

A Search for Balance in the Whirlwind of Law School: Spirituality From Law Teachers

Thomas L. Shaffer*

Those who plan things for annual meetings of the Association of American Law Schools decided for 2006 on a “workshop” entitled “A Search for Balance in the Whirlwind of Law School.” They invited three of us to one of the sessions therein, this one on “Spirituality.” Other sessions were on the affective, on “connection to purpose,” contemplative practices, religion, student services and counseling, and teaching methods. “Spirituality” was the most mysterious; even after an enjoyable ninety minutes with Professors Calvin Pang and Reginald Robinson and other interesting law teachers who joined us, I only slightly know what it was about.¹

I do, after half a century in them, know about whirlwinds in law school. The only slightly hackneyed metaphor says that law students, like Dorothy in the cyclone, are in a house that is being carried to Oz (in her case from Kansas). Dorothy’s house landed with a thud on top of a wicked witch. Dorothy stepped outside; the movie turned from black-and-white to Technicolor; and Dorothy met the good witch, who led her and the scarecrow, the lion, and the tin man down the Yellow Brick Road.

Within the whirlwind we had in Washington in January, 2006 (first scheduled for New Orleans), our sub-theme, Spirituality (capital “S”) seems to describe the effort by the good witch to put Dorothy in touch with Dorothy’s spirit, after she landed in Oz, so that she could get by better when she got back to Kansas. I imagine Dorothy as a law student, Spirituality wants her to be happier in Oz and, when she gets back to Kansas, to be there a good lawyer in all senses of the word—or at least a lawyer who does not make things worse (which is the Hoosier way to express the wish).

*Robert and Marion Short Professor of Law Emeritus, University of Notre Dame; Supervising Attorney, Notre Dame Legal Aid Clinic.

¹ASS’N OF AMERICAN LAW SCHOOLS, AALS WORKSHOP ON A SEARCH FOR BALANCE IN THE WHIRLWIND OF LAW SCHOOL, JANUARY 4, 2006 (2005).

“I definitely want to be a lawyer and a good one,” a student of mine wrote in his journal, “but I will also have family and friends...who will expect me to be responsive to their needs and sorrows.”² Spirituality in law school, as I am thinking of it, would suggest that this student add clients to the list of those who expect a lawyer to be responsive to their needs—to learn how to do that, and in learning and doing figure out a way to hold on to the person who came to law school.

Part of this is helping a law student do something about the SOBs on the faculty. Our colleague Professor Kingsfield (of “Paper Chase”) handed a coin to the first-year Contracts student who had just tried to answer one of Kingsfield’s devious questions, and said, “Call your mother and tell her you will never be a lawyer.” My friend Bill Geimer, when he taught law at Washington and Lee, told of one of his teachers at Chapel Hill whose student questioned the ethics of a judicial decision they were talking about; the teacher said, “Ethics, schmethics. Ethics is for Episcopalians.” One of my students wrote in her journal, “There have been times when I just feel that I’m never going to say anything again, because every time I do I get in deeper and feel worse.”

Karl Llewelyn, in his celebrated old book “The Bramble Bush,” spoke to students such as the one Kingsfield sent to the phone; he said: “The hardest job is to top off your common sense, to knock your ethics into temporary anesthesia. Your view of social policy, your sense of justice—to knock these out of you along with woozy thinking.”³ In other words, law school says: Put aside what you bring from your family, your town, your closest friends, and your religious congregation—and learn to think like a lawyer. My sense of Spirituality is that its mission is to counter that bad instruction.

²Many of these journal entries are also in THOMAS L. SHAFFER AND ROBERT S. REDMOUNT, *LAWYERS, LAW STUDENTS, AND PEOPLE* (1977), and in Grismer and Shaffer, note 6 *infra*.

³KARL LLEWELYN, *THE BRAMBLE BUSH: ON OUR LAW AND ITS STUDY* (1951).

“In the end,” one of my students wrote in his journal, “what difference does it make if someone knows what your fears are or how you feel about them? I get a kind of monotonous and sickening feeling when I think about that. I want to leave.” Another student wrote, “I have seen what law school means, and it frightens me. People lose whatever humanity they possess, or allow it to become suppressed so they can make out.”

