

WHEN FEAR KNOCKS: THE MYTHS AND REALITIES OF LAW SCHOOL*

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INTRODUCTION

The term “myth” is somewhat patronizing; the term “reality” is somewhat presumptuous. After all, there were a significant number of human beings who actually believed in the existence of Zeus, and there were a number of scientists who once believed that the earth was flat. Today, we speak with some confidence regarding certain “realities” and yet we can only wonder as another millennium ticks off, which of our “realities” will become the myths of the next generation. If there is one lesson to be learned, it seems to me that what we believe substantially creates our kind of reality; and some realities are better than others. So as you enter law school, you might begin to think, What are the realities that I believe in? What myths will I follow as truths? If you are like most of us, you will enter law school with one set of expectations, and once you graduate (and certainly after you practiced a number of years), you will have a different perspective entirely on the law school experience. The overarching question, then, is: “Is it possible to jump-start the transition process into law school so as to maximize the law school experience?”

When I am with my colleagues, we often comment: “If we knew what we know now when we were in law school, we would have had a much better time of it.” There is no doubt that although many people come to law school with many different beliefs and expecta-

tions, most of us entertain at least some beliefs, let's call them "myths," that do not contribute to the most successful performance in law school. You do not believe in Zeus or a flat planet; however, if you have ever slept with a light on or carried a rabbit's foot, perhaps you should read on.

MYTHS, LITTLE LIES, HALF TRUTHS, AND REALITIES

Myth #1: The Reverse Cassandra Complex

Mythical Cassandra was cursed with the ability to see the future and yet no one believed her.¹ First-year law students often suffer under the influence of the Reverse Cassandra Complex. In this Complex, a green law student enters law school believing that everyone who is speaking to her knows the truth about law school; in fact, in most instances, exactly the opposite is true. Within minutes of showing up on a law school campus, the typical law student is deluged with information. The information is always presented as, "This is what you need to know to succeed in law school."

This voice comes from a variety of sources. For example, there are an absolute multitude of study aids and assistance materials. There are also outlines from almost every conceivable source (now including the psycho-puzzle known as the Internet). Perhaps even more influential is the non-printed, non-published, unofficial, under-buzz of the student body itself. The "wisdom of upperclassman" is often listened to with great eagerness by first-year students. Within no time, "authoritative source" information begins to infest and infect the mind of the new law student. I am often amused to hear the stories that are passed around the student body.

In terms of academic success, this kind of information can be particularly dangerous. For example, students are often told that certain professors "want certain things." This information is often based on discussions with other students, but not on a direct discussion with the professor herself. The results can be quite a surprise during exam time, because the exam is often not what the student anticipated. The reality upon entering law school is that while there are many individuals out there who are very confident that they know the "truth" of the law school experience, in fact,

1. BULFINCH'S MYTHOLOGY 232 (1979).

there are very few people who have the kind of perspective on what is occurring in the law school that can be helpful to the students in the long run. As obvious as this may sound, the finest source of wisdom about the law school experience can be found in the professors and instructors and also in members of the legal community who have practiced for many years.

However, one caveat is important. Law school has changed considerably in a relatively short period of time and promises to change even more considerably in the years to come. Today, for example, the modern law school features a heavy dose of Research & Writing in the first year, and also puts heavy emphasis on skills and clinical training. In addition, even the so-called traditional classes like Contracts, Property, and Torts have changed quite significantly in their format and form from earlier years.

So, you may find that although you can get some wisdom from people who have experienced law school in the past, to some extent the realities of the modern law school are being created as you are going through law school. This may put a greater burden on the students to assimilate the realities while they are in the process of learning in the educational program, because realities are shifting so fast.

Half Truth #2: The Keyshawn Johnson Complex

Keyshawn Johnson, a football player for the Tampa Bay Buccaneers, wrote a relatively well-known book called *Just Give Me the Damn Ball!*.² Law students often come with the Keyshawn Johnson mentality: They say: “*Just give me the x!?!&@ black-letter law.*”

The Keyshawn Johnson Complex is built around an important myth. This myth is that the most important thing to learn in law school is black-letter law. In fact, many students come to law school with what I affectionately refer to as “the pharmacology mentality.” (Now, as most lawyers, I am willingly to speak about disciplines that I am not an expert in, and I am no expert in pharmacology — so no offense please.) However, my sense is that law students often come to the modern law school and feel that they are about to encounter a ready-made, fully coherent matrix of legal rules. Students

2. KEYSHAWN JOHNSON & SHELLEY SMITH, *JUST GIVE ME THE DAMN BALL!: THE FAST TIMES AND HARD KNOCKS OF AN NFL ROOKIE* (1997).

see that their job is to hear, then assimilate, memorize, and acquire these rules.

In truth, a very important feature in the first year of study is the acquisition of certain foundational rules and principles of the law, which are the common knowledge of all lawyers. (If you want to test how significant the common core of information is — do not tell anyone that I told you to do so — but call up any lawyer in the phone book and ask them, “who is Mrs. Palsgraf?”)³ However, it would be a tremendous mistake to think that the first and only project of the first year of law school (and law school in general) is to bring a student in and hermetically seal legal rule information into his or her brain. First, there are so many legal rules that no human being could possibly memorize and acquire them all. Second, the rules of law are constantly in flux. For example, I teach Torts. My subject deals with negligence law, product liability, and such. Just recently, the Florida Legislature had the audacity to pass a comprehensive tort reform bill and change a number of the rules that had been solid black-letter law for many years before.⁴ Needless to say, I have to teach my students not just what the rules are, but what the rules may become.

Further, there is “the Monopoly Effect.” I am sure many of you have played the popular game “Monopoly.” Sometimes I think the game is nothing more than an evil ploy to create discord and disharmony in the family and among friends. Nonetheless, the rules of Monopoly are actually fairly simple. The rules of Monopoly can be printed on the back of the box. However, you may have noticed when you play the game from time to time a dispute about what is appropriate and legal in the “rule system” arises. Quite unfortunately, no particular rule seems to solve the problem. So for example, what exactly is the remedy if your brother has been hiding a \$500 bill under the board all along and pulls it out at the appropriate moment to buy Park Place? Or, in a multi-player game, if one player deliberately lies to another, in the hopes of manipulating that player into some scheme, is there any remedy for “fraud in the performance” of Monopoly? If you’ve had any experience with even mildly complex rules systems at all, it becomes painfully obvious that the rules sometimes just simply run out. Making more rules does not always

3. *Palsgraf v. Long Island R.R. Co.*, 162 N.E. 99 (N.Y. 1928).

4. Walter G. Latimer, *Florida Tort Reform — 1999*, FLA. B.J., Nov. 1999, at 56.

solve the problem because as soon as you think that you have a complete set of rules to cover every situation, something always comes up that no one anticipated.

Learning how lawyers and judges in the legal system deal with this very basic feature of any significant rule system is an important and critical aspect in legal education. So, for example, I could teach you that the King has said that no one is to open the gates to the city after 5:00 p.m.; the army that has besieged the city could attack the city and get inside its walls. But what will you do when at 5:05 p.m., the King's son walks up and attempts to get in the gate, knocks on the door, and begs to be admitted into the city?⁵

Whereas the typical law student often sees the principal task in law school as acquiring basic skills and black-letter information, in fact the study of law is a much more complex process. There are many lessons to be learned in law school and basic black-letter law is just one. Among the things that are important objectives in the learning process are the development of writing and communication skills, socialization into the practice of law, the development of the ability to identify legal as opposed to non-legal problems and to separate legal issues out into their constituent parts, and the ability to analyze problems and to recognize the boundaries of what is known and what is not known in law.

Perhaps most important, a student must begin to learn the process of critical evaluation of law. Law is not a static system. Law is a system that needs (and does) respond to social forces. One of the worst injustices that can be done to a law student is to deprive that student of the opportunity to recognize that she is not simply a foot soldier in a legal system, but also an important general in the process as well. Individually and as a group we bear collective responsibility for the legal system that we generate and perpetuate. Teaching responsibility, not to just one's own career but to the system in general, is an important part of legal education and could never be taught simply by the memorization of black-letter rules alone.

Myth #3: "It looks like English."

5. St. Thomas Aquinas, *Whether He Who Is Under a Law May Act Beside the Letter of the Law?*, in *THE GREAT LEGAL PHILOSOPHERS: SELECTED READINGS IN JURISPRUDENCE* 75, 76 (Clarence Morris ed., 1971) (Question 96, art. 6).

Go ahead, even if you have not started law school, pick up a judicial decision. It's written in English, isn't it? Or is it? I mean, it looks like English and it is written like English. However, if you pick up even a modestly complicated case, you can read the first word and every word after that word until the last word, and have read a lot of English and have no idea what you just read (this is often called the first week of class). This illustrates one of the most important myths of entering law school students. This is the myth that "I am an educated, English-speaking, intelligent adult. Therefore, because the law is written in English, I am fully capable right now, of reading the law, writing about the law, and communicating about the law." To the contrary, you will soon discover, as competent as you may be in the English language you know, the law looks like English and it sounds like English, but it really is a foreign language of the most nasty kind because it looks like your familiar language but it really is not. I do not want to overplay this point. Obviously words used in judicial opinions are defined in the ordinary dictionary; however, you will soon find that, much like traveling to Australia, it may take a little effort to understand how the language that you are familiar with is being used in that particular environment.

