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# Live Free or Die: Perceptions About Law Students

IRVING E. FASAN\*

Many years ago in my favorite barber shop a young person came in who was no more than twenty-five. All of the barbers (five or six) greeted the entrant warmly as "doctor so-and-so." Since this was long before holders of Ph.Ds called themselves "doctor," I knew that this confident and buoyant young man who was basking in what he took as appropriate admiration was a medical person. I also soon learned that he was only a medical student! But that did not matter. The distinctive term of address was freely given and accepted. Medical education early on creates a feeling of a special status which eventually impresses a stamp on the individual as unique and indelible as the person's own name.

The contrast with law students is sharp and revealing. I have been around law students now for over twenty years and I find them without much sense of a unique corporate or individual identity. Some seem apologetic about their status; most seem unaware of anything special. A few have a professional sense and bearing. I have wondered for some time why there is this difference between law students and medical students, assuming that my unscientific intuition is reasonably accurate and not too over-stated for purposes of highlighting my opinions.

In the abstract the situation seems quite wrong, since the work of lawyers is surely superior to that of doctors. Doctors deal only with health while lawyers deal with justice. In the long and short run it is clearly more important to live justly, rather than to live at all. New Hampshire has it correct: "Live Free or Die."<sup>1</sup>

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\* Professor of Law, Creighton University, Omaha, Nebraska. My thanks go to Robert P. Heaney, M.D., and my colleagues Professors David Larson, Larry Teply and my old friend Professor Paul Borgman of Gordon College in Wenham, Mass. for their helpful comments. Final responsibility remains mine.

1. In M. ADLER, *SIX GREAT IDEAS* (1981), the author discusses two sets of related ideas: Truth, Beauty and Goodness; and Liberty, Equality and Justice. "In the case of the first three ideas, we observed the sovereignty of truth . . . . So here, in dealing with the second set of ideas, we must note the sovereignty of justice. . . . In the popular mind, and even in the opinions of the learned, either liberty, or

Why then this curious inversion? I suggest that there are several reasons why even at the student level, doctors and lawyers feel differently about themselves:

(1) The difference is in part merely something with which the students arrive, having come out of the culture in which they live. Americans hold health and longevity in high regard and so prospective medical students would normally share that attitude and apply a high degree of worth to themselves without much thought about the matter.<sup>2</sup> It is more difficult to generalize concerning the public attitude about lawyering.<sup>3</sup> This public attitude may reflect the existence of some strong double messages, so that law students come to law school with a mixed view of their calling and of themselves. One of the double messages is this: The public expects attorneys to be above reproach,<sup>4</sup> yet some of the public also wants the attorney to become a street fighter for the client when the client gets into

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equality, or both together, is accorded the highest honor. . . . Against the weight of both popular and scholarly opinion, I will try to explain why justice is the supreme value." *Id.* at 135-36. "Man's greatest and most frequent troubles depend on man's injustice . . ." J. PIEPER, *JUSTICE* 11 (1957) (quoting I. KANT, *EINE VORLESUNG UEBER ETHIK* (2d ed. 1925) (A Lecture Concerning Ethics) (translation mine)). The textual reference relates to New Hampshire's state motto which appears on its license plates.

2. I do not mean to suggest that health and longevity are not human goods. They are. My observation, from the perspective of someone 61 years old, is that there is among Americans of all ages an increased awareness of health, and a recognition that something can be done to promote it, such as, ceasing smoking, increasing exercise and changing one's diet. The relatively recent appearance of environmental law strikes me as another indication of this change in attitude. Many Americans are concerned about the health hazards of chemicals, just to mention one item in the environmental area.

3. Polls of the general public often show lawyers rated rather low compared to other occupations. In a poll which asked survey members to rank twelve endeavors by answering the question "How would you rate the ethical and moral practices of people in the following professions and occupational groups?," CPA's received the highest ratings: 90% "Positive" 9% "Negative" and 2% "Not Sure"; Doctors received 78%, 20% and 2% respectively; but lawyers received 43% "Positive" 55% "Negative," and 2% "Not Sure" answers. Louis Harris and Associates, Inc., *A Survey of Perceptions, Knowledge and Attitudes Toward CPA's and the Accounting Profession* (N.Y. Amer. Inst. of CPAs 1986), reprinted in *The Good Lawyer* 3 (Spring 1988).

