

# Clients, Curiosity, and Commitment: A Career in Public Interest Law

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Thank you very much Dean Seligman. I want to, as a commercial, say that you have an extraordinary law school. Dean Seligman, in the short tenure that he has been here, has been very supportive of the part of the school that is most important to me, the clinical program. I have seen the growth and the extraordinary place that this clinical program has gained throughout the country in both the kinds of clinical programs and the caliber of people running it. It is an extraordinary legacy.

This talk is going to be a lot of stories. The first question I want to ask is how many people in this room are first year law students? In the first two weeks that you have been here, have you asked yourself “Why am I in law school?” “Was this the colossal mistake of my life?”

I want to tell you a first year law school story. It is my first year of law school. It is 1966; I am at Columbia Law School. We have classes every day of the week, including Saturday. There is a particular course called Development of Legal Institutions, which meets at nine o'clock in the morning on Thursday, Friday, and Saturday. It is a twelfth through seventeenth century medieval law course taught by a man who is so boring that once, one of my friends during his class turned to another and said, “I will bet you a quarter this hour never ends.” Ten minutes later, the other student paid the bet.

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I start to come to class and to read the book. I get to page 110, and I read the following sentence; I know a good story when I see it. I memorize the sentence, and I close the book. I never open it again until the final exam.

The sentence I memorized read: “This forces an identification of sac and soc with the *causa communis*, the delicts punishable by mulct, *i.e.*, by the exaction of blodwihte, fitwihte, legerwihte or the like.” I walk away. Now, it is the final exam. The final exam consists of fifty short answer questions, multiple choice, and true or false questions. They are true or false questions like: “The statute of De Donis, passed in 1530, has as chapter 17 the gavelkind, is abolished in the county of Kent, true or false.” The answer is false; it was chapter 41 of De Donis. Well, the story goes, in the front of the classroom, in the middle of the exam, a student takes out a coin throws it up in the air, lets it hit the desk, looks at it, and makes a mark on the paper. The student does it again and again. The classroom cracks up. Everybody can relate to this student. Everybody is laughing, and then, the professor giving the exam walks in at that moment, very angrily walks to the front, grabs the coin, grabs the student, and says out loud, “I do not allow people to determine the answer to my test questions by flipping a coin.” The student is unperturbed, smiles, looks up, and says, “Oh, sir, no you don’t understand. I am not determining the answers; I am just checking them.”

Today, we will check out some things. I want to talk to you about the world of practice. I want to talk to you about school, some of which I know from having spent time not only as a student, but also from running a clinical program in a law school. In the end, I really want to talk about you. What is most important to me concerns the ways in which you can think about a career in public interest, using that term in the broadest possible sense.

Let us start with the world in which I practice anti-poverty law, doing criminal defense law, and running this large legal aid society that celebrates its 125th anniversary next year.

These are very mean times in which we live. There is such an extraordinary disconnect and such extraordinary contradictions in this country. We are at the zenith of economic recovery with unbelievable wealth, yet we still must face the level of poverty and the deep kinds

of problems that poor people face in this society. This speech is not going to be a lecture about the problems of the poor. You read the newspapers; you know about it. This speech will focus on some meditations regarding what is happening in society and that the problems the poor face still happen. In some ways, because we are lawyers, because you are law students, and language is so important, it seems to me that the very description of what we use for some of our most disenfranchised people actually sums up in a few words where we are and how language demonizes people.

Think about the words we use in the newspapers, in the media, and in everyday speech when we talk about “illegal aliens.” Think about those two words and what images they conjure up for you and for the public when we read in the paper about an illegal alien doing something. First, the idea that a human being is illegal is repugnant.

Secondly, probably more perverse, think about the word alien. At best, aliens are E.T.—sort of cute and cuddly. Most of the time, however, aliens blow us up. Only the army saves us with extraordinary machinery that repels aliens. Yet, we talk about people being illegal aliens.

Now, take the same person and call that person an undocumented immigrant. Call that person an immigrant without papers. You know, the people in this country who came across on the Mayflower, immediately went on food stamps and food assistance from the people who were here. We now have a national holiday celebrating the people who came here needing assistance. We do not demonize the Pilgrims. Indeed, we celebrate that diversity. Yet, our contemporary language about newcomers is fraught with demonization.