Do not take your language skills for granted, and do not overlook language skills that you might have that could be very facilitating to you. It is reasonably well-known that some of the most successful law students are college music, math, and language majors. The lesson I have taken from this, after years of watching law students struggle with acquiring law-English, is that if you have abilities to work with foreign languages or other languages, or other language systems, you may find yourself taking more quickly to the law. However, if you stubbornly hold to the law-English myth, you may find yourself terribly frustrated in the study of law. I strongly suggest that you accept the fact that for the purposes of working with the English language in the context of law, you are an absolute beginner. If nothing else, this can make some fairly frustrating moments in your first Research & Writing days much easier to swallow. I think it is very important to be willing to give yourself the freedom to realize that although you may have tremendous skills in other disciplines, law truly is different and that it will take some time to move along the law learning curve. In fact, it may take more time if you have learned other skills well.

Half Truth #4: “My professors will teach me the law.”

This is a myth? Certainly one of the things that you will pay for in your legal education is having quality professors teach law school classes. So in a very important sense, this is not a myth. However, there is an important myth built into this belief. This is the belief that to learn the law, all one needs to do is passively engage the learning process and wait for the professor to fill you up with law-knowledge. Unfortunately, a number of new students entering law school will have encountered education that is dominated by the information offered, information received, information retrieved modality. (You might see how this type of educational background could easily predispose one to the pharmacological form of legal education.) However, you will quickly learn that law school classes are not designed to spoon-feed information. Instead, you may spend an entire class period on one case going back and forth using the so-called Socratic Method.⁶ At the end of the class you may be hard-pressed to identify a moment in the class when the professor clearly said, “This is the lesson from the case.” This is sometimes one of the most frustrating moments in legal education for a new law student. Students often complain that the professors are attempting to “hide the ball” or are “unclear” or “theoretical” or whatever. Naturally, if you come to law school assuming you are simply a vessel into which black-letter knowledge will be poured, then this type of education would be a cruel hoax.

However, this is no hoax. Instead, a foremost major objective in law school is the acquisition of legal reasoning skills. This is particularly true in the first year of education. This objective is especially important in the modern era given the rapid pace of legal change and the incredible multiplicity of legal rules. Again, it would be impossible to fill every student's mind with even a significant fraction of the total legal rules that exist in our system. Instead, it is important that nascent lawyers be taught how to reason and work with the law: Students must be able, in a sense, to teach themselves as they go through their career. If the legal education process is successful, then in effect, you become your own self-contained profes-

6. See, e.g., Richard K. Neumann, Jr., *A Preliminary Inquiry into the Art of Critique*, 40 HASTINGS L.J. 725, 728–39 (1989) (discussing Socratic critique).

rial unit. After all, in no time at all, you will be sitting in an office and someone will be asking you questions. These may be life and death questions, and there will not be a law professor or an authority figure there to handle that issue for you. Law is a very decentralized business in many of its aspects, and lawyers must learn self-reliance, self-teaching, and self-education skills.

So, as you enter law school, it is important to recognize that the responsibility to teach you largely and centrally rests with you. You will notice one very important feature about the law school program that differs dramatically from other educational programs in which you may have participated. In other programs you may have a significant group of academic advisors, section leaders, thesis advisors, and what have you. In this program, it is up to you to make a coherent whole out of the information and classes that come your way. There is very little hand holding. Although academic advising is available, it is often only available if you seek it out.

For example (and I think this is one of the more important practical tips in this Essay), I find it remarkable that a large number of students in their first year do not review their exams. Most professors in the first year design exam-review procedures that are there for students to take advantage of so that students may analyze their own strengths and weaknesses on exams. A certain group of students avail themselves of just about every opportunity in this dimension. However, a certain number of students may see one test or two tests, but not all of them, and probably make no concerted effort to try to look at everything they have done and evaluate it as a whole. It is important to recognize that one law school exam cannot give you a definitive statement on your overall abilities at this stage in your career. In fact, the only way to begin to approximate an evaluation is to look at all your performance as a whole and begin to look for common themes and threads.

One method that I strongly recommend to law students is as follows. After you review this first set of exams, affirmatively attempt to identify your strengths and weaknesses in terms of what we call the IRAC Formula. IRAC is nothing other than a fancy way of explaining the basic building blocks of almost any case and any case analysis: *Issue, Reasoning, Analysis, & Conclusion*.

When you dissect a legal decision, you will find that it features at least four constitutive parts. The first part is the issue(s) presented. What is at stake in the litigation? What are the parties ask-

ing the court to decide? What did the court decide? The next thing you will be able to identify in a case is the rules. Again, the rules are a key part of any legal decision, but not the only part. Another important aspect of a legal decision is analysis. How did the court, in the context of the issue presented, apply the facts to the rule? How did the court handle uncertainties or inconsistencies in the law? Finally, every legal decision comes to some kind of determination, we can call that a conclusion for short-hand purposes. What did the court decide? What is the conclusion of the case?

In like form, when students analyze law school answers, their answers map out pretty regularly in terms of exactly the same formula. How well have you identified issues? How well have you identified and stated accurate and complete legal rules? What is the quality of your analysis? Are you willing to draw conclusions and are the conclusions reasonably accurate? In no time at all, you will be able to map your own performance on these dimensions. Look for the kinds of comments that your professors make on your exams. Some will even tell you that you have problems with issue-spotting, or tell you that your rule statements need work. In other cases, you will detect problems of these kinds by putting other types of information together from the exam. By the way, it is a perfectly fair question to any professor to ask, in terms of "IRAC," "What do you think my strengths and weakness are?" I would strongly urge that every law student, by the end of their first set of exams, self-evaluate on these dimensions. And while it is important to listen to what other people think your strengths and weaknesses are, it will be your evaluation of your performance and your techniques to deal with improving your performance that will tell if you will succeed.

In a very important sense, law education is not an extension of an undergraduate experience and not even analogous to many Ph.D.-style programs. Law education is graduate school but it is graduate school with a different twist. Again, when the main objective is so strongly oriented around creating people who can educate themselves and continue to do so for a lifetime, it becomes more obvious that one of the major goals is not simply to infuse people with reams of rule knowledge but to inculcate abilities on other dimensions. This means that not only do we want to see you develop good issue-spotting skills, great analytical skills, and the ability to draw solid and defensible conclusions, but we also want you to be able to work with legal change and to be able to teach yourself when

no one else is there to help you.

No doubt that during this process you will feel at times that you have been abandoned; however, this is an important part in the growth process of becoming a lawyer. Instead of resisting this situation, I strongly urge you to embrace it and take advantage of the opportunity to work with nets that law school affords. This is one opportunity, and perhaps the last opportunity, you have to take chances, to work on your own, where the consequences are limited ordinarily to nothing more than small variations in a GPA. In just a few years, you will find yourself in a position that if you make mistakes you could be involved in professional discipline, professional malpractice, or simply out of a job.

The practice of law, at least according to many, has changed. At one time, law practice, at least we are told (another myth for another day), featured strong mentoring processes. This meant that a young lawyer could spend several years apprenticing with an experienced lawyer and learn the tools of the trade without terrible risk to self or others. Times have changed. Today, many law firms and legal operations expect young lawyers to enter the profession more or less fully equipped to shoulder the responsibility of day-to-day decisionmaking. I cannot say that this is an entirely positive development in the history of American law; however, it is a fact of life and therefore legal education must address this issue immediately for those who enter the program. So the next time it is 1:30 a.m. and you have not finished the assignment, and you are still not sure what exactly it is you are supposed to learn, and you are cursing your professor, you might stop for a minute and say, "Thank you sir, may I have another?"⁷

Little Lie #5: The Clone Theory

The Clone Theory is one of those beliefs that is often unstated but commonly held. It is the belief that all law professors are simply clones and all law classes are basically first cousins of each other. To put this in other terms, law students often approach each class and each professor as if each class and each professor were fundamentally similar in approach and aspiration. The truth is that an important feature of legal education is the exposure to different styles

7. ANIMAL HOUSE (Universal Pictures 1978) (motion picture).

of lawyering and different modalities of practice. You will encounter a great diversity of individual styles and aspirations. This is not an accident or a weakness of the program, but is an affirmative strength. You will find, for example, that when you enter law practice, working for one lawyer will be radically different from working with another. Even judges differ significantly in temperament and the manner in which they conduct their business. You must be prepared for all styles. So you would hope to come to a legal education to gain as much pragmatic insight into the variety of styles that are acceptable in the profession as possible.

The Clone Theory also has its related corollary that all classes are basically the same. For example, you will be inundated with study guides and study aid sources. One of the underlying themes in so many of these sources is that there is basically one method that succeeds in law school, in general. While there is some truth that there are common threads (e.g., IRAC), it is important to recognize that each subject will differ a little bit from others in terms of the kinds of skills and the emphasis that will be placed on aspects of legal reasoning.

For example, let's take Evidence class. Evidence is a subject that ultimately prepares you to be in a courtroom or at deposition (or in other environments in which you must make quick decisions on admissibility, relevance, and other evidence issues). Evidence classes very often, then, put a tremendous amount of emphasis on the ability to quickly identify an issue, to know which rule applies to the issue, and reach a quick and accurate conclusion. Hence, it is not uncommon for Evidence tests to be very long because it is important for the professors to evaluate how well you can work under pressure with a tremendous number of issues coming at you and resolve them quickly and accurately. In terms of IRAC, you may find that the emphasis is heavy on issue, rule, and conclusion. You may find, however, that other courses, often emphasize other aspects of IRAC a little more strongly.