4. The Bar fosters this attitude. Canon Nine of the MODEL CODE OF PROFESSIONAL RESPONSIBILITY states that "A Lawyer Should Avoid Even the Appearance of Impropriety." T. MORGAN & R. ROTUNDA, 1988 SELECTED STANDARDS ON PROFESSIONAL RESPONSIBILITY 66 (1988).

trouble.<sup>5</sup> Get me out of this drunk driving charge at any cost, the client pleads, or the drug possession indictment, or the false income tax return problem. Some of the public thus wants it both ways, and that's not possible. We can't be above reproach and still get some people off; we can't keep our hands clean and also overcome what some business entities have done. Thus, there are these pulls on the lawyer and students are aware of them. They bring them (inside themselves) to law school. Of course, we know from literature and art that this public attitude is nothing new.<sup>6</sup>

(2) Law students arrive at law school without much specific sense of professional purpose or knowledge about the legal profes-

5. There is a very hazy line between "tough" advocacy, and "dirty" fighting. One problem is that, in the short run, it is easier to fight a bully by becoming one. That is the human side of any combat. The problem was poignantly described some time ago in a piece in *The New York Times*. The lawyer-writer said, among other things, "[t]o be effective in court I must act forcefully, and, often, brutally. I must frequently, for example, discredit witnesses, destroy them if possible. Surely not every witness I have humiliated was as despicable as I had tried to portray them [sic] . . . . The trial itself is ritualized aggression between combatants." Wishman, *A Criminal Lawyer's Inner Damage*, *N.Y. Times*, July 18, 1977, at 27, col. 2. The lawyer-writer seeks some justification for what he does, by feeling that he is working for the underdog in an unfair system. The lawyer-writer thus goes on to say, "Finally, I see myself as part of a process which is arbitrary, frequently racist, and often brutal. Many defendants are convicted for acts made inevitably by poverty. The warehousing of criminals while furnishing all basic needs except heterosexual ones seems silly and vicious." *Id.*

6. Dickens' novels and Daumier's prints come to mind, as well as the words of William Langland, who is the accepted author of *Piers Plowman*. "Langland tags them [lawyers] with two memorably mordant lines, compounded of local color and scorching contempt:

Thow myttest bettre meete myst on Maluerne hilles  
Than gete a mom of hire mouþ til moneie be shewed.

Venality is their manifest essence throughout the poem, notably in the preface to Pier's Pardon, where of all men they 'leest pardon hadde.'" Yunck, *Satire*, in *A COMPANION TO PIERS PLOWMAN*, 146 (J. Alford ed. 1988) (citations omitted). My good friend Dr. Gordon Bergquist, Chair of Creighton's English and Speech Department, has translated these lines for me, and added the lines immediately preceding, so that the whole phrase is as follows:

There waited there a hundred lawyers in silk hoods; Sergeants they seemed,  
that served at the bar, Who pleaded for pence and made the law *their*  
property And never, for love of Our Lord, unloosed their lips even once.  
You might better measure the mist on Malvern Hills Than get a mumble  
from their mouths until money is shown.

*Piers Plowman* 210-15 (B. Prol.) (private letter from Dr. Bergquist to Professor Fasan, Sept. 23, 1988 on file at Northern Illinois University Law Review).

sion.<sup>7</sup> That is one reason why teaching law is particularly difficult. The whole field of law is like Chinese metaphysics to many students. Given this lack of specific purpose and knowledge about the law, given the aggressively competitive atmosphere of law school,<sup>8</sup> given the recognition that first year, first semester grades go a long way toward setting one's entire professional future,<sup>9</sup> and given the knowledge by all these hitherto A and B students that most of them will end up as C students, is it any wonder that their self-esteem suffers?

(3) I tend to believe that medical students enter medical school with a clearer idea of what is in store for them and why they are there than law students, although one of my medical friends disagrees with me on this point.<sup>10</sup> I suggest this sense of purpose in medical students generates self-esteem. Moreover, entering medical students have taken true medical school prerequisites, like organic chemistry, which serve to narrow their numbers. At any rate, the prerequisites for medical school give future medical students a clearer idea of what medical school will be than pre-law courses give future law students. Then too, most medical students have been to doctors and have been in hospitals; they have some idea of the medical milieu. How many law students know what lawyers do? How many have been in an attorney's office? How many have been a client of a lawyer? How many have been in court?

(4) Regardless of what attitudes and knowledge law students bring with them to law school, there is evidence that law school itself inflicts psychological damage on law students. This damage

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7. "Unlike medicine, few young people decide to be lawyers early in life. Instead, law schools have traditionally been the refuge of able, ambitious college seniors who cannot think of anything else they want to do." Bok, *A Flawed System*, 85 HARV. MAG., May-June 1983, at 70.

