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IV. ON PRAXIS

THE LOSS OF IDEALISM—
BY WHOM? AND WHEN?

MONROE H. FREEDMAN*

A recurring theme at the SALT conference was the view that students come to law school full of fervor to further social justice and law reform, and leave with no other interest than to practice in prestigious law firms and become rich. The law school experience is thus viewed as one that is destructive of idealism and that produces a profession of legal technicians devoid of a sense of social responsibility.

Although I agree that the legal profession as a whole has failed in its responsibilities to society, I do not agree that the cause of that failure is to be found in legal education. Certainly law school did not have that effect on those of us who attended the conference to voice our dismay over the state of our profession. Somehow we survived the law school experience with social consciences intact; indeed, with the benefit of our rigorous training in lawyering skills, we are now able to deal more effectively with what we believe to be injustices in society. Those of us at the conference, however, were only a small portion of those in legal education, and a much smaller fraction of the legal profession as a whole. What happened, then, to all those others who entered law school with the sole goal in mind of righting social wrongs?

The answer, it seems to me, is clear. Those people never existed. Law school did not destroy their sense of social justice, because they never had it in the first place. That, at any rate, is the conclusion I draw after a quarter of a century of involvement with law students as a student, teacher, and administrator.

That conclusion should surprise no one. We admit people into law school principally on the basis of their technical skill in attaining high test scores, either by repeating back what they have been told, or by marking the appropriate box in a short-answer machine-graded examination. We give virtually no weight in the law school admissions process to a candidate's manifest concern with social problems. The end product of a legal education, therefore, is not conditioned in the

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classroom, but is predetermined before students enter class, in the admissions process.

A rather forceful illustration of the attitude that affects law school admissions—and that significantly determines, thereby, the character of the legal profession—was provided about four years ago at a meeting of the Northeast Association of Pre-Law Advisers. Those attending the conference represented some of the most important undergraduate sources of candidates for law school. Moreover, the prelaw advisers play a significant part in advising and guiding candidates to—and away from—careers in the law. The principal speaker at the NAPLA conference was Soia Mentschikoff, a law school dean and the then President of the Association of American Law Schools. Dean Mentschikoff's message to the pre-law advisers was presented loudly and clearly. "Whatever you do," she counselled the counselors, "don't send me those mushy-headed kids who think they're going to go to law school and change the world."

Although numerous law schools were represented at the conference, I was probably the one who did not share Dean Mentschikoff's attitude. Certainly, I was the only one who was moved to express disagreement. I urged the pre-law advisers to send their "mushy-headed kids" to Hofstra Law School, and to have the candidates submit documentation of their asserted interest in social problems, suggesting, for example, references from people who had supervised them in community service work during their college years.

Unquestionably, law school and practice require intellectual facility. For that reason Hofstra has relied heavily upon a candidate's academic achievement in college, although our primary focus has been on the transcript rather than the cumulative grade point average. We have minimized, however, the weight given to Law School Admission Test scores. Most important, we have paid substantial attention to the candidate's demonstrated concern with social problems, as manifested in work and extracurricular activities.¹

Since the point somehow seems to be readily misunderstood, let me reiterate it in other words. I do not mean that law schools should be admitting students who are "unqualified" in the sense of being incapable of performing at a satisfactory academic level. For some time, every accredited law school has had substantially more qualified applicants than the school has been able to accommodate. Selection within the qualified pool has always been characterized by a signifi-

¹ As a result, the student body at Hofstra has been more experienced, more involved, and more challenging than at law schools generally—a factor that is of independent significance to legal education.

cant degree of arbitrariness, by both design and necessity. My proposal, therefore, is simply that, in making selections from the pool of qualified candidates, we give substantial weight to the demonstrated likelihood that a candidate, as a member of the profession, will be concerned with law as an instrument of social reform. Admittedly, the prediction is an uncertain one—about as risky, in fact, as predicting whether a candidate will make law review, become a federal judge, become a partner in a Wall Street firm, or serve on the faculty of a prestigious law school. The issue has never been whether we should take risks in admissions, but what kinds of risks are worth taking and what kinds of risks we are willing to take.

When I made that proposal at the SALT conference, a familiar objection was expressed from the floor:

I am a little bit skeptical. I am afraid that if it worked out that the top law schools give credit for those who demonstrate social concern, you would have people trying to build up a record of social concern.

My response was, "Worse things could happen."