Take for example my subject, Torts. In Torts, very often you are dealing with very simplistic rules. In many ways, Torts is an easy subject. After all, every given day, jurors are instructed with the basic rules of Tort law and asked to apply them. These jurors have little or no legal training and yet routinely perform the job. Thus, it should not be surprising that we would expect law students to quickly acquire and memorize certain basic axioms of Tort law.

However, any familiarity with Tort law at all will soon give you the experience that the application of simple rules is not always simple. In fact, even the simplest rule, in what may appear to be a fairly simple fact pattern, can create some incredible complexity in terms of both issue identification and analysis. Thus, you may find that a typical Torts exam puts heavy emphasis on issue-spotting and analytical ability.

What does all this mean? As you enter legal education, you should recognize that while the common theme of all the courses centers more or less on IRAC, there will be significant variations in the way individual professorial styles come at IRAC and also significant variations in the ways individual courses emphasize some skills over others. This would be much the same as recognizing that Mozart is more or less the same on sheet music but sounds very different if played by one symphony or another. Composition and arrangement do make a difference.

Myth and Half Truth #6: “Probably, probably, probably if, if I make a hard conclusion, I’ll probably whiff.”

So often when I read law exams, I see students who adhere to this little haiku. I think one of the greatest myths of legal education, especially testing, is that there are no answers and that law professors are always looking for “maybe.”⁸ It is definitely true that recognizing uncertainty and parameters of possibility is one of the most important lawyering skills that someone can learn. Again, going back to our Monopoly example, so often the untrained student assumes that there is one and only one clear legal answer to every legal problem that is posed. That is an interesting belief because certainly life does not feature anything like that. In fact, “maybe” is sometimes the best answer.

However, sometimes this belief in “maybe” translates into a kind of practical nihilism. This is the belief that there are no answers. The law is simply the whim of what law professors or judges think it is and that the most important skill that a lawyer can have is creative hedging. If you adhere to this philosophical point of view, you will be in for an incredibly rude shock in law school.

8. There is even a fairly well-known book titled *GETTING TO MAYBE*, by RICHARD MICHAEL FISCHL & JEREMY PAUL (1999).

Despite the fact that there are many uncertainties in the law (and in fact casebooks typically take you to exactly to those points in the law), the truth is that there are some fairly hard and fast legal truisms that typically are not subject to much debate. For example, you are free to walk into court and argue to a judge that the prima facie case of negligence is something other than duty, breach, causation, and damage. You are also free to bring your toothbrush and a towel for an overnight stay in the county jail. It is essential that the new law student recognize that, while there is tremendous uncertainty and constant evolution in the law, at any point in time lawyers will be able to put their fingers on certain principles and rules which are, for our purposes, practical certainties.

Judge Richard Posner of the Seventh Circuit, one of the best-known judges and jurisprudential writers of our generation, has often referred to these types of things as what he calls: "Can't helps."⁹ In fact, the bar examination is built almost entirely on the premise that there is a core of information upon which, at least in a majority sense, most lawyers should have a basic command. So if you find yourself being compelled down the road of the nihilistic theory, stop for a minute and assess the fact that although it is true that there is a certain openendedness or open texture¹⁰ to legal analysis, there are also some settled truths.

Admittedly, legal education often puts such emphasis on the margins of the law that it is easy, if you are not paying attention, to overlook where the margins are not. One of the most popular casebook techniques is to use a principal case for discussion that is a minority decision — even a discredited decision, or a decision that is in a class by itself. In other words, professors may lead off in class with a case that is at the margin in some important sense. From this, you are often to learn what the majority and general rules are, even if those are not the rules that were applied in that particular case. This may seem a little backwards, but is a common technique in the Socratic method. I will say that I typically make it a practice in my class to point out that a case does not state the majority rule

9. RICHARD A. POSNER, *THE PROBLEMS OF JURISPRUDENCE* 73 (1990). The "can't helps" have roots in Holmes' writing. See Oliver W. Holmes, *Natural Law*, 32 HARV. L. REV. 40 (1918); see also Oliver W. Holmes, 2 HOLMES-LASKI LETTERS 1124 (Mark DeWolfe Howe ed., 1933) (writing to Laski on January 11, 1929, Holmes states, "[W]hen I say that a thing is true I only mean that I can't help believing it.").

10. H.L.A. HART, *THE CONCEPT OF LAW* 124 (2d ed. 1994).

and is in the book precisely for the purpose of illustrating a minority rule. However, do not expect this kind of assistance at all times and in all situations.

You might wonder why on earth a law professor would ever teach a dissenting opinion or a case that is a minority opinion or especially a case that has been overruled. It might seem bizarre that we would attempt to teach you the law from the point of view of the losers. A major reason we do this is that the dissenting opinions, the minority opinions, and the overruled decisions often end up becoming the law. Moreover, it is important to observe that on certain key questions there is a healthy and reasonable dissent from an otherwise widely held point of view. Another important lesson that can often be gleaned from such cases is that judges are human, and therefore fallible. Most students certainly do not feel that they are in a position to challenge the fallibility of a decision that has been made. Yet, that is precisely the skill that lawyers must develop, because there will be points in a career where it will be important to change and revise the law to correct mistakes or to meet new circumstances. Still, most new students do not feel capable of attacking judges in terms of critical reasoning skills and analysis of previous case discussions. It appears to them that the judges are the experts in the area and are therefore fully capable of reasoning at levels that students have not yet attained. This leads into the next myth.

Myth #7: The Imposter Syndrome

I find it particularly intriguing that lawyers typically suffer from what is well-known as the Imposter Syndrome. This means that throughout their careers lawyers often experience themselves as people who enter a situation, regarded as the expert or person in charge, when in fact they see themselves as teetering dangerously close to the edges of their own competence. One common sentiment is that everyone in the room knows more than you do, or is better educated than you, or is more capable than you. Sooner or later you are the “Great Oz.” As time goes by in the practice of law we all learn to cope with this and overcome this in various ways. We actually learn to appreciate the Imposter Syndrome for fear of its toxic mimic: the Top Gun Syndrome is far worse.

The Top Gun Syndrome is the situation in which one actually believes that one is utterly incapable of error and is an absolute ex-

pert in all things that come in front of her. It is hard to believe that anyone would be so foolish as to think that they have completely mastered the law, legal analysis, and all possible angles. For in almost any day, even if you are highly competent at what you do, someone will offer a point of view, or a case, or a prospective you may not have considered before. So, the Imposter Syndrome is far more common, and it is particularly common among first-year law students.

Among first-year law students, the Imposter Syndrome manifests itself in a variety of ways. Often the law students feel — secretly — that other students know more, are smarter, are more connected, have better opportunities, etc. The truth is, just about everyone in the room feels exactly the same way. Quite honestly, if they do not, they probably should. Intriguingly, if you step back from the Imposter Syndrome, you begin to recognize that it is nothing other than a healthy recognition of one's own limitations and it is a natural and common feature of being a professional. I often feel that the essence of professionalism distills down to the fact that to be a professional is to be someone who can master not only difficult concepts and well-received wisdom, but can also experience herself at the frontier of her abilities and be willing to confront the challenges that society has that will test the abilities of even the very best among the professional caste.

I recently watched the popular movie *Saving Private Ryan*¹¹ and was struck by how daring young men bravely attacked, almost suicidally, enemy positions on the beach at Normandy. American Rangers, some of the most elite troops in the military, were highly trained. But even as highly trained professionals, nothing that the Rangers encountered before prepared them for what they faced on the beaches of Normandy. It was individual acts of professionalism and heroism that saved the day and paved the way for the ultimate victory of democracy over evil. I realize that the analogy is a bit strong. Most lawyers will not face those kinds of circumstances on a day-to-day basis, and in fact may never face the true tests of democracy. However, I think one of the marvelous aspects of our profession is that at any given moment anyone of us can become the front-line soldier at the moment of decision in a key point in the adminis-

11. (Steven Spielberg 1998) (motion picture).

tration of fair and orderly democracy. If you ever have a chance, you really owe it to yourself to speak with someone who has argued in front of the United States Supreme Court. One thing that may strike you is how a fairly common or ordinary lawyer may suddenly be elevated to the position of speaking about the highest issues to the highest court of the land in one of the most highly developed legal systems that ever existed.

So when you feel like Oz behind the curtain, it is well to remember that one of the great myths of law school — that everyone else knows more than you do — is nothing other than a myth. In fact, to a certain extent, we are all thrown into the mix. At some level we are confident and capable based on past experience, and at another level we are challenged and somewhat unnerved by the open-ended possibilities in front of us.

Myth #8: “GPA is everything.”

Just to say the word “grades” strikes fear into the heart of beginning law students. Deep in their hearts, most first-year law students expect that they will succeed where others have failed: they are the “A” students and others will fall behind them. This belief is perfectly reasonable (and tempered by the Imposter Syndrome, which paradoxically coexists with the expectation of high success) given many of the experiences that students have before they come to law school. The classroom is filled with successful doctors and accountants, top students from good colleges and even mediocre students from good colleges who have shown an aptitude for legal analysis.

One thing inherent in that belief is the almighty importance of the GPA. I have often talked to students in the third year of law school who have told me that they have eschewed courses that will be on the bar exam and/or ones that they feel are in subject areas that they should take, simply because “it will hurt their GPA.” Even in doing exam reviews, I often encounter students whose first question is: “Is there any chance to change my grade?” When the answer is “no,” their interest in their exam review wanes. The belief that grades are almighty is so powerful that it has actually bred a supporting belief that keeps it in place. This is the “X-files”/pseudo-paranoid belief that grades are so important that the faculty deliberately obfuscates the importance of GPAs to distract students from

the true game that is afoot in the law school curriculum.

