1991

Leadership and the Law

Ralph Nader
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Dean Stuart Rabinowitz:

We apologize for the crowded quarters, but I must say that it is a tribute to Mr. Nader that so many of you are here today. We have had many speakers over the past few years, but we have not had a crowd this large.

We are glad to have you here, and we are delighted to have today Ralph Nader, an accomplished and committed consumer advocate, lawyer, writer and scholar, who has devoted virtually all of his professional and personal life to his vision of the public good. It is especially fitting that this audience is composed largely of lawyers and law students, at least some of whom we hope will be inspired by Mr. Nader's example to devote their activities and indeed to make a personal sacrifice in an effort to change the law in the areas in which it fails to serve society's needs.

Mr. Nader's career as a public interest advocate has been closely, and not surprisingly sometimes critically, scrutinized by the press. It

* A.B. Princeton University, 1955; LL.B. Harvard Law School, 1958. This address was delivered by Mr. Nader on March 5, 1991, at the Hofstra University School of Law.
was just this summer that *Life* magazine ranked him as one of the one hundred most important Americans of this century. On the other hand, a cover story in *Forbes* magazine recently referred to him as "Ralph Nader: Empire Builder." This dual portrayal of him — sometimes as a great American hero, and at other times as an irritating "national nag" — has followed, but has not distracted, him throughout his career.

Ralph Nader graduated *magna cum laude* from Princeton’s Wilson School of Public and International Affairs in 1955 and he went on to become Editor of the *Harvard Law Record* while earning his law degree with distinction from the Harvard Law School. He began practicing law in 1959 in Hartford, Connecticut. In 1963, Mr. Nader left his law practice and hitchhiked to Washington. Two years later, his book, *Unsafe at any Speed*, asserted that the Corvair was a safety hazard, and that General Motors was ignoring the flaws in order to increase profits. When the company then hired a private detective to follow Mr. Nader, he was catapulted to national status. General Motors eventually paid him over $400,000 for its invasion of his privacy, endowing him with enough money to expand his organization.

In 1969, Mr. Nader brought dozens of young people to Washington, well scrubbed and ill-paid. "Nader’s Raiders" turned out report after report criticizing various government agencies and such large corporations as DuPont and Citicorp. Mr. Nader went on to establish more than two dozen public interest groups. The bulk of his crusade became law during Richard Nixon’s presidency, including the bill that created the Occupational Safety and Health Administration, the Environmental Protection Agency, and the Consumer Product Safety Division.

Mr. Nader himself was mentioned as a possible presidential candidate, an ambition he said he never harbored. Said a colleague referring to Mr. Nader’s alleged legendary frugality: "He could never be president; he couldn’t bear the idea of signing all those checks."

Since 1988, Ralph Nader has achieved a number of notable successes. He helped to defeat the Congressional pay raise issue by encouraging voter response. His support for insurance reform in California helped insure the passage of Proposition 103. And after nearly twenty years, air bags are now becoming standard equipment in many American cars. In recent years Mr. Nader’s consumer groups have launched investigations into the nuclear power industry, the educational testing service, and the postal service, among others. A prolific writer, his most recent book is *The Big Boys: Power and Position in*
American Business, which explores the motives and practices of the leaders of nine of America’s largest companies.

Ralph Nader is an American legend. Whether or not one agrees with his positions, he is living proof that even in twentieth century America, one person can make a difference. I am very proud now to introduce Mr. Ralph Nader.

Ralph Nader:

Thank you very much, Dean, for those words, and ladies and gentlemen. First of all, I want to ask a couple of questions so that I can get an idea of where you are on the spectrum of futility or grandeur. How many of you are determined, after you have finished your education and passed the bar, to be leaders in the advancement of justice in our society? Not very many. How many have decided to be followers? That leaves about seventy-five percent of you who have not expressed a preference for such an important career choice. Does that mean you still have the subject under contemplation? Or have never thought about it? Unfortunately, leadership and the law are not the subjects of a seminar, or even, very often, a topic of discussion of future leaders of the American legal system as they walk down the street. And yet, if you do not pivot around that sort of vector in terms of your future, you are going to get caught in a pattern of drudgery that has its own momentum. Although it is generally hard to find drudgery that has its own momentum, in our profession it is relatively easy.

For those of you who do very well, you will just repeat year after year and become partner. And you will get on some Bar Association committees, and maybe make a statement once in a while as a distinguished member of the Bar. And even those of you who do not do quite as well financially will be part of a process of legal representation that ignores most of the serious problems in our society and represents very few people in need.

But you will have status. People will refer to you as “counsel.” And you will be able to walk with your head high at Bar Association meetings. The expectation level of the public, vis-a-vis the legal profession, is now lower than it is for George Bush. And when you have a profession that is confronted with such a level of cynicism or low expectation on the part of the lay people, that does not give you much of a push. You can begin to internalize your own status sym-
bols, your own success, and live happily ever after as part of the core
of five hundred thousand people in our country who, for the most
part, represent about ten percent of the people who retain lawyers.
The rest do not know, or are afraid, or cannot afford to use your
services. This is not a very optimistic scenario, but it is something of
which you ought to be aware. You have about fourteen thousand days
left before you turn sixty-five, if you are about twenty-three or twen-
ty-four. Some of you I see are a little further along. So you have
about two thousand weeks, unless you want to make your imprint
when you are in your seventies. Two thousand weeks. What is two
thousand weeks? Look how fast last week went . . . , how fast yes-
terday went . . . . There is not much time.

