

## LAW SCHOOLS AND THE PURSUIT OF JUSTICE

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### I. INTRODUCTION

THE question was simple enough; the answer powerful, eloquent and challenging. “What is the mission of our law school?” I asked the President of the University of San Francisco, Father Stephen A. Privett, S.J., at a faculty lunch some time ago. “To train skilled lawyers who hunger and thirst for justice,” he replied without a second’s thought.

Indeed, those of us lucky enough to be law school deans have a unique opportunity not only to train skilled lawyers, but also to train lawyers who “hunger and thirst for justice.” To be sure, the task of ‘Pursuing Excellence and Educating for Justice’ (as our tag line at USF intones) is not the sole province of law schools. Other disciplines share an equal responsibility to promote human dignity and to better the human condition. But for law schools, and for the deans charged with crafting the message and direction of the law school, the mandate to pursue justice is particularly challenging precisely because the law and legal institutions, our discipline, have the unique ability both to insure justice *and* to institutionalize injustice. Guarantees of freedoms in our Constitution and in the United Nations’ Universal Declaration of Human Rights hold out hope for the former. Jim Crow, Dachau, and Cambodia’s killing fields testify to the latter. Indeed, the relationship—or lack of it—between law and justice situates law schools on the front line in efforts to bring about a more just society. As such, law deans charged with promoting justice must be laser-like in their efforts to develop concrete strategies to achieve that goal.

The importance of this aspect of our work as deans was brought into sharp relief a year ago April with the horrific revelations from Iraq’s Abhu Graib prison—revelations that led Susan Sontag to proclaim in the *New York Times* that “the photographs are us.”<sup>1</sup> We all had many reactions to those images, but one of my strongest reactions was to the role that lawyers played in creating the logic and ‘moral infrastructure’ that allowed torture to take place in Iraqi prisons controlled by Americans.

With regard to the lawyers’ role, there is both bad news and good news. One need only read the memoranda of three of the then-highest ranking lawyers in America—Attorney General John Ashcroft, then-Deputy and now Attorney General Alberto Gonzales, and then-Assistant Attorney General and now United

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1. Susan Sontag, *Regarding the Torture of Others*, N.Y. TIMES, May 23, 2004, § 6 (Magazine), at 25.

States Court of Appeals Judge John Bybee—to understand the degree to which counsel twisted treaty obligations to authorize so-called ‘Category III’ methods of interrogation and to insulate the administration from any future responsibility for its actions. On the other hand, one wonders where, in the intense environment supporting these ‘expansive detention techniques,’ White House counsel William Howard Taft IV mustered the courage to oppose (along with Colin Powell and some members of the military) the policies that the digital cameras brought to light.<sup>2</sup>

For me, Abhu Graib confirmed the obvious: lawyers in America play a critical role in deciding whether we simply have a ‘rule of law’ or a ‘rule of law with justice.’ And it is the ‘with justice’ that I would like to focus on as we go about our work as deans. I use the word ‘justice’ in its broadest sense, believing that it encompasses ethical training and a desire to promote the common good, and that it is critical to every subject in the law school curriculum and every area of practice. As such, the pursuit of justice is no less important to the student studying Contracts than it is to the student taking International Human Rights nor is it of lesser concern to the lawyer in a large firm working on acquisitions and mergers than it is to counsel working in an NGO on land mine issues.

## II. CONTEXT AND DISCLAIMER

I want to offer some thoughts about how law school deans might go about promoting justice, but not before providing some context and offering a disclaimer. The context is really a confession of bias that has the potential to adversely affect my own work at USF and also raises questions about how we as deans can promote justice. I am the Dean of a Jesuit law school, but I am neither Jesuit nor Catholic nor even a Christian. I am a Jew who grew up in Brooklyn, in Los Angeles, and ultimately in Berkeley during the sixties. I grew up believing, and still believe, that the war in Vietnam was a tragic error for which the United States will pay a price for generations to come, that marginalized people around the world share a common bond, and that the law is a noble profession which can be used to do enormous good. I offer these facts because I think that the dean’s own personal agenda may pose obstacles to devising an effective means of promoting justice in our law schools—obstacles that must be addressed if we are to succeed.