Nineteen ninety-four through 1996 saw the passage of the Personal Responsibility Act,<sup>1</sup> which was a way of taking the underpinnings of the entire New Deal and dismissing it by saying that people should take personal responsibility. Of course, the people who have to take personal responsibility for their lives in this country are poor people. The anger at poor people who are on welfare gives rise to a Personal Responsibility Act for them. When I talk to many

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1. Personal Responsibility and Work Opportunity Reconciliation Act, Pub. L. No. 104-193, 110 Stat. 2105 (1996).

people in the practice of law about their lives, they talk about the extraordinary numbers of hours that they work. They talk about the days and the weeks spent flying all over the world, and about being at the mercy of fax machines and of cell phones and being awakened at anytime of the day to do work. They lament that system, and they ask themselves, “Why won’t my law firm change it? Why won’t law schools put pressure to change? Why doesn’t the A.B.A. do something about it?” I see these people who are the most powerful people in the country, and they have given up responsibility for their own lives by saying outside forces are acting on them. Yet, when it comes to my clients, we pass a Personal Responsibility Act as if they are the only people in the country who should be taking control of their lives, though they have nothing.

This last remarkable year saw some challenges to the rise of capital punishment around the country. Questions surrounding the innocence of people on deathrow are emerging for the first time. What we do as a nation is condemned by every Amnesty International.

These are extremely hard times for poor people. The role that law plays in their lives is extraordinarily interesting. It is one that, in my mind, starts with law schools and asks, “Where do you fit in, where does your institution fit in, and what are the values we are teaching you?”

Let us start with this: whether you are in your first, second or third year of school, this great law school accepted you because you wrote essays talking about your values. You wrote essays talking about the importance of law. You wrote essays talking about law as a social utilitarian instrument to make change. I sat on the admissions committee at Harvard Law School, and I read thousands of applications. Not one of them said “I want to come to law school so that I can merge two great corporations together and make millions and millions of dollars for the one taking over the other one because I want to stay up all night six nights in a row.” I never saw one of those things in the application process. I actually would have loved it. I think I would have admitted the person, or at least recommended the person for having some degree of forthrightness. Nevertheless, I think most people come to law school because of their sense that law can be used in a socially important way.

I think law schools teach you, in the words of the profession, to think like a lawyer. I think in some inadvertent way, we tell you that thinking like a lawyer is somehow divorced from values and divorced from issues of right or wrong—divorced from all of the things you consider important in your life. Think about the things that you do most of the time. You never really ask if this is legal or illegal. Instead, you ask if it is right or wrong or whether it is good or bad, whether it will have some value to you, whether it will move you in some way.

In law school, we learn to filter things through the sieve of “legal or illegal,” and I suggest that it can have a very harmful result. I will tell you another story. It is not funny.

It is a story that took place at Harvard Law School while I was there, and it is about a professor in a neighboring school who was murdered. It was a horrid event, and it really turned the town of Cambridge on its head. A few weeks after the murder, a parody issue of the law review came out, a traditional parody, in which one of the items concerned this professor being killed. It was repugnant. In addition, it was hurtful. It was mean. It was not humorous. The effect it had on the law school was fascinating. The immediate result was that some faculty and some students demanded the expulsion of the student who wrote it, under the hate speech doctrines at the law school. Instantly, a group of faculty members and students came to the author’s defense on First Amendment grounds. They said that nobody should be expelled for writing something like that parody. Within days, the issue of whether this parody was legal or illegal monopolized everyone’s conversations. The issues never discussed were whether or not it was right, whether or not it was smart, what prompted someone in this school to write a parody like that one. What is really important to us was swept away in the rush to focus on the legalities of this parody.

While you learn in law school to argue both sides of a case, I fear that one of the things that you may also learn is that both sides of the case are equally good, right, important, or most importantly, that both sides of the case equally deserve to have you on that side arguing it. I fear that the decision between which proverbial road you take in your life is wrapped in some neutral principle that says all things are equal. I fear that you believe there is not a difference in what you do

because the law teaches us to argue either side of a case, both sides being equal.

