

The Harvard Law Record

HLRECORD.ORG

INDEPENDENT AT HARVARD LAW SCHOOL SINCE 1946

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The Difference between Thought and Opinion

Welcome to Harvard Law School! Welcome to a place that is going to teach you about the law – and, if you let it, about yourself. You worked incredibly hard to come here. Enjoy it. Make the most of it.

My name is Robert. I came to HLS after studying chemical engineering because I want to work and study at the intersection of law and technology. If your goals are different, broader or narrower, loftier or more pragmatic, set in stone or subject to

change, that is great! But every so often, it may be worth pausing to ask what you personally want to get out of this place.

You will encounter many people here and, along with them, many different ways of looking at the world. Law school does a pretty good job providing us with opportunities to think about what we think. Given the topics that we discuss, both in class and beyond, you will inevitably have the type of disagreement that forces

you to confront topics very close to home. This is hard.

To say that all we know is that we know nothing may be “Socratic”, but it is also an oversimplification. Still, as humans, somewhat inevitably, we have a limited perspective. When we encounter disagreement about topics we feel strongly about, it is very hard to prioritize “productive dialogue”. It is easy to cling to our beliefs, to our opinions. Yet, doing so deprives us of an opportunity to

question ourselves, to learn about and refine how we look at the world. It can also fill rooms with an energy that makes it hard for others to disagree constructively. As you embark on this journey, don’t forget why you are here but do keep an open mind – be wary of opinions you do not like to question – and try hard to leave wiser than you arrived.

Robert Mahari, Editor in Chief – Harvard Law Record

Interview with Professor Carol Steiker

The Record: Professor Steiker, did you always know you wanted to teach criminal justice, and how did you end up at HLS?

Prof. Steiker: When I was growing up, I did not want to be a law professor; I did not even want to be a lawyer! All the time people would ask me, “what do you want to be when you grow up?” My answer was: a writer. I wanted to be a writer. I came to Harvard College where I concentrated in history and literature. It is a unique major. I loved it, and I decided I wanted to be a professor. But I was also very interested in politics and in the world and I worried about being a professor. Even though I loved the idea, I was concerned about being too ivory-towered, not being relevant enough. But I thought that law professors write about justice. They write about how the world ought to be, and that is what I thought I wanted to do. So, I applied to law school and came here. When anyone asked what I wanted to do with my degree, I’d say, I want to be a law professor.

I thought that law professors write about justice. They write about how the world ought to be, and that is what I thought I wanted to do.

While it is sometimes hard to recall when exactly you decided to go down a certain path, I know for a fact that I wanted to be a professor from my first week at law school. There was a colleague from one of my college classes that I ran into during one of my first weeks at law school. He was also in my law school class. He had gone to medical school after college while I had accepted a fellowship to study French poetry in France. We ran into each other under the International Law Library, near the soda machines right down there. He asked me, “what are you doing here? I thought you were studying French poetry.” It turns out we had both decided we wanted to be law professors. That colleague was Einer Elhauge, and he, too, ended up on the HLS faculty. While I knew that I wanted to be a law professor, I did not know I wanted to focus on criminal justice. At that time, I knew nothing about criminal justice. It was not even on my radar. I had been very interested in women’s rights. I went to college in the late 1970s, so this was when the women’s movement was happening, and I was very interested in civil rights and racial justice. During law school, in the 1980s, I started to become interested in criminal justice. Because it seemed to me – this is in the middle of the ramp up to mass incarceration – that criminal justice was one of the main engines driving inequality in our society.

The Record: What was your biggest take-away during your time at law school?

Prof. Steiker: Even though I wanted to be a law professor, I did not think I was going to like law school itself, because I thought that law school is like a trade school, it is where you learn to become a lawyer and it will not be as intellectually interesting as studying history and literature had been. However, I was very pleasantly surprised, perhaps even shocked, by how intellectually engaging this law school was. I loved law school, I thought it was fascinating. I had many extremely interesting

professors. And I remember that one of the things that solidified my desire to become a law professor was that one of the professors I had was Martha Minow, who was essentially a baby professor back then. She was an assistant professor and had only been here for a couple of years. I remember asking her, do you like being a law professor? And she said instantly, without missing a beat, “I love it!” I even remember where her office was, and I can just picture her, her face lighting up and saying, “I love it”. After HLS I clerked for two years at the appellate level, at the D.C. Circuit and then at the Supreme Court. First for Judge J. Skelly Wright on the D.C. Circuit, a great liberal lion of the D.C. Circuit, and then for Justice Thurgood Marshall at the U.S. Supreme Court. And I thought, if I am going to become a law professor, and if I am going to teach and write about criminal justice, I need to learn some more about the criminal justice system itself. While I was at law school, the one thing I did not do much of was clinical education, although I did belong to, and had worked a little bit for, the Harvard Defenders. Yet, I was very involved with the Law Review and it was simply not possible – or at least it did not seem to be possible to me – to do both. So I didn’t have much relevant experience, did not know much about the criminal justice system. I felt like I should change that. So, I joined the D.C. Public Defender Service and worked there for four years before I came back here to teach.

The Record: And then you eventually developed a focus on capital punishment.

Prof. Steiker: That particular interest arose during my second clerkship when I clerked for Thurgood Marshall because he cared a lot about the capital cases. He and Justice Brennan dissented in every single capital case that did not otherwise yield a reversal. He believed that capital punishment was unconstitutional *per se*, as did Brennan. They were the only two voices on the court who did at that time. When I first started my clerkship, the outgoing clerks told us, “you guys really need to learn the Court’s capital cases, because the boss” – that’s what we all used to call him – “cares a great deal about those.” And they handed us these two giant black three-ring binders that had all of the Court’s capital cases up to that point in them.

I found that stuff really, really interesting, and that is where my interest in capital punishment started. When I joined the faculty here in 1992, the dean at the time, Bob Clark, said to me, “we want you to teach Criminal Law, and we want you to teach Criminal Procedure, but you can also teach a seminar on any topic of your choice.” And I immediately thought, a seminar on any topic of my choice? How about capital punishment? So, I started teaching a seminar on that and about ten years later, I turned it into a course. And about five years after that, I added a clinical externship component to it.

The Record: Working on such a morally and politically charged topic that puts the U.S. in a global spotlight must be quite difficult. How did you decide to dedicate a significant portion of your life to this particular topic?

Prof. Steiker: I built it over time. Part of it was because of my younger brother, Jordan Steiker, who also went to Harvard Law School. He was two years behind me in law school, so he was a 1L when I was a 3L. We shared an apartment in Somerville while we were here. He also clerked for Justice Marshall two years after I did. But unlike me, he went immediately into the legal academy upon finishing his clerkship. He actually became senior to me in the academy: he became a professor two years

before I did. He used to call me up on the phone, and say, “Hello, this is Professor Steiker, is Assistant Professor Steiker there?”

The September of the year I started teaching, I got a call from the Yale Law Journal, and they said, “we have a book review that we wanted to publish in December and the person who was supposed to write it dropped out. You could write it on whatever book you want. And we promise we will publish it, but you have to get it to us in four weeks.” And I said, “I don’t know, can I get back to you?” And they said, “this afternoon you can get back to us.” I hung up with them, called my brother and told him “I just got an offer to publish a book review, but I don’t know. I just started teaching, I am working really hard on my classes and my teaching notes, I just don’t know if I can do this.” He said that I could not turn down a guaranteed publication in the Yale Law Journal in my first semester. I told him that I hadn’t even read any books lately and he said, “sure you have, we read that book over the summer, we both read that book about the death penalty.” The book he was referring to was not academic, it was the story of a woman on death row in Texas, but I told him that, yes, I could probably do something with that. He was on leave at the time and he offered to come up to HLS. I called Yale back, my brother came here, and in the end, we wrote something so extensive they had to call it a review essay – it went beyond the bounds of an ordinary book review. Looking back, it actually wasn’t that good a piece, but it was full of the type of ideas you get when young scholars are thinking about an issue. Since that piece,

I do think that it seems to have become harder for people to disagree about something that is important to them without vilifying the person they disagree with.

my brother and I have been writing together for almost 25 years. We have also done some litigation work together – he is based in Texas – and this has become our mutual project, and a tribute to Justice Marshall.

The Record: You clearly have a very close relationship with your brother, what are your thoughts on family and family relationships?

Prof. Steiker: My brother and I like to say that we are like a walking Rorschach test for people’s family relationships. For one, when people who do not know us meet us at conferences, they assume we are a couple. After all, we have the same name. It is interesting to me that, when you see people of the same age, with the same name, you always assume that they are married and not siblings. People sometimes ask, “how did the two of you meet?” and I always say, “my parents brought him home from the hospital.”

When people learn that we are actually siblings, they react in one of two ways: they either say, “oh, that’s so great” or they say, “I could never!” People have very different relationships with their siblings. One thing that is good about working with a sibling is that we are going to be siblings no matter what. We can yell at each other – and we do – and disagree with each other – and we do that, too. But it is not going to affect the underlying relationship.



CREDIT: MARTHA STEWART

I mean, we are blood. There is also a degree to which – because even though he is younger just by a little bit, 18 months – I am unbearably bossy, but he puts up with me in a way that I do not think many other people could. Just because he is used to me being unbearably bossy, because I am his older sister.

The Record: On that subject of disagreement, in one of your law review articles you name two of your colleagues in the very first line and disagree with them throughout the rest of the piece. In law school we disagree all the time. As an academic and as a pedagogue, what are your thoughts on how we should disagree with each other?

Prof. Steiker: That is such a great question, I really love this question because I do think that it seems to have become harder for people to disagree about something that is important to them without vilifying the person they disagree with. And one of the things that is so great about universities is that they are devoted to the truth, and to the idea that truth emerges out of robust debate and disagreement. It is so important that this place be a site for that, and that those habits and experiences accompany people for the rest of their lives. When I think about this, I often think about my late colleague, William Stuntz, who was one of my closest friends on the faculty. He died of cancer in his early 50s and I miss him all the time. One of the things I really loved about him was how much he enjoyed being disagreed with. He was used to it because he was unusual in the sense that he was an Evangelical Christian in a place where that is not a common thing. He also had some very radical views that would be embraced by the left, but then he also had some remarkably conservative views. I think that, in general, he was more of a small-c conservative in a lot of the ways that he looked at the world. He absolutely liked nothing better than for people to tell him how and why he was wrong. And he was just delighted, truly delighted, to hear other people’s views. He was always thinking and rethinking his own thoughts. I just learned so much from the lovely way

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that he invited, and reveled in, pushing and pulling and turning thoughts over and over and over. He was such a great model for that. He and I co-taught some of the time and I can still hear him and see him in the classroom. Sometimes when I feel I haven’t done that well in the classroom, I will go back to my office and think, what would Bill have done?

So how should we disagree with one another? I do not know if there is a clear answer, but there is one piece of advice – really listen! Another is perhaps to try to think about times that you changed your own mind and realized that you were wrong about something, or at least only partially right. That helps me when I am struggling to be forbearing and really listen to something that I feel in my heart has just got to be wrong. This is not easy, and it is not easy not to rush to push away ideas that you think just have to be wrong, as opposed to really thinking them through and thinking about what you can learn from them. And to talk in a non-defensive, non-dismissive way with people who have fundamentally different views.