Modern students take warning from modern Kingsfields, even when the modern Kingsfields are somewhat more subtle. One of my students said, “I’m an infant in the study of law, but even a child recognizes extreme dangers.” Paper Chase’s Hart said Kingsfield ruled his mind, which, I guess, is what my student meant when he spoke of extreme dangers—and the worst of that is that the SOBs teach young people to be Kingsfields to one another: “The logical, rational lawyer appears to be gaining among my classmates,” said one of the student journals. “I wonder what my own reaction will be. I fear that perhaps my own weaknesses will draw me into a pattern similar to theirs. I am hoping that I can keep my head together.” He was assuming that practicing lawyers would be like his teachers. “Lawyers are so warped as to lose a human perspective,” he wrote. He said he needed a break.

In Hart’s story, four or five first-year law students managed to find limited company in their study group, but as the semester wore on it became clear that they were beginning to treat one another the way Kingsfield treated them in Contracts class. One my students wrote, “It’s easy to bury your love and let your selfish nature possess your actions, especially in the law-school atmosphere. The faces we put on for those we want to impress are faces that fulfill a need in each of us. But this need can be fulfilled in many other ways which speak of love and not selfishness. I hope that my life will speak” of love and not selfishness. Then she seemed to have paused a moment before continuing to write: “These heavy thoughts are a real drag, unless one is able to laugh at oneself and make light of those things that others consider heavy.”

Hart was not able at first to laugh and make light of Kingsfield, but he got a girl friend (played in the movie version by Lindsay Wagner). That helped. (I omit from consideration the television series based on the novel; I thought the Kingsfield character there was unacceptably cuddly.) In my case it was my good wife and our three little boys; we lived with other couples and families in the student-housing section Notre Dame built from old World-War-II prisoner of

war barracks, for veterans. My family helped me more than I was willing to let them know. They helped me avoid wondering, as another of my students did before writing: “I wonder if one could be a lawyer and live ‘outside the law’ to some degree. I’ve seen...people sacrifice everything for their jobs—and in the end they find out they really didn’t like the jobs.”

I think the student I just quoted was wondering also whether law practice is like law school. If I had known enough to respond helpfully in those days, I would have said—Well, law practice is like law school somewhat, but there are fewer SOBs there. I am now, in my old age, a legal-aid lawyer in a rust-belt Midwestern community with a Bar of about a thousand, few of whom are what this student feared he would become. We have a few SOBs certainly, and we have had a few judges who qualified. One of them, before whom I had many stressful moments, has died. I look at his portrait on the courthouse wall, and I wish him well, wherever he is. But I’m glad he is out of there.

“Spirituality,” as I am defining it—helping our students get in touch with their feelings, to grow, to accept themselves as children of God—has an educational agenda as well as this therapeutic agenda. I suppose the method of Spirituality in law school is connecting students with their spiritual selves, but the object is to help them be humane to the clients they will serve. It is important to see this education as a dimension of Spirituality, because seeing it is how the topic can take clients into account. I first began to see this dimension when I got interested in teaching counseling in law school. I went to Joe Simons, a young priest-psychologist who worked in the counseling center at Notre Dame and asked him to help me plan a course in legal counseling. He asked me whether I wanted my students to know about Freud or to be sensitized. I opted for sensitized, and he offered to co-teach the seminar. (If Joe and I had had to put our goals into a syllabus, we would have said that sensitivity, like Spirituality, aims at putting the learner in touch with her own feelings, so that she can learn to pay attention to the feelings of her clients. and it operates—both as learning and, incidentally, therapeutically—person to person.)

Our course was called “Psychological Aspects of Legal Counseling.” The students came to call it the Psychedelic Seminar, probably because we taught it as a Rogerian encounter group, maybe, too, because we invited the wives of students to join us. (Notre Dame Law School was all men in those days—not even any nuns. It is no longer all men, thank God.) My wife Nancy

joined in, as did a colleague of Joe Simons, Sister Jeanne Reidy. Our method, faithful to Rogerian dogma, was person to person. When we met for our first session, no one set the agenda; neither Joe nor I said anything. We sat there in silence until one of the students spoke up, and then we proceeded to talk about what that student said. That is the way Carl Rogers started his therapy sessions, too; I have him on tape. He said, “I personally don’t think much of trying to give insights to another person. I think that either frightening or futile.”⁴