I have had students on numerous occasions tell me that they “know” that the faculty recognizes that grades are everything and all else is meaningless. This incredibly powerful myth is so strong in the law school environment that many times it truly makes itself into a reality. For example, as the semester wanes, it is often difficult to get students to focus on learning material. Instead, students prefer to focus in on a more important question they perceive — Is this on the test? Admittedly, a focus upon grades is perfectly reasonable and totally understandable given the culture of examination and evaluation that exists in the typical modern law school. Thus, this is not a criticism of the motivations and aspirations of the majority of modern law students. Instead, this is a call to recognize that although the myth about grades is so powerful, there are alternative realities that are much more beneficial to students in the short and the long run.

I have first-hand experience with students who were at the very tippy top of the class (in some cases, number one, two, or three), but who were unable to get a job after graduation. I have also had students, whose academic performance tested the margins of our academic standards. In some cases, students have graduated with just a fraction of a percentile point above the minimum 2.0 grade point average required to graduate. Yet, somewhat paradoxically, these students have often gained good employment that they find tremendously enjoyable and very rewarding. How, then, is it possible that the best student in the class might struggle to get a job when the worst student in the class finds a job, and a rewarding one at that, almost instantaneously? The answer lies in the fact that when you postulate the best and the worst student, and do so in terms of GPA, you have completely missed the point. It sounds trite, but it is nonetheless true: Each law student brings a particular bag of strengths and weakness, dispositions, and abilities and disabilities to legal education. Finding your niche is really your goal. Along the way, learn as much as possible to facilitate your work.

Law school, like so many programs of education, ultimately is a path of self-exploration. I particularly admire law students because they are the graduate students with who I am most familiar. So many students are people who have successful careers and other successful aspects in their life, and are willing to throw themselves into a very hardworking and challenging environment in which the

system may not entirely reward them on every dimension for all of the things they see as strengths in themselves. But therein lies the opportunity. For example, I encountered one student who is a natural business personality. She will clearly be a great success in the law and probably someday become a great leader in the bar and the community. However, on one afternoon she confessed to me a tremendous terror regarding public speaking. I was most impressed when I learned that she had signed up to do Moot Court, which features (principally) getting on your feet and getting grilled over hot coals while speaking. It is precisely this type of attitude that portends the greatest true success in law school.

It is true that certain grade point averages do have demonstrable and important effects on a student's career. For example, to work full time with a judge upon graduation often requires that a student have a very high GPA and also have performed admirably on Law Review. And certainly, at the other end of the spectrum, a very low GPA can easily garner one a trip to the Academic Standards Committee. Moreover, high grades may privilege certain students for certain types of interviews (because some firms will use numeric criteria to sort students out) and a particularly low GPA may mean a highly improbable call back or even first interview with certain firms. Nonetheless, what is often overlooked is the fact that good jobs are most often garnered through entrepreneurial skills rather than through a GPA. This leads to the next and perhaps the most important myth of all.

Myth #9: "If I do well in law school, I'll get a good job."

Far too many students assume that their job is to maximize their law school GPA performance and to pad their resumé with a variety of activities. By doing this, many believe that they have put themselves in a position to get the best possible job and to begin a rewarding career. A damaging follow-on to this belief is often that nothing else need be done. It were as if students believed that an invisible hand were guiding them to gainful employment and all that they must do is simply play their role and all will work out well in the end.

At a certain level, law is a business. And in many ways, it is about "you-business," the business of you and your career. It seems a little odd that a person who wants to be a professional would be so

anxious to delegate the business of being “you” to someone else. And that is precisely what many students want the most: a good job, good benefits, a high salary, and a lot of “no responsibility” to the development of their own career. To the contrary, the business of law inevitably rewards those who will work and help themselves. This means that beginning with the first day of law school you begin the process of “you-business.” If you sit back and wait for a good high-paying job to come to you, I suggest you prepare yourself for another career. Instead, you should begin almost immediately developing connections and working on developing who you are and your skills in law school.

Looking back at the previous myth regarding grades, it is easy to see how these two myths and the realities are so closely intertwined. Instead of focusing so dramatically on grades and GPA, a student should focus on learning material and developing a sensible curriculum that may lead her down the path in which she is interested. Students should emphasize making connections within the law school community, to other students, and outside the law school community — connections which will benefit them down the road. The students who truly succeed in law school are not the ones with the highest GPAs, but the ones who put out the most effort to improve themselves and the ones who recognize, and take responsibility for, their own education and their own “you-business.”

Myth #10: “All law students are cutthroats.”

This myth is probably more of a fear than a myth. Many law students are terrified that when they start school they will be surrounded by a lot of nimble-footed, fleet-faced, sweet-talking, cutthroats. And the thought of being among disingenuous and backstabbing individuals in one's graduate education is truly disheartening. Luckily, while there is always a Tracy Flick¹² or two present in the student body, you will be amazed at the compassion and camaraderie that you will find among fellow law students.

Many of us look back to our law school days and see that as the time when we made some of the most enduring friendships of our entire life. I will confess that I really have no connections with people that I once knew in high school and very distant connections

12. A fictional character in *ELECTION* (Paramount 1999) (motion picture).

with most of my friends in college. However, my law school friends are constantly on the phone with me. In other words, you should look forward to the fact that law school can be an opportunity to create some of the most durable and meaningful relationships in your entire life.

A word of warning though. Law school is more than simply a classroom educational experience. In many ways, law and law school are lifestyle choices. This means that no matter who you are, or where you come from, you should expect and anticipate a significant challenge to your identity and to your circle of friends and relations. It is simply foolish to think that you will go to law school, absorb the process, and remain unchanged. Moreover, even if you were to remain unchanged, the stresses and demands that are put upon you will definitely reflect into the loved ones and friends that you have. For better or for worse, there is an alarmingly high rate of break up and divorce after law study. In fact, it often appears that inculcation with law adds aspects to your persona that change your relationship with just about everything in your life. In some cases, this is clearly for the better, in some cases this is clearly for the worse. You may find yourself, for example, arguing with a spouse and throwing out terms like “due process” and “meaningful standard of review” and other lawyerisms. On the other hand, you may find yourself able to facilitate disputes and other issues much more quickly.

Myth #11: “If I make it through law school I will pass the bar.”

This is an important myth to dispel. The mere fact that one survives the three-year law school experience, and in fact even excels in it, does not ensure success on the bar exam. This is increasingly true in an era when bars around the country are putting up more barriers to admission. The current perception, however real or unreal, is that there are too many lawyers. This perception has caused certain backlashes against lawyers, including the raising of standards for passage of the bar exam. Moreover, it is worth noting that the typical American law school does not see itself as a bar preparation course.

So how is one to prepare for the bar? Perhaps the first thing to do is to recognize that it will be your job, and your job alone, to prepare yourself for the bar exam. No one will assume the responsibility to ensure that you pass the bar exam. I would suggest the follow-

ing several strategies to improve your chances for passing the bar. First, recognize that the typical bar exam has at least two major parts. The first part is what we will call the multistate part, which is typically a “fill in the dot” multiple choice style exam. This portion of the bar examination features so-called multistate law. This is typically the material that you learn in the first year to year-and-a-half in law school. Without a doubt, the major emphasis on the multistate bar exam is on three subjects: Torts, Property, and Contracts. Thus, to succeed on the multistate, a mastery of Torts, Property, and Contracts is essential.

It really did not occur to me when I was taking those basic courses in law school just how important those courses would become to success on the bar exam. The multistate test is a most difficult standardized test. So, even if you are an ace on standardized tests, it is important to prepare yourself with the foundational information that will form the core of the test. I strongly urge you, that if you did not do well in any Torts, Contracts, or Property classes (even the back half of one of them), that you make an affirmative effort to tutor yourself and to improve your skills in this area. Indeed, throughout law school, I would make some effort to continue to keep my skills in Property, Contracts, and Torts current. This could include participation in Moot Court, participation in Law Review, or part time work.

Now, the other part of the bar examination is the state section of the bar exam. This section puts heavy emphasis on local law. There is an excellent chance that unless you make an affirmative effort to study local subjects in law school, you will never be exposed comprehensively to local law subjects. Again, most law schools do not gear themselves to specific state bar exams. Thus, I would make a point of gravitating toward at least some classes that do feature a significant segment of local law. In lieu of that, I would find some other method to educate myself in local law principles while passing through law school. It is simply a lot to learn when it comes time to take the bar exam if one encounters new material in large chunks for the first time.

For both sections of the bar, it is important to emphasize certain subjects. For example, Florida frequently tests Trusts and Estates; however, many students do not take Trusts and Estates before they settle in to take the Florida Bar Exam. They are at a clear disadvantage when it comes time to take that exam. There are other subjects

as well that will help with preparation for the bar exam. Some of these courses feature titles that are a bit off-putting and are in a subject areas that students sometimes shy away from. For example, it is extremely important to be well-versed in commercial subjects. Again, recall that the multistate bar exam puts heavy emphasis on Contracts — including commercial transaction issues — and commercial subjects are likely to appear on state sections as well. Thus, it is sensible — indeed almost necessary — to take courses that involve the Uniform Commercial Code after you have taken the basic Contracts class.