I reject that theory. I reject it categorically because I think that the most important decisions that you make about your life concern who you want to be and where you want to put your energy. To me, that means choosing a side. “Do I want to spend most of my waking hours defending property or being on the side of people?”

Now, I know that I am making the lines stark. Particularly, running a legal aid society where the private bar gives us millions of dollars and thousands of hours of pro bono work. I am not saying that it is wrong, or immoral, or you should not choose private practice in a great law firm. What I am saying to you is that if you make that choice, you should make it knowing what you will be doing with your life because there are other choices you could make in which you would spend your waking hours in different ways.

You will spend most of your waking hours at work. It is probably the scariest thing that I am going to say, but it is true. You will eat a little bit; you will go out with people; you will occasionally watch a movie. Now, I think that life is not bad if the work that you do is integrated into your life. If your life is many things including families, relationships, love, movies, and your work, then you have managed to create an integrated whole. Yet, I hear many of my colleagues and classmates say, “I do this work so that then later I can . . . .” The question becomes whether you want to spend most of your waking hours doing something which, at best, is irrelevant to your life or at worst, may downright counter what you want to do with your life because it will give you the economic security to spend the few remaining hours doing something with the wealth that you procured during that time.

I do not. I did not. I use “I” because I think what is missing in law schools is various ways of thinking about your life. I think, even for people who want to do public interest work, that option is part of what you are taught to think about, and it is shown in questions that I got this morning when I had breakfast with some extraordinary students here. The questions posed to me were: “What are the most important things I can do? What should I be doing in public interest? What are the important kinds of issues?” I will tell you that they are all important kinds of issues. I cannot give you any more of a

hierarchy. One thing that I often hear, albeit subtly, from people who talk to me is that the most important work that one can do is to be a capital defense lawyer in the South because there are few there and every case is a matter of life or death. Then, someone will say, “Well, that’s true, but, you know, you should really be involved with children. You know children are really important. The most important work that you can do is to work with children because children need your help.” Then, someone else will say, “Law is bullshit. You shouldn’t be a lawyer at all because you should be out there organizing with the people in the community. To be a lawyer is to prop up this decadent capitalist system that is in its dying throes, and you are the problem if you go to law school. Get out there now and be with the ‘people.’” A faculty member will say, “The people have never made a revolution. It is always the intellectual elite. To be a law professor is really the cutting edge.” I have to look at my law professor friends when I say it. This practice is the cutting edge; you have been a law professor, and you are smart enough to do it. We compete over what the most important area in law and law reform is, and we accuse others of bullshit, band-aid work, or not affecting anybody. “I do law reform work. I make big changes, and the next week some people say my law reform worked.” You could spend nine years on one case and lose because the makeup of the Supreme Court changed. We are all competing with each other to tell you that a handful of public interest workers basically wasted their lives. On the other hand, we give you the message “You were born too late because the sixties were incredible. It was so good to be poor in the sixties. You have no idea. It was so good to be a criminal in the early seventies. It was wonderful. Now it is all over. Listen to our stories, but you should have been smart enough to be born earlier.”

Despite my teasing, all those people are right. All that work is terribly important. There is no question that we need the sum total of all law reform work, organizing, teaching, and people working in conjunction with different organizations around the country. All of that synergy is what helps make change. All those people are really saying, “I love doing this kind of work.” The person who is organizing is saying, “I love being with people. I love not dealing with law. I love just being with the community and trying to help it understand itself.” The person who is doing law reform work is

saying, "I really love big knotty issues. I love trying to think of the politics of it. I like trying to think of the precedents. I enjoy looking up history and getting it into modern framework and I love the oral argument. I am an appellate lawyer." Perhaps someone is saying, "I love kids. There is nothing more rewarding to me than seeing a kid in family court the first time she comes in on a delinquency charge and I am able to affect that person's life. First, by being a lawyer, and second, by being a trusted person who can make a change and help that person see why a life in delinquency is not smart."

My colleagues are telling you very personal stories, but instead of phrasing it "You have to know what you love to do," it takes the form of "My work is the most important. What I do is what is necessary. The other work that people do is not nearly as important as what I am doing."

