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ESSAY

GETTING OUT: A SPEECH TO THE LAW CLASS OF 1996

PETER K. ROFES*

Thank you, Dean Shmegege, for that kind introduction. And thank you, distinguished members of the class of 1996, for selecting me as your graduation speaker. I consider it a great privilege to have the opportunity to welcome you into your new careers with some thoughts about the legal profession, the profession from which I was so unceremoniously bounced just a few weeks ago. Let me assure you, moreover, that I am deeply humbled by the fact that I stand before you today only because your top thirteen choices for speaker all flipped you the bird when they learned how chintzy the honorarium would be. But I digress.

* * *

Today, at the very moment you receive your law degrees, the profession you are about to enter finds itself under vigorous attack. A careful examination of what is being said about lawyers today reveals three principal, and to my mind unfounded, criticisms.

One criticism often leveled against us as lawyers is that we are greedy, money-loving bloodsuckers who pander to egregiously unethical

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Professor Rofes wishes to extend his appreciation to Allen Stewart Konigsberg and Professor Quincy Adams Wagstaff, whose work in this area continues to inspire, and Neil Posner, for incisive comments on an early draft of the speech.

conduct just to make a buck. Careful scrutiny of the circumstances in which the charge has been made reveals that it is patently untrue.

Critics ranging from investigative reporters to the Securities & Exchange Commission have begun to suggest there may be something unseemly at work just because a hard-working lawyer with some inside information goes into the market two hours before an acquisition is publicly announced and purchases half a million shares of the target company. A Fortune 500 corporation that used to pay its legal bills with nary a peep has begun to complain just because two lawyers working late the night before trial submit a fourteen hundred dollar charge for dinner, drinks, and cha-cha-cha with a couple of floozies. Judges and disciplinary agencies have begun to lash out at plaintiff personal injury lawyers just because every now and then they use settlement proceeds to upgrade the furniture and computer equipment in their offices rather than pass along the monies to their clients. Time and again creative lawyers such as these are being victimized by those who seek to destroy the prestige of our profession with nitpicky complaints.

A second knock on our profession concerns the issue of civility. In recent years, the claim has been made with increasing frequency that lawyers have become rude, nasty, and downright hostile with their adversaries. Some observers go so far as to assert that a crisis of incivility plagues our profession. With forty-seven years of practice under my suspenders I believe myself qualified to respond to this ridiculous charge.

It cannot be denied that the high stakes involved in a good deal of legal disputes will produce an occasional spat between counsel on opposite sides of a matter. Heck, I remember just last year smashing my stepson's Camaro through the living room window of an adversary's new home when the shmuck refused to give us an extension of time to file an important motion. And, yes, there's the well-publicized fist fight I got into a few months back with that snotty assistant district attorney, but that's only because one of her objections was so sanctimonious. For the most part, however, this is an eminently collegial profession. The lawyers at our country club go out of their way to have drinks together regularly. If that's not collegiality, I don't know what is.

The third charge made by critics goes to the very core of our professional identity. The charge is that widespread dissatisfaction pervades our ranks, that contemporary law practice just is not much fun any more. These critics claim that lawyers who have the wherewithal to do so are deserting the profession in droves while those unable to leave

spend part of each day dreaming of how to break free. Once again, the naysayers have the story wrong.

We ought not doubt that, for some of our compatriots, the practice of law leaves something to be desired. Indeed, the latest survey of the American Bar Association—in which sixty-four percent of practicing lawyers opted for “cleaning out the orangutan cage at the local zoo every day for six months” over “continuing in your current employment”—suggests a bit of skepticism on the part of colleagues about whether their jobs provide adequate levels of reward. As usual, however, statistics such as these obscure more than they illuminate, conceal more than they reveal. Too often missing from analyses of lawyer satisfaction is one basic truth. The vast majority of lawyers, miserable though they may be, continue to trudge to the office day after day to do the very things lawyers do best: sue the bejesus out of everybody in sight and charge clients an arm and a leg for doing it. As you soon will learn, my friends, that is the essence of fun.

* * *

Philosophers from Confucius right up through Tonya Harding and the Honorable Sol Wachtler have spoken reverently about the lessons of history. Looking back over our nation’s history, we see that each generation of American lawyers has confronted a fundamental challenge to its professional expertise.

American lawyers fighting in the Revolutionary War were challenged to explain to their fellow soldiers what General Washington meant when he responded with an emphatic “*Res Ipsa Loquitur*” to inquiries about strategy for defeating the British.

American lawyers moving west with the nation’s nineteenth century Manifest Destiny spirit were challenged to find suitable office space as near as possible to the location of the next brouhaha between cowboys and indians.

The generation of lawyers that emerged in the aftermath of World War II was challenged to discover which of its members played in a clandestine Wednesday night bridge game with Whittaker Chambers and the Rosenbergs.

Lawyers of the babyboom generation were challenged to decide which imported luxury car to purchase from a rapidly increasing market and a breathtaking array of options.

I do not doubt that these and other challenges faced by your professional ancestors have been onerous. But, to my mind, those which confront the new generation of lawyers are more daunting still.

First is the challenge of improving the quality of advertisements that personal injury firms broadcast on television between ten at night and four in the morning. As we all know, public confidence in our profession has been on the wane. Recent studies reveal a link between this dwindling esteem in which our profession is held and the proliferation of late-night messages advising prospective clients who have been injured in vehicular mishaps that they won't have to pay a dime for legal services unless there's a recovery in their case. Whatever hope we have of recapturing the respect of the citizenry must begin with an effort to reach the influential segment of the public that regularly views reruns of *The Patty Duke Show*, *Hogan's Heroes*, and *The Man From U.N.C.L.E.*

A second challenge facing new lawyers concerns the crisis of client control. Of the many ways in which our professional culture has deteriorated over the past five decades, none is more troubling than the newfangled insistence of clients to have a say in decisions made throughout their representations. It will fall to your generation of lawyers to navigate the professional seas amid interruptions from clients who have forgotten that it is you, not they, who are captains of the ship.

The final challenge each of you faces as a new lawyer may prove the most difficult of all. That challenge will be to share your talents with all Americans—especially those who cannot afford to pay for them—while at the same time managing to amass the resources necessary to purchase and maintain a summer home, country club membership, and the panoply of material rewards that a learned professional so richly deserves.

* * *

More than half a century ago, in that most American of American classics, Dorothy Gale sought advice from the Munchkins on how to begin her journey to Oz. Looking back, we now know that the Munchkins ought to have advised Dorothy to secure legal representation, so that she and her companions could more effectively seek redress for the tortious conduct of the Wicked Witch and her agents. Despite this oversight, and though the changes unfolding in our nation and around the world since the time of that request have transformed humanity, the reply given by the Munchkins remains as apt for you

today as it was for Dorothy. "It's always best," they counseled her, "to start at the beginning."

And so it is. As you begin your careers as lawyers, remember to pause and lay the foundation for a successful journey on your professional yellow brick road. Take the time necessary to improve your golf game—after all, getting that handicap below fifteen will considerably enhance your prospects for professional success. Resist the voices of temptation luring you toward off-the-rack suits—have at least two, and preferably more, custom made. Most important, take care with those initial investments—it's never too early to begin your quest for a no-load mutual fund with a record of substantially outperforming the S & P 500.

On this, the day of your professional coming of age, I congratulate you on your accomplishments and pray that each of you finds fulfillment in your career as a lawyer. And if, by chance, some of you have an interest in helping seek reinstatement of my license to practice, I would be delighted to hear from you after the ceremony. Godspeed to you all.