8. "One sophisticated observer has concluded that, within the traditional law school structure, 'competition is magnified to the limit of human imagination and endurance.'" Boyer & Cramton, *American Legal Education: An Agenda for Research and Reform*, 59 CORNELL L. REV. 221, 262 (1974) (quoting Stone, *Legal Education on the Couch*, 85 HARV. L. REV. 392, 424 (1971) [hereinafter Boyer & Cramton]).

9. "From the standpoint of competitive success, the first year [in law school] is undoubtedly the most crucial because the first-year grade-point average is generally determinative of status and rewards, including law review, summer employment, and research assistant positions." Boyer & Cramton, *supra* note 8, at 263.

10. Robert P. Heaney, M.D., who was for many years the Dean of Creighton University Medical School as well as Vice President for Health Sciences disagrees with me. Dr. Heaney is now the John A. Creighton University Professor.

surely affects their sense of worth. A research team recently found that:

The law school educational process itself affects individuals rather than that certain types of individuals choosing to enter law school overact to the process because of their unique and rare vulnerabilities. Specifically, on the basis of epidemiological data, only 3-9% of individuals in industrial nations suffer from depression; prelaw subject group means did not differ from normative expectations. Yet, 17-40% of law students and alumni in our study suffered from depression, while 20-40% of the same subjects suffered from other elevated symptoms.<sup>11</sup>

Who would expect this group of persons to have a high regard for themselves, or for their endeavor?

(5) I suspect that some of the psychological damage comes from law school teaching methods. Some law professors take pride in bullying students and falsely justify it as the Socratic method.<sup>12</sup> This adversarial and confrontational method in the classroom spills over into the entire law school atmosphere, exacerbating an already highly competitive and combative situation.<sup>13</sup> This law school milieu is in contrast to medical school which, some say, has a more collegial and supportive environment.<sup>14</sup>

11. Benjamin, Kaszniak, Sales & Shanfeild, *The Role of Legal Education in Producing Psychological Distress Among Law Students and Lawyers*, 1986 AM. B. FOUND. RESEARCH J. 225, 247 [hereinafter Benjamin]. Besides depression, law students showed higher-than-normal symptoms of "obsessive-compulsive behavior, interpersonal sensitivity . . . anxiety, hostility, phobic anxiety, paranoid ideation, and psychoticism (social alienation and isolation)." *Id.* at 246.

12. The image has entered the popular mind via Professor Kingsfield in *The Paper Chase* movie and the television series.

13. For example:

The major characteristic of the first year [of law school] . . . is its atmosphere of 'collective terror'—an atmosphere which manifests itself in students' fear of taking risks, of being 'wrong', of having their innermost convictions held up to ridicule. Once the initial excitement and newness . . . wear off . . . many students withdraw emotionally into a kind of hardened cynicism, for fear of being hurt any further.

Dickson, *What would Socrates think if he could see the classroom battles waged in his name? Just answer the question, please*, 16 STUDENT LAW, Oct., 1987, at 7, 8. Query whether this so-called "Socratic method" is the way Plato described how Socrates led someone toward learning.

14. Students tell me this. Note also the following: "In our initial study, medical students and law students were compared. Although medical students

(6) There is a distinct difference in the service which law students and medical students are learning. A medical student can feel that healing the body is a natural good (which it is) and hence that he or she is learning a skill which is important. While both law and medical students are probably equally devoted on a primary level to money, power and prestige,<sup>15</sup> the sense of conferring a natural good by healing can allow the medical student to live more comfortably with those other motives. The law student has no such source for feeling good about what he or she is doing.<sup>16</sup> Unfortunately, the law student sooner or later may gain a sense that he or she is being trained to do some dirty work, such as: splitting up families; defending almost indefensible criminals (in my view those could be multiple-convicted drunk drivers and drug dealers); and working to delay and overturn laws and rules which may be for the common good.<sup>17</sup> How can the law student feel other than that he or she is

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expressed statistically higher levels of distress compared to nonpatient normative scores, law students developed significantly more distress than medical students for all symptoms except somatization and phobic anxiety." See Benjamin, *supra* note 11, at 247 (footnotes omitted). For further insights into the differences in the psychological distress of law and medical students, and some suggested causes for the differences, see Shanfield & Benjamin, *Psychiatric Distress in Law Students*, 35 J. LEGAL EDUC. 65 (1985). Don't let the title deceive you. The authors studied medical students as well as law students during all three years of law school, saying that "the present investigation was designed to survey law student distress in men and women in all three years of law school . . . . Comparison with medical students was made to contrast the levels of distress in each group." *Id.* at 66.

