to learn the English language, not the English common law. Liberal Arts do not bloom in the night. This perception is misguided, especially as it applies to the study of law.

It is a sad commentary on the state of legal education that an incalculable number of potential Retreads with vast training and experience in commerce, government, science, and many other fields will never become Retreads. It is not only that it would be financially unfeasible for these individuals to give up the jobs that support their families. There is little, if any, logic in requiring them to sever their ties with their present careers. It is the quality of these special skills which Retreads take to their legal careers which may eventually make the practice of law richer as a whole. There can be no credible justification in having Retreads foreclose their ongoing life experience and have it replaced exclusively with "the law school experience." The accumulation of life experiences

will directly shape their ability to be effective and concerned attorneys. The isolation of the law student from society by "total immersion in the study of law" is a separation of mind and body—the intellect from the senses. One soon finds out that much of what is needed to be successful in law turns, not on convincing the mind, but on touching the heart. The unique nature of the law, then, might be better served here by merger than by bar.

Unquestionably, one of the commitments of law schools is to provide society with the most qualified lawyers possible. This lofty goal rings somewhat hollow at most law schools because they have no Evening Divisions to train the valuable Retread resources in their communities who cannot attend fulltime. Similarly, the beauty of learning the law is beyond the reach of many potential Retreads and remains, to a large extent, the domain of the very young. If we are to take Professor Llewellyn seriously when he said that good and effective legal work depends on "vision, range, depth, balance, and rich humanity," then extending the opportunity to study law through evening programs should be the rule, not the exception.

IV. ON RETREADS AND THE SPIRITUAL THIRD CORD: FRUSTRATED AUTHORS TAKE NOTE

The mark of Karl Llewellyn is indelibly imprinted on American legal education through such classics as *The Bramble Bush* and *The Common Law Tradition*. His ideas took on a particular vitality at the University of Miami when Soia Mentschikoff became Dean in 1974. Dean Mentschikoff had been wife to Llewellyn, and she had collaborated with him on such monumental tasks as the development of the Uniform Commercial Code. Llewellyn's vision was that the study of law should be that of a true Liberal Art, embodying three fundamental elements of which he spoke as the "three-fold cord" necessary to become an artist in the law: technique, intellect, and spirit. Technique could be thought of as "the mechanical or physical underpinning" of the practice of any Liberal Art. The intellectual side was that of "making clear the meaning of the art for neighbor and for nation, for the practitioner, the artist as a man, and for mankind at large." The spiritual was "the drive and quest of the art, and within the art, for beauty or for service or, best, for both together."

After the smoke of the traumatic first semester had cleared, the spiritual strand of Llewellyn's three-fold cord was beginning to reveal itself to me and my fellow students. Our preconceptions

about the law were quickly evaporating. The law was not only a series of legal concepts to be learned but also a collection of human drama to be witnessed. I came to realize that the law library was not just a workplace, but also a theater; the reporters not just formalistic rulebooks, but also vibrant literature. My attitude about studying was evolving from what I had expected to be tedious reading into a thirst for observing this endless procession of human conflicts. And by reading the cases as a true participant in their drama, one cannot help but learn their underlying legal principles. Judicial decisions are not unlike short stories. They begin by laying out the cast of characters and circumstances—the facts. Next comes the weaving of the plot—the legal issues. Finally, there is the climax and ending—the result and holding. Judges can be great authors, their styles as diverse and moving as any great literary figure. I have been moved on many occasions as much by a good judicial opinion as by a good short story. This was my first encounter with what Llewellyn must have meant by the “beauty within the art.”

I have always been interested in writing and even once tried my hand at a novel. To write the story you can't put down, to move others through your words, this to me was a noble pursuit because of the great pleasure you could give to others. But I soon realized that, no matter how skillfully you can craft the words, you cannot be a successful author unless you have a story to tell. Like so many others, I had arrived at law school full of misconceptions about the law. Now, almost as if by accident, I had discovered that my desire to write “to move others” was part and parcel of the practice of law. The stories would be supplied by clients. My job would be to mold these stories into powerful legal writing. The case law, rather than an impediment, is the equivalent of the background research a conscientious author collects before he writes his piece. The cases give direction and depth, as well as authority, to the story the lawyer tells. I realized that what I would find in those reporters, and how I fused those cases with the facts into an effective argument, would irrevocably shape my clients' futures.

Legal writing encompasses a factor beyond simply “moving” people. Your clients' legal rights are at stake, perhaps their freedom. Unlike the surgeon's limited set of tools, the lawyer has every word in the English language at his disposal to help him in his task. Yet, he must be just as careful, and hold each word firmly within his grasp, for a wrong turn in construction or reasoning is as lethal as a slip of the surgeon's knife. This solemn charge of the

writer-advocate greatly impressed me as it must have my fellow Retreads. For most of us, as the nature of the work of the lawyer came into focus, our other careers began to pale in comparison. Because we had the benefit of this comparison, there would be less chance in the future that we would brood about greener grass. There are few human endeavors as noble and intoxicating as advocacy; "In service lies its soul—service for client or cause or class, or for some dream which embraces all classes and even a world." I was beginning to understand what Llewellyn must have meant by the "drive and quest" within the art of law for "service," the second-half of his spiritual third cord.