The results were certainly educational, and, unlike the rest of law school, they were personal: Those young couples, no longer young, have been friends of Nancy’s and mine for almost forty years--very close friends some of them. After fifty years in legal education, the Psychedelic Seminar remains my favorite bit of teaching. Joe Simons and Jeanne Reidy fell in love, by the way; they left religious life, got married, moved to California, taught college courses, and wrote books together on humanistic psychology.⁵ Having lost our academic colleagues to romance, the next year Nancy and I signed up another young psychologist-priest to work with us—Father Bob Grismer. Bob and I published the results.⁶

I have used what I learned from such friends in courses with other titles. I use psychedelic devices in bits and pieces in teaching Property and Wills and Trusts and business; in orientation sessions with incoming students; and in CLE programs for practicing lawyers. My own experience is that a human-relations approach to teaching offers an alternative to being an SOB, which I admit I have tried, and which I am not good at. My experience has been like that of Elwood P. Dowd, friend of the giant rabbit (actually a pooka) “Harvey.” Dr. Chumley criticized Elwood for lacking righteous indignation: Elwood said, “My mother told me, ‘Elwood, in this life, you can be oh, so smart, or oh, so pleasant.’ I have tried smart. I recommend

⁴See generally CARL ROGERS, CLIENT-CENTERED THERAPY (1951), and ON BECOMING A PERSON (1961).

⁵JOSEPH SIMONS AND JEANNE REIDY, WISDOM’S CHILD (1969); THE RISK OF FREEDOM (1970); THE HUMAN ART OF COUNSELING (1971). See also JOSEPH B. SIMONS, C.S.C., RETREAT DYNAMICS (1967), and JOSEPH SIMONS, C.S.C., AND JEANNE REIDY, C.H.M., THE RISK OF LOVING (1968).

⁶Robert T. Grismer and Thomas L. Shaffer, “Experience-Based Teaching Methods in Legal Counseling,” 19 Cleveland State Law Review 448 (1970).

pleasant.”⁷

Joe Simons and I did not tell the Dean that what we were after was sensitivity. We said it was “skills training,” and then we found out that it really was. At least it was when you remember that most lawyers spend most of their time with clients, and find that lawyers who treat people well do better than those who don’t. One of our students went down town and, he said, “talked to a lot of lawyers.” He came back to report that “some of them I am just...turned off to. Because I think they’re only there to hear their own words.” We at least taught him to know it when he saw it.

Another wrote, “It seems to me that, if I could shut off my insides, I could be a reasonably successful lawyer. I could understand enough to get by and do rather well. But I can’t shut off my insides.” Another wrote, as we were finishing the first Psychedelic Seminar, “I find that I can be more alive with people I never thought I could be. And it doesn’t only relate to this group, because I’ve noticed it in terms of other people at school, people who normally I would just say ‘hi’ to. I’ve just taken time and sat down and talked to [them], even if it’s just for five minutes. I think [too that] it has sort of broken down this caste system that I had. I think I would tend to give people more of a chance [now], instead of categorizing them. I think if there’s anything this course has done, it has done that. It has [also] given me a sort of excuse to say what I needed to say; and at the same time taught me that I really don’t need an excuse.”

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If I know what “spirituality” means, our Psychedelic Seminar was a spiritual success. “People,” one of our students said, “find each other more interesting than books.” That’s how I became a fan of “T Groups” and trained as a group leader (what the Rogerians in those days called a “facilitator”). I did a fair amount of work with groups in business. And I expanded my own skills to borrow devices a pure Rogerian would not use: I have used those unorthodox devices in teaching mainline law-school courses, and with groups of student-lawyers in the Clinic. Some of those deviant experiences:

⁷MARY CHASE, HARVEY (1953).

Group Building. One way to use these methods in a large class is to build groups, and one way to build groups is to give each group, as it builds from three to about twelve, interpersonal tasks. Suppose, for example, I have fifty students and I want them to practice the counseling skill of “active listening.” After a very brief introduction that shows some technique (maybe from the Carl Rogers tape),⁸ explains that the skill turns on what Rogers called “unconditional positive regard,” useful when the agenda is talking to people about their wills:

–Start with groups of three (and there is some value in letting students take the risk of forming their own groups of three)—one person (given a script on the side) to be the client and describe what she is bringing to her lawyer—to, that is, be the star in a psychodrama; one to be the lawyer; and one to observe and comment (later) on what the lawyer did.