The Record: Another thing that we struggle to do in law school, and as lawyers, is making mistakes. You gave a Last Lecture talk where you wished the outgoing class much success, many mistakes, and fortuitous failures. How do we square a lawyers’ natural risk aversion with the need to make mistakes?

Prof. Steiker: That’s another great question. I mean, I think anyone who never makes a mistake is just not reaching high enough. If you never make a mistake, it just means that you are doing things that are too easy for you. But I do think that law students – and Harvard Law students in particular – are very high-achieving and are used to being high-achieving. They are worried more than most about not being great, or not being the best at what they do. I think this makes people less willing to risk making mistakes. But it is hard to talk people out of that sentiment. I remember one of my kids told me about an elementary school

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Advice from the Harvard Law Women’s Law Association

Dear 1L Women,
Some advice from the Women’s Law Association, is best explained by Beyoncé hit song titles.

First and foremost, know that you are “Irreplaceable.” You, “Flawless” 1L, belong here: we are so grateful for the passion and brilliance you bring to this community. Never be “Sorry” for letting those passions drive your time here at HLS. While we know that “Ego,” may plague many a lawyer, for women it is very often the opposite: we are told to make ourselves small, to be “Nice,” to “Bow Down” to tradition, and to downplay our accomplishments for fear of coming off like a “Diva.”

But that cannot stand: we know you will “Rocket” to great heights, and as you do so, we encourage you to own your success here and share it unabashedly with our community. Women at HLS are “Boss,” thriving as some of our most driven and devoted leaders in academia, activism, mentorship, and pro bono and clinical work. We help drive this community “Forward,” and we can’t wait to see all that you, too, will accomplish here.

Now, in all “Honesty,” some days you might want to “Start Over” or “Disappear.” It may be a constant “Countdown” to the weekend, waiting to find yourself “Drunk in Love” (with the law). But know this: you can and will ace 1L. Because in the end, it’s girls who “Run the World.”

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The Record
is looking for 1L writers,
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Contact us at
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If you have a response
to any piece in
The Record,
email us at
editor@hlrecord.org.

American Constitution Society (ACS)

Welcome 1Ls! We are the American Constitution Society (ACS), a big tent progressive organization working at the intersection of law and policy. In the spirit of being pragmatic policy wonks, here's a list of operational things we didn't figure out till way too late into 1L:

- The HLS printers have a hidden fax setting (for the old school judges/employers who require you fax things)
- In spring term, you'll all have to write a brief for Legal Writing and you'll all inevitably pull an all-nighter. The printers in WCC and Langdell will run out of paper by around 2am – go to the 3rd floor journals office (which you all have swipe access to) and take reams of paper from their cabinet to feed into the downstairs printers.
- In the main Harkness dining area, you'll see cabinets under the station where you get condiments and napkins. Those cabinets are always unlocked and come in handy when you need a fork for your UberEats delivery that came at midnight with no utensils.
- Book WCC study rooms at myrooms.law.harvard.edu. Far better than the stress of the library and almost as silent.
- For an affordable lunch spot other than Cambridge Common, check out Grendel's! They have a super cheap lunch special.
- Use TooDope and HLS Intel for outlines, exam answers, used books, and course evaluations.
- Most of the student practice orgs have free coffee, so if you don't like the free morning Hark coffee or Langdell coffee, go stalk PLAP or TAP's office.
- New Hampshire is only about an hour away, so go see the presidential candidates in person! Someone gives a speech nearly every week, and HKS typically has free transportation.
- Ask 2Ls and 3Ls for help. Assuming you know what you're doing is the worst way of approaching 1L. No question is too dumb! Radhe Patel and the 2019-2020 ACS Board

Harassment Assault Law-Student Team (HALT)

Dos and Don'ts for 1Ls Interested in Social Justice

- Do:
1. Keep an open mind about your interests! You don't need to commit to a practice area on Day 1.
 2. Prioritize self-care. Fighting the good fight is strenuous, and HLS does not encourage prioritizing mental health.
 3. Speak up when your experience is relevant, and listen when it isn't. Don't:
1. Feel the need to join every organization and fight for every cause. The world is a mess; focus on using your skills to fix one thing and fix it right.
 2. Worry too much about what other people are doing. Other people doing great work doesn't make your work less important.

Tax Law and Financial Regulation Students Association

From the Harvard Law School Tax Law and Financial Regulation Students Association (TaxFin), welcome to the Harvard Law School community and to the amazing journey that you are beginning. Graduation may seem like an abstraction, but, in fact, it is right around the corner. Your years on campus will fly by. Make the most of every moment—even the stressful ones—because before you know it, you'll be walking across the stage in front of Langdell to receive your diploma and off you'll go to another beginning. Use the tough times as an opportunity to bond with your classmates and revel in all the positive experiences you will have. Soon it will all be a distant memory.

La Alianza

Advice and Random Thoughts on 1L

1. Write down 2 or 3 priorities for the year (i.e., get direct services experience, take care of family, do all readings, make friends). When you're overwhelmed or feel yourself swept up in the anxiety of the crowd, look back at your list.
2. There's lots of free candy at this school. The most easily accessible between classes is in the Dean of Students' office on the third floor, or the Office of Public Interest Advising on the fourth floor.
3. There's trivia at the pub every Wednesday.
4. Trust yourself – you got yourself here, and you can get yourself through.

5. Leaving Cambridge every once in a while, even for an afternoon, will make the year more enjoyable.
6. Know that a lot of the learning you'll do this year won't be from your professors. Engage with the people around you – section-mates with different backgrounds and experiences, custodial staff, neighbors, clients, students in other graduate schools, LLMS.
7. Affinity groups and student practice organizations can be a source of comfort and support during stressful times (they were for us!). Also, they're a great way to meet 2Ls and 3Ls who can answer questions about classes, professors, and legal work.

HLS Antitrust Association

Law school is a vortex. If you stop paying attention, you'll get sucked onto a conveyer belt. Swim against the current. Swim towards whatever you came here for. As leaders of a new student organization, we want to stress that Harvard's resources are at your disposal and you shouldn't hesitate to take a gamble on things you care about. We found out that there was a November deadline for creating new student organizations TWO DAYS before the deadline. Until then, we hadn't considered starting an organization, but we decided to haphazardly pull together the materials and shoot our shot.

We also want to encourage you to swim against the grain when it comes to what job you want out of law school. Harvard is a high-volume factory that is excellent at delivering corporate results en masse, and it will nudge you towards those results if you let it. At the same time, Harvard can open doors to jobs that will let you do good work for the world and pay off your debt. You are talented, and after paying ungodly amounts of money and sinking 3 years into a degree, you can do something that you're actually excited about instead of something you hope will give you access to maybe one doing something you might be excited about.

Harvard Law School Christian Fellowship

Welcome to law school Class of 2022! You have probably heard that law school is hard, and 1L year particularly so, whether you got that idea from *Legally Blonde*, *Paper Chase*, or a law student meme page. A bit nervous? That's natural and healthy. Excited? I hope you are. While you might be flooded with advice on how to succeed academically and eager to learn more about the law, there is nothing more important than taking care of yourself. Here are some tips from one survivor of 1L to the next to help you do just that.

1. Get into the habit of exercising. Exercise reduces stress level, counteracts the harmful effects of sitting all day, makes you sleep better, improves your memory, etc.
2. Have a network of support. No one can do law school alone. Get to know your section mates because they will be with you through all the ups and downs. Joining an

affinity group or student organization is a good way to start making friends outside of your section too. Make sure you also maintain friendships outside of law school. When you are stressing out about a misplaced comma, these are the people who will be there to remind you that everything will be ok.

3. Seek help when you need to. Make sure there are people you can reach out to for significant issues such as personal crises or financial worries. Mental health is prolific problem for lawyers, and unfortunately the problem may start as early as 1L. If you find yourself struggling, understand that many people are experiencing this, and never hesitate to seek help. The bottom line is that 1L year is a uniquely challenging and exciting year for most people. Make sure to take care of yourself, work hard, and remember to have lots of fun!

Korean Association of Harvard Law School (KAHLS)

Welcome! Please consider these words of advice as you begin your HLS journey:

- Prioritize self-care. It's crucial that you evaluate your well-being regularly. When stressed or overwhelmed, admit it and seek support. Doing so is a sign of strength, not weakness.
- Chart your own path and define your own success. At HLS, you may feel pressured to “follow the mainstream” in choosing classes, extracurricular activities, and jobs. You'll also hear a lot of “prestige” talk. Don't let others define what your law school experience should be like. Use your 1L year to explore possibilities and discover

what excites you. Each of us has the power to diversify the narrative of success at HLS.

- Remember that everything is optional. You need not join a journal/SPO, work as an RA, or attend particular events, unless you wish to. But be proactive in exploring your passion and take advantage of the incredible resources at HLS. Be curious and take initiative. And don't forget why you came to law school.
- Always study the law with a critical eye toward the persisting forms of discrimination and inequality in our legal system. Think carefully about how you can contribute to advancing social justice. Good luck!

HLS Student Government

Dear Class of 2022,
Welcome to Harvard Law School! We're Princess Daisy Akita and Daniel Egel-Weiss, your Student Body Co-Presidents, and we are thrilled to welcome you to the HLS Community. There is a reason you're here. Always remember that. Over the coming weeks (years, really) you will hear advice from several people who today may be strangers to you. Remember to put your reason for coming here above all else, and remember that your passions and goals are what made you worthy of being here. You can press ahead through the inevitable

uncertainties, and you will succeed.

During your time at HLS, you are bound to see some things that you like and some that you don't. The most important piece of advice we can offer is this: take ownership of your experience and seek to shape it for the better. HLS is not a static entity; it is a living, breathing, dynamic institution that morphs and transforms through the years. Strive to be part of this change, and make sure that HLS bears your imprint in some way by the time you depart.

Here's to a transformative and fulfilling year!
Princess Daisy & Daniel

Alliance for Reproductive Justice

Read. I know, you're looking at this right now and laughing because all you'll be doing in 1L is reading. But seriously, try to read something that isn't in a case book and is longer than a Tweet or Instagram post. Some ideal version of us would tell you to read fiction every night before bed. And I'm sure doing that would both help you sleep and expand your mind, but we aren't that into giving advice we could never follow

consistently. So just try to read something, anything, that isn't for law school and isn't news. It'll remind you who you were before law school, it'll keep you connected to the world outside of Harvard, and it will help you remember that reading can be joyful and transcendent.

P.S. We highly recommend the Cambridge Public Library. There's no need to spend any more on books than we already are.

Coalition of International Students and Global Affairs (CISGA)

Finding Home Away from Home

HLS's percentage of international students – a staggering 17% – is higher than any of its peers. HLS is working to create more global curricular offerings, extracurricular opportunities, and alumni networks, and as international students, we are a valued part of this community. Yet, from uncertainty about work visas to the novelty of being one of the first from your country to attend HLS, we also know that there are unique challenges facing international students.

CISGA is a space where you can get informal information and advice from international 2 and 3Ls, learn more about formal resources on campus, and build community. In addition, HLS has several country-based and regional affinity groups spanning

multiple identities. And, of course, our LLM class has historically been one of the most diverse in nationalities and cultures represented. We hope that you will take advantage of the global diversity within and outside HLS.

When classes or long-term career planning starts to feel overwhelming, know that we are here to support you. Every international student deserves to graduate with an experience they are proud of and a future they are excited about. Know that there is a community at CISGA that has your back.