This statement is for me, a direct link into part of the most important question that you must ask yourself. Washington University School of Law gives you the opportunity, particularly if you are hearing this message as a first year student, to step back and say, "I am going to learn the technicalities of law here. It is a great law school because it is not teaching the laws of Missouri. It is not teaching the laws of St. Louis." It assumes that you will go all over the country, and you will learn law. It is teaching you how to think about things, and it is trying to give you a perspective. The truth that we all know is, by the end of your first year, you learned a great deal about how to do those things.

What is most important for you to do is to see this school not as a place that is enervating, making you learn rules that you think you will never need again, but rather as a place where you can test different parts of who you are. Realize that you have three years, that you have two years of clinical experience, and that there are extra-curricular activities. Currently, there is a public interest placement advisor and an office that can help you learn about the opportunities available to you. You have a city where you can volunteer. You have an opportunity to answer the questions: "Who am I? What do I love to do? What is fun? What will get me up in the morning? What will make my frustration come only from not doing enough?" You have this extraordinary opportunity to use loans and summer internships to go anywhere in the country and test who you are—law reform,

individual cases, or organizing. What level of law is most compelling for you? What kind of law interests you? Do you want to work with women's organizations, with poor people, or with people of color? Do you want to work on litigation involving civil liberties or civil rights? Then, there is the question of where do you want to work. In answering this question, I suggest that you use the summers to make contacts in places that you want to work. In sum, I am saying that your law school experience can transform these decisions. You can take control. Instead of a chance occurrence, you can make it part of your self-exploration so that you answer the question, "What do I love to do and what is most important to me?"

I think within that realm, all of the people who talk to you, all of your classmates, all of the summer jobs you have, they become ways for you to reflect, "That is interesting. I had not thought about that. It is good for me to wonder about whether or not it is the kind of thing I want to do." This extraordinary law school becomes a base of operation for you to answer your most important questions.

Once you decide you want to do progressive law and what side you are on, what are the number of ways you can do it? In addition, those who will work at law firms are not off the hook. I am not implying that there is nothing you can do there. As I said, legal aid uses thousands of lawyers. They give us lots of money. There are lots of ways to do *pro bono* work. There are lots of things you can do to give back to the community when you work at a firm.

I am not saying that this work is without its frustrations. When I started in legal services, I was a housing lawyer. I did family law and housing law. I went to housing court when I was a young lawyer. It was probably my second or third trial, I was really scared, but I was well prepared. New York's housing law is archaic, and I know that it is much the same all over the country. The law requires landlords to make an oral demand of the tenant before the landlord can receive rent money. The idea is, why waste the court's time if you can get the money without having to go to court? As a result, there was a requirement for an oral demand. The day the landlord's lawyer presented his case, he asked the client if he made an oral demand. The landlord said, "Yes I did." In my cross-examination, I asked, "Did my client not tell you how bad the conditions were in her apartment?" The landlord responded "No, I never heard they were

bad.” So, I asked, “What are you talking about? In all the interactions you had with her, she never told you about conditions?” The landlord replied, “I never met her before in my life. I do not go near that building. I do not live near that building. I never talk to her. How could I hear about these conditions?” I looked up at the judge with a smile, and said, “Your honor, he said he made an oral demand and he has now admitted on cross-examination that he has never talked to her. This case has to be dismissed.” The judge banged the gavel, case dismissed; I walked outside. The landlord’s lawyer came toward me; I was ready for him to start screaming at me. He put his arm around me. He pinched my cheek, and he said to me,

Greenberg. You commie. I love you. Greenberg, Greenberg. You do not understand the economics of law. Before you guys came along from legal services, what could I charge somebody to throw them out of their apartment? What could I charge them? Fifty Dollars? Seventy-five Dollars? A Hundred Dollars? And now, you come along and I turn to my clients and say, huh, legal services. They got their motions; they got their adjournments. They got their demands. They got their jury trials. Five hundred hours down by the time we finish two thousand dollars. Greenberg you commie. You made me a rich man.

And then, he added, “I hear you are in trouble with your funding. Maybe I can make a donation.” I was ready to shoot myself. I think to myself, at least I can use this story as a reason to say the private bar owes us a lot. I think that if you choose the private bar, you must understand that legal services basically makes your life.