Of course, it will last longer if you achieve less. It will feel
longer, anyway. I recall a cartoon from the '50s. We used to have
cartoons on morons, moron jokes. And one moron was demanding
that he live a boring life so he would live longer. So if you do lead
sluggish, routine-ridden, repetitive lives, where you keep saying, “I’m
getting experience; I don’t like what I’m doing at the firm, but I’m
getting experience,” forty years later you will have one year’s experi-
ence, multiplied forty times, and life will have gone slowly for you.
So that’s a consideration. If you want time to slow down, engage in
very tedious, repetitive work. On the other hand, if you look around
and ask what the function of the law is in a society like ours, well
there are a lot of possible functions. One of them is to defraud; to
give people a sense that there is justice out there, but that they sim-
ply have not been lucky enough to find it; to give people a sense
that there is some kind of ongoing structure, staffed by educated
people who are able to foresee and forestall problems, to anticipate
them, and to engage in preventative medicine, broadly defined, in
society. And there are people who feel comfortable with this. There
are people throughout history who live in hovels, who lose nine of
their fourteen kids, but who feel comfortable because they can look at
the King and Queen and feel part of the regal focus by way of osmo-
sis or some sort of political empathy. They do not ask, “What are the
King and Queen doing for us, with all of those jewels, all of that
money, all of that power to change things?” Theirs becomes an ob-
server society.

There are other functions of the law, one of which is to create
jobs. The law does that very productively. It is an employment agen-
cy. Just imagine the number of jobs created by the lawyers who
wrote the Internal Revenue Code and the Regulations. If you piled
the Code and Regulations up here for the U.S., and then you did it for Canada, the pile for the U.S. would be about three times higher. Both are industrial societies; Canada would presumably come up with all kinds of similar legal problems. But their way is just not as good at creating jobs for bookkeepers, lawyers, accountants and congressional staff. So, the law is a job producer — a tremendous job producer. As a matter of fact, the more our society fails, the more jobs are produced. For example, street crime produces an enormous number of jobs — people designing alarm systems and closed circuit TV, policing neighborhoods. And now we have a corporate crime epidemic in our country, which, of course, we never study in law school.

When I was in law school, we had Criminal Law I, and it was street crime all the way until about May, when we stumbled upon a few larcenists — devils who stole something from banks. It was all crime in the streets, no crime in the suites. Besides, there were no job opportunities. You did not come out of Harvard Law School and, in being interviewed by a senior partner from Cravath, Swaine or Ropes, Gray, inform him that you had majored in corporate crime. And the curriculum just reflected the job market. By and large, it is the rare law school that will teach a course that does not have its counterpart in the job market, which includes law school teaching. And law schools have gotten better than they used to be. They used to be really the complete mirror image of the commercial job market. So if you had a lot of jobs available for estate planning, you had Estate Planning I, Estate Planning II, and a seminar on Estate Planning. If there were no jobs available for environmental lawyers, you had no courses on environmental law. At our law school, we had several courses planning for the dead, but none planning for the living. And it goes right down the line. Now you have some seminars in Poverty Law, where you may not be able to get a job right away, but by and large the curriculum reflects that prospect. And that is a tremendous depreciation of the potential of the law, because the principal function of the law ideally should be to curb the abuses of raw power and to clear the way for the fulfillment of the human potential.

And what if we asked ourselves, "What if the law were entirely abolished today... all laws were abolished, were repealed... would there be more street crime?; would there be more corporate crime?; would there be fewer or more opportunities?" Obviously, people do a lot of things in society irrespective of the law. They do not kill their neighbors, or refrain from killing their neighbors, because there are statutes on the books. You can have a situation in
which you have a tyrant in charge of a society, and even the tyrant could not kill anybody that he wanted to kill. He would not kill just anybody; he would kill somebody, but not anybody. Why? What is it that curbs the discretion of even a totalitarian tyrant? There is obviously something at work — custom, a certain reciprocity, certain desires for tranquility, certain fears of vigilantism or revenge, and so on, that operate quite outside the law. But if you say that the law’s function is to curb the abuses of power and to allow for the fulfillment — the courage and fulfillment — of the human potential, then what has happened to our society in the last fifty years? Can you develop some sort of index? Is there more power and less law operating? There’s a lot more law on the books, but is there more power or less law?

Well, let’s look at the decline of the ability of non-law to curb raw power—the schools for instance are a good example. Elementary schools: more and more of them are scenes for mayhem. There are all kinds of laws that prohibit kids from beating up each other, and beating up teachers, and so forth, but the mayhem keeps increasing. In 1939, in California, the principal student-related problems that were cited by the superintendent of the schools were as follows: talking out of line; sassing the teacher; chewing gum; and running in the aisles and the walkways. Now, according to a list made in 1989, these have been replaced by knives, guns, drugs, rape, arson, assault on teachers, and all kinds of mayhem. The laws have not changed; something else has changed. That is, we have gone beyond the effective limits of legal action or enforcement.