15. I have no social science "proof" for this assertion. It is based on my reading of human nature.

16. Law students are not without other "sources" for feeling good about themselves, particularly if they are told, and come to believe, that all of the small and large things that they do in a professional fashion go to make justice work. One can have a wonderful sense of worth about doing that! An attorney I knew many years ago in Chicago put it in a less sophisticated fashion when he remarked that the things he did were "the dull dreary tasks that make the nation great."

17. "The Washington, D.C. firm of Covington & Burling, for example, once delayed for twelve years a Food and Drug Administration ruling on the labeling of peanut butter jars. Said one Covington lawyer: Certainly, there's something suspicious about a 24,000-page hearing transcript and close to 75,000 pages of documents on a case involving peanut butter." *Those #\*X!!! Lawyers*, TIME, April 10, 1978, at 58. Note also the following:

My own view of the relationship between morals and law practice differs considerably from Professor Shaffer. This difference, however, does not result from differences in our estimates as to whether the world of law practice and the administration of justice is pervaded by evil, banality, indifference, irresponsibility, or incompetence. It is clear to me, as it seems

being trained to be a "hired gun" in such a setting, particularly when "The Ordinary Religion of Law School," as Professor Cramton calls it, fosters "[a] moral relativism tending toward nihilism, a pragmatism tending toward an amoral instrumentalism, a realism tending toward cynicism, an individualism tending toward atomism, and a faith in reason and democratic processes tending toward mere credulity and idolatry . . . ."<sup>18</sup> What then is left for the law student except a search for money, power and prestige?<sup>19</sup>

(7) Even if law students could adopt as their goal "making justice work" or "constructing the common good," if there is little or no agreement about what those terms mean, or there is a widespread opinion that the terms have no meaning at all, those goals cannot serve as a firm focal point for the law student, as the goal of healing may guide and give solace to the medical student. In his opening paragraph of *THE CLOSING OF THE AMERICAN MIND*, Allan Bloom observes that:

[T]here is one thing a professor can be absolutely certain of: almost every student entering the university believes or says he believes that truth is relative. If this belief is put to the test, one can count on the students' reaction: they will be uncomprehending. That anyone should regard the proposition as not self-evident astonishes them, as though he were calling into question  $2 + 2 = 4$ . These are things you don't think about: The relativity of truth is not a theoretical insight but a moral postulate, the condition of a free society, or so

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to be to him, that law practice and the administration of justice is precisely such a world. . . . In my view, the world of law practice and the administration of justice, soberly viewed, is a tricky, brutal, and dangerous place, and will remain substantially so, at least for the foreseeable future, no matter what is done to improve it.

Hazard, *Professional Ethics, Rules and Conduct*, 34 *THE CLE J. AND REG.* 5, 11 (1988).

18. Cramton, *The Ordinary Religion of the Law School Classroom*, 29 *J. LEGAL EDUC.* 247, 262 (1978).

19. It is no wonder that the Bar is asking itself whether or not it is a profession any longer. See Bauer, *Is Lawyering Still a Profession?*, 1987 *CHI. B.A. REC.*, July-Aug. 1987, at 23; Brown, *A Profession Losing its Soul*, 72 *A.B.A. J.*, Oct. 1986 at 38; and Hengstler, *Professionalism Declining?*, 72 *A.B.A. J.*, Oct. 1986, at 19, which discusses the American Bar Association's recently issued report on professionalism, ABA Commission on Professionalism, "*In the Spirit of Public Service*" a *Blueprint for the Rekindling of Lawyer Professionalism*, 112 *F.R.D.* 243 (1986). When lawyers write reports about "professionalism," that's some indication that the trait is dead or moribund.



they see it. They have all been equipped with this framework early on, and it is the modern replacement for the inalienable rights that used to be the traditional American grounds for a free society.<sup>20</sup>

Doctors for the most part (at least until recently) have not been as enmeshed in their culture as attorneys have. The medical student can still view medical practice as working on a given subject-matter, the human body, no matter what is happening in society. This sharp difference between subject matter and society is breaking down, and there are presently deep concerns for doctors in such areas as abortion, surrogate mothering, and when to let a patient die.<sup>21</sup> Nevertheless, the difference in the milieu in which doctoring and lawyering takes place still remains great and no doubt affects the attitude of students about themselves.

(8) There is finally the matter of training. I think it is accurate to say (a) *in general*, the systematic law school training of a lawyer is significantly inferior to that of a doctor,<sup>22</sup> and (b) *in general*, the

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20. A. BLOOM, *THE CLOSING OF THE AMERICAN MIND* 25 (1987).