Sabrina Singh, JD '20, Nepal
Ayoung Kim, JD '20, Korea
Matthew Farrell, JD '21, Canada
Jeff Ong, JD '20 Canada
Shuyu Sun, JD '21 China
Grace Zhu, JD '20 China

Harvard Federalist Society

Welcome to Harvard Law School! My name is Chance Fletcher, and I am the VP of Membership for the Harvard Federalist Society. We are a group of conservatives, moderates, and libertarians who seek to provide respectful, open, and challenging debate at HLS. Additionally, we offer mentorship, academic and career support, and a strong community.

We want to congratulate you on coming to HLS. While you are probably just starting your legal career, arriving at this point is the culmination of years of effort. You have also enjoyed the help of mentors, friends, and family along the way (and more than a little luck). So in addition to taking the time to celebrate and enjoy your achievement, it is worth commencing your time here with a sense of gratitude.

Harvard Association for Law and Business (HALB)

On behalf of the Harvard Association for Law and Business (HALB) – congratulations, and welcome to your 1L year!

1. Broaden your horizons (and eat free food) with lunchtime speaker events!

Don't (i) spend lunchtime alone with your books or (ii) pay for lunch! Whether you choose to attend events hosted by HALB or another organization, capture these incredible opportunities to meet distinguished speakers.

2. Remember the entire Harvard community.

Tap into the networks beyond your 1L Class! HALB strives to build bridges between law students and

other schools, organizations, and students pursuing interesting careers outside the law. Explore what the entire university has to offer.

3. Stay true, and gather the skills you need to impact the world.

Like any challenging experience, this first year of law school will test your mind as well as your heart. But that same inner strength that brought you here will be your strongest ally. Find inspiration in the people around you, and in the leaders and pioneers that Harvard attracts. HALB is available as a platform for you to meet the people who have the skills you want to build to change the world. Engage, and stay true to yourself.

Jewish Law Students Association

Finding a community at HLS may feel like a daunting task. As a 1L, your section will serve as a natural community during what can be a busy and overwhelming year. Take advantage of that built-in support system and also feel free to explore the many other communities at HLS. But remember that while some of your peers may get involved right away, that doesn't mean you have to. We're not going anywhere!

The rumors are true: law school can be stressful. Many see law students as hypercompetitive because we're motivated. But there's a difference between motivated and cutthroat. We are no experts in the human condition, but if, for some inexplicable reason, you are interested in our advice, we would urge you to be nice. From a purely practical perspective, it's unwise to alienate your future colleagues. On a more fundamental level, though, it's simply nice to be nice.

Harvard Law School is huge, but it is home to many kind people who form loose networks of wonderfully supportive communities. Welcome, and we look forward to meeting you!

National Security and Law Association

Harvard Law School is a shiny place, filled with shiny objects: journals, research assistant gigs, prizes, job opportunities, etc. And don't get us wrong; these are great things that you should pursue... *if* you want to. But time is short, and our advice is: spend your time intentionally. You came here for a reason, and you shouldn't forget it. If you want to work with tech start-ups, become a public defender in your hometown, or work on a political campaign, make sure you put yourself in a position to do it. Sometimes that might mean going after some of those lauded, shiny objects, but sometimes it will mean declining a seemingly great opportunity because there's something unconventional that better suits *your* unique interests.

For example, when former Ambassador to the UN, Samantha Power, was at HLS, she focused on researching a book about the war in Yugoslavia. A few short years later, she won a Pulitzer Prize for it. We encourage you to also find something you care about, prioritize it, and embrace going your own way over the next three years.

Interview with Professor Joi Ito

The Record: Can you tell me about your path and what made you interested in teaching a course at HLS?

Prof. Ito: Since my early days when I did commercial work, I always appreciated the importance of law and lawyers. This appreciation increased quite a bit when I joined the board and then became CEO of Creative Commons. Creative Commons was really about trying to balance commercial interests to lock up content with the opportunities of the internet. We were working with 60 or 70 international jurisdictions. For each of those, we had a local lead and we were trying to harmonize and port the Creative Commons licenses to these local jurisdictions. What was so interesting was that, in each country, we had to identify lawyers who also cared about free culture; who also cared about getting behind the Creative Commons' mission to create ways to provide easier and freer access to knowledge and allow genuine creativity online. The impact that we had once we were able to get law and social impact coordinated was interesting and very exciting to me. Most lawyers serve corporations that pursue commercial interests. It was fascinating to see how public interest lawyers got together and helped enable pro-social behavior that would not have been enabled otherwise without

their legal rigor. In the same way as you could not have the internet without engineers, we could not have this sort of free culture movement without lawyers.

I helped build the first internet service provider in Japan, and one of the companies I invested in was called HavenCo. It was an abandoned anti-aircraft platform, in the English Channel, that had been

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taken over by a family and declared independent. They built a server farm there, that was supposed to be extra-jurisdictional. Many of the early internet people really believed that the internet could be extra-jurisdictional. This whole idea of international law, and the law of the internet, is an area that my co-instructor, Jonathan Zittrain – JZ,

has a lot of experience in. The law of the internet was a prelude to many of the interesting issues that we have today. I do not think that the law is going to keep up with AI. AI is going to affect the law in many ways – including the practice of law, which is a rich area, and I believe it is also the area you are interested in. Our course is cross-listed at MIT and Harvard. Roughly half of our students are engineers and the other half are lawyers and policy people. I found it very interesting that the technical people tend to think that there has to be a law that fixes an issue while the lawyers think that we can fix the problem with technology. You end up realizing that neither side can fix the issue, really. In many ways, it may seem somewhat disappointing that the course does not end with a solution, it really ends with more confusion than it started with.

The Record: You once said that the MIT Media Lab seems to be a happier place than HLS because people are builders. Should lawyers aspire to be builders?

Prof. Ito: I think that lawyers can and should be builders! Even though public interest lawyers do exist, most lawyers are trained primarily to act in the interest of companies. There are obvious exceptions, but if you sit at a table, the lawyers are usually risk mitigators rather than adventurous



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forward-leaning builders – their job is usually to tell people why you cannot do something.

The law, as a medium of expression and production, is changing. Lawrence Lessig's book, *Code and Other Laws of Cyberspace* started to bring code and law closer together in the late nineties. Today, with smart contracts and other innovations, I think we are going to see code and law become substantially more connected.

One of my friends, Alexander Macgillivray, was the first product counsel at Google. Today, there are 891 product counsels on LinkedIn but no real training ground exists for these people. I talked to Martha Minow and others about the future of law schools

and law curricula and it seems possible that in the future there will be different sub-sections of law school: some where the law is used more as a creative tool and others where the law looks more like an audit instrument or a regulatory tool. I think you might also start seeing different disciplines emerge from this development. I could imagine that, if the ultimate goal were not to pass the bar exam and practice law but rather to know enough law to be dangerous, and to work closely with professional lawyers, things might start to look different.

The Record: You have thought a lot about measuring success – is there something we can improve about how we measure personal success in the law?

Prof. Ito: It is funny because in the afternoon I teach at the law school and in the mornings I teach a class called “Principles of Awareness”

Lawyers can and should be builders!

together with a monk named Tenzin. It is about exploring the inside and trying to understand your underlying motivations – to understand yourself. To ask, “why are we here?” and “why do we do this?” is immensely important. Very few students take both of my courses.

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teacher who “loves mistakes”. He would write mistakes on the board because he really wanted the kids to know that this is how you learn. So maybe we should write mistakes all over the blackboards here at Harvard Law School.

The Record: During the same talk you mentioned that we often imbue the choices we make during law school with undue importance and do not give enough importance to the choices we make afterwards. That said, there must be important choices that the incoming class will be making over the next three year – how do we know which choices are the important ones?

If you never make a mistake, it just means that you are doing things that are too easy for you.

Prof. Steiker: Maybe important is the wrong word. The choices people make in law school do not tend to be as consequential in the long term as some of the choices people make after law school. A summer commitment is not the same thing as a real job that you take for an indefinite future. A boyfriend or a girlfriend is not the same thing as a spouse. There are certain kinds of choices that tend to come a little bit later down the road. They are super important, simply because they are bigger commitments. Whereas law school is a great time to experiment in all of those domains. Unless you are already married, in which case it is not a good idea to experiment in those domains, probably.

There are a few things I would say to students. The first is about the idea of making mistakes, trying things that are beyond your comfort zone. Many students who feel a little uncomfortable with, say, quantitative analysis, avoid classes that are about economic analysis. We have a great Analytical Methods for Lawyers class, and they think, “well, I’m not good at that.” But school is the best time to experiment with something that you believe you are not good at. Or people who are very quantitative think, “I don’t want to take something touchy-feely like jurisprudence or critical perspectives, that’s just not me”. School is a great place – perhaps one of the last places, to be honest – where you can easily immerse yourself, expose yourself, and get guided in something that’s totally foreign to you. I think students tend to shy away from that rather than run towards it. Second, I will occasionally teach a reading group. Sometimes when I ask people to write a statement about why they want to be in the reading group, amazingly enough, some will say “I only need X number of credits to graduate, and so if I do a reading group, then I won’t have to go over the minimum number of credits that I need to graduate.” I am not thrilled to read such statements and I would generally argue that people should not be thinking that way. After all, somebody is paying a lot of money to be here.

While I am not suggesting that you should hugely overload yourself, you should try to wring every last drop you can out of this place. Many students leave money on the table. While you are here, come to office hours – professors are here waiting to talk to you. At least that is what I am doing when I have my office hours.

Most Harvard Law students are super involved and kind of overwork themselves, so maybe this is not really the advice most people need. But there is a lot of stuff to be done here. There are classes and there is meeting professors and getting to know your fellow students, there are extracurriculars. There is just so much available here. And I feel that people should try to get as much as they can out of it. This goes back to disagreeing with people because you should make friends with individuals who do not share your views. One person I was very close to in law school was very conservative, and we were quite good friends. And we would often have long conversations, trying to get to the bottom of why it is we thought so differently about pretty much everything. I did not think that those conversations were so unusual then, but as life has gone on, I see how much everyone, including myself, gravitates towards people who share your views. I discovered that it is hard to develop close friendships with people who are really different. But it was extremely valuable, and I still think back to some of those conversations. They helped me understand the world in a better way. It is amazing to me how much people cling to and gravitate to others who remind them of themselves; even here, where it is so easy to find people who are not at all like you.

It’s only if you look inside and are honest with yourself about what you want that you can be happy in your choice.

The Record: Regarding the choices people make, it seems that most of us come here to make the world a better place. However, most outgoing HLS students go on to work in corporate law. The path seems linear – a good GPA and LSAT get you in and then a good 1L performance gets you to the “right” firm. Many people, however, do not seem to be happy in the end. So, what is your advice on becoming a happy lawyer?

Prof. Steiker: I keep asking students, and I still do not really quite understand, why it is that so many people say they want to make the world a better place but end up going into corporate law. Because you could believe that you are making the world a better place by doing corporate law, but that is not at all what most people say when they come in. So, maybe their views change, and they think that the best way to make the world a better place is to go into corporate law. I think it is a choice that many people’s friends and families will view as prestigious, and no one loves a little prestige more than Harvard Law students, so there’s that. It is really astounding how much money

you can make. I do not think people totally get just how much money they could easily earn until they’re in law school, and it is a lot of money to say no to. People do have debt, which is a real thing.