Second: the disclaimer. This is a complicated topic with no clear answers. I am struggling with how best to promote justice as, I suspect, many of us are. I do know, however, that some of our efforts at USF are succeeding very well; others are works-in-progress. I suspect that other deans would make similar statements. I also hold firm to the premise that law deans must constantly try to create an environment that allows students to explore the relationship between law and

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2. See generally MARK DANNER, *TRUTH AND TORTURE: AMERICA, ABHU GRAIB, AND THE WAR ON TERROR* (2004). Danner’s book is a compilation of his articles in the *New York Review of Books* on prisoner abuse and torture in Iraq. Most important, the book contains administration memoranda that paint a chilling picture of precisely how the U.S. policy toward prisoners in Iraq developed, including memos authored by Ashcroft, Gonzales, Bybee, Taft, Powell and others.

Fall 2005]

*PURSUIT OF JUSTICE*

15

justice and an environment that fosters opportunities for the law school community to engage in activities that promote justice. Simply put, I believe that law schools have a special responsibility to help students develop a thirst for justice and to provide opportunities to quench that thirst.

III. THREE GUIDING PRINCIPLES TO PROMOTE JUSTICE AT THE LAW SCHOOL:  
ARTICULATING AN INCLUSIVE MISSION; PROMOTING JUSTICE  
IN THE CONTEXT OF THE UNIVERSITY'S MISSION; AND,  
EMPHASIZING ACADEMIC EXCELLENCE

A. *Articulating an Inclusive Mission: The Role of the Dean*

There is no formulaic strategy that law schools may use to promote justice, but several prerequisites surely exist. First, a consistent message must be sent that promoting justice is a central and valued element of the learning community. As a corollary, an environment must exist in which efforts to promote justice can thrive. Such an environment requires that efforts to promote justice *not* be perceived as the work of a chosen few with a particular political agenda. Different members of the law school community have different ideas about how to fulfill a mission of promoting justice. My political biases could not and should not dictate what we do at the law school. The school must accommodate differing ideas and modes of action.

At the same time, such differences within the community should not mask a common agenda that can be phrased in many different ways. In the context of USF, Rev. Peter-Hans Kolvenbach, S.J., Superior General of the Society of Jesus, eloquently articulated that common agenda in a keynote address focusing on the commitment to justice in higher education: “the promotion of justice for all, the quality of personal and family life, the protection of nature, the search for peace and political stability, a more just sharing in the world’s resources and a new economic and political order that will better serve the human community.”

In sum, we can maintain a delicate balance by emphasizing that we are engaged in a collective effort in response to a universal condition—the plight of those who are marginalized and whose right to exist with dignity is denied. We should promote self-examination and self-discovery so that every member of the law school community is better able to understand the problems and to choose ways to go about solving them. Our goal should be to open eyes and to create opportunities for action, understanding that there is no single path and that few will seek the same way to promote justice. The metaphor is a jazz tune in which all musicians play their solos within the same chord structure (promoting justice), relying on the support of each ensemble member to help create the beauty and texture of the composition.

The role of the dean in this effort must not be underestimated. It should be clear to everyone that the dean takes seriously the mandate to pursue justice and to create an inclusive environment in which such a pursuit can flourish. If we as deans succeed in this task, we create unlimited potential for imaginations to soar and for programs to thrive.

*B. Promoting Justice in the Context of the University's Mission*

Second, to be most effective, the notion of “promoting justice” should be articulated in the context of the mission of a particular law school whether it be a public institution or a private institution or, in the case of USF and thirteen other law schools throughout the United States, a private Jesuit institution. Our work at USF provides an example. In June 1999, just before becoming Dean, I wrote a memo to my faculty. At the time, I had been a faculty member at USF for fifteen years and felt that the law school community had not come to grips with the impact of our Jesuit mission and its overarching principles of academic excellence and service to others. Despite the facts that numerous faculty grew up in the sixties and were activist in their orientation and that the law school offered many opportunities for our students to do good works (clinics, Street Law programs and the like), we still had not adequately explored how our University's mission could benefit our students and serve local, national and international communities.

Since then, that conversation has gone forward. Our community has engaged in discussions about the role of the University's Jesuit mission (“educating minds and hearts to change the world”), concerns by some about perceived overreaching by some elements of the Catholic Church, the relevance of the law school curriculum to our mission, and questions raised by the mission's mandate to promote justice. We continue to explore how service learning fits into the curriculum and how we can increase service opportunities for the entire law school community. Our public statements about our mission have been sharpened both symbolically—on law school banners—and in our publications explaining what we are trying to accomplish, as well as in monthly *Justice Forums* that showcase student and faculty efforts to promote justice. In addition, existing programs consistent with our mission have been celebrated and expanded, and new programs developed, including joint programming with other departments and colleges in the University.