Take Washington for example. You have the breakdown of some very critical countervailing forces, which has resulted in hegemony between corporations and the White House, which usually is their business agent, certainly in recent years. The Congress has weakened vis-a-vis the Executive Branch; the Executive Branch is into so many things now that many judges say, “Well, that’s a political question” or “That question is not subject to legal standing for challenge.” You have the Democratic Party losing its status as an opposition party, through a lot of its own fault. So you no longer have a countervailing political force against the Republicans, who have been in charge of the White House and Judiciary for so long. The labor unions have declined seriously in terms of their countervailing force. So this pluralism that we all read about, which began building up early in this century, in the ‘30s and the ‘40s, now has declined to a point where the multinational corporation has an ability to socialize its losses and
privatize its profits; an ability to shape elections, to shape the agenda of elections; an ability to threaten domestic controls by saying it will just go overseas — close down the plants and go overseas — and export back into the U.S. to evade certain tax requirements, or environmental requirements, or whatever; an ability to merge with the media and not just to influence the media, but to become the media. GE owns RCA, which owns NBC, and the media is becoming more and more a conglomerate concentration from year to year. So, after law school, you will enter the midst of a fifty-year period characterized by the greatest corporate power ever in our history, except possibly that of the post-Civil War nineteenth century.

What does this mean for you? Well, first of all there is the great ability of some people not even to think about what it means. For example, if someone asks you, “How did you grow up?,” you say to him, “Well, I grew up in Garden City . . . or Brooklyn.” “And what was the main influence on your life?” “Well, I had a couple of parents, . . . or an uncle, . . . or a neighbor, . . . or whatever.” Do you know how we grew up? We grew up corporate; the household is corporate. Right down to residential patterns, commuting patterns, housing adequacy, all the way down to what is placed in our minds. Let me give you some examples. Just ask yourself if you have ever spent five minutes of your life thinking about who owns the media, and who owns the airwaves. And why do the landlords — who are the public, which owns the airwaves — lease the spectrum to radio and TV networks, who are the tenants, for no rent, and the tenants decide, after paying the landlords no rent vis-a-vis the FCC, who says what on TV and radio. We have no access to our own property. We do not even have the models of Britain, or Canada — CBC or BBC — not to mention Holland. We do not have any assigned time for an audience network. We are shut out of our own property. Has anybody thought about this for five minutes? Well, here is where it ends. They say, “Well, if you don’t like a program on TV in the United States of America, land of the free and home of the brave, you are free to . . . .” To do what? Switch it off. That is the beginning and the end of it — an absolutely devastating rejection of “I Love Lucy” reruns. Now, to think of it in terms of who owns property, who controls property: we own it; they control it; the FCC does not even charge rent for it. The end of the fairness doctrine has been decreed by the FCC. We do not even have the ascertainment requirements of community news needs incumbent upon radio and TV stations. The FCC is about to get rid of the cross-ownership laws. This only deals
with the biggest operating media, which, poll after poll says, produces most of the news for most Americans. And have we talked about ownership and control for five minutes in our lives? No, because we grow up corporate.

There are millions of people who grow up and never distinguish the strategies employed by food companies for selling food. They attract you with one or more of the following criteria: tasty; easy to chew; pretty to look at; easy to prepare. You can meet all the criteria, and buy all the food with those criteria, and end up with low nutrition, unsanitary food, and harmful ingredients. How many people discuss that? How many people are aware of it? How many people are doing anything to fight against it? Not many. In a country that has enormous foodstocks and enormous malnutrition and adverse effects to the wrong kinds of food. We grow up corporate.

Standardized testing. We have all taken it, haven’t we? The PSAT and the SAT and the LSAT. And we take these tests, and we get our scores, and we internalize the scores as a measure of our self-esteem and self-worth, providing the testing industry with a free police corps, mainly its victims. We decide whether we can do this or that in life depending on how we perform for three hours one April or one October. And the system is very administratively convenient for academia, and it has a pseudo-objectivity based on some very subjective assumptions, and the gates are opened or closed depending, to a far more significant degree than it should, on how you do on the standardized test. How much time have we spent challenging this kind of sorting out, this focusing on a very narrow brand of analytic skill, if you want to call it that? Some people would not even want to go that far. By the use of these tests, we ignore all kinds of other multiple intelligences that people develop in one form or the other, and we make our career choices based upon our performance on a multiple choice exam. Your bar exam is multiple choice, as you know, and I do not know how many people would go to a multiple choice lawyer, but the bar exam has it. So it’s as if somebody is saying, “I’m going to test your athletic ability,” and they test only your ability to play basketball. You say, “That’s not a full test of my athletic ability. I can play soccer, and baseball, and tennis, and have a go at archery,” and so on. But they say, “I’m sorry; we’re just testing for basketball.”