But one thing I believe people do not know is that they do not have to do corporate law to be very financially comfortable. My husband and I are two fancy-pants graduates of Harvard Law School and Yale Law School. Me here, him there. We sometimes amuse ourselves by calculating how much money we could have earned had we thought that amassing a fortune was what we wanted to do. On the other hand, we live unbelievably comfortable lives, incredibly comfortable lives, without either of us doing corporate law. And I sometimes wonder if students do not have enough of those models in mind. It seems that they feel it’s either corporate law or peanuts. Sometimes that is the choice, but there is a whole spectrum in between. And there are lots of choices that are neither very high paying nor very low paying and perhaps people in those jobs are generally happier.

I am surrounded by lawyers – I am a lawyer, my husband is a lawyer, my two brothers are lawyers, his brother is a lawyer, his cousin is a lawyer. I have been teaching law students for more than 25 years, so I know a lot of lawyers, and have seen a lot of careers. And generally, it’s not that there are no happy corporate lawyers, there certainly are, but that is not, by any means, the category, or even one of the top three or four categories of lawyering, where I would say people are happiest.

My best advice – which has never been in print, I think – is that there are certain things you can get from your work. You can get money. You can get prestige. You can get the freedom to set your own agenda. You can get intellectual satisfaction. You can feel like you are contributing to the greater good of society. You can have power in society. But you cannot maximize all of those things at the same time. You have to choose which of those things are most important to you. You have to decide, and you have to be honest with yourself. Corporate law definitely maximizes the money aspect. To a certain extent, it also maximizes prestige and power. It is very low on freedom to set your own agenda. You cannot decide what you will do today, how much you will work today, tomorrow, next month, next year. People can argue about that, but it is probably not high on making the world a better place, because you are pursuing your clients’ agendas. Sometimes that will make the world a better place, sometimes it will decidedly not. And it may or may not be high in intellectual satisfaction, depending on the person and the kind of work. The work that I picked as an academic is not super high on remuneration. Not super high on power in the world. But it is very high on intellectual satisfaction. Very high on setting your own agenda. It is one of the few jobs for a lawyer that you can do that is not client-driven. It is driven purely by your own intellectual interests. And I have a high degree of freedom with my time. It might be high on prestige, Harvard is a prestigious place, but in a different way than corporate law. You have to know yourself, and know which things are really important to

you. And it’s only if you look inside and are honest with yourself about what you want that you can be happy in your choice.

The Record: It seems that the legal profession has not changed all that much over the last century. The world is quickly becoming more global and technological. How do you think the legal profession is going to change?

Prof. Steiker: Law is often a backward-facing practice: it looks to precedent, it looks to tradition. These are things that have always been part of the lawyer’s toolkit. And I think

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many people turn to law, either as lawyers or as activists, as a route to change. It can be frustrating to see how slowly things change. One of the things I look to, and I take great hope and comfort from, is an experience I had as a law student here when I wrote my note on gay rights. No one has been more surprised than I, even though this was something that I have followed with great interest, and participated in a little bit, how quickly things have moved in the U.S. towards LGBTQ rights, especially in terms of the generational attitudes towards LGBTQ rights. I have taken a lot of hope from that and I think we need to study how and why this happened, in order to see how legal tools can be crafted and used to bring about other change that seems to us to be too slow in coming.

The Record: Switching gears a bit – you have been in Cambridge for some time – where do you go to get away from things?

You never can make new old friends.

Prof. Steiker: When I was a fellow over at Radcliffe about five years ago, there was a little sunken garden in the Radcliffe yard that is one of my favorite spots in Cambridge. It’s a small, beautiful, little sunken garden, with a little fountain in it. Another great place to take a walk that’s also not too far is the Mount Auburn Cemetery. And the Arboretum in Boston, which is also owned by Harvard, is just an incredible place to walk around outside.

The Record: Do you have any extracurricular reading advice?

Prof. Steiker: Oh my God. I am an obsessive reader; I read, read, read all the time. There are some great law reads, if people have not read them. *Simple Justice*, by Richard

Gluger, is the story of the *Brown v. Board of Education* litigation and it reads like a novel. Some of the things that happened in it you would never believe except that they really happened. For example, when Brown was first argued and voted on, it was decided 5-4 the other way. Chief Justice Vinson was one of the votes the other way. Then he had a heart attack and died. The new Chief Justice, Earl Warren, came in and his vote went the other way, so now it was 5-4 the other way. He felt that this decision needed to have the moral authority of the court behind him. He twisted arms, and it came out 9-0, the way we are familiar with it. If someone said I am going to write this book about this topic, you’d be like, no, that’s so not realistic! But this is, in fact, what happened. Another book that also involves Justice Marshall is *Devil in the Grove*, it is about Thurgood Marshall and his representation of the Groveland defendants, some black men who had been falsely accused of raping a white woman in Groveland, Florida. This happened before Justice Marshall was a justice, before he was even a judge. It happened when he was a Legal Defense Fund lawyer. The book is by Gilbert King, and it won the Pulitzer. Terrific, terrific law read. One more, Heather Ann Thompson’s *Blood in the Water* is a historical account of the Attica prison uprising in the early 1970s and the aftermath of that. Just another incredible book.

The Record: Do you have any parting words of advice?

Prof. Steiker: I said before, don’t leave money on the table. But there are certainly plenty of law students who work themselves to the bone. I think you need to take care of yourself. For me, that involved reading outside of law school and being out in nature. Exercise is extremely important. Sleep, sleep, sleep! It is so important. I feel like law school is not a sprint, so you have to take care of yourself. Most of you are too young to realize that some of your friends from college and law school will be your friends for life. You should invest in those relationships, and you should maintain them over the years, because it doesn’t just happen, you have to work on it. It has been 30 years since my HLS graduation and I am really grateful for the friends that I have from law school, and the friendships that I have maintained – I often think of the saying “you never can make new old friends.”

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In law, just like in engineering, everything is about solving problems, assuming that we know what the problems are. We do not challenge whether we are even asking the right questions or whether we are solving the right problems. Engineers and lawyers are usually in the service of someone else who has predefined the problem. At the individual level, a lawyer could ask, “why am I doing this? Is it because my mother told me that, if I am not rich, I am stupid? Or because I am enjoying it?” If you are enjoying it, you should ask why that is. If it is just because you are trying to accumulate more stuff, then that, to me, is a little bit old-school.

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I believe that the world is more complex than that. Heterogeneity, people pursuing things for different reasons and resisting reduction of everything to mere quantitative metrics will help us tackle complex problems better. In that sense, engineering and law both tend to reduce the complexity of the real world to the measurable. Some people really want and need structure, and it is comforting to have measurable results. Whether it be grades, degrees or anything of the sort. However, we need some people to question things, because the law will not improve unless someone questions it. **The Record:** Earlier you mentioned Dean Martha Minow, who is one of many people who seem to be both friends and mentors of yours. How should we think about mentorship, and how have you thought about it? **Prof. Ito:** Mentorship is extremely important. I have been unlucky about a lot of things but the area in which I have been the luckiest was finding great mentors. And now, shifting from being mostly a mentee

to sometimes being a mentor, I think what is important about finding a good mentor is not just finding one but getting them to want to mentor you. If you are a busy mentor, you give a certain amount of attention to everyone in your class, but you really will give particular attention to those who will take your mentorship and convert it into something useful. Usually, that is a combination of them understanding what you have to contribute, of being articulate about it, and then trying to do something unusual with it. You need to figure out not only who the best mentors are but, as a mentee, you also need to understand what is interesting and different about what you yourself want to do and which mentors would be the most appropriate match. The good thing is, if you are at Harvard or at MIT, you can actually email any faculty member and they will usually respond to you. Then, the next question becomes, what does the relationship with them look like? **The Record:** In your Wired article, The Educational Tyranny of The Neurotypicals, you distinguish between places that are friendly to neurotypical people and those that are not. Do you find that law schools cater to the neurotypical? **Prof. Ito:** They cater to a certain kind of typical. There is definitely a personality type that is selected for in law school. This has a lot to do with what you want to be when you grow up and how you picture lawyers. If you are just a crazy person who wants to explore and fiddle around, you are probably not going to go to law school. I think that it would be interesting to think about a kind of law school, or about a track in law school, where the point is not to go through the pantheon of legal topics and to become a lawyer when you grow up. Instead, it could provide an opportunity to think about the law really as something that you fiddle around with. This could also look like what you are thinking about – conceiving of law as something fundamentally cross-disciplinary. **The Record:** Despite being an incredibly busy person, you have carved out time for personal hobbies such as scuba diving. How do you think about work/life balance? **Prof. Ito:** I definitely do less scuba diving than before I was at MIT. I used to go every single weekend – and since my daughter was born, my scuba diving has also been cut back. It is important to step outside of your

traditional routine, whatever that is, and to look at what you are doing from an entirely different perspective. Meeting new people, whether at a conference or while scuba diving, and explaining to them what you do gives you humility and forces you to explain what you do to people outside your field. Learning in a completely different context also allows you to reflect on what you are doing. Whether you are in law school or studying engineering at MIT, it is important to constantly question what you are doing from a different perspective.

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For me, scuba diving involves a certain mindfulness. Once you are underwater – unless you have ridiculously sophisticated gear – you cannot talk. Scuba diving might be the nerd version of getting into stillness because there is a lot of technology involved, but having stillness forced on you is interesting. I have advised students who never go out and whose coursework is so heavy that they really end up losing context. It is a waste because, all across campus, there are so many interesting people to meet. I was advising an undergrad whom I asked, “what do you want to do?” and they said, “I want to get passionate about something and do the shit out of it.” But when I asked what they were passionate about, they said they did not know yet. They had spent all their energy getting into MIT. Ultimately, that student figured out they wanted to pursue the arts and transferred out. You spend all this energy getting into law school and you might forget why you are there, so explaining to other people why you study law is a good way to reflect. **The Record:** Disagreement is inevitable, and valuable – especially in law school. Do you have ideas about how to disagree productively? **Prof. Ito:** This is an interesting question because a lot of the law I encounter – such as mediation – is

really the formalization of disagreement. In a sense, law is a technical way for people to disagree. I imagine that, when lawyers are arguing with each other, it is a lot like fencing: both sides have the same tools and the same rules. But when a lawyer disagrees with an engineer, it is like two religions clashing, where you do not even agree with the other group’s fundamental framework. Disagreements where paradigms clash are harder to resolve because they are very emotional – almost religious. What is really challenging, and probably really interesting, is to disagree with another reductionist quantitative discipline, such as engineering. But then, disagreeing with a totally qualitative person, like a social scientist, is even harder and more important. I would urge you to try. I do not think that the point is to disagree, I think the point is to try to take a disagreement and come to some sort of mutual, respectful understanding. **The Record:** In the spirit of encountering new people and thoughts, what should we read? **Prof. Ito:** I have a new book out that I will give you to read, it is called *Resisting Reduction*. Right now, a really important theme for me is race. One good book that I am currently reading is *White Fragility* by Robin DiAngelo. Ibram X. Kendi’s work is also interesting. He wrote a book called *Stamped from the Beginning*, and he has a new book

Understanding technology will be a requirement for the next generation of law and lawyers.

coming out called *How to be an Anti-Racist*, which is also an interesting read. Another one I recommend, by Ruha Benjamin, is called *Race After Technology: Abolitionist Tools for the New Jim Code*. The relationship between race and algorithms, and race and law, is hugely important. It is not going away, and we keep dancing around it. **The Record:** Do you have other parting words of advice? **Prof. Ito:** Understanding technology will be a requirement for the next generation of law and lawyers

– you are sort of Exhibit A. If you do not understand technology, you definitely cannot write laws nor will you provide a valuable service. A lot of lawyers became lawyers simply because they do not like math and code. But I do not think you can escape it. If you think that you can avoid it as a lawyer, I think that is a dumb mistake because technology has become such an integral part of how contemporary society works and how it is increasingly going to work. It might be easier for engineers to become lawyers than the other way around, but it is also never too late. Everybody should take as many courses related to technology as possible, or at least pay attention to and spend time understanding technology. This ties back to your earlier question about our class. One approach to the intersection of law and technology is to start working on projects that involve working with technologists. Simple things like multiparty computations or zero knowledge proofs allow you to do things that you could not do before. This fundamentally changes what you might put into a contract, or into a statute, because you can actually create a way to verify something effectively without sharing the underlying data. Just like the internet created this whole complexity around jurisdictions, modern cryptography will fundamentally change the way we think about resolving disputes, performing audits, or doing other things of a legal nature.