When I started in legal services, the pay for a legal service lawyer was sixty-five hundred dollars a year. The pay for a Wall Street lawyer or a corporate lawyer was seventy-five hundred dollars a year. This was 1969. In 1969, because they were losing numerous lawyers to the new legal services offices, Wall Street doubled its salary. Kravatz, Sullivan & Cromwell went to fifteen thousand dollars a year for fresh law school graduates, at a time when people had very little debt. It was an unbelievable raise. Now, it is about one hundred thirty thousand dollars. Without legal services lawyers, you would be making thirty-five thousand dollars a year. Again, my pitch says that

you are not off the hook if you go to a big firm. We expect the bucks, we expect the time, and we expect the commitment. Wherever you go and whatever you do, there are things that you can do for us.

The clinical program here is an extraordinary program. Although we all love to hate *U.S. News & World Report*, you should know that your clinical program's reputation is one of the best in the world. (I love, by the way, academics. If you ever hear your professors talk about *U.S. News & World Report* in a dismissive way, they are just so annoyed that there can be this rating on law schools based on no interviews, just based upon paper that has so much effect. Of course, that is how we accept you to law school, for what it is worth. We think it is a perfectly agreeable way to decide who comes here. Somehow doing it to rate the law school itself is dismissed out of hand.) Any of you who are considering a clinical program, you should get involved. They are an important way of merging theory and practice. There are lots of them here, and there should be more of them. There should be more of them here because there should be more everywhere. The program is extraordinary and the handful of your professors that I have become friendly with, Karen Tokarz, Jane Aiken, and Peter Joy, are all wonderful people. Get to know them; they can be models for you and help you as you make decisions.

Let me begin to sum up by trying to put some overlay on what I have been attempting to say. The symmetry of it all is, why did we want to become lawyers? Why did I want to become a lawyer? I talk about law trivializing things. I talk about law not getting us to the heart of matters that I think are important. The truth of the matter is that the law is simultaneously an extraordinarily powerful tool in this society to right wrongs. We know how far we have not come. We know all of the things that remain to be done. My organization, Legal Aid Society, is 125 years old. We look at what history has done and how much is still required to be done.

When the Legal Aid Society was brand new, slavery itself had been abolished in this country for less than a dozen years. The turn of the century saw massive oppression against workers, people killed for trying to organize labor. The 1930s saw massive unemployment, and I would be prohibited from a speech like this one in the 1950s because of McCarthyism. Each year was followed by something better.

We have civil rights laws, not nearly enough, but we have civil rights laws that took some of the vestiges of slavery and put them aside. We organized unions which reaffirm the work of workers. Following unemployment in the 1930s, we had a massive rebuilding of this country, and the 1950s gave rise to some of the most activist times in the history of this country. I know that this century will give rise to something, I am not exactly sure what, but it will be better, and it will be one more change in the pattern of ebbs and flows that law has accomplished.

One of the extraordinary things about a life in public interest law is what it does for you as a person. For me, it has meant that the dichotomy between being a human being and being a professional has been about as low as possible and about as small as possible. I think, for me, the lynchpin of that dichotomy comes from what I considered to be the best writing about clinical education that I have ever seen, which appeared in a medical journal. My wife is a physician. She runs neighborhood health clinics, and one day she gave me an article from the *Annals of Internal Medicine*. It was called *On Being a Doctor—Curiosity*.<sup>2</sup> The article was written by a woman who was a dean at a medical school, and she wrote about her time as an attending physician on the wards. She talked about how she would watch her students, her interns, her residents, talk with patients, and how often they were dismissive of patients because they were uninteresting. One day she said to them, give me the least interesting person on this ward. They pointed to an elderly woman, a woman well into her eighties. She was a woman who depicted most of the indices of old age and neglect, and the dean started to question the woman in front of them to show them that this woman was really an interesting person. The dean learned that this woman was a hotel maid, but she gave mostly one-word responses to further questions. The interview went on mono-syllabically for a while, and finally, in desperation, the author said she was beginning to think that maybe nothing unusual happened to the person. She began again by saying, “[Have you] ever been to the hospital before?” “Once.” “How did that happen?” “A broken arm.” “How had she broken her arm?” “A