Although no one will take particular responsibility to see that you receive the education that you absolutely need to succeed on the bar exam, you will find many willing individuals who will help you to strategize on this path. I would strongly urge you to find someone in an academic advising capacity to take a few minutes to help you to identify what it is that they think that you should learn in law school to help you prepare for the bar. You can also gain valuable insight from contacting the local bar and requesting information regarding testing. While it is important to focus upon your first-year studies as you enter law school and it is likely that much of your bar review effort will be back-loaded in your academic program, I would nonetheless begin from the very first day of law school to begin bar examination files. Thus, I might start a Torts, Contracts, and Property file in which I would place valuable information that I would want to access when it comes time to study for the bar. For example, in my Torts class, I sometimes provide students with very recent cases that come down from the Florida Supreme Court and ask them to put those cases away and update them when the time comes to take the bar. However, even if your professors do not do this, you can do such a thing for yourself. Again, at the early stages of your career, you are not looking to make a comprehensive review of all issues arising under local law, but simply begin to familiarize yourself with as much as possible to cut down the cramming that will be necessary when it comes time to study for the bar exam. I have found in my experience, that if I have been exposed to legal subjects on the second time through it's much easier to study and to remember them.

So, do not panic, but do get to work. Again, it is important to take responsibility for your own education and your own career. I think that students often expect something else, or something more,

from legal education. Perhaps they should. But the reality of most law school experiences is that students will find the greatest success when they take the most responsibility for their own situations. Indeed, I do think this is one of the biggest and most important lessons that is learned in law school. Again, in no time at all, you will be practicing law and you will be a responsible professional who cannot look to others to take responsibility for the decisions and judgments that you make.

Myth #12: “I know what I want to do when I graduate law school.”

Ho. Ho. Ho. It is impossible to make the kind of commitment that one must make financially, emotionally, and temporally to the law school experience and not have some kind of a plan about what one intends to do with the education. However, a word of comfort and perhaps caution is in order. While it is essential that you begin to plan and take responsibility for your own career, it is worthwhile to recognize that a law career is part planning, part timing, and part luck. And I think this is a good thing. It is the rare student indeed who, setting a goal on the first day of law school, then fulfills that goal upon graduation and stays permanently in the position she had planned to enter. More often than not, students who make hard plans along the way discover aspects of their personality and their work abilities that guide them in new directions.

The study of law and the practice of law is really a path of self-exploration. As one progresses through a career at law, one discovers new talents, new aptitudes, and new dislikes and antipathies. It is important to be available to these changes and opportunities. So often important job opportunities and career paths present themselves almost as if by accident. And yet, these paths become the most rewarding aspects of a person's career.

The law virtually ensures that almost everyone goes through one or two radical transformations in their careers. The law is constantly in flux. This is especially so today. It seems as if every day brings a new case, a new piece of legislation, etc. More to the point, we often see radical paradigm shifts in basic practice areas. For example, when I first went into private practice, the firm that I worked for had a thriving antitrust practice. However, that practice all but dried up with changes in antitrust law. Literally legions of lawyers had to redefine their career. The same thing happened

again, in no time at all, when the mergers and acquisitions business began to decline in the late 1980s and early 1990s. Many lawyers who had been mergers and acquisitions lawyers simply had to find new ways to work. I see the headlines today and it certainly looks as if there will be substantial reform in the health care system in the next ten years. Who knows what that reform will look like? But one thing is virtually certain, lawyers who practice in the health care area will find themselves confronting new challenges, new laws, and new paradigms. In fact, I sometimes talk with my Torts students — the subject that deals with negligence and product liability law — and tell them that there is always a chance that my subject may basically evaporate from the curriculum. After all, it seems each year states enact further tort reform. It is not entirely implausible that our entire system of accidental loss/compensation could be revamped. The personal injury lawyer of the future may turn out to be ????

Myth #13: “Most of what happens in a law school class is useless.”

Big Myth! Law school classes often feature the so-called Socratic Method. Again, this method is many different things but usually involves an extended period of question and answer between a student and the professor. It may seem that in the tedious process of questioning and answering regarding a case, a great deal of effort is expended to gain very little valuable information. In fact, the process of Socratic questioning is itself an important part of the learning process, and the learning can occur (perhaps especially) if the person is merely listening to the exchange between the professor and another student. Indeed, it is very important to recognize that the professor's questions are telling and may lead one down a path of greater understanding regarding case material. All too often students sense that the fellow student is floundering or unable to “answer the question” when in fact it is the very process of going through the question and answer mode that begins to divulge the issues and the problems that can arise with particular cases.

Again, as before, students often feel that they are being cheated out of the black-letter law, which they believe is the real object of the lesson. However, one can only truly appreciate a so-called black-letter rule by working through its open-endedness and its indeterminacy. Thus, the Socratic Method is an essential teaching element

in virtually every subject and virtually everything that happens in class is relevant and important.

This does not mean that students should attempt to transcribe a class verbatim. Often the best strategy in class is to pay attention very carefully, taking a few notes here and there, especially regarding the professor's questions, then after class, a student can begin to take what has happened in the classroom and assimilate it into coherent notes. I feel that one of the great mistakes students often make about law school classes is that they come to class after having read a case in a linear fashion, ready to passively absorb black-letter law and then leave the class only to move on to the next subject. This entire orientation is really off the mark. First, class should be approached as an interactive experience; students should come prepared to discuss the material and not simply to hear about it. Second, a student should accept the fact that it is very likely that, after having read a case very carefully, and even after discussing it with friends, the case may not be at all what the student thought it was. After class time is crucial in terms of assimilating information and being prepared for exams. I tend to think the "A" students are often the students who take that little bit of extra time between classes and that evening to write down what happened in class that day. Looking back and sideways, in other words, is as important as looking forward. The linear model of education, in which the student continues to build from one day to the next in a linear progressive fashion, is not always the best way to approach law school education. Learning law is much more like walking a path that one has been on many, many times. Each time one passes down the path, new and important things appear. If you like geometric images, I suggest that you think of law study more in terms of concentric circles rather than in lines heading out into infinity.

Myth #14: "I must brief every case."

Upon entering law school, you will learn about briefing cases. To brief a case is really nothing more than taking notes on a case in a very stylized way. The process is fairly time consuming and often tedious. I highly recommend that you attempt to brief virtually every case that you encounter in the first few weeks of law school. Usually the pace of law school classes is quite slow in the first couple of weeks and will give you ample opportunity to devote the time

necessary to brief all the cases. However, as time goes by, the number of cases mounts and the pressure from other subjects mounts as well. In no time at all, one is forced into a very difficult situation: To brief or not to brief? Many times students abandon the briefing process entirely at some point in the semester, sometimes just a couple of weeks into the semester. Other students attempt what is virtually impossible — they attempt to brief every single case throughout the entire semester.

Extremes are rarely the best solution in any situation, and in law school these extremes are usually not good ones. It remains important to brief some cases, but it is virtually impossible to brief all cases. So then, if a happy middle is the correct solution, how is one to know which cases to brief and which cases not to brief?

Myth # 15: “All animals are equal, but some animals are more equal than other animals.”

One of the colossal myths of law school is that every day is just like another, every case is just like another, and every case is of roughly equal magnitude to every other case. In fact, nothing could be farther from the truth. Without any doubt, in every course there is a core of cases, let's say for purposes of discussion, fifteen to twenty-five cases, that form the basis of understanding of the semester's material. Likely, these will be the cases that your professor spends what seems to be an inordinate amount of time in class discussing. In some situations, you may find yourself talking about a case throughout the entire semester here and there. With some cases, you may find yourself working on one case for a whole day in class. Needless to say, as you will soon experience upon entering law school, the amount of material that is assigned often exceeds the reasonable bounds of the human ability to amass. So often in law school, the important lesson is similar to that which is learned in triage. If you treat all the individuals coming in for emergency treatment as equal, you will find yourself unable to treat anyone. You will lose almost all of the patients. It's just simply a bad strategy to try to treat everything equally when you have limited resources and extremely large demands made on your time. So, I strongly urge you to approach law school with somewhat of a triage mentality, recognizing that some cases are bigger than other cases. To study cases as if all are equal is to miss a very important part of the lawyering

experience. Lawyers quickly recognize that some cases have far more significance than others. Recognizing the importance of placing due emphasis on the appropriate cases can often be the key to success or failure.

Let me tell you another story. When I was in law school I had Civil Procedure with a very well-known professor who taught the class as a six-hour class in two semesters; that is one whole year, with *one* final exam in May. The professor was not particularly fond of our class and made this quite well known to us. Frankly, we were all scared to death. When it came time to study for the exam, I remember that there was one case, which to me did not seem all that important, but the professor had spent a great deal of time in class on it that year. I figured, if he is talking about it, I am reading about it. So, I found myself taking a little extra time to pull that case out of the hundreds that we studied over the course of a year and attempt to master its basic ideas. I worked through certain permutations and variations and even read the notes following the case. When I took the final exam, it may have been luck (but I think it was manufactured luck), because there was a question dead centered on that one case. A number of my colleagues could not even remember the name of the case, let alone what happened in it, but I was able to write a fairly decent essay on it. My grade in the class reflected that at semester's end.