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Scales of Justice

- **Do:** Get involved. Join a student organization - it’s a great way to meet people outside your section.
- **Don’t:** Wear a big hat that blocks the view of the person sitting behind you.
- **Do:** Socialize with your section. Get to know them, because you’re going to spend a lot of time together this year.
- **Don’t:** Get angry when someone asks you to take off your big hat because they can’t see.
- **Do:** Participate in class. Don’t let the same four people dominate the conversation - speak up, because your voice matters too.
- **Don’t:** Spend your cold call

- talking about your big hat, even though it’s the biggest hat you’ve ever seen and you won it at a carnival.
- **Do:** Go to office hours. It’s the best way to build relationships with your professors, and you’ll be glad you did once it comes time to ask for letters of recommendation.
 - **Don’t:** Ask your professors to try on your giant, humongous hat, and if they politely demur by saying “no thank you, it’s too big,” say “well yeah, that’s the point, Einstein.”
 - **Do:** Ask your professors out to lunch. It’s more casual than office hours, and you get free lunch!

- **Don’t:** Go to the Chang Sho buffet and pile food into your massive hat, and then when you make eye contact with a waiter, wink at them while putting your finger to your lips, then put the hat back on your head and have chow mein spill out.
- **Do:** Be inclusive. Help make HLS a place where everyone feels welcome. Make your section a big tent.
- **Don’t:** Only invite people who compliment your enormous hat, even if you’re sure everyone is going to say something nice about it, like, “wow, what a big hat.”
- **Do:** Enjoy it.
- **Don’t:** Wear a small hat.

First Class

Dear 1Ls,
Remember: this is not normal. HLS is exceptional and elitist. Now, so are you. I invite you to think about what that means to you. You’ve always had talent, now you have privilege. Where will you put it to use? Which communities are excluded from this privilege? What voices are not heard in your 1L Criminal Law class? Sometimes you may feel like you don’t belong. That’s okay -- HLS is not normal. The majority of your peers may come from very different backgrounds than yours. Perhaps your perspective seems idiosyncratic.

For me, First Class was a place to be reminded of these things and feel grounded. First Class is the organization for first generation college students and low-income students. We come from families of factory workers, waiters and waitresses, and families living on food stamps. It may not feel normal that we’re here, but we’re here. If you are also a first generation and/or low-income student, I hope that you don’t forget to feel proud of yourself. Being here is enough. You are exceptional. Be unique.

Best wishes,
HLS First Class

Texas Club Tips

- Do’s of 1L
- **Do** get outside of your comfort zone! Try new things, join new groups, and meet new people. Take advantage of everything that HLS has to offer.
 - **Do** remember to relax by attending student org events with free barbecue, beverages, and bluebell ice cream.
 - **Do** make time to meet people and have some fun! Part of the value of HLS is the network you gain access to. Your friends here will do some amazing things and you shouldn’t feel guilty for spending time with them away from casebooks.

- **Do** compare cost of living and state income taxes across the country when considering job markets. Don’t’s of 1L
- **Don’t** forget that HLS exists outside of your section. This is a big school and your people are here, you just might have to branch out to find them.
- **Don’t** be afraid to SAY NO to joining an org or a journal. You don’t have to do it just because it seems like everyone else is.
- **Don’t** neglect to investigate the best legal market in the country and explore what makes it so great to practice law in Texas.

Law & Behavioral Science (LaBS)

At regular intervals, think critically about who you are, why you’re here, and what you care about. It will help you with the big, long-term stuff. At HLS, a strong current propels students toward certain jobs and areas of law. Amid the torrent of 1L, it’s easy to lose track of your own priorities and adopt someone else’s – to blink – and all of a sudden realize you’re on a path you didn’t expect and you don’t know why. Maybe that path is right for you. But you should get

there by choice, not by default. It will also help with the day-to-day. 1L has a homogenizing effect: everyone’s doing the same work and dealing with similar stressors. It is dehumanizing to talk only about classes, deadlines, and exams. You and your classmates are much more interesting than that. Don’t forget it. Let HLS shape you, but not replace you. At regular intervals, think critically about who you are, why you’re here, and what you care about.

Harvard Law School Mock Trial Association

Tips for the incoming 1Ls, from people who were just 1Ls

Just remember to be nice to yourself about feeling clueless, because everyone does. One highlighter definitely isn’t enough. In and out of the classroom, surround yourself with people who remind you that life is about more than school! Never forget to take yourself a little less seriously. Make sure to get as much swag (and free coffee) as possible during 1L. Open your mind and broaden your

horizons outside the classroom. Class preparation is not necessarily the same as preparing for the exam. Taking practice exams is the best way to prepare for finals (in addition to a great Attack Outline). Know not to worry if some of the advice (including the bullet directly above) doesn’t make sense just yet!

Honestly, just have a good time, learn a lot, use the amazing resources provided to you, and make sure you always carefully read the first letter of each sentence – the real key to success at HLS! Best of luck!

Harvard Health Law Society

Despite boasting over 1600 students, HLS can still be an incredibly isolating and lonely place. Invest in quality relationships, not to “networking,” but because it feels good. Sure, time spent catching a movie, playing soccer, or hanging out with friends could be time spent studying – but balanced social time is necessary self-care. Lean on others for support (and conversely, be kind to others). Do not be afraid to seek professional help. Law school is not a three year slog to be merely endured – seek to thrive. (Also, get your flu shot!)

Golf Club

On behalf of the Harvard Law School Golf Club, welcome to Harvard Law School! We believe you should aim to graduate with no regrets. Don’t don your cap and gown in three years and regret not having gotten involved in initiatives and student organizations about which you’re passionate, not having gotten to know as many people on campus as possible, not having explored Cambridge and Boston (indeed there’s more to the area than Harvard Square), and not having taken the opportunity to enjoy your time in law school.

For decades, **The Record** has helped foster a sense of community at Harvard Law School while providing an independent outlet for students and professors to express opinions. Everyone from Barack Obama to William Rehnquist has appeared in its pages. News stories and analysis pieces have been followed by open debate that is too rare at too many law schools. Help support **The Record** by donating today. 1585 Massachusetts Avenue · Cambridge, MA 02138 <http://hlrecord.org/donate/>

Land of the Lawless

How power in America has turned the rule of law into a mere myth.

BY RALPH NADER

Ralph Nader (HLS '58) is a lecturer, attorney, author, political activist, and four-time candidate for president of the United States. In 2015 he founded the American Museum of Tort Law in Winsted, Connecticut. Mr. Nader is a former editor-in-chief of the Record. He is the co-author, with Wesley Smith, of No Contest: Corporate Lawyers and the Perversion of Justice in America (Random House, 1996). He may be contacted by phone (202-387-8030) or email (info@csrl.org). The Record asked Mr. Nader to share his advice for the incoming class in this issue.

In the late 1970s, I had lunch with the head of the Internal Revenue Service. I broached a subject long on my mind: “I have been told that the section on insurance in the tax code is so complex that fewer people understand it than understand Einstein’s theory of relativity.” He replied that he wouldn’t doubt if that were true. So I followed up and asked, “How can it be enforced?” His answer was that it largely wasn’t.

If this seems shocking, beware—lawlessness is an overwhelming fact of American life, though little attention is paid to this many-un-splendored phenomenon. How many times have we been told that our country is under the rule of law and that nobody is above it? Yet the country’s legal life is defined instead by major zones of lawlessness created, in one aspect, by noncompliance and lack of enforcement and, in another, by raw power, which can be political, economic, or armed. These multiplying zones have pushed the rule of law into little more than a torrent of dysfunctional myths.

You might think attending one of America’s 205 accredited law schools would help a person see through all this. But with few exceptions, law schools teach the rule of law as if it were the norm—as if public condemnations of criminal acts and sometimes prosecuted violations mean our culture really is defined by its laws. Courses push students to hone their analytic skills to find conflicts, inconsistencies, distinctions, ambiguities, and textual improvements in the formal legal system. Rarely is the rule of law exposed for what it is, though from time to time schools of legal thought do examine this—as did the “legal realists” at Yale Law School from the 1920s to the 1950s or the “critical legal studies” professors from the 1970s through the 1990s. But the language of these schools was too abstruse. The scholars did not focus enough on reaching outside their academic groves and were mostly unable to foster any kind of social justice movement that could

make the law mean what it should—that is, justice.

THE MORE LAWS, THE MORE
LAWBREAKERS.

—Tao Te Ching, 500 BC

Over the past century, as laws have become more remote from public education and distant from popular access, they have also become more complex and more pervasive. In parallel, the various zones of lawlessness have expanded and the rule of power has increased. Occasional high-profile prosecutions or sanctions have helped promulgate the idea that laws are effective in their coverage, but such prosecutions have often been ineffective, with corporations demanding that Congress eliminate criminal penalties for willful and knowing violation of the law. To give just one example, corporate lobbyists succeeded in eliminating the criminal penalty from the 1966 automobile-safety laws, even when people were killed due to knowing violations of the government’s motor-vehicle safety regulations.

To see through a myth as pervasive as our rule of law requires a journey through these zones of lawlessness. Taking it may provoke the constructive outrage that can come from an informed sense of injustice.

Let’s start with systematic violations of the law that escape enforcement year after year. First, the health care industry, in which at least 10 percent of what our country spends goes down the drain from computerized billing fraud and abuse. According to Harvard professor Malcolm Sparrow, author of License to Steal, this 10 percent figure represents the minimum amount. Applying it to this year would produce a fraud amount of about \$350 billion. The fraud is rarely prosecuted. In 1992 the Government Accountability Office estimated a comparable 10 percent drain, but Congress continued to starve the enforcement budgets of the Department of Health and Human Services

and the Department of Justice. These agencies recover less than \$3 billion of what’s defrauded from Medicaid, Medicare, and Tricare military insurance each year—appallingly low, given that commercial crooks defraud an estimated \$60 billion from Medicare alone.

Even more alarming is what we learn from a May 2016 report from the Johns Hopkins School of Medicine estimating that there are a minimum of 250,000 lives lost yearly due to preventable problems in our nation’s hospitals. That’s an average of 5,000 deaths a week. These deaths stem largely from continual negligence—which can include accidents, misdiagnoses, malpractice, and hospital-induced infections—but criminal negligence and outright profit-driven criminality are also prevalent. Though these mass violations are supposed to be actionable by public prosecution and by private civil action under our tort laws, far less than 5 percent of potential civil cases are brought to attorneys by next of kin. Prosecutions are much rarer.