Well, that is what the multiple choice tests are. They are an insult to the diverse and multiple intelligences that people have, all of which are in great demand in our society. Take organizational skills,
for example. What if you were the best social organizer ever to come
to Hofstra? Would that have helped you with one question on the
LSAT? It would not. Now, the LSAT does not purport to be that
broad, and law schools claim not to give it an exaggerated signifi-
cance. I love it when Harvard says that it does not give major weight
to the LSAT. Whom are they kidding? How come so many of my
classmates got C+s out of CCNY and a 98 on the LSAT, and got
into Harvard Law School? Because Harvard loved CCNY? It is very
easy to assume that you are going to be bright because you can an-
swer, very quickly and under totally unrealistic time pressures, these
kinds of foolish, fraudulent questions that allow for no human intel-
lectual nuance, not to mention ingenuity or creativity. So we go
through all of this while these tests do not test the most important
features of our personalities; those that will spell success in our lives.
Nor do they purport to. They do not test our judgment, experience,
wisdom, creativity, imagination, idealism, stamina or determination.
Otherwise, they test everything.

Now, until NYPIRG started questioning, until we put out a re-
port on the ETS, it was not even a subject of debate. We grew up
corporate. Defining human intelligence and then measuring you up
against that narrow definition are pretty powerful tools in the hands
of a couple of corporations called ETS and the College Board. We
grew up corporate. We not only did not question it; we willingly
became its victims, and we went through life moping or with our
heads held arrogantly high, depending on how we scored on those
tests.

We grew up corporate in many other ways as well. For example,
we rarely question whether there can be equal justice under the law if
corporations, as artificial entities, are given the same set of constitu-
tional protections as individual flesh and blood human beings are.
Now, there are certain things that corporations can do that we cannot
do, no matter how ambitious we are. First of all, we cannot create
our own parents, and corporations create their own holding compa-
nies. Ask Chase Manhattan Bank and Citicorp. They, a number of
years ago, created their own bank holding companies, chartered them
in Delaware, and knocked out some interesting provisions in federal
law dealing with cumulative voting. They can create their own par-
ents. They can also commit a crime and then disappear. People often
try to do that, but they are called fugitives. Corporations are just
called Chapter 11. They have immunities and privileges and
insularities and an ability to transfer costs that human beings do not
have. When General Electric and Westinghouse were convicted of a price-fixing conspiracy around 1960, in a rare criminal prosecution of the antitrust laws that ended with jail terms, hundreds of millions of dollars were involved, and the longest sentence was six weeks. They did not like rubbing elbows with somebody who was in for five years for forging a two hundred dollar check. Before it was over and the fines were imposed, a lawyer representing them in Washington got the IRS to issue a regulation allowing these payments to their victims (these were treble damage settlements to the electric utilities and so on) to be deducted as ordinary and necessary business expenses. Next time you get a traffic violation ticket, see if you can deduct the fine as an ordinary and necessary business expense. So we grow up corporate, and law students and lawyers are no exception.

We have got to face up to the citizens’ movement in terms of what the roles of lawyers are going to be. First of all, a most important point to recognize is how little of what you do and get paid for as a lawyer is done to advance the quality of our democracy. Rather, it is to represent power and to make it more powerful; or it is to represent power and to preserve it from being tamed by an assault from some legal process or regulation. What are the challenges that you are going to be facing and do you care? Well, one is that violence is now becoming environmental on a big scale and the law is not catching up. You have got the greenhouse effect, the warming of the planet, acid rain, ozone depletion. For those of you who think big, those are going to be real challenges to the international rules of law: treaties, multinational, international type commissions, dealing with the predations of multinational corporations vis-a-vis the ocean, the tropical forest and other natural resources. That is a major new chapter of world violence that will occur, and it will rebound in terms of famine and soil erosion, and more human “emotion pictures” that we see on television when we are asked to help Africa or Asia or some other area.

Violence then will come in some other forms as well. For example, the misuse of genetic engineering. The day will come when there will be more talk of the adverse effects of changing the genetic codes of flora, fauna, and eventually human beings. That is going to be a very, very serious ethical challenge — probably the most serious ever in the history of the law. There are also some of the more traditional problems: hunger; no housing; police brutality; discrimination; and others that present their own forms of violence, of course. Where are the institutions to deal with this? Where are they? We can count them
on the fingers of two or three hands. The NAACP, the ACLU — they are starving for funds to begin with. We have a few more environmental groups. We have roughly a thousand full-time public interest lawyers in the country. We have four thousand legal service attorneys. They are under very strong pressure not to bring law reform lawsuits, but rather just to represent clients in the run-of-the-mill landlord-tenant cases, or domestic relations cases. Heaven forbid that you bring class actions; that you bring suits dealing with wholesale justice. That is one of the legacies of the Reagan-Bush regime, which spent so much of its time building a government in Washington, of the Exxon, by the General Motors, for the DuPons. And that, of course, limits the desirability of entering public service law since there is no longer a strong law reform component to it.

Now, as lawyers you are growing up in a society in which you are very lucky to grow up. For better or for worse, lawyers have a tremendous role in society. They become secretaries of state. They are heads of corporations. I was in Japan last year and I talked to a group of Japanese lawyers. One lawyer came up to me and said, “Did you know that you just addressed ten percent of the entire bar of Japan?” I said, “What do you mean?” He said, “Well, there are fifteen thousand lawyers in Japan and you addressed fifteen hundred of them. And I asked him, “Why are there so few lawyers?” And he said, “Because in Japan things are worked out.” What does that mean, “things are worked out?” I’ll leave that to your imagination. But lawyers have a lot of leverage in our society. They are not as circumscribed as they are in Western Europe, not to mention China. There is a much broader leeway.