The moral of the story is that you may well guess right or guess wrong on which are the important cases, but if you do not make an educated guess and take a reasonable stab at it, you are almost certain to do, well, no more than average. Surprisingly, there are some easy resources to help to gain some appreciation of what the major cases are. For one thing, your casebook itself will often show you by the way it is laid out which cases are principal and which are not. Moreover, secondary sources will typically illuminate the cases that everybody seems to be talking about and often those are the cases that show up on law school exams and later on bar examinations. More important, your professors are often receptive to questions regarding the prominent rules, issues, and cases in the semester. I would not go to a professor and say "Gee, what are the top fifteen cases that are likely to be on the exam." Professors are not particularly fond of students whose first and only motivation is to gain good grades, because as above, they are well aware that that motivation is not in the student's best interest. However, one can approach the

problem from a purely academic point of view and ask questions that are bound to elucidate positive answers. I would not be unwilling to go to a professor and say that I had looked at five or six cases and felt that they formed a core understanding of the material for me and ask the professor if there were other cases that I should add to that list. This is just an example, and again in each class and for each professor, you may have to find a different technique. But the basic idea remains the same, treating all the material as if it is equal is a guaranteed recipe for failure.

Myth #16: “The person who talks a lot in class will do the best.”

Sometimes the students who perform well in class out loud or who talk a great deal do well. Very often, they do not. There is no real magic connection between the amount of time you spend speaking and how well you do in class. It is a good idea not to read too much into the absence of silence.

Myth #17: “The person who talks in class too much is a jerk.”

Very often in a law school class there is one (or two, or sometimes three) individual(s) who seems to have a hand in the air all the time. This is the modern Horshack.¹³ Never does a question go to the floor, but that a hand goes into the air asking to be called upon. I actually have had students who sat in the front row and raised a hand continuously throughout the class during the entire semester. Other students have become notorious for asking ten, twelve, fifteen, or twenty questions in a class period. In no time at all, this type of student garners something opposite of the respect and admiration of other students in the class. The snickering begins and the backbiting takes hold.

Someone once said to me when I went into teaching law that every class will turn on somebody, and they especially like to turn on one of their own. The perception that the person who talks too much (“the gunner”) is a jerk, in most cases is a myth. In fact, the reason a person often is able to occupy so much of the out loud space in class is that other students begin to abdicate that space to that

13. *Welcome Back Kotter* (Komack Co., Inc. television broadcasts 1975–1979) (television series).

individual. One way the professors will silence a so-called “gunner” is to insist on a very rigid format for participation in class. Whereas this format may be a very good format, if it is done specifically to manage the flow of questions and answers in the classroom, it can have the unfortunate side effect of damping out quality participation from other members of the class. There is no substitute in any Socratic class for the spontaneity that arises from a group of people who are well-prepared and are willing to chime in at any moment. No form of rigid class calling could ever mimic the quality of that sort of class. However, to get a quality class of that level requires that a large number of people be extremely well-prepared. Now, you can see that if the “gunner” takes over the floor, the professor may be hoping to generate a dynamic, but the students who are prepared are not raising their hands (or worse there are no other prepared students). In this situation, if there are any jerks to be seen, it really is the students themselves that do not take the responsibility for their own classroom. The best way to silence someone who dominates the classroom discussion is to become a participant in that classroom discussion yourself. You will be surprised at how welcome most professors will be if you are willing to join in and create a new chorus of voices. Unfortunately, many students are perfectly happy to fall back into a passive learning modality, which as we saw before, is a dangerous trap.

Myth #18: “I’m so funny.”

A little piece of advice, when it comes to exam time, and even in classroom discussion, is that you are not nearly as funny as you think you are. Every exam period, when I am reading 50 to 120 or so exams, I let out a huge laugh. It is never because a student deliberately tried to be funny. Unfortunately, what is humorous in that context is often the very pathetic misstatements or misjudgments that someone has made, particularly the situations in which a student clearly has no idea how to answer the problem and tries to sling some answer at you as if you might somehow fall for it. To the contrary, attempts at humor all too often come off as flip or disrespectful. Kramer is Jerry's best friend, but a “C” student.¹⁴

14. *Seinfeld* (NBC television broadcasts 1989–1998) (television series).

Myth #19: Exam Mythology

Some of my favorite myths in law school relate to examinations, particularly the way professors grade examinations. Number one on the list has to be the home run myth. According to the home run myth, a student taking an examination is seeking to get an “A” and tries to hit that grand slam home run in the bottom of the ninth to completely destroy the competition. When a student embraces this myth, the student attempts to be extremely clever and to look for all the possible angles, especially those that other students have not seen. It is true that the very, very best exams (those two or three exams in the career of the law professor that feature memorable moments), hit grand slam home runs. However, the simple fact of the matter is that most top exams become top exams not by particularly brilliant insights and new ideas, but rather by the careful and somewhat tedious process of laying out accurate rule statements, identifying central and obvious issues, analyzing the facts in the question, and drawing reasonable conclusions. In short, the “A” test is usually from the person who hits the most singles consistently, not the home run hitter. Do not forget that very often the people who lead in home runs, also lead in strike outs. When I review an exam with a student, the first thing that they will say to me is, “I thought I did really well on this test and I knew the material.” Then we sit down with the test. And, within just a couple of minutes, it is painfully apparent that basic things called for in the questions simply were not answered because the student was on a hunt to try to identify that one special turnkey issue that might distinguish them from others. In truth, what typically distinguishes students on exams is not flashy or particularly brilliant insight, but again, covering the bases.

It might help to step on the other side of the table for just a minute to see why this is so. When professors grade examinations, they often have many, many long examinations to grade. It is not unusual for me to have approximately 100 exams in a semester to grade. Let's say, for example, if a professor spends one half hour on each exam and has 100 exams to grade, this means that professor has to spend 50 complete continuous uninterrupted hours just grading exams. (It is more, but that is another essay.) This work is usually quite tedious. I often tell students it is often like receiving directions from 100 people on how to get to a place that you know how to

get to very well. The answers typically range from the kinds of directions that you might find in your pocket on a Sunday morning written on a cocktail napkin that has been soiled and soaked with water, to the "A" answers which look a little bit like a AAA Trip-Tic. The vast middle of the exam pile is neither as bad as the crumpled cocktail napkin, nor nearly as good as the AAA Trip-Tic, but often a fairly complete but substantially inaccurate recital of how to follow the path to the appointed place.

After you have spent twenty or so hours grading, you are not looking to find the cure for cancer or an explanation for why fascism flourished in Europe in the 1930s and 40s, but instead you are looking for something very simple. You want to find an exam that can clearly and concisely work its way through the basic issues, stating the rules clearly, analyzing the facts, and drawing reasonable conclusions. Once every couple of years, you read an exciting exam that does all that and goes beyond. However, the reality is that very, very few students will write such an exam and it is truly not worth the aspiration to attempt to write such an exam, particularly given that the downside is so heavy. You know, if you think about it, there is no particular reason to think that a person sitting under extreme pressure in a three-hour examination will have any realistic chance of writing anything that is particularly wonderful to read. Indeed, most examinations are fairly pathetic. I do not mean this to be a cut on the students who write them; it is a simple fact that one simply could not expect a terribly high level of thinking and writing in such a scenario. Taking the home run myth out of the equation really makes preparing for exams a whole lot easier for students. Indeed, I often tell students, if they saw what I saw, they would find writing exams very easy. Needless to say, however, there is no alternative but to go through the process of law school to learn how to write exams well.

Another myth fairly common in law schools regards anonymous grading. Most law schools feature substantial anonymous grading. Because grading is done anonymously in many important classes, it seems also natural that students would begin to conjecture about the integrity of the anonymous grading system. I will admit that students often do boneheaded things regarding anonymous grading. For example, I have received exams that had the exam number on each of the exam pages and then the student signed her name at the last page of the exam. We handle this type of problem with various

techniques. However, students often feel and sometimes express the fact that they believe that anonymous grading is sometimes violated by professors. I am virtually certain that somewhere, sometimes, some professor may well have violated the anonymous grading policies of his school; after all, law professors are human and in the group of law professors, there are no doubt fallible and perhaps even not so benevolent individuals. However, the truth of the matter is that professors have adopted anonymous grading as much, if not more, to protect themselves than to protect the students. I, for example, want anonymous grading and religiously adhere to it, because in some ways it is much easier not to know who the students are than it is to know. When you are coming down to give that very difficult grade of an "F," it is truly a relief to be able to grade knowing that you are simply looking at the test and not taking into account other factors that are extraneous to the exam.

Moreover, the myth that professors wish to violate anonymous grading turns on an important and unspoken assumption. This assumption is that the professors care enough to try to manipulate the grades. The truth of the matter is, the professors have very little incentive and interest in manipulating grades. It really does not matter much at all to us who gets an "A," who gets a "B," who gets a "C," or who gets a "D." I do not mean to sound callous, but the myth that professors manipulate grades assumes the professors really care one way or the other. The truth is, we have hundreds of exams to grade and in no time at all, we encounter thousands of students. A student may believe that a professor likes that student or a student may believe that a professor dislikes the student: In fact, you might be surprised that in many of those situations, the professor does not even know the student's name. Also, professors have many obligations outside of the classroom that press upon their attention and time. To be successful in our business, you must publish and do a variety of service activities. This means that the day is terribly full of important and positive things to do and manipulating student grades is hardly a priority.

Some students feel that professors can identify handwriting, for example. I find this quite amusing. The truth is, you would need to be a handwriting expert to be able to pull off identifying someone and have to commit hours of laborious effort to do so. This would be truly a waste of time, particularly given the pressure. Do not forget, that in the Fall Term, professors are often grading exams heading

into the holidays. Quite frankly, I cannot imagine that many professors would rather spend their time trying to advantage some preferred student or disadvantage some student at a time when hours would be necessary to do so and time is so precious. Similarly, the Spring Term falls on the cusp on the beginning of summer and many professors are committed to teach summer school, which starts shortly after the end of exam period, or have other summer obligations including research or service activities. There is a tremendous pressure to get the grades done quickly at this time, and again, there is no time to play favorites.