At the risk of sounding presumptuous, I would add yet another facet to "the spiritual" of Llewellyn's three-fold cord. It is "the choice," the choice like that of Tycho Brahe, the Danish astronomer of half a millenium ago about whom Cardozo so fondly spoke. It was Brahe's dream to chart a thousand stars before he died, even though his countrymen ridiculed him for what they considered a foolish and wasteful endeavor. "The submergence of self in the pursuit of an ideal, the readiness to spend oneself without measure, prodigally, almost ecstatically, for something intuitively apprehended as great and noble, spend oneself one knows not why. . ." To study the law, to make the great personal and financial sacrifice necessary for something "intuitively apprehended as great and noble," is not unlike the choice of Tycho Brahe. For Retreads, this choice takes on a special significance.

The Retread departs on a perilous journey to another place and time. Behind he may leave a career, and always family and friends, because to reach the law he must walk great distances alone. The Retread travels back in time, to the time when he must again sit long hours in classrooms, prepare endless assignments, and submit himself to the authority of teachers. Because the Retread has been successful in his undergraduate and real-life careers, he is accustomed to receiving praise. But law school, with its socratic method and one-exam grades, has a way of giving him an unexpected side effect—loss of self-confidence. To learn the law requires a completely different mind-set. You suddenly realize that you know nothing. You have to begin by swallowing large amounts of that most distasteful of all substances, your own ego. Then, you have to fall madly in love with the law. If you don't, you'll soon see that you're mismatched. You can't be "just good friends." If learning the law is to be your "thousand stars," your choice must be the prodigal commitment of Tycho Brahe.

Like my fellow Retreads, I embarked upon that perilous voyage with only a vague notion of where I was heading. My new life as a Retread became a pressure cooker, steaming with the demands of job, school, and family. It not infrequently caused me to be less human than before with those about whom I deeply cared. At times I felt so guilty and ashamed that I wished I really could have hidden in another place and time. Doubts began to haunt me. Maybe I had made a terrible mistake. By attempting to alter my future, I had interfered with my destiny. But it was too late. The study of law can be a potent, addictive drug. I could only fervently hope that at the end of my journey I would be able to find my way back to everything that had previously been good.

Toward the end of my first year of law school, I surveyed the damage. I was certain that working days, going to class nights, and studying every possible hour in between would be a great burden, not only on me, but also on my wife and son. I also knew that there was little I could do in advance to prepare for this radical change in our existence, and so I had expected the worst. It was likely we would end up greatly resenting one another. But beauty had begun finding a way to fill the fewer hours we were spending together. The support and understanding which my wife and son were giving me heightened my love for them. I saw them much less, but when I was able to spend time with them, the quality of our togetherness was enormous. I began to view them in a new light, not as jealous competitors for the time I needed to devote to that demanding mistress, the study of law, but rather as anchors in the rough seas of "the law school experience." We were all learning from my learning, and there was a newness to our conversations and our view of the world around us. And then there were the friends who shouldered part of my burden—the obligations fulfilled, the small emergencies resolved—always with smiles and encouragement for *my* pursuit of the law. With their help, I was, after all, finding my way back, not just to everything that had been good before, but to something that was better.

Perhaps, more than anything, it is the *support* of family and friends that instills in the Retread a special sense of mission and personal commitment to the law. They too have sacrificed: the spouse who works overtime, the child who makes do with one parent, the friend who visits but is not visited. They have walked with you, and without recognition, for the glory that will be yours. In their own way, they too have made the choice of Tycho Brahe. For the Retread to unflinchingly persevere in the face of great doubt and

personal sacrifice, to make this choice of Tycho Brahe to study the law, and to see this choice in family and friends—this for him should be no less “the spiritual” than the drive and quest of the law itself.

V. CONCLUSION

This essay began by identifying two troubling problems for the legal community. Perhaps Retreads can have a positive influence on the overall public perception of lawyers. The value of the kind word, the patient explanation, the genuine concern—this is what the Retread hopefully has learned and will bring with him to his new profession. Perhaps Retreads will be more satisfied with their legal careers than other lawyers. The well-considered choice, the personal and financial sacrifice, and the support and encouragement of family and friends, may give the Retread a greater sense of mission and satisfaction in his new career. And if all this is so, then Retreads can be as good as, if not better than, new. It may be that the practice of law should be viewed in a new light, that its unique nature and special demands make it better suited to be a second career. The study of law as a Liberal Art can impart to the future lawyer Llewellyn’s “three-fold cord.” The Retread can impart to the practice of law his own three-fold cord: specialized skills, life experience, and personal commitment. Perhaps when these two cords are joined they will have sufficient strength to withstand the heavy pulls, both personal and public, inherent in the practice of law. The extent to which this knot holds fast, this is the true measure of the value of the Retread.