So what do you want to do with yourself as a lawyer? Let’s look at some scenarios. First, let us eliminate the factor of salary and bonus, okay? Let us assume that money is no object, no object whatsoever. How many of you would choose to become public interest lawyers rather than corporate lawyers? [An overwhelming majority of the audience members raise their hands.] Alright, keep your hands up. Okay, now let’s say that the most you could make as a public interest lawyer was fifty thousand dollars. How many hands would stay up? [Less than one third of the raised hands remain raised.] That’s worse than I thought. I was ready to go to twenty thousand. Alright. So you are being deterred by debt load and other things.

Now you have to ask yourself, how many of you are first stage pioneers? First stage pioneers are the following: Edgar and Jean Cahn, out of Yale Law School in 1964, who wrote an article in the
Yale Law Journal that led to the development and establishment of legal services — four thousand jobs. They went to Washington, they got the Bar Association and the ABA behind them, and they lobbied it through Congress. First stage pioneers: four law students out of Northeastern area law schools — 1970 — wanted to do environmental law, but could not find any jobs. They started the Natural Resource Defense Council — budget last year: fifteen million dollars. Dozens and dozens of lawyers working all over the country and other parts of the world on arms control, water purification, pollution control, radiation lobbying, research. Those are first stage pioneers. They came out with nothing and they built institutions that have developed many, many public interest jobs.

How many of you think you could handle being first stage pioneers? Two? Alright, second stage pioneers. Second stage pioneers — lower risk. What they can do is, they say, "Look, I worked for a summer with some canvassing organization, so I'm a little familiar with canvassing. What I'm going to do is, I'm going to set up my own canvass, delineate my own issue, my own geography where I'm going to work, and I'm going to raise my own funds for my public interest law office." Let us say that you want to focus on migrant worker mistreatment here on Long Island. I am not sure that there is any agricultural land left. Or you want to deal with subterranean water contamination. And you want to start your own program. And you have had experience canvassing with NYPIRG or some other group. And you know that it is largely a matter of two things: organizational expertise and a good issue that appeals to people at the door. So that is the second stage pioneer. You go with relatively low risk. You are able to marshall your own support. How many of you are interested in doing something like that? More.

Okay, let us go to the third stage pioneers. The third stage is where you work two jobs. You work by day to pay your debts and your rent and so on, and you have a part-time job in the area of your belief. So, for one job you leave your conscience at home for your client involvement, and the other part-time job is what you really want to do in life, but you are inching in as a practitioner, and you cannot afford to do it full-time. Now, there are a lot of groups that need to be pushed forward in the civic arena in new and bold ways. They need fresh blood. They need new ideas. You can attach yourself to one of the ongoing groups: a homeless action group or any number of groups all over the place. So you can basically work by day the regular job, and during weekends and a few hours at night you
can begin to establish the kind of career pattern you really want to pursue. How many would be interested in that one? Even more.

Now, the fourth stage is where you say, "Look, I've got to earn a good amount of money, and I'm going to go and take a government job that's a good government job. I'm going to go work for the Civil Rights Division, the Justice Department or the dwindling Solar Energy Unit of the Department of Energy, or any other unit, state or local. And I want to do it because, first of all, it pays a living, a salary, and second, it develops an understanding of why things do not work in government, so that when I'm on the outside, battering away against some powerful interest group, to get a safety standard issued, or a subsidy stopped, I'll know how to do it. But, I'm not going to stay forever in this civil service job. I'm going to stay, pay my debts, learn the techniques, and then go out and do the kind of work I want to do." How many? Government? [Almost no one raises a hand.] Wow, it really is bad, isn't it? See, that's where many of us wanted to work when we were in law school. And now, I guess the denigration of government service — people thinking that government cannot accomplish anything — has lowered it in many people's esteem. Remember, there is a lot of good whistle-blowing that can be done in the government, to the press, if you do not want to do anything else. And there is a lot of good work that still can be done if you go in as a group and develop a network among agencies.

For instance, why did the Federal Trade Commission, three weeks ago, bring an antitrust suit against baby formula manufacturers? For price-fixing; enormous overcharging, especially to government agencies that had to buy the formula for feeding programs for poor infants. Why did they bring it? This is the Reagan-appointed Federal Trade Commission, long de-fanged, the leading pretense of protecting consumers. Well, first of all, there is an organization called the Council on Budget Priorities, which was started by Bob Greenstein, who used to work for us. And he puts out reports on all kinds of government services and how the budget is allocated: so little is going to human beings and so much is going to armaments, etc. And in doing that, he started studying the infant feeding program, the WIC program. And he was being told that they do not have enough money in the budget to get enough infant formula for all the infants who need it, who have been abandoned. And he asked, "Well, how much are you paying for the formula?" And they said, "We're paying so-and-so." And he said, "This is ridiculous! There must be price-fixing going on. There are only two or three companies manu-
facturing infant formula." And he had lunch with a former Federal Trade Commission Chairman, Mike Pertschuk. And Pertschuk studied this problem, and he went over to the Federal Trade Commission and he said, "You know, you ought to do one thing this year with your budget. Why don't you bring an antitrust suit?" So now they are bringing an antitrust suit. Suddenly, some young lawyers in the Federal Trade Commission have a reason for being. They are beginning to enjoy what they are doing.