Also deeply underreported are the crimes that take place in the lawless zone of wage theft. A recent report by the Economic Policy Institute—which draws on surveys of state labor departments and attorneys general as well as data from the Department of Labor and class-action settlements—estimates \$50 billion a year is stolen from mostly low-income workers, while terribly weak enforcement budgets and priorities led to the recovery of only some \$2 billion in 2015 and 2016 combined.

The EPI examines wage theft through minimum-wage violations, overtime violations, tipping violations, and employee misclassifications. On average, it finds that workers suffering minimum-wage violations are cheated out of \$64 a week, or \$3,300 annually—all while the federal minimum wage has been frozen at \$7.25 an hour. Such theft is clearly illegal. But in 2016, the EPI reports, the Department of Labor’s Wage and Hour Division had only a thousand investigators responsible for 7.3 million workplaces. And workers rarely file private claims anyway, as they are often forced to sign away their right to go to court in order to have a job in the first place.

ALL MOANDAY, TEARS DAY, WAILSDAY,
THUMPSDAY, FRIGHTDAY, SHATTERDAY
TILL THE FEAR OF THE LAW.

—James Joyce, 1939

This is contract peonage, quite simply. But aside from the rare case of stolen-wage restitution, employers are almost never prosecuted under criminal laws. The absence of civil and criminal deterrence assures that big-time wage theft is part of the American worker’s nightmare.

Corporations further assert their power over the rule of law through tax evasion and avoidance.

As Congress cut the IRS budget over the past decade (with inflation adjusted, down more than 25 percent from 2009), the agency has been increasingly unable to enforce the law against what it says is \$400 billion a year in “uncollected taxes”—a sum that does not even include huge “avoided taxes” that flow from corporate lobbyists driving their agendas through a greased Congress. The result of this, says Robert McIntyre, who was the director of Citizens for Tax Justice for many years, is that citizen taxpayers have to pay more taxes and receive fewer public services or else incur larger government deficits.

Ongoing myths about the law serve to camouflage or protect these truly dominant acts of power—that’s an important reason for the near nonexistence of regular compliance reports by regulatory agencies to Congress and the public. Such reports would not only show widespread noncompliance and minimal enforcement, they would also reveal just how little help the aggrieved classes receive from legal processes. And, of course, indentured enforcement agencies do not have much interest in publicizing widespread violations of such magnitude. Doing so might generate an appropriate level of outrage—which could spur a movement to change the system that powerful institutions are more interested in keeping the way it is.

Why would government want to help diminish these zones of lawlessness? It, too, operates in one. Our uncontrollable national-security government has given us secret wars, secret law, secret courts, secret evidence, secret prisons, unauthorized secret budgets, unlawful surveillance of attorney-client communications, blatant snooping on all Americans, un-auditable secret expenditures for quagmires abroad, and even redacted published judicial decisions. Though due process of law is arguably the greatest legal achievement of Western civilization, unlawful imprisonment (now euphemistically called “detention,” regardless of duration) of domestic persons and aliens are the stuff of media exposés that mostly go nowhere. Our government has too often shunted aside probable cause and upended habeas corpus and other bulwarks of due process. And U.S. courts contribute to the impunity through knee-jerk procedures blocking lawsuit challenges due to presumed “lack of standing” or by saying that a dispute is “political” and can only be resolved between the executive and legislative branches.

LAWS, LIKE HOUSES, LEAN ON ONE
ANOTHER.

—Edmund Burke, 1765

Then, when legal bodies do attempt to speak out against this lawlessness, they are ignored. In 2005

and 2006, the normally reticent and conservative American Bar Association (under its president Michael Greco) sent three unprecedented white papers to President George W. Bush asserting that he was in violation of the Constitution. Neither Bush nor Vice President Dick Cheney ever bothered to acknowledge, much less respond to, these charges from the largest bar association in the world.

The government continued its extensive violations of our constitutional freedoms. In January 2012, an extraordinary article was published in the Washington Post by George Washington University professor Jonathan Turley outlining ten of them, which flowed from the official misuses of laws as well as from the instruments of oppression themselves, including all-too-routine prosecutorial abuses and lawlessness among police and in prisons. New York governor Andrew Cuomo’s 2018 State of the State address picked up on a similar theme, giving a shocking statistic: 75 percent of all inmates languishing in New York City jails have not been convicted of a crime but are simply awaiting trial. (Although not the subject of this essay, the lawlessness of the powerful—through their actions or inactions—have often worked to worsen the incidence of street and domestic violence.)

The view is no better on the international stage, where law cannot keep up with the violent insults of noncompliance with constitutions, treaties, or statutory restraints—from the general precepts of the laws of war to specific provisions of the Geneva Conventions. National sovereignties are routinely overridden by undeclared wars of choice, drone killings, illegal armed incursions, torture, and the widening license accorded military contractors. Greenhouse gases originate in one nation but traverse the globe, leading to devastating impacts. All are outside of any legal frameworks.

The maturation of the so-called corporate state has made all this even more entrenched. A major factor is military contracting. In September 2007 the government-contracted Blackwater Corporation used weaponized vehicles to slaughter fourteen unarmed Iraqis in one of Baghdad’s public squares. This briefly occasioned some attention from Congress, but by the end of October, Secretary of State Condoleezza Rice had officially informed the House Oversight Committee that—remarkably—there was no law covering the actions of Blackwater and their private police in Iraq. It seems that any crimes committed by corporations commissioned by the Defense and State Departments to perform guard duty and other classified tasks fell into a gap

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Harvard Law School professors love to use hypotheticals in their classes. So let’s try one that they have not subjected their students to in its 202 years of storied history. What if the Law School split itself into two parts – each with different professors and students on its crowded campus in Cambridge, Massachusetts? One half would retain the name Harvard Law School, while the other half would be called Harvard Lawless School. How would the courses differ?

Well, the Harvard Law School curriculum would remain pretty much the same, accepting the law as is, working its interpretation by courts, regulators and legislatures and speculating a little about how it could be clarified and improved.

Harvard Lawless School would be more grounded in grim realities, where there are no operating laws to discipline raw power or where the laws are so violated as to be systematically inoperative over a large range of activities.

Lawlessness, the kind that is considered as factual non-compliance with existing law, is often far more widespread than the studied phenomenon known as compliance.

I am reminded of the long history of this duality by in a 1932 review by Daniel James of *The Modern Corporation and Private Property* – a famous book by Adolf A Berle, Jr. and Gardiner C. Means that documented the split between *ownership* (the shareholders) and *control* (by the corporate executives). He wrote then what is worse now, that “There is a paper government for corporations and there is an actual government. The one is embodied in Constitutional provisions, statutes, charters, by-laws, decisions; the other has its being in the conduct of men who control corporate activity...With them as with all human institutions there is a divergence of the *intended* and the realized, the *ought* and the *is*.”

The “is”, declared Mr. James, is “made up of blunt, realistic facts”



CREDIT: EMILY KARAKIS / UNSPLASH

which is what Harvard Lawless School would teach and take off from.

What’s all this got to do with you? Just about everything. If you cannot use the law to pursue your rights – say health coverage – under fine-print contracts or gain adequate compensation for your wrongful injuries, you are being strapped by lawlessness through the design of the power elites. They, of course, live under their own rules – monetarily greased through their plunder of the political economy – and, not surprisingly, use these special rules to their advantage in ways that disadvantage you and most other people.

Business crooks get away with over \$300 billion a year just in computerized billing fraud and abuse in

the healthcare industry, despite the existing laws against fraud. Starvation enforcement budgets for the federal cops on the corporate crime beat are assured by an indentured Congress. Thus, a routinely vast area of theft and harm drives a political climate of lawlessness and exacerbates crime in the suites.

When Congress cuts the IRS’s budget year after year, the agency cannot collect what it estimates is over \$450 billion a year in “uncollected taxes.” Add additional massive sums of “avoided taxes” by corporate lobbyists driven through a greased Congress, and you end up paying more taxes, or receiving fewer public services or incurring larger government deficits. Huge sums of money

are outside the tax laws.

As the protections of tort law – the law of wrongful injuries – are diminished, millions of Americans are left outside the civil justice system – unable to hold perpetrators accountable. The forced under-utilization of consumer, environmental and worker protection laws by their supposed beneficiaries against violators is overwhelmingly the norm.

Expanding areas of lawlessness flow wildly away from existing laws. Criminal wars of choice, mass government surveillance, the tortures, and the licenses allowed military contractors are examples of rampant lawlessness. Wars of aggression (Iraq, Libya) are not declared, the Fourth Amendment to the

Constitution is violated routinely, torture and unlawful imprisonment (euphemistically called ‘detention’) are the stuff of media exposés that go nowhere.

Domestically, using the law itself as an instrument of oppression, prosecutorial abuses, police and prison lawlessness and entrenched procurement violations between vendors and governments are institutionalized dimensions of lawlessness. There are unconstitutional laws that need amendment or repeal.

Who enforces the legal boundaries on the Federal Reserve, whose widening unaccountable penumbras of lawless discretion are worrying Right and Left in this country. Then Secretary of the Treasury Henry Paulson told the Washington Post that he had “no authorities” to engage in his serial bailouts of Wall Street, but somebody had to do it.

There are no international laws regarding the ongoing, growing cyberwarfare; no laws governing the tumultuous nanotechnology, few rules that can contain the spread of migrating, untested biotechnology.

When, according to Johns Hopkins School of Medicine study, at least 250,000 Americans can die yearly (about 700 a day!) because of medical malpractice, medical error, hospital-induced infections and mis-prescription of medicines and their lethal side-effects, there clearly is no “rule of law” applicable in this realm of preventable mass violence which has any quantitative significance.

This short introduction to a hypothetical curriculum at Harvard Lawless School only scratches the surface of the “blunt, realistic facts.” Students, professors and courses at this kind of law school would not be mired in what Professor Jon Hanson has called “the illusion of law.”

Hypotheticals can spark the imagination to connect law to justice in thought and practice. Who knows what the future holds for an imaginative Harvard Law(less) School?

So you want to go to work for a large corporate law firm

Maybe you should find out more about them than they are willing to tell you

BY RALPH NADER

Corporate law firm recruiters will tell you about the different departments of specialized practice – such as mergers and acquisitions, trusts and estates, regulatory practice, criminal defense, taxation, environmental, health care, trade, commercial, intellectual property, real estate and the like. But these descriptions do not introduce you to the kind of corporate clients, to whom you ostensibly owe a duty of zealous representation, and the demands these clients will make.

In the past, your predecessors, whether through desire or because of student debt, defended long-standing or episodic abuses and crimes. What you are expected to do, for a lucrative retainer, is to preserve and expand the privileges and immunities of these large corporations, their profiteering and drives toward greater control, concentrated power, executive pay packages, and protection or escape from law enforcement. You might also be asked to draft and lobby amendments into permissive law to achieve these objectives.