In the end, I suggest that a conversation about the pursuit of justice in the context of a law school's particular history and mission creates an institutional imperative critical to success. It has certainly helped to focus and motivate our work at USF.

*C. Emphasizing Academic Excellence*

A third principle is critical for the first two principles to succeed: academic excellence is an essential component of a mission of promoting justice. It goes without saying that academic excellence is what law schools must be all about. In addition, if USF's experience is any guide, commitment to academic excellence lends credibility to the mission of pursuing justice and keeps us honest about not using the pursuit of justice to further personal political agendas. In a recent State of the School message to our community, I addressed the need for academic excellence, again citing words of USF's President:

Fall 2005]

*PURSUIT OF JUSTICE*

17

Our mission is a noble one that should make us proud. I believe that it is also a distinctive mission that is capable of building the character of our students to help them 'do the right thing' regardless of the legal area in which they may find themselves. For me, one point requires emphasis. If our mission statement is truly about educating minds and hearts, the connection between the two must not be ignored. Listen again, to Father Privett:

Educating minds and hearts is our challenge and society's best hope for a future. USF is obviously a university and, as such, committed to creating, communicating and applying knowledge. In fulfilling those responsibilities, USF holds itself accountable to the highest standards of excellence in teaching, scholarship, and service. Academic rigor and excellence are not inimical but essential.

Thus, our law school and other law schools around the country are rightfully proud of the myriad service-related activities that support the pursuit of justice. But as we deans go about this work, we constantly must question how it furthers academic excellence and benefits our students. Consistent with the broadest of definitions of justice, we must ensure that the passionate pursuit of these activities does not diminish our efforts to provide broad educational opportunities for our students that prepare them to be lawyers in all arenas, whether it be in the courtroom or the board room and in practice areas ranging from corporate to real estate to criminal.

#### IV. FOCUSING ON PROMOTING JUSTICE: COMMUNITY RESPONSE AND BENEFITS

The response of the law school community to this increasing emphasis on mission has been positive, demonstrating a desire for an agenda that elevates promoting justice. This positive response, particularly the enthusiasm of students, may come as a surprise to many. It shouldn't. Today's students are getting a bad rap. They are too often perceived as selfish, uncaring, and solely concerned about making money and getting ahead. It is true that students are concerned about money. And, in fact, they should be. The average debt a student incurs at a private law school is in the neighborhood of \$80,000 to \$100,000, and the debt burden of students at public law schools is rising at an alarming rate. Moreover, students are graduating at a time when meaningful employment in the public sector is often a fleeting fancy. Gone are the halcyon days of the sixties and seventies when quality education was affordable and public interest jobs were readily available and competitive with jobs in the private sector.

Nonetheless, today's students are willing and wanting to do good works. Ask entering students why they chose law school and the response is predictable and often heartwarming—many want to do good in the world and see the law as a useful tool to accomplish that goal. In fact, a large number of today's students are every bit as well motivated as the students of my generation. I remain convinced that if you put today's students in the 1960s you get the 1960s all over again. On the other hand, if you put the generation of the sixties in the

circumstances that greet the new Millennium, my hunch is that the outcome is as problematic and complicated as we are witnessing with today's law students.

Here is anecdotal evidence to support that thesis. At USF, we created a service program for the law school community. Initially, some skeptics said: "There is no way this will succeed. Students don't have the time or the inclination to think about others let alone to go into the community to help others." That response seriously underestimated the inherent desire of students—and in fact the entire law school community—to do good works while at the same time paying attention to their own real needs. The law school's first effort to create a service event—a modest effort to get ten students to go to San Francisco's Tenderloin to serve meals to the homeless—eventually morphed into a program we call Law in Motion, which involves upwards of 20% of the student body as volunteers. In fact, as a result of these efforts, staff have also organized to volunteer in the community.

Indeed, our biggest challenge as legal educators is to insure that students' expressed desire to do good and to do well is not extinguished during their years in law school. We must guard vigilantly against the "assassins of the spirit" whose harsh, and sometimes unintended words, snuff the passion and excitement that brings students to law school in the first place. Those assassins can be found in any place where students' passions are not fed and where the message is communicated that the "real" world requires that idealism give way to a focus on billable hours. A vigorous dialogue about justice and creating opportunities to do good works are the best defenses against extinguishing that spirit. My hunch is that one way or another, the mission of all of our law schools provides the push and support to do just that.