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2. Faith T. Fitzgerald, *On Being a Doctor—Curiosity*, 130 ANNALS OF INTERNAL MEDICINE 70 (1999).

trunk fell on it.” “A trunk? . . . What kind of trunk?” “Steamer trunk.” “A steamer trunk. How did [that happen]?” “The boat lurched.” “The boat? . . . Why did the boat lurch?” “It hit the iceberg.”<sup>3</sup> Within hours, she went from the least interesting person on the ward to being one of the only remaining survivors of the Titanic. In addition, the media flooded into the hospital, and the doctors were interviewed. This woman was on the news for days on end. The doctor proved to her students that nobody is uninteresting.

The extraordinary thing to me about a lifetime of doing public interest law is not that you receive honors and not even that I have been lucky enough to be part of a lecture series. My real heroes are the eight hundred lawyers of The Legal Aid Society—not the eighty cases they do and have done in the Supreme Court of the United States, but for the three hundred thousand cases a year that they do in the lowest courts of America. There, nobody knows their names and no one knows the names of their clients, and they stay literally from nine in the morning until three or four the following morning when criminal court in Manhattan breaks.

It may be that great law schools teach us to be great lawyers and say that you can do anything you want, but my message today is that part of being great lawyers is in fact doing anything you want. Even if your name is never in the *New York Times*. And, even if you never earn lots of money. The irony of it all in the end, the great, great lovely contradiction, is that by focusing on small unimportant things, we do the most important things. There is a woman named Anne Michaels; she is poet. She wrote a book about two or three years ago called *Fugitive Pieces*.<sup>4</sup> It is the only part of this talk that I will read to you because what she says to me is a story about life and also a story about you and the power of law. *Fugitive Pieces* is a story of a boy who was orphaned during the Holocaust. He watches his parents being killed. As he wanders around, a Greek archeologist picks him up, gets him out of the country, and adopts him. In talking to this young boy about the world, Athos, his new adopted father, turns to him at one point, and says,

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3. *Id.* at 72.

4. ANNE MICHAELS, *FUGITIVE PIECES* (1997).

It's a mistake to think it's the small things we control and not the large, it's the other way around! We can't stop the small accident, the tiny detail that conspires into fate: the extra moment you run back for something forgotten, a moment that saves you from an accident or causes one. But, we can assert the largest order, the large human values daily, the only order large enough to see.<sup>5</sup>

By doing work that you find meaningful, by choosing a public interest career, in it's broadest, most important sense, by living every moment of your life doing something that you want to do, you are extraordinarily lucky because you can do it and make a living at it. I said to students this morning that I reject categorically the notion that to work in public interest is a sacrifice. I can think of no better way to spend your life than to do something that you want to do. In fact, there is nothing that would be a greater sacrifice than to spend most of my waking hours doing something I did not want to do because it gave me money.

In the end, when we talk about law, just as I spoke of my wife as a physician giving me insight about the practice of law, I turn to my eleven and twelve year-old daughters and tell you how I think we need to look at the changes law makes as we get cynical about all the things that are not done.

When my wife went to Yale College she was the captain of the soccer team. It was the first class of women admitted to that all-male school. She was a part of a group of people along with Abbe Smith and other friends that we have in the clinical world who sued Yale in order to get equal money for woman sports teams and they won. My daughters now wear T-shirts that say, "*Forget About the Dolls, Pass Me the Ball.*" The other one has, "*Games Real Girls Play*" and crossed out is "jacks, jump rope, dolls" and on the other side is "basketball, soccer, baseball," and all the things they like. Literally, in one generation we went from having to sue to get women sports, to my daughters knowing that they can do whatever they want, wherever they want, equally. It was a social revolution that law helped to push, but it was lawyers who were part of that revolution

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5. *Id.* at 22.

helping it happen. Being a revolutionary is one of the great things that you get to do.

So, to the extent that anything I have said today seems cynical, let me assure you that it is not. One thing that I know with every ounce of my being is, I can wish you nothing better than that at your thirtieth law school reunion you can be one of the handful of people who stand up and say “I have spent the last thirty years of my life doing what I wanted to do. My only frustrations have come from the fact that I could not do it enough.”

Good luck.