Another set of myths relates to: "Should I type or should I hand-write my exam?" I have heard students express completely contrary sentiments in this situation. Some students believe that typewritten exams are the better way to go, and other students believe handwritten exams are the better way to go. Truly, there is no categorical best answer in this situation. Admittedly, typewritten exams are usually easier to read than the typical handwritten exam. However, it is extremely rare to encounter a student's handwriting that is so poor that it is truly difficult to read. Every now and then a little effort is required to decipher some text in the handwritten mode and perhaps students who know this should prefer the typewritten modality, but most students' handwriting is perfectly easy to follow.

It seems to me that the choice should turn on something other than some prediction about which type of exam does better on the whole. Some people think with a pen in their hand and compose best when they are writing with a pen. I am certainly such a person. Some people, on the other hand, think and write on computer keyboards much more thoughtfully than they do with a pen in hand. It really is a matter of experience and with what you are most comfortable. I would suggest that if you think on computers, if you were trained to write on them for example, that you might want to prefer a typewritten modality for an exam. However, if you find yourself being a Ben Franklin-style quill pen oriented individual, then I would suggest that you gravitate toward the medium in which you work best. The only caveat is that if you're a very slow typist, or have particularly poor handwriting, I would take both of these factors into account and choose accordingly.

Another major myth is that many students believe that doing well on law school exams turns on how many cases they cite on an exam. I have found that, in most instances, merely citing a case does

not add a whole lot to a particular exam. For example, I often get exams that are just laced with citations to multiple cases. However, the students who cite hundreds of cases often simply state the name of the case and say something like “for example, see *Winterbottom*.” This citation adds very little to an exam question because really what is at issue is seeing how a student can bring a similar case and its facts to bear on a problem that is presented in an exam. This means that simply rattling off case cites does not do much more than identify for the professor that there is a reasonably good chance the student may have read a number of cases (perhaps superficially). In general, when using cases on exams, realize that the maximum effectiveness of case usage is when a student can take a case and identify a specific rule of law and work with the facts of that particular case to compare and contrast it with the issue that is presented.

Another point about exams is more in the nature of a mistake as opposed to a myth. Students often approach exams as if every question or every issue has equal importance on the test. Although that is possible, most law tests feature a variety of issues and problems that a student must confront. Naturally, some questions are easier to resolve than others. However, if a student devotes equal time and attention to all of the issues, then it serves to reason that they will end up devoting more time than is necessary to some questions and too little time to other, more difficult, questions. In some cases, the exam itself tips the student off to this: for example, an exam may give suggested time allotments for questions showing students how they should allocate their time. Even if the exam is not that user-friendly, students can make these kinds of judgments for themselves, and in fact need to. For example, it is very common in first-year tests to get substantially incomplete answers to the last question on an exam. Nonetheless, when one pages back to the very first or second question, the student may have written something on the order of *War and Peace* for the answer. It is very clear that in budgeting her time, the student did not leave ample time to give even equal time to the last answer on the test. This is particularly damaging if it turns out that the last question is the more difficult and demanding question. Because exams are typically graded on something like a curve, and most students tend to do this in the first year, the damage to your grades is relatively minimal. At least at the outset. But the opportunity lost is tremendous.

I strongly urge students to review and read exams strategically. In most situations, it is highly advisable that before pen hits paper to review the whole test to get a sense of what types of questions are being asked overall and to strategize and prioritize where one's time will be spent. By the way, there is no magic necessity in most exams to starting with the first question and ending with the last. Very often a student might be well advised to skip ahead to, say, question number six and answer that in a bluebook and then return later, having left appropriate room in the bluebooks to answer question number one. A little tactical and strategic thinking on how to approach questions can be invaluable and avoid a needless slaughter of your time. You may pick up a test and the first question may completely blow you away. You may experience that all too typical white-out phenomenon that students have when they encounter a question which is very difficult. Why spend thirty minutes sitting there struggling and staring at a page? Page ahead and find a question you can answer relatively easily and get into the flow of the exam, then when time permits, return to the first question and finish it off.

Myth #20: "All lawyers are tough-guy litigators."

One of the most profound myths about the practice of law and legal education is it is essential to be a tough-guy litigator. The classic image of the tough-guy litigator is the bull-nosed lawyer/tactician who gives no ground and can grind his enemies into submission in depositions and in trials. The truth is that although some lawyers will become hard-nailed litigators and tough trial attorneys, there are many, many careers in law in which other personality types and tactics prevail. Indeed, even in hard-nosed litigation and take-no-prisoners trial scenarios, hard tactics are not always the best tactics. Even in the heat of the most pitched battle in a deposition or in a trial, cooperation, kindness, and alternative methods of dispute resolution often resolve issues best. Look, for example, at a very telling statistic. The vast majority of civil cases never go to trial. Instead, most cases are settled or otherwise resolved prior to trial. Increasingly, courts and insurance companies look to the softer forms of legal interaction for dispute resolution. The rise in so-called alternative dispute resolution is a salient development in modern law and promises to continue to grow.

Moreover, there are many careers in law in which the idea of litigation and trial is basically foreign. Lawyers may prefer to seek the path of transactional work or perhaps get involved in estate planning. Or, lawyers may choose a governmental path and become advisors on policy questions or in regulatory matters. And the list goes on. Moreover, some will never practice law, but import legal skills into new areas. So, while law school will no doubt feature skill development so that you may experience your abilities in the harder-nosed dimensions of law, it would be a terrible mistake to assume that if your personality type is not well-suited to that type of endeavor that there is no place for you in the law. Likewise, it would be a particularly tragic mistake to assume that if you are pugnacious and bullheaded that law will automatically reward you and you will necessarily be a good litigator and a good trial lawyer.

Myth #21: Merit

I would not be surprised to hear that most entering students believe law school and the practice of law is, and should be, a meritocracy. Or, to put it in other words, that the best and the brightest should and do prevail. This can be a particularly cruel myth if not tempered with a healthy dose of reality. Students may punish themselves for perceived failures and also make unrealistic assumptions about how the world will respond to them if they perform in certain ways. There is no doubt the cream does tend to rise in the business of law, and it tends to stay there; however, the practice of law, and the study of law, are a complex human dynamic and thus feature, as all human endeavors do, a variety of non-meritocratic forces that are constantly at work.

For example, some students will enter law school with tremendous financial and familial resources at their disposal and even if their native abilities do not match those of many other students, in all likelihood they may have very positive opportunities upon graduation and perhaps throughout their career. Also, sheer luck has its hand in things. As another example, the practice of law is not always rocket science and because it is often performed in small circles — law firms — there are highly subjective features to the criteria that become the benchmarks for success. I have often observed individuals spoken of as “superstars” in law firms. These so called “superstars” have succeeded, say, in luring a particular client or

impressing a certain core group of individuals who control the dynamic of a firm, but these are not necessarily the most gifted people. The proof is in the pudding: many people who were once considered “superstars” are now playing a different role in a different environment. Unfortunately, the negative side of human behavior is an invariable constant in the practice of law. Jealousy, pettiness, stupidity, sexism, racism, homophobia, all play a part from time to time in who gets ahead and who does not. You will encounter some fairly dark personalities on your path in the law and I have no doubt that you will receive rewards you do not deserve and you will fail to receive rewards in situations where you are fully deserving. This dynamic often breeds a kind of deep cynicism in lawyers and even in some law students. Students sometime feel they have been denied certain opportunities or have been unfairly passed over in given situations. I am willing to grant that, in some cases, this may be true. However, this kind of cynicism is unfortunate and self-defeating.

One of the key features of being a professional in a dynamic business is that the frontiers of the profession are constantly growing and changing. This means that unlike a high school Algebra test for which there are clear, demonstrable answers, and hence clear benchmarks of success and failure, in the practice of law success and failure will have both very strong objective and very strong subjective dimensions. In fact, the history of successful professions is littered with the fits and starts of the margin that make it exciting to be in that sort of profession in the first place. Look, for example, in an analogy to the margins of science. The history of science repeatedly shows scenarios in which individuals come to the edge of technological understanding and are often rejected and shunned by their peers only to be vindicated, in some cases after their deaths. Indeed, in some situations, individuals who have made phenomenal scientific progress have been vilified as cultists and heretics. Certainly, the history of politics is similarly littered with such figures. Simply consider for example, the case of Joan of Arc. In her lifetime and after her death, Joan played several roles, hero, villain, saint.

When entering the practice of law, you should not just accept this fact — that the practice of law will not always run smoothly and in accordance with strict meritocratic procedures. You should also embrace this feature of the law. For in the end, it is exactly this dynamism, uncertainty, and open-endedness that makes getting up

every morning and going to work so exciting and such an incredible opportunity. It is particularly riveting to realize that everything that we do in our practice counts in large amounts. At any moment, we may be thrust into the open texture of law, where it is possible things truly could go one way or another. Here is a most exciting place, and the greatest opportunity to do good and to preserve our integrity. So, the next time you feel slighted or overlooked or the next time you win a prize, like Tony Manero in that dance contest,¹⁵ that you did not earn, keep in mind you are experiencing one of the most basic features of the profession of law.