See how it works? You have a citizens' group; someone who left government who heads another citizens' group. Pertschuk heads the Advocacy Institute in Washington, which trains citizen lobbyists and develops strategies to go after the tobacco industry, for example. Very creative strategies are developing in the anti-tobacco drive in this country. And, going to the government agencies with a lot of data in order to get something like this done is a good strategy.

Now, there are other opportunities too. If you want to go into the cooperative movement, a consumer cooperative bank has opportunities in Washington. Most students have never heard of it. Turns out they have got more money to lend than they have co-ops filing loan applications. But they have a development unit that is supposed to encourage development of co-ops in poorer urban and rural areas around the country. Again, you do not know about it, and if you do not know about it, you are not going to aspire to an alternative form of economic delivery, which is the consumer cooperative form.

Now, this continues in many modes. The point is, you have got to give yourself a chance. Do not immediately prejudge the absence of the kind of work you would like to do but cannot find. You know, the S & L bailouts are producing enormous work for lawyers. The RTC just paid a half a billion dollars to outside law firms. And that sum is to deal with the wreckage of the S & L bailout, which proceeded from speculation or criminal business activity, and a heavy dose of mismanagement affecting about one third of the S & Ls in the country. Now, that is very parasitic work. That is clean-up work for something that never should have happened in the first place. Now, how do you work as a lawyer and anticipate those kinds of problems? Whether it's insurance, banking, utilities, nuclear power, or whatever. Here is where you get down to something that should be a seminar at every law school, and that is "Institution Building."

How do you, as lawyers, put yourself in a position where you are able to develop mechanisms that facilitate the banding together of like-minded citizens around certain goals and certain missions to
improve the society? Now, you have millions of ratepayers of electric, gas and telephone services. You probably have one to two percent of them who will pay to join a national and state ratepayers' organization. But how are you ever going to reach them? You do not have money to put ads in the paper or on television. How are you going to reach them? So you think — you've got a seminar exam here — of a mechanism to organize, inexpensively and repeatedly, residential ratepayers, so they can have their own lawyers, economists, organizers, canvassing, to shape TV and energy policy in the United States and to be the important players with the utilities on the other side of the table. How would you do it? You’ve got an exam. The clock is ticking. How would you do it?

Governor Cuomo, about a month and a half ago, had a news conference adopting our proposal to develop a solicitation envelope and to allow it to be put in any state government mailing to more than fifty thousand New Yorkers, inviting them to join the Citizens' Utility Board, where they would elect their council of directors, who would provide them with full-time consumer advocacy. We proposed this in Wisconsin, which adopted it; in Illinois, which adopted it. And just like that in Wisconsin, over one hundred thousand people joined. Minimum dues were five dollars, but people averaged twelve or fifteen. And, in a state like Wisconsin, which is not much bigger than Long Island in population, to have a ratepayers' group with one hundred thousand members, and a full time staff, and an ability to reach more people through their newsletter and the media, is quite impressive. One hundred eighty thousand people joined during the first twenty months in Illinois. All it was, was that when they opened their electric or gas bill, out fell a little postage paid envelope that said, “Are you fed up with high utility rates?” They said, “What’s this doing in my bill?” So you would reach them at their peak point of interest. And the result, this is what it looks like, in your bill, just a little insert like this, “Dear friend,” and a little coupon. Look at this carefully. It is going to be the silicon chip of the citizens' movement once it gets under way.

Now, the beauty of it is that it does not cost the taxpayers a cent and is voluntary to the consumer to join. And it does not cost the utilities anything, because they do not exceed the weight for first-class postage. So it is very ideologically invulnerable to the right wing yahoos who do not want to give the people any voice vis-a-vis their own corporate vehicle. Now, look what happened — I will show you how ideology and power affect Constitutional law. Now, here
you have monopoly utility companies. You cannot say that you are going to go across the street to a competitor. Gas, telephone, electric. Monopoly. Guaranteed rate of return. And they hire lawyers, advertisers, public relations people and consultants to beat you in rate proceedings, and then hand you the bill, and that is permitted! Now, these are three very powerful privileges, are they not? Monopoly, guaranteed rate of return, and the power to force you to pay for your own defeat.

To counteract this, a California regulation says that the utility company has to put this in their envelope so that people can band together and protect themselves. And it does not cost the utility company anything! It then goes up to the Supreme Court of the United States, after having been dismissed by the California Supreme Court — a lawsuit by the utility claiming that this insert requirement is a violation of the monopoly utilities' freedom of speech right to remain silent. The utility claimed that the polemic in this insert was so provocative that they had an irresistible impulse to rebut, and that this constituted an impermissible violation of their first amendment right to remain silent. The opinion, by Lewis Powell, a five to three decision — Powell was a former utilities lawyer from Richmond, Virginia — said that the companies' — the monopoly utilities' — First Amendment rights were being violated. And this California requirement was no longer constitutional. Rehnquist dissented, with heaps of scholarship and ridicule, but he lost, five to three.