A sustained focus on promoting justice also creates "side-benefits" that may not be readily apparent. The first involves the effect on the law school community itself. It turns out that many students, faculty and staff are interested in finding ways to promote justice. Such joint efforts provide new ways for the law school community to come together and to engage in a mutually inclusive agenda. At USF, this has happened as close to home as San Francisco's Tenderloin and as far away as Phnom Penh, where the law school's Center for Law and Global Justice has been working for years. And alums, searching for meaning in their own lives, find solace and hope that a new generation of law students and their *alma mater* are reaching out to the world in ways that many feel have eluded them in their own daily work.

There is yet another "side benefit" of no small consequence. The focus on promoting justice is precisely what the legal profession needs to rid itself of the reputation we have managed to acquire for ourselves. Nothing would change that image more quickly than creating a profession that focuses more on doing good works and that demands that all people have access to the benefits of a system based on a rule of law with justice and compassion. Legal educators, perhaps more than any other members of the legal community, shoulder the responsibility to emphasize these values if we ever hope to be held in esteem in the public eye—a day which will only come when it is the common wisdom that the legal profession is serving those in need. If we pursue our mission vigorously

Fall 2005]

*PURSUIT OF JUSTICE*

19

and honestly, we offer hope that the public finally will be persuaded that lawyering is a noble profession.

And this final “side benefit” bears noting. For deans it may be the most critical benefit of all. Donors appreciate and respond to a message that puts the law school lock step with pursuing justice, focusing on ethical lawyering, and serving a multitude of communities. Deans know when a donor is interested in and excited by what the law school is doing. Put another way: we know it when we see it. I can report that this most often occurs when ‘justice-related programs,’ articulated in the context of academic excellence and as a means to enhancing the law students’ experience, are put on the table as a law school priority.

IV. WHAT IS TO BE DONE?: LET A THOUSAND PROGRAMS BLOOM AND DEAL  
HONESTLY WITH THE CONTRADICTIONS ALONG THE WAY

A. *Let A Thousand Programs Bloom*

Of course, the rhetoric of promoting a more just society must be supplemented by an action agenda aimed at making it a reality. The mosaic that each of us creates in pursuit of justice will vary depending upon the history and traditions of our schools, our geographical locations, and the interests of our faculty. As we at USF have attempted to create our mosaic, we have focused on our Jesuit mission with its emphasis on ethics and service, our long tradition of skills training, our location in a diverse, urban environment, our involvement in international issues, particularly those focused on the Pacific Rim, our front row ticket to the Silicon Valley technology revolution, and our proximity to so many other fine law schools, which makes collaboration on projects to support the common good a real possibility. Moreover, as we at USF focus on justice-related programs, overriding notions of enhancing students’ academic experience, giving students a sense of those experiencing injustice, and engaging in communities—local, national, and international are foci that help create the mix.

Here are some examples:

- Our skills training emphasis is reflected in a multiplicity of clinics: Criminal Law and Juvenile Justice; Investor Justice (claims before the National Association of Securities Dealers); Employment Discrimination Mediation; and Child Advocacy to name some.
- Our service emphasis is exemplified by local volunteer programs in the San Francisco Bay Area (our ‘Law in Motion’ program sends hundreds of our law school community to feed the homeless or to work in orphanages or prisons or other venues to engage in service work, and our Street Law program gives students credit for working with inner city high school students).
- Our focus on international matters, particularly those relating to the Pacific Rim has been the impetus for our International Human Rights Clinic which sends students to Geneva and New York to advocate in front of various U.N. human rights bodies. It also motivates our Center for Law and Global Justice’s internships for students and our efforts

assisting in a multitude of rule of law projects in developing nations including Cambodia, Vietnam, Indonesia, East Timor, El Salvador, and the Dominican Republic. These programs consist of immersion experiences for students, courses for credit such as “Prosecuting the Khmer Rouge” which was offered this past summer in Cambodia, and assistance programs focusing on judicial training, legislative drafting, and developing curriculum for law faculties.