Myth #22: The Paradox of Errors

This is really not a myth but a paradox. The Paradox of Errors is that while mistakes by lawyers will occur, they are unacceptable. I remember working on a brief when I was in practice with a now-deceased lawyer. He was a crusty litigator in the old mold, who had successfully argued in major cases. He was highly regarded, tough as nails, and in many cases feared. While working on a brief with this lawyer, an error occurred. It was early in my career and I was summoned to his office and in a very calm and deliberate tone, he pointed out the error. He sensed that I was uncomfortable, because I tend to be a perfectionist, and stopped for a minute to say something that has stuck with me ever since. He said, "I know that errors will occur, but they are unacceptable." In the practice of law, as professionals, we begin to set for ourselves a standard of perfection that borders on strict liability. We assume that we will not make even the most venial errors. Our learning techniques are oriented toward the notion that errors are simply unacceptable. Nonetheless, we know they will occur. How is it possible to enter a profession whose standard is the acceptance of nothing less than perfect, knowing full well that you will make mistakes and fail to meet that standard? At a certain level, it seems sort of stupid that anyone would ever want to do that to themselves. I guarantee you that at least once in your career you will make one monumental mistake; you may make several. The good news is that most monumental mistakes that are made are caught by someone else, are rectified by the system, or simply have no impact because they never amount to any harmful

15. SATURDAY NIGHT FEVER (Robert Stigwood 1977) (motion picture).

problem. In many cases, luck and circumstances will be your ally. Of course, there is that lawyer who left off the zero on the \$92 million dollar debt instrument and cost his law firm millions with a mistake.¹⁶ The reality is, this could happen to you.

How, then, is one supposed to cope with a profession that demands perfection of the imperfect? Truthfully, this is one of the most important aspects of professionalism. Perhaps the mightiest lesson in law school is the value of the ceaseless pursuit of high standards, coupled with the willingness to accept mistakes as an opportunity to learn and develop further. One cannot personalize and internalize overly much. A few lawyers will realize, either in law school or after they pass the bar, that the demands of the ceaseless pursuit of high standards are simply too much for them and their personalities. Truthfully, law school does you a favor. If, after repeated attempts to comply with that standard, one is unable to do so, a law school will disassociate you. Many people can survive the law school experience and practice competently, but the toll in psychological and emotional terms of meeting the standard is inordinately high. For these individuals, some hard decision-making may be appropriate. It simply may be the case that although you can do the job, the particular demands of law just may be too much. There is nothing wrong with that and there is no failure in it. Often I notice that students and lawyers feel compelled to continue in the profession and in the study of law in the face of obvious pressures to the contrary. If you plan on a happy and successful career in law, you should be able to navigate the Paradox of Errors.

CONCLUSION: THE PATH OF A LAWYER

If you think about it, as you begin the practice of law, you are your own hero on your own mythic journey through the business and practice of law. The downside of myth is when reality comes crashing in. The upside of myth is that by imagining realities, in some ways we begin to make them real. So, it would be inappropriate to conclude from this Essay that the new lawyer should abandon all myths and begin the study of hard realities and nothing more. Instead, I think it may be more appropriate to examine and to seek an

16. See Cerisse Anderson, *Suit Against 2 Firms Allowed to Proceed: Claim Involves \$92 Million Drafting Mistake*, N.Y. L.J., Dec. 10, 1990, at 1.

appropriate myth than can become a reality for your life and your path in the law.

Seek challenging myths and make worthwhile realities! Popular culture frequently portrays lawyers in less than flattering lights. Today the word “lawyer” often depicts for people negative and disempowering images. For those of us who have chosen this path, it is somewhat disheartening. How can one imagine the path of law, and a life in it, in a positive light? What myth is worthy of those who chose this business in this practice?

This process is intensely personal and is as multifaceted as the individuals who come to the practice of law. Let me share with you some thoughts that have helped me along my career path, for what they are worth. One of my favorite essays by Dr. Martin Luther King, Jr. is the essay titled *The Strength to Love*.¹⁷ Dr. King begins the essay by referring to scripture and the notion that we should become as “wise as serpents and harmless as doves.”¹⁸ It has always struck me in reviewing Dr. King's writings and his life, how intimate Dr. King — a man of religion and spirit — was with law. In fact, in so many ways, Dr. King chose the law as a vehicle to express religious and spiritual truths. His entire path of conscientious objection was built upon not just religious notions and spiritual ones, but upon a very careful notion of law in a much grander and higher sense. Had Dr. King's life not been cut short, I can only imagine that he might have devoted more of his attention specifically to the profession of law and to lawyers. The path of law has always been intimately connected with the highest ideals and spiritual aspirations of humankind. All one has to do is go back and look into ancient Indo-European texts on law and a consistent theme comes through. Law comes down to humans from above to express basic spiritual and human necessities. Even in the history of the United States, the higher aspirations of the founding fathers are evident everywhere in the Constitution and the Declaration of Independence itself. In America, we replaced the divine right of Kings with the divine right of all human beings to seek life, liberty, and happiness.

Now, Dr. King's essay brings this kind of deep connection to a more personal level. Dr. King points out that the path of the righ-

17. MARTIN LUTHER KING, JR., *The Strength to Love*, in THE ESSENTIAL WRITINGS AND SPEECHES OF MARTIN LUTHER KING, JR. 491 (James M. Washington ed., 1991).

18. *Id.* at 492.

teous person, while coated with the gentleness of a dove-like personality, will nonetheless force confrontation with the other side — the serpent.¹⁹ Dr. King points out that the gentle spirit that is not rigorous, critical, and examining can easily fall prey to propaganda and dark forces.²⁰ As an example, Dr. King shows how Hitler and Nazi propaganda became an illustration of how the dark side of human nature can use unremitting lies to generate evil and disempower good.²¹ When I think of the great spiritual masters and the great leaders in law, there seems to be one common thread they all possess. On the one hand, there is gentle and deep kindness in their personalities — a true compassion for humanity. Then, on the other side is a toughness and ability to face the most rigorous and demanding circumstances with incredible dignity. How does this connect the path of the modern lawyer?

When I open the doors to the classroom the first day of a law student's first year, I see many eager and often many young faces in the room. These individuals are full of aspirations and are full of the kind of remarkable human qualities that make coming to work every day a pleasure for me. But in no time, we confront these gentle spirits with tremendous obstacles. We give them more work than a human being can realistically accomplish in a period of time. Learning how to manage the unmanageable is one of the more important lessons in law and one of the more troubling and difficult ones to master. We also set people at each other in ways that foster competition. We put in motion the wheels that fracture people. We also disentangle the happier myths of our society. The study of law brings lawyers face-to-face with the reality that law is law — not always justice.

So, for example, lawyers will study how women and racial minorities were subjugated under color of law. Moreover, at a thousand different points, young lawyers will begin to experience the subterfuges of law, and its half-truths and sometimes untruths. In other words, the study of law is in many ways an enterprise in the study of how to perfect the serpent side of one's personality. And, needless to say, as Dr. King points out in his essay, the encounter with the serpent side of experience is often a deeply troubling expe-

19. *See id.*

20. *See id.* at 492–93.

21. *See id.* at 493.

rience. In fact, I suspect, from the innumerable conversations I have had with law students over the years, that almost every law student experiences a certain amount of nihilistic unweaving in the course of the study of law. The experience that rules are manipulable and that human nature is capable of incredibly dastardly acts (all one has to do is look at autopsy pictures of a young murder victim to lose one's faith in humanity for a moment) is highly disconcerting. However, the ability to face down the darker side of humanity and to see it for what it is — and nothing more — is a critical aspect in bringing truth, justice, and righteousness to the human condition. History is littered with examples of individuals who deliberately chose not to see egregious wrongs. By choosing to study the practice of law, you choose to study the methods and tools by which we can examine, in the most rigorous way, the motivations and rules of human society. In some cases you will like what you see, and in other cases you will not. The practice of law and the study of law, however, train one to be able to dispassionately observe both phenomena and to see them for what they are and what they are not.

Undoubtedly, in the rigorous practice and study of law many individuals — some who are so predisposed — will lose themselves in the serpentine path and unfortunately miss the greatest opportunity that the study of law can truly offer. For example, the newspapers are littered with stories of lawyers who fail. There are those, for example, whose technical abilities are exceedingly strong, but who never truly connect with the positive side of law. However, for every such person, there is at least one other individual who takes the learning and the hard training and the difficulty of facing down the darker realities law can show, and turns them into positive good for others in society. Truly this type of hero, often an unnoticed lawyer who toils in relative obscurity, is the ultimate mythic hero in law.

For me, this understanding has enabled me to get through some fairly dark nights in the practice of law and to recognize that for every setback and every difficult and dark circumstance, there is an opportunity to learn something that can be turned to the benefit of greater numbers of people in a different time and a different place.

Admittedly, all myths are aspirations and this particular myth is one that is as aspirational as any. For there will be days when it will simply be hard or impossible to see this path and in many situations it may be impossible to see how any good can come out of what

has occurred. Nonetheless, this particular myth has turned into many positive realities in my practice and I offer it to you for what is worth. However, I might suggest, if you do not like my myth, find one of your own and make it real. Ultimately, the practice of law and the study of law is not just a job, it is a lifestyle choice and a very important part of your development as a human being. I urge you to embrace the opportunity that is presented and recognize that difficult and dark circumstances are often the opportunities for tremendous potential. In his essay, Dr. King closes with a famous parable. I think it sums up in so many ways how the positive lawyer, who understands balancing the serpent with the dove is the ultimate goal, can see a life in law. As Dr. King relates: "Fear knocked at the door. Faith answered. There was no one there."²²

22. *Id.* at 517.