–The observer is there to listen to the lawyer tell her how he did, and to tell him what she thinks, and the client is there to be asked what she thinks.

–Then each group of three joins another group of three and the six of them talk together about how they have done. Then six to six, and maybe a visit from the teacher to help continue what the psychologists call “processing.”

(The selfish personal misgiving I have from group-building is that it gets lonely not being in the middle of things from the first. The biggest pay-off is I that I learn a lot when I have enough sense to pay attention to the groups of twelve.)

Journals. All of the quotations I have used here have been from student journals (and I use them with permission). My friend, colleague, and teacher Bob Rodes has become a master of the journal device, in his required third-year course in Legal Ethics. Each of Bob’s eighty or ninety students gives him a journal entry every week. Bob carries bundles of journals to his office, around the school, and home with him. He writes responses in the margins and returns each marked-up journal before the next class. When (as in Bob’s case) the only point of evaluation is whether the journal writer is being faithful to his own task, journals are an avenue to self-awareness, and that is what Spirituality aims for.

When I followed Bob’s example, as I taught “professional responsibility” at Valparaiso one recent year, I identified a theme or topic from the weekly submissions I got, identified four

⁸Note 9 infra.

or five student submissions that addressed the theme or topic, and set up a panel of the writers to present their ideas (from behind a panel-of-experts table in the front of the room) to the class—for discussion among themselves and with the rest of the class. On a good day it was kind of like a break-out session at an A.A.L.S. meeting.

Pencil and Paper. Personal questions and mental exercises in books put students in touch with their own feelings and the feelings of their clients. These are not as good as working with real people in the Clinic, of course; nor are they as good as group methods in the law school; but they turn the agenda to the personal and interpersonal, and they help a lawyer get in touch with what she is up do. There are course-oriented examples in Carol Mooney’s, Amy Boettcher’s, and my book “The Planning and Drafting of Wills and Trusts,” and in Jim Elkins’s and my Nutshell on legal interviewing and counseling. Here’s an example that came out of first considering Rogers’s active-listening practice and then comparing the lawyer skills exalted in Casner and Leach’s classic casebook in Property with what my co-authors Jim Elkins and Bob Redmount⁹ learned from Rogers and came to see as legal counseling skills:

property lawyer

fact conscious

relevance conscious

foresightful

legal counselor

perceptive to verbal and
non-verbal signals

empathic, congruent

resilient

⁹See the active-listening exercise in THOMAS L. SHAFFER AND JAMES R. ELKINS, LEGAL INTERVIEWING AND COUNSELING IN A NUTSHELL 65 (4th ed. 2005). See also Sherman J. Clark, Law as Communitarian Virtue Ethics, ___ Buffalo Law Review ___ (200_), at ___:

Or do we want to reach people? If so, we may need an occasion to lay aside the comforting water-tightness of our empirical demonstrations and the appealing order of our normative systems. We may need to find a way to talk to people about what the law means to them.

comprehensive
verbally sophisticated
orally aggressive
thorough

listening
open
reflective, accurate in summarizing
accepting and caring

I have come up with pencil-and-paper exercises that are meant to alert students to the human dimensions of property law and of the law of wills, trusts, and future interests. They are based on practice experience as well as psychological and clinical studies on death attitudes, attitudes toward property, and attitudes toward being dependent (as a client is asked to be when she visits a lawyer to, say, clear title to her home or make her will). (These are in our planning and drafting book, now in its fourth edition.) In the wills-trusts course, and in working with student-lawyers who do wills for people in the Clinic, the doctrinal agenda is that a client making her will cannot take it with her; she cannot even visit it later to see how it is being used; and she is not going to have to pay taxes on it. Her lawyer needs, in my view, to stop and think what the law-office job is about. He should not guess at what the real, live-for-now, human agenda is. He should find out about that from his client; and his client may have to learn from him to take on the task of explaining what the agenda is.

(I think of an old friend, a pillar at the Bar who taught in the law school, who was asked by a grandmother how to distribute her property among two living children and the children of a deceased child who had left her three grandchildren. My friend did not skip a beat. “What you do,” he said, “is give a third to each of your children and a ninth to each grandchild. That’s the way it’s done.” He turned over a rich human adventure to the English Statute of Distributions of 1663.) It was as if, to quote the poet, he had his lunch eaten by a threshing machine.