Decade after decade, teams of corporate lawyers have fought for the tobacco, drug, chemical, banking, insurance, nuclear, coal, oil, and hospital industries in direct conflict with consumer, worker and environmental health and safety. The billings are impressively large with mostly uncontested padding or fraud. Under the cover of “every client deserves a lawyer,” the extraordinary lengths these attorneys go to in fealty to national or global corporations receive almost no media or governmental scrutiny. That people are dying, being injured, sickened or defrauded, before and after private or public legal actions are instituted, provides little or no sense of remorse by these law firms. Protecting people is not usually considered their professional or moral responsibility, especially in an adversarial system in which corporate interests have all the advantages. They have perfected the gaming of the adversary system, should there be one, through deliberate wars of attrition, overwhelmingly superior resources and the fact that for aggrieved plaintiffs with bills to pay, time is more of the essence than it is for an artificial corporate entity and its deductible legal expenses.

Corporations, with few exceptions, are pitted against consumers, workers, small taxpayers and communities, and corporations have the upper hand.

We have seen patients, workers and children die waiting for the *deliberately protracted* proceedings of litigation or legislation or regulatory agency action. Delay is a long-standing specialty of corporate attorneys. Consider the victims of asbestos poisoning, of disease-festering chemicals and particulates in the workplaces – the factories, foundries, mines and industrial agricultural fields.

Here are some architectural achievements of these corporate law firms deploying undue power against the polity and general public. They:

- Destroyed the freedom of contracts by an inscrutable structure of adhesion or standard-form contracts that kick in at a click or a signature, often taking away people's rights to their day in court. Consumers cannot usually obtain the full contract to which they are bound and if they can, the text is often incomprehensible and often too small to read – assuming there is any time.
- Perpetuated the worst health insurance chaos in the western world, full of trap doors, deductibles, co-pays, waivers and exclusions – all to the corporations' advantage.
- Repeatedly structured markets to be less competitive and more monopolistic and strip shareholders of any power to *control* what they *own*.
- Held down law enforcement budgets of agencies that are supposed to pursue civil and criminal actions against corporate crimes and other predations. This is widely true for the misbehavior of the weapons of mass destruction industry and its relations with the Pentagon.
- Made sure that many health and safety laws do not have a criminal penalty for willful and knowing violations of the law, while freezing obsolete civil fine levels.
- Utilized deferred and non-prosecution agreements, originally designed for individuals, as a way

to defang successful prosecution of corporate crime.

- Arranged for continual installment of corporate lawyers in the nation's federal and state judiciary.
- Restricted access to justice by lobbying legislatures to enact limitations on the law of torts, jury autonomy and by establishing judicial procedures that obstruct the pursuit of justice.
- Expanded systems of corporate welfare or crony capitalism, “garnished by directed campaign contributions,” without open procedures and regular reviews.
- Expanded massive government outsourcing and procurement systems that enable waste, minimum competition and exaggerated claims of proprietary information which restrict review and reform.

- Shielded tumultuous new technologies such as biotechnology and nanotechnology and artificial intelligence from legal and ethical frameworks and accountability.
- Become the legal spearheads of avaricious state lobbies such as ALEC, funded in part by the Koch brothers, to weaken or repeal safeguards for consumers, workers, patients and the environment.
- Elaborated corporate bankruptcy laws that now stand as a cruel double standard between the corporation and the individual. The GM bankruptcy and the emergence of the old GM and the “new GM” lacerated the rights of creditors and vaporized cases by injured litigants is an advanced case of this lawyerly imagination.

pooled assets that are owned by or in clear trust on behalf of the people (see hollier.org). They include the vast public lands onshore and offshore, the public airwaves, the trillions of dollars in government research and development that built or expanded many of the old and new industries in our country. They attach to the trillions of dollars in pension and mutual funds. The sheer intricacy and diversity of such splintering of publicly owned resources is testimony to the intellectual adventures that firms have used to attract law school graduates looking for rigor and challenge.

This partial list should not be concluded without mentioning the constant work of corporate law firms to arrange, advice, and defend measures that suppress voters and candidates in the electoral arenas,

These work products of corporate attorneys overwhelm and overcome what hurdles – legislative, judicial, and regulatory – there are that hold corporations accountable. Public interest lawyers know how powerful these defenses and strategies can be – for example, in litigation against corporate-owned prisons or Pentagon contractors, claiming sovereign immunity.

Corporate misbehaviors – either statutory crimes, common law gross negligence, civil violations of regulations, and regular criminogenic abuses – have been subjected to criticisms by some leading corporate attorneys.

About a century ago, the pre-eminent corporate lawyer, Elihu Root, a Nobel Peace Prize laureate and Secretary of State under Theodore Roosevelt, declared: “About half of the practice of a decent lawyer is telling would be clients that they are damned fools and should stop.”

Henry L. Stimson, the early twentieth century doyen of modern corporate attorneys, who served in high government positions, wrote about the necessity of the American lawyer to be a defender of the laws and Constitution. “I felt,” he wrote in his co-authored book *On Active Service in War and Peace*, “that if the time should ever come when this tradition faded out and members of the bar had become merely the servants of business, the future of our liberties would be gloomy indeed.”

That time has come. The ingenious advocacy of corporate attorneys has serviced a stifling matrix of political and economic global corporate power, deployed over capital, labor, and penetrating new technologies. There is an accelerating, huge imbalance between individuals and corporations, both within and outside formal legal frameworks. Under such condition, there can be very little “equal justice under law.”

Corporate lawyers going to extremes seem wholly unrestrained by their status as “officers of the court” and the larger ethical standards and missions accorded this privileged monopoly known as the practice of law. Lucrative corporate retainers can narrow one's sense of professional responsibility.

Writing in 2009, Law Professor and leading legal ethics specialist (author of the treatise “Regulation of Lawyers,” Stephen Gillers concludes: “A lawyer who uses his or her legal education and skills to distort the law, to destroy the rule of law, because he or she is adept at manipulating language, when no judge, no adversary, is watching, is as blameworthy as the client. You cannot hide behind your professional mask.”

Louis D. Brandeis in 1905 told a gathering at Harvard: “...able lawyers, to a great extent, allowed themselves to become adjuncts of great corporations and have neglected their obligation to use their powers for the protection of the people. We hear much of the corporate lawyer and far too little of the ‘people's lawyer.’”

Occasionally, law firms heed these admonitions. One of Boston's largest corporate firms, Hale and Dorr, instituted a policy in the nineteen seventies of *not* representing any tobacco companies. In the early 1970s, Robert Wald, the attorney for tobacco company, Lorillard, Inc. dropped his client after he became convinced of the company's failure to address the health risks of smoking.

The above – noted subjects deserve a great deal more time in the law school's curricula and extra-curricular activities. Think of the engagements, around proper names and controversies that could flow from just one definition in the America Bar Associations (ABA) Model Rules of Professional Conduct: “A lawyer is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice...”

As inquiring law students, you are now as free as ever to contemplate and address such conflicts within your chosen profession and anticipate the enormous perils or illegal corporate drives over the next half century of tumult. Think, for instance, about the personal ramifications of either your accepting or turning down a lucrative career defending the perpetuation of the fossil fuel industries and their greenhouse gases in the face of rapid climate disruption?

Think how you want to look back on your legal career fifty years hence. Looking backward is good way to be looking forward! You choose.



CREDIT: OLIVER NIBLETT / UNSPLASH

- Conceived and encouraged ever more permissive tax havens around the world to evade or avoid taxes for the wealthy and corporations.
- Created modes of corporate coercion via credit and debit cards and other payment systems for a cashless economy that constructs webs of incarceration around consumers through adhesion contracts, privacy invasions and other deliberate manipulations, dictates, and unresponsiveness.
- Molded a patent system that crushes individual inventors in favor of corporate patent controls dubiously extended to reduce competition and increase consumer prices, as in the drug industry.
- Perfected “document retention” strategies to destroy evidence in anticipation of forthcoming law enforcement.
- Stifled free speech and citizen criticisms of corporate power by filing or threatening SLAPP (strategic lawsuits against public participation) suits that produce large penumbras of civic fear, intimidation, and self-censorship.
- Provided the intellectual grease and political muscle to facilitate giant anticompetitive mergers when challenged by antitrust authorities.
- Designed massive executive compensation packages, marinated by huge unproductive stock buybacks that harm workers, pension funds, disempower shareholders, and deplete the overall investment practices of the affected corporations.
- Shielded and defended the excesses of Wall Street and its far flung speculations with other people's money, as occurred in 2008 and 2009. Where were the corporate lawyers to detect, foresee and forestall? They were paid to look the other way and profit from their past installations of immunities, impunities, and cover ups (See: <http://hlrecord.org/2018/04/is-law-still-an-honorable-profession/>).
- Dominated bar associations with their funding and priorities to assure that corporate interests are first and foremost, sometimes with a modest nod to legal aid for poor, accused defendants.

- Utilized corporate lawyers to fight against group legal services and controlled town government where there were large corporate employers such as those in Butte, Montana, the paper mill company towns in Maine and textile companies in the Piedmont. They work to strategize, mature, and entrench the autocratic corporate state, illustrated by President Eisenhower's farewell warning about the “military industrial complex.”
- Imposed a weakened system of frozen workers' compensation insurance to limit the liability of corporations to their injured workers.
- Lobbied for decades to prevent single payer, more efficient national health insurance to cover all.
- Perfected a revolving-door system so that corporate lawyers can go into public service – weakly enforce the law for a few years to gain “experience” – and then come back out to continue representing corporations at much higher pay.
- Tolerated a criminal justice system where corporate crime is immunized, poverty is criminalized, and the indigents charged paralyzing fees to boot.
- Replaced judicially supervised probation officers for corporate criminals with corporate monitors – approved of and paid for by the corporate criminals.
- Helped set up corporate front groups – groups whose names sound like public interest groups, but that are in fact funded and controlled by corporations.
- Created the nation's most powerful civil rights movement – the movement for corporate civil rights – putting the corporation – never mentioned in the U.S. Constitution – on par with living breathing human beings when it comes civil rights protections.
- Advocated and perpetuate a neither admit nor deny settlement practice at the SEC that lets wrongdoers off without even admitting their wrongdoing.
- Split the *ownership* from *control* over our public resources and hand control over to corporations and their government concessionaires. Surprising to many, the greatest wealth in our country comprises the “commons” or

unlike, by far, any other western nation.

Of course, much corporate law firm work is the tedious handling of conventional commercial transactions, estate planning and the like. There is, of course, the option to work on behalf of mid-sized smaller companies who do good work, such as Patagonia, Esprit and the Interface Corporation and other companies, often still run by their founders that belong to the Social Venture Network (svn.org). But the big money comes from the big corporate law firms representing the giant corporations. That is the lure, the temptation that requires further examination.

A major transition to further concentrated corporate power over individuals and other institutions, such as labor unions, makes up the long-range activities of corporate attorneys, with the help of some law professors. That mission started with the concept of limited liability for shareholders (as with the early 18th century charters for textile companies in New England) to relentless expansion of limited liabilities *for the corporate entities themselves*. These shields are often enabled by statutory limits on liability, as with the nuclear power companies through the Price Anderson Act, to the judicially recognized privileges and immunities promoted by corporate counsel. This includes corporate personhood for use of civil rights, civil liberties, and other constitutional rights/remedies originally enacted for the protection of individuals. To repeat “corporations” or “companies” are not mentioned in the Constitution.

Another creation of corporate law firms relates to restricting the private rights/remedies of aggrieved individuals vis-à-vis corporate predations. There are the many “tort reforms” such as caps on damages in medical malpractice lawsuits that further imbalance the power between persons and vendors and deepen the unequal protection of the laws. “Tort reform” rarely applies to corporate usage of tort law. In addition, Professor Arthur Miller (HLS '58) has demonstrated how the federal rules of civil procedure have been twisted into obstructing the people's access to justice (see more at nyulawreview.org/wp-content/uploads/2018/08/NYULawReview-88-1-Miller.pdf).