So, now it is done on a state mailing basis because the utility companies cannot complain if the Motor Vehicle registration envelope reaches you with this insert. This is what Governor Cuomo is in the process of instituting. Now, you just look for a moment at the opportunities for full-time legal work in these kinds of organizations. We hope to overturn the decision, Powell's decision; there are grounds to believe that it could be overturned if we get a proper case. Utility companies, banks, insurance companies, all over the country, would have these groups noticed in their billing envelopes or bank statements. Your 1040 tax return could have a notice saying, "Are you fed up with the way your taxes are used?" You could join the taxpayers' group. Television could open an audience network where one hour of prime time would revert back to a Congressionally chartered non-profit audience network, open to any viewer who wanted to join for minimal annual dues. And they could establish their own reporters, producers, studios, for professional use of that one-hour period. That would open up opportunities.
Now, building institutions like these — and this is just a glimmer of the possibilities — is something you should give yourself a chance to imagine and to dream about, and perhaps to work with as interns, and as part-time jobs to go along with your conventional work. The law schools have fellowships, student-funded fellowships — I think you have such programs here — loan forgiveness programs. Twenty-five law schools now have loan forgiveness programs, so that if you get a job with a non-profit group or in public interest law, and you make under thirty thousand dollars, or whatever, your loan, principal and interest, are forgiven for every year you have that job and meet the criteria. I am told that at many law schools these programs are undersubscribed. That is, there are more opportunities than law students are taking. This is a rather sad situation, and it goes to what the problem is: you have got to free your imagination; you have got to value yourself more; you have got to have a higher estimate of your own significance and ability to change this world. You have to avoid the deadening hand of routine induced by lucrative bonuses and salaries. You cannot simply pod through law school, a pseudo-socratic method of memorization, regurgitation and vegetation. You have got to look at yourself as relatively unique and fortunate human beings, compared to people your age around the world who live under dictatorships, or in places where there are no civil juries, contingent fees, and roles for lawyers; where almost everything done has to be accomplished through formal political parties, such as in Western Europe, for instance, rather than also through civic action organizations. There are not many people like you around the world, people who can breed justice, build institutions, and begin to have the law be more far-seeing and preventative. I do not know how to convey the quality of life you would lead if you chose that, other than to urge those of you who have experience in these lines of work to do some clinical work for some group, or to intern for some group, or simply to read. Yes, read. There is a school in Dallas, a junior high school, that put disks in place of books for science, and the kids love it. They said, “We don’t have to read. We only have to watch.” Watch the screen.

This is a book called *The Other Government: The Unseen Power of Washington Lawyers*, by Mark Green who, as many of you know, is New York City Commissioner of Consumer Protection. Two thirds of the book is a case study of Covington & Burling, the biggest — then — law firm in Washington; how they represent the drug industry and the tobacco industry; how all these lawyers go home and tell
their spouses and children the wonderful things that they have done. And the other third is on Wilmer, Cutler, Pickering. There has never really been a book quite like this. It gives you an idea of what corporate practice is like; what you have to do in terms of your conscience, and sense of justice, in return for a large retainer. So it is quite important to read this book. It has gotten worse since this book came out, and this is before the whole merger & acquisition racket, before Finley Kumbel's collapse. And you should read one of the two books on Finley Kumbel's collapse. There is also a book called Verdicts on Lawyers, written by lawyers and a couple of judges. You can imagine what the answer was. It opens up a critique of the profession that you may not be getting in your courses. And you read a book like Taking Ideals Seriously, and you say "Oh yeah, I should have thought of that." And of course that's right, which indicates some sort of a deficiency in your formal curriculum, and how narrow it might be. There is a lawyers' public interest movement called Equal Justice Foundation, which itself is now merged into a group called NAPIL — National Association of Public Interest Lawyers — which is fostering and pushing for more loan forgiveness programs, student-funded fellowships, and trying to get the corporate bar to pay for some of these, shall we say, public interest chairs.

Now, do you have a corporate crime course here? You do. Very good. I do not mean a white collar crime course. There is a difference. We are not talking about bank tellers. We are talking about banks. Now, Professor Harry First at NYU was an early summer intern for us, and he wrote a law review article on Delaware Corporate Law, and he has never been the same since. He put out the first casebook on business crime — not white collar, not individual, but basic organizational corporate crime — with the hope that there would be more seminars and courses in this area. And his experience in Delaware was that, as you know, Delaware is the corporate Reno for chartering — and they have used it as a revenue source all these years, since 1900, when they beat out New Jersey, which wanted to be the number one corporate Reno; but they could never match Delaware’s race to the bottom. The corporate charters and constitutions are very biased against the shareholders and consumers, and very much out of date. And we still do not have federal charters for major industrial or other corporations; they are all chartered at the state level. Four hundred fifty of twelve hundred New York Stock Exchange companies are chartered in Delaware. Their franchise fees at one time represented twenty-five percent of Delaware’s revenues,
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but are presently down to about ten percent. Now, Delaware has no interest whatsoever in using the corporate charter as a mechanism for corporate accountability. It is a very permissive jurisdiction: a permissive judiciary and an even more permissive legislature. GM could buy Delaware. It is a very small jurisdiction. GM could buy it in a weekend if Dupont was willing to sell it.