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This is an aging law teacher’s take on Spirituality. It needs to have appended to it a theological warning suggested by Rabbi Arnold Jacob Wolf: “Something profound is missing” in spirituality, he said, “and I believe it is precisely the communal, the historical, [for example,] the great Jewish Legacy of collective social responsibility. We get so mired in the self that we are losing sight of the sacred,”¹⁰ notably the sacred other that is right in front of us—student in our

¹⁰Arnold Jacob Wolf, “Against Spirituality,” ___ JUDAISM 362 (___). See also Frederick Mark Gedicks, “Spirituality, Fundamentalism, Liberty: Religion at the End of

case–client in our student’s case. Spirituality invites lonely individuality and the mistake that says, as the suicidal philosopher in the Woody Allen movie thought, that what each of us is the sum total of his lonely choices: One of the lessons I have taken from my adventures in humanistic psychology is that, while my best source in learning about people is my self, the best place to learn about myself is you.

It has occurred to me, working with student-lawyers in real-client wills cases, that Rabbi Wolf’s warning discourages the battery of questions that “estate-planning” lawyers seem to be taught to visit on their clients. (Some even use questionnaires, as if one’s client were at the welfare office filling out forms rather than talking to—talking to—a lawyer.) There is something about planning to be a lawyer, or about “Socratic” instruction in law school, or about lawyers on television, that tends to interrogation rather than toward interest and concern. How about instead of saying to the person who wants to make a will, “Tell me about your family.... Tell me about your property.... Let’s talk about what is to happen after you die”? Especially when the agenda in a will interview tends toward the touching, active listening is a powerful skill to have, if only because it is inherently sympathetic.

The other day, one of my charges in the Clinic came to me concerned because her client, a late-middle-aged widow, kept changing her mind as our student lawyer came up with will drafts for her. The student-lawyer, frustrated with what she thought was a client who wasted her busy-law-student’s time, asked me, “Does the Clinic have policies on clients who keep changing their minds?” This young woman is a warm, sensitive person; she has no problem respecting her

Modernity,” 54 DePaul Law Review 1197 (2005), and Eolene M. Boyd-MacMillan, “Awkward Relations: Should the Field of Spirituality Distance Itself from Theology?” Bulletin, C.S.S.R., Sept. And Nov. 2004, p. 61; and Professor Marie Failinger’s positive observation in the Newsletter of the A.A.L.S. Professional Responsibility Section (Fall, 2005, p. 3): “A...dilemma for us is to broaden our students’ imaginations about how they can find or create the kind of community they need to sustain their professional lives.”

clients—but, as I say, she was frustrated with this client, and would have liked to have a policy to invoke. Under some inspiration or other, I asked my young friend, “How long has it been since this lady’s husband died?” My young friend answered, “Thirteen months.” And with uncharacteristic Jungian insight, I thought to say, “She’s grieving.” Spirituality would say it would have been a good idea to consult my Jungian self sooner and to suggest that my young friend begin her first meeting with her client by offering to talk about her client’s recent widowhood, about how she was proceeding with what the counselors call her “grief work.”

I thought later about my own talking with clients who have had a hard time making up their minds on distribution among adult children, and even on restrictions on distribution to one child when the shares are equal. (The empirical data has suggested for decades that American will makers think it is immoral to distribute their wealth unequally among children, a substantial number of whom think it is immoral to impose restrictions—things such as spendthrift clauses on trust distributions—on some children but not on others.) I thought of a client of mine, a late-middle-aged mother like my young friend’s client, who burst into tears at the prospect of imposing a trust on the share going to one of three children who could not hold on to his money.

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Conclusion. What I want to say to my student in the whirlwind, as her house heads through the air for Oz, is in one way or another, this:

Tending to your spirit will legitimate your aspirations in coming among law teachers.

Tending to your spirit is a way to learn lawyer skills that are at least as vital to your professional life as drafting and cross-examination are.

Tending to your spirit builds relationships, and relationships are not only a way to be; they are a way to learn how to be.

And: I hope to be here to help you find ways to tend to your spirit, woozy thinking and all.