In fact, under generally current admissions policies and practices, worse things do happen. Aware that their grade point averages will be a principal factor in admissions to law school, prelaw students have been known to avoid taking challenging courses that are likely to result in lower grades and to seek out "gut" or "cake" courses that will maximize their GPAs. Thus we read in Scott Turow's *One L* about Harvard Law School students, by a proportion of six-to-one, electing to study Constitutional Law with a young and relatively inexperienced law professor rather than with Archibald Cox, primarily because of Cox's reputation as a "notoriously low grader."² That disposition to place grades over the quality of the learning experience is yet another characteristic that law students acquire long before coming to law school, and that we reward in our admissions policies and practices.

Just as an apparently outstanding academic record can be established by concentrating on easy courses and by ingratiating oneself with professors, an apparent concern with social justice can be manufactured. In my experience, however, a candidate's asserted commitment to community service is not easy to fake and is subject to verification. For example, one candidate, Mr. J, appeared on the basis of his academic credentials alone to be just another one of the

² S. TUROW, *ONE L* 203-05 (1977). Having taken a course and a seminar from Professor Cox, I can attest that he is a superior classroom teacher, particularly at a school where classroom teaching ability has never been a primary criterion for the faculty.

mass of qualified candidates who necessarily would have to be rejected. Mr. J impressed me, however, with the fact that he had been an enthusiastic participant in a special course in Community Involvement. I therefore wrote to Professor D, with whom Mr. J had worked closely in the course. Professor D responded in part:

While taking my Community Involvement [Mr. J] never impressed me as a person intensely involved with human welfare. . . . He was also somewhat frivolous. . . . I also felt that [Mr. J's] talents were those of an entrepreneur. He is a young man who, given free time, will not read about or visit a social welfare agency, but rather develop an ingenious scheme of boosting his income.

Thus, my prediction is that if he graduates from law school, there is a greater probability that he would join the family firm as a corporate lawyer than pursue . . . an area of legal reform.

Consider, by contrast, the subsequent recommendation from the same professor for another candidate:

Because I wanted to preserve your trust, I have refrained from recommending to you any student who was something less than outstanding. But now, I believe, I have such a one.

. . . [Mr. G's] sense of balance, perspective and fairness, [is] admirable. He is the stuff that just and courageous leaders are made of, something widely recognized by his classmates and colleagues.

One of [Mr. G's] most admirable gifts is the intimacy with which he interrelates formal knowledge and social commitment. For him, a college education is not a way of attaining a "union ticket"—a diploma—but rather an indispensable training for responsible social welfare, which in his case lies in the area of justice.

Few law schools will even consider an applicant with an LSAT score of 454. We accepted one such candidate who had been extensively involved in prison reform activities. Ramsey Clark wrote about her:

[Ms. K] possesses that quality the legal profession needs most: an ardent and unselfish desire to compassionately address human need through democratic institutions, the processing of principle, the rule of law. She is, as well, wise, sensitive, articulate and driven: an extraordinary person. I have watched [Ms. K] work for nearly five years now in the most discouraging area of human activity—prisons, parole, criminal justice. She has served under the most frustrating and tenuous conditions. . . . Far from despairing, she has never faltered in her cheerful, faithful and very effective effort at reform.

In addition, Professor Herman Schwartz wrote in part:

Because of this combination of skill, energy and initiative I would strongly recommend that [Ms. K] be admitted to your law school. I think her work . . . shows motivation, judgment, maturity, social commitment and leadership ability far above the average.

I could multiply such cases many times over—candidates whose statistical credentials suggest that they will fall substantially short of law review, but who possess, in Ramsey Clark's phrase, "that quality the legal profession needs most: an ardent and unselfish desire to compassionately address human need through democratic institutions, the processing of principle, the rule of law." I should add that even at Hofstra, such candidates are still a relatively small minority of those college graduates who self-select themselves for law school (under the guidance of prelaw advisers who have been conditioned by law school admissions policies like those articulated by Dean Mentschikoff). For better or worse, therefore, Hofstra gets its full share of candidates whose academic records and aspirations are directed toward law review and a lucrative commercial practice.

Will people like Ms. K lose their sense of commitment to social reform during the three years of law school? I think not. Moreover, whatever the risk, I think it is worth taking. Two statistics may be of interest in that regard. First, the proportion of Hofstra Law School graduates who have entered public service is 150% larger than law school graduates generally. Second, the proportion of Hofstra graduates who have taken jobs with public interest firms and indigent services is more than 200% greater than law school graduates generally. I conclude, therefore, that if idealism is being lost, it is not being lost by students in law school, but by administrators in the admissions process.