Now, I want to end with some more quick job opportunities. There are four thousand attorney’s fees statutes at the state level that are grossly under-utilized. There are one hundred twenty federal attorney’s fees statutes that are also grossly under-utilized. There must have been some gnome on Capitol Hill who slipped these provisions into the amendments of statute after statute. We had to have a seminar for lawyers in Washington ten years ago to teach them about the Moss-Magnuson Act, which provides that attorneys who represent car owners against dealers and manufacturers for breaches of implied warranties can be awarded attorney’s fees if they win. The use of the Odometer Disclosure Act is almost zero.

There are environmental statutes that award attorney’s fees — not just civil rights statutes — and it would behoove you to consider, in your own practice, whether you want to supplement your income using more of these attorney’s fees statutes. Now, Duke’s journal, Law and Contemporary Problems, has collected these four thousand state attorney’s fees statutes, and we have a list of the federal attorney’s fees statutes. And it is remarkable how these market-oriented attorney’s fees statutes are not catching a market response, in large part because of lack of knowledge about them, and in large part because when you are in a typical law firm, they do not want to mess around with this sort of stuff. They are after bigger fish and larger corporate clients against whom many of these attorney’s fees statutes are directed.

And finally, there are group buying organizations. We are going to see more group buying. Up and down the east coast there are heating oil group buying associations comprising many thousands of households that are negotiating discount heating oil contracts. Now that, with two-way cable and computer networks, can spread all over the country, so that maybe ten or fifteen years from now there will be, on one side of the table, lawyers for four million dues-paying consumers, across from the lawyers from Sears Roebuck or Citicorp, to redraft the loan contract so that it is not so much a contract of adhesion and so that it reflects consumers’ rights. Or in the negotiations of warranties with the auto companies. Or developing, through
negotiations with testing laboratories, specifications for products to ensure environmental or consumer health and safety. This will be the biggest consumer lawyers' job producer of all. And it will lead to the development of the concept of the giant organized consumer negotiating with the giant multi-national corporation, as larger and larger portions of the corporate market devolve into fewer and fewer corporate hands.

NYPIRG started the fuel buyers' group, which has about fifteen thousand members, and they are thinking of moving into other areas. Home repair costs, based on the Triple A model, for example, is a very attractive opportunity for any legal entrepreneurs in this audience. You can go into counteracting privacy invasion databases. You can begin developing information systems for discerning the cheapest auto insurance, life insurance or other insurance policies, through a subscribed, computerized system. Through telecommunications technology, the sky is literally the limit.

I hope that I have succeeded in conveying some of the opportunities and horizons open to you. Those who come after you will have an easier time than you did if you are the pioneers. But nothing can happen in this area without your developing a heady sense of injustice about situations that you are not going to tolerate in this society or in this world. And that is something very few people can help you with (other than to give you experiences in which you are up against injustice) unless you are able to evolve your intellect and develop the motivation as to what you want to do with your time and your skills. As Professor Cahn at NYU once said, "You'll never have an adequate sense of justice unless you have an adequate sense of injustice as a frame of reference." And to do that, you have got to light a fire inside yourself, so that your heart works in tandem with your mind, and you begin to question the assumptions of a society that raises its children corporate.

I must add that this is not just a matter of perceiving a duty, or of recognizing the canon of ethics of your profession. Rather, you should see it as a key to human happiness. The application of your conscience to the implementation of your talents should be seen as a way of enhancing not only your pursuit of a more just society, but also your pursuit of your own personal satisfaction. You will be teaching people that they do not have to go through life feeling as though they do not count; that they can take on City Hall or Exxon; that they do not have to swallow their grievances. You will be teaching them that they do not have to submit to the destruction of their
primary identities as functioning members of this society. All of those feelings produce a lot of anxiety, frustration, introversion, taking it out on family and friends, and unhappiness, broadly and deeply. Just go to some third world countries where people are brutalized, starved, homeless; where there is a huge rate of infant mortality; and see what happens when people go through life with the feeling that they cannot do anything about their deeply entrenched misery and self-destructiveness. See how people turn the violence that society inflicts on them against others weaker than they, or fall into lifelong pits of violent addiction or mayhem.

So I speak of a pursuit of happiness; something about which you should think very definitively. You must resolve to make a mark on this law school before you leave, so that those who come after you will have a better law school. Do not simply coast and take what those who have gone before you have given you. Try to change and improve, or expand, or enliven, the atmosphere, the environment, the courses, the curriculum, so that you can get a sense of built-in legacy that will be very valuable to you throughout your life. And since a legacy means that you may not benefit from what you are working on, but the ones who come after you will, you maintain your motivation in a way that transcends one generation, or one period of time, and gives you a longer view. When I was in law school, we had five hundred fifty students, two blacks and thirteen women among us. And the professors at Harvard Law School were some of the brightest people in the United States. If you did not believe it, you just had to ask them. So we asked them, “Why are there so few black or female law students?” And they said to us, almost without exception, that they would love to have more black and female law students, and that Harvard Law School was open to any qualified student, and that there were no barriers. There you have it from the best and the brightest: professors at Harvard Law School from 1955 to 1958. Watch out for the best and the brightest. They can be more wrong than people who do not attempt to aspire to their intellects.