Radical individualism, reinforced by a university hostile to common truth, results in young people who have no ability to make relationships and connect to some broader social purpose. They are steeped in an ethical relativism which prevents them from looking to a standard outside their immediate lives and peer groups for guidance. This state of affairs, in turn, leads to anomie, apathy and even anarchy in our society, and a susceptibility to totalitarian solutions. If there are no standards that are worthwhile, if there are no traditions, if there is no wisdom of the past, that is cultural suicide.

Honig, *What's Right About Bloom*, 4 *NEW PERSP.* Q. 36 (1988).

21. Nebraska has not passed a living will statute. This is due in part because opponents view such legislation as a step toward euthanasia. Note the following news item: "California Bar Association delegates have approved a resolution supporting, 'doctor-assisted suicide,' which would allow physicians to give terminally ill patients a prescription for a lethal dose of drugs." *'Doctor-Assisted Suicides' Backed by Legal Delegates in California*, Omaha World-Herald, Sept. 22, 1987, at 3, col. 1. The N.Y. Times of Sunday June 26, 1988 had a front page lead story entitled, "Steps to Control Surrogate Births Rekindle Debate," at col. 6. See also two recent books, E. KANE, *BIRTH MOTHER* (1988) and P. CHESTER, *SACRED BOND* (1988), both reviewed by Robert Coles, Professor of Psychiatry and Medical Humanities at Harvard in N.Y. Times Book Review, June 26, 1988, at 1, col. 1. See also 8 *PROB. L.J.* (1987) which is a special issue entitled "The Law and Social Change: A Matter of Life and Death."

22. Just on its face the difference is vast. Twenty-seven largely academic months for lawyers compared with the traditional two nine-month academic years for doctors, clinical training in medical school and then a residency (apprenticeship)

training of lawyers is less uniform than the training of doctors.<sup>23</sup> Law students spend only twenty-seven academic months studying mostly introductory courses in law. They then pass a state bar examination and are licensed to practice every aspect of law.<sup>24</sup> Contrast this situation with the process which begins in medical school and continues throughout a residency to board certification. While it may be true that the first two years of medical school are essentially cram courses requiring mostly memorization, and that legal training is more conceptual,<sup>25</sup> I am presently persuaded that law students, law faculties and the practicing bar are quite aware that even the best law schools do not turn out graduates with anything like the level of academic and clinical proficiency that a board certified doctor possesses.<sup>26</sup> If that is the case, then it would be difficult for the average law student to feel good about his or her

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of varying length, depending upon the medical specialty. *See generally* K. LUDMERER, *LEARNING TO HEAL: THE DEVELOPMENT OF AMERICAN MEDICAL EDUCATION* (1985) [hereinafter K. LUDMERER].

23.

In the development of modern medical education, the public, too, had benefited. In the middle of the nineteenth century, it had little faith in the efficacy of medicine; a century later that situation had dramatically changed. . . . [T]he public could now be confident of the training received by the average physician. In the twentieth century, all who entered medical practice were properly prepared.

*Id.* at 268.

My father-in-law, George H. Belshaw, who is a retired physician, made this same observation to me some years ago when I was concerned about the kind of medical service available to a member of my family in less populated areas of the United States. He stated that a board certified specialist, wherever found, would be of quite good and uniform quality.

24. There are about a dozen states with some kind of specialization program. *See generally*, ABA/BNA *LAWYERS' MANUAL ON PROFESSIONAL CONDUCT* 21:4001. About 21 states have some kind of mandatory continuing legal education requirement. *Id.* at 21:3001. But query, how effective is the requirement of mandatory continuing legal education? *See* Harlan, *Continuing Law Education Faulted by State Bar Groups*, *Wall St. J.*, Oct. 12, 1988 at B1, col. 5.

25. For an alternative viewpoint, consider the following:

At its roots, the development of American medical education involved a conceptual revolution in how medical students should be taught. With the introduction of laboratory and hospital work, students were expected to be active participants in their learning process, and the new goal of medical training was to foster critical thinking, not merely the memorization of facts.

K. LUDMERER, *supra* note 20 at 5.

26. Students are keenly aware of this situation. They constantly refer to their clerking jobs as "the real world," in contrast to law school.

calling, knowing that he or she has not been very well trained by law school and further knowing that the chance of finding a master to whom to apprentice in order to complete the professional process is going to be difficult, and largely left up to the student.<sup>27</sup> Is it any wonder that law students sometimes have that anxious look?

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27. One of the most persistent complaints of law students, in my experience, is that placement offices do not do very much for anyone other than those in the top ten percent or so of the class.