- Our Jesuit tradition has inspired work on death penalty issues (involvement in opposing the juvenile death penalty and sending students to five southern states each summer to work with death row inmates) and more recently on migration and immigration issues as well as on issues dealing with corporate global responsibility. Moreover, the Jesuit focus on ethics and educating ‘the whole person’ has helped to motivate experimentation with courses such as Interpersonal Dynamics which focuses on the ‘personal’ aspects of lawyering, and a course/program entitled Prayer, Spirituality and the Law co-taught by a Catholic California Court of Appeal Justice and a leading San Francisco Rabbi, which helps students explore the relationship of spirituality to their work as lawyers. Finally, the University’s Jesuit tradition has led to experimentation with service learning courses in which students study a body of law while working with organizations involved in addressing the particular problem.
- Our proximity to so many other fine law schools has led to the creation of a collaborative through the Law School Consortium Project to organize alumni in small and solo practices who want to provide legal services for low and moderate income clients. (The collaborative provides skills training, tips for law office management, and interaction with law students and clinics.)

The details of our efforts to promote justice and their effectiveness are grist for on-going dialogues. Hopefully, those detailed discussions will come as we all talk about how our law schools can best train the skilled ethical professionals concerned for others whose work makes us proud of our graduates and of our work as deans.

### *B. Questions, Questions and More Questions*

The quest to educate for justice raises many questions. They are questions that will not and should not go away. Here are some questions and arguments that have been raised in the course of our dialogue at USF:

- How do we define justice? Whose justice are we talking about?
- If my politics diverge from your politics, and my idea of what is important for society and how to accomplish it are different from yours, why should the law school take one path as opposed to another?
- How does one respond to a faculty member who says: “You may think it is important to be engaged in the community, but for me ‘service’ means being an excellent teacher and engaging in productive scholarship. It doesn’t mean serving meals in a homeless shelter”?



Fall 2005]

*PURSUIT OF JUSTICE*

21

- Is the call to engage in work in local, national, and international communities a self-righteous and sanctimonious endeavor that puts people off? And if that is true, does it hinder rather than promote efforts to make the world a better place?
- It's easy to talk a game of justice but the reality is that people need to make a living and that "justice" jobs don't really exist. Therefore, the rhetoric and push to educate for justice creates unreasonable expectations on the part of students that cannot possibly be fulfilled.
- In a professional school, we are interested in training the best professionals possible. While ethics and doing good works are important, those endeavors are only a small piece of what we do. To overemphasize them will divert resources from our task at hand. In short, where are we supposed to get the resources to do what promoting justice demands?

Some of these queries have been discussed above. Others require more discussion. One point in particular, however, should be noted. Failure to put money and administrative resources where our well-intentioned mouths are will surely doom any serious effort to promote justice. The scarcity of resources does not give us an excuse to ignore the mandate and mission of our law schools—to pursue justice in its broadest sense. In sum, educating for justice is not ancillary to what we do.

#### V. CONCLUDING THOUGHTS

There is no question in my mind that a mission of promoting justice is a magnet for our students and that it creates the possibility for individual and societal transformation. Recently, a group of us visited San Quentin Prison, a maximum security facility just north of San Francisco. We attended mass and then spoke with inmates serving life sentences. Here is the response of one student to that visit:

The trip to San Quentin challenged my own thinking and perceptions on many levels. As a law student, it provided an opportunity to go beyond the books and learn from a very different point of view. As a future lawyer, it forced me to revisit why I am on this path and where I want to the path to lead. On a personal level, the chance to sit shoulder to shoulder with that same person (the convicted felon) and learn about his concerns, fears, and hopes challenged my own mental picture and preconceptions of a San Quentin inmate.

Dare we not accept the challenge to make these experiences multiply? This is the time to acknowledge our collective purpose and responsibility, to celebrate it and to commit ourselves to promoting justice in a meaningful way. We do it because it is our mission and we do it because it is the right thing to do.

In 2001, as part of our Nobel Laureate Lecture Series, 1976 Peace Prize winner Mairead Maguire Corrigan, who founded the Housewives Brigade—a coalition of Catholic and Protestant women organized to stop the violence in Northern Ireland—visited the law school. I asked her about the role of lawyers

in promoting peace and justice throughout the world. She answered with her own question that spoke volumes about the world's need for passionate, skilled lawyers committed to creating the rule of law with justice. "I have thought about this a lot," she said, "and I keep asking myself: during all of the violence and the lawlessness, where were the lawyers?" For deans, the answer to Ms. Maguire's plaintive cry is clear: they are in our classrooms and on our watch. We have our work cut out for us!