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between Iraqi law—from which they were exempted by the U.S. military occupation—and the laws of the U.S. military itself. The rights of the individual guards were less clear; though some have been prosecuted, a single conviction for first-degree murder was overturned in circuit court in 2017.

Such lawless zones only become more complicated as technology advances. The daily evidence of international cyberwarfare and hacking—as well as corporate espionage—occurs without any framework of international law. There is presently no serious effort by the community of nations to negotiate international treaties regarding this volcanic, intrusive technology that, apart from stealing personal and official records, can destroy the critical infrastructure of societies.

Recourse does—or should—exist. America inherited from medieval England two great liberation movements for private action against wrongdoers: the law of contract and the law of torts. These two pillars of our private law are meant to empower wrongfully injured or defrauded people against wrongdoers by giving them their day in court with a trial by jury.

AVOID THE LAW—THE FIRST LOSS IS GENERALLY THE LEAST.

—Hannah Farnham Sawyer Lee, 1844

But here, too, powerful forces have fomented a culture of lawlessness. Corporate power has been able to erode the strength of these remedies by imposing one-sided fine-print contracts and by lobbying legislatures to seriously weaken the content and use of tort law. Though the latter is euphemistically called “tort reform,” it is a reform for corporations, not people. Corporate lobbyists have succeeded in having legislation enacted that arbitrarily ties the hands of judges and juries, who are the only ones who see, hear, and evaluate the evidence in each case in court. These lobbyists seek nothing less than impunity and immunity for their corporate entities.

Prominent lawyers, too, have been involved in weakening these remedies. Their unprofessional conduct flows from their status as so-called officers of the court, whose ethical responsibilities should be pointing them instead toward widening access to justice and its judicial institutions. But corporate law firms are the brains behind the political and economic domination of corporatism and its corporate state, which runs roughshod over

weakening labor unions and consumer-defense organizations. They systematically obstruct use of the law by the very people meant to be protected by it.

One pervasive way this affects consumers is in debit- or credit-based cell-phone payment plans—an intricate system of consumer incarceration in which cell-phone users surrender access and privacy and become beholden to fine-print contractual servitude. Any attempts to fight back mean one is confronted with a series of difficult tasks, including reaching a human being working for the vendors. Consumers then have to deal with low bargaining power, nonexistent alternative competition, and the potential arbitrary actions of lowered credit ratings and credit scores. The judiciary usually protects vendors by invoking the myth of consumer consent while precluding practical remedies by the aggrieved. Computerized transactions between consumers and financial vendors have turned unconscionable penalties and fees into corporate profit centers worth tens of billions of dollars a year, especially against the poor, who are forced into these difficult, rigged arrangements and so pay more.

This sort of thing is happening everywhere. Fast-expanding zones of lawlessness emerge from all kinds of rapid changes occurring in societies,

from new technologies to new forms of capital to more complex interrelationships between people and artificial entities like corporations. With government contracts there are the entrenched, complex, often secret abuses by corporate vendors, especially in the military and corporate welfare arenas. These official exercises of power without legal authority are bipartisan under both major political parties.

Law does not keep up, and the modern denizens of lawless territory like it that way. Just ask Wall Streeters, whose economic power allows them to deal in tax havens, complex commercial partnerships, and speculative derivatives that few humans can even understand, much less regulate. Where were the legal boundaries breached by the Federal Reserve, the U.S. Treasury, and the White House during the massive bailout of Wall Street and other companies? George W. Bush’s secretary of the Treasury, former chief of Goldman Sachs Henry Paulson, openly told the Washington Post that he “didn’t have the authorities for anything,” but “someone has to pull it all together.”

WE ARE TO GO TO LAW NEVER TO REVENGE, BUT ONLY TO REPAIR.

—Samuel Pepys, 1661

It would be nice to believe such actions were aberrations from the rule of law. But they’re not; lawlessness in its many exercised forms of raw power is itself the norm. What it has wrought is the institutionalization of criminality—with overworld and underworld often blurring together—producing inequality of wealth and income, planting the seeds of political seizures by dictatorial, plutocratic, and oligarchic forces.

What can be done? We start with the lawyers, who are not only invested with the monopolistic right to be attorneys for clients but should also be obliged, as officers of the court subject to their code of professional ethics, to be the sentinels for the administration of justice.

Some are heroically assuming this august obligation to the people. But far too few of the 1.3 million lawyers in America see the rule of law for the myth it is; too few see the rule of power for the lawlessness it creates.

More of them must assume the higher significance of their calling, to respond to the silent cries for justice—which nearly two centuries ago Senator Daniel Webster called “the great interest of man on Earth” and “the ligament which holds civilized beings and civilized nations together.”

How to Succeed as a Lawyer

BY DEBORAH BETH MEDOWS

Hone both your legal skills and your character. Your current actions determine your future both professionally and personally; the demarcation will dissolve as you further your career. Treat your classmates with respect; as your lifelong colleagues, they will impact your professional reputation.

Be fair; never confuse decency with weakness. Be a zealous advocate while recognizing that cruelty and indifference comprise an easy path; integrity requires maturity, strength, and leadership. Success in the legal field is analogous to a marathon, not a sprint. Help struggling classmates as 1Ls, welcome new students as 3Ls, and as lawyers, mentor new attorneys and help others advance. It will make a world of difference to them, and they’ll remember you for it.

Earn your degree honestly, and as future attorneys, refrain from misrepresentations. You will encounter clients at their most vulnerable, and people will entrust you to protect them; do not betray that trust. You are not above the law. When you are pressured, it can be tempting to act in ways you otherwise think you would not. Keep your perspective and know that otherwise, when justice comes, and it will, you will shame yourself and your family and destroy the career that you invested so much into building. The crux of success lies not in fleeting case victories but in the quiet moments of decisions that encapsulate your career.

Navigate boundaries in your life and balance your career with other obligations. As Joseph Story wrote, “the law is a jealous mistress and requires a long and constant courtship.” Value time with family and friends. Success without someone to share it with is a hollow victory.

Broaden your definition of long-term success. You cannot win everything; if you do, you are not adequately challenged. Your collegiality and reaction to setbacks, and ability to learn from them, determine success. Law can be thankless; know in bleak moments that success lies in perseverance and resilience. Success was, to Kipling, the ability to “meet with Triumph and Disaster and treat those two impostors just the same.” Consider Teddy Roosevelt’s “The Man in the Arena” and know that as Churchill said, “if you’re going through hell, keep going.” Congratulate a classmate who prevails in moot court. Always shake your opposing counsels’ hands, wish them well, and mean it.

The definition of success may change throughout your career, but not its fundamental principles. It may currently feel like you are taking law school day by day; that itself is a victory in the beginning as you navigate your growth trajectory.

As Seneca said, “Non est via e terra ad astra mollis,” or, there is no easy way from the earth to the stars. Keep striving through your career to earn your success. You will be proud of yourself when you do.

Hello, dear 1Ls, and a warm welcome to campus! For your reference (and entertainment) I asked some 2Ls, "WHAT ADVICE WOULD YOU GIVE YOUR 1L SELF?"

me, a worldly 2L

TRUSTING YOURSELF

"Take everyone's advice (mine included) with a grain of salt. You've made it this far, so don't discount that — keep doing what works for you, and don't agonize over what other people are doing."

DON'T OVERTHINK IT.

MAKING MISTAKES

"You will, most likely, blow a cold call or two. Resist the urge to drop out of school and assume a false identity, and know that no one else has time to keep track of your mistakes. You'll catch on quicker than you'd think."

IT'S FINE I'M FINE AND YOU'LL BE FINE

ASKING FOR HELP

"There is an entire institution full of resources for you here, and there's no shame in using them. Whether it's academic accommodations, mental health counseling, or confusing Latin phrases — don't wait to hit a crisis point. ASK for help."

MAKING FRIENDS

"The best part of 1L was the people. Having a group to lean on makes such a difference, and I've learned so much from my peers. I can't wait to see where we all go and what we do next."

IT'S CORNY BUT I FEEL HOW I FEEL

STAYING HEALTHY

"Don't neglect your physical, mental, or emotional health. It sounds obvious, but staying active, eating nutritious meals, and taking breaks when you need to are so important."

EAT A YEGGIE

STAYING GROUNDED

"Repeat after me: 'law student' is NOT a valid personality. Remember those things you enjoyed before law school? Schedule them in. Go hiking, call a friend, volunteer at a local nonprofit — whatever it takes to get some space and perspective."

YOU MEAN THERE'S A WHOLE WORLD OUTSIDE OF LAW SCHOOL??

DEFINING GOALS

"It's okay to come to law school intending to do one thing, and then realizing you're more interested in something else. You're allowed to change your mind — and 1L is the time to start figuring those things out."

I'M GONNA BE THE WORLD'S BEST DOG LAWYER

EMBRACING THE STRUGGLE

"Commiserate when you need to, but don't get stuck in a toxic feedback loop of negativity. 1L is supposed to be challenging, not totally miserable. Try to appreciate the little moments — and all the wacky legal trivia you'll acquire along the way."

WHY WOULD YOU BRING DYNAMITE ON A TRAIN? WHY?

"And finally — whether you come from a long line of lawyers or you're the first in your family — knowing **YOU DO, 100%, BELONG HERE.**"

WOO!

And that we're all rooting for you!!

Good luck 1Ls!!

CREDIT: ELLEN MILLER

An Open Letter to Harvard Law Students

By RALPH NADER

Alumni can make an important contribution to students presently enrolled in their alma mater by calling attention to frames of reference often unmentioned or little discussed at Harvard Law School as the curriculum focuses on developing analytic legal skills and discerning legal concepts. Some alumni wish that they were accorded these larger perspectives when they attended Harvard Law School. A brief mention of a few advisories that might enhance your grasp of the meaning of legal *education* in addition to legal *training*:

1. During the orientation meeting in September 1955 with Dean Erwin Griswold, he welcomed us and promptly pronounced that we were right then members of the legal profession. I remembered saying to myself, “What? On the first day?! Before we’ve passed the bar and received our license to practice?!” A few days later, while trying to understand this remarkable accolade to our class, there emerged the distinction between the roles of “lawyers” and “attorneys.” The attorneys “attorn” vigorously for their clients, while lawyers, licensed or unlicensed, pursue the broader goals for improving the administration of justice. Our professional codes of ethics and conduct embrace both roles because all *attorneys* should spend some time also being *lawyers*, looking out for the big picture of a just legal system. The Dean was saying that we were budding lawyers joining a learned profession, with many privileges and a tradition of public service. Unfortunately, I don’t ever recall a serious discussion in class about this duality of obligations.

2. Even less attention was given to our status as “officers of the court” upon being admitted to the Bar. This poorly defined, but unique quasi-official role of all licensed attorneys should imply some special responsibilities. Former American Bar Association President (1973-1974), Chesterfield Smith took that status to require attorneys to comply with

a judge’s order to represent an impecunious defendant in a criminal case very seriously, predicting that in a few years attorneys might be sent to jail for refusing such an instruction. Well, that has not happened, but clearly, law students should start filling in the ethical blanks about what being an “officer of the court” should mean beyond obeying the criminal laws and judicial rules. It could mean not lobbying to block access to courts, or pushing to contract the law of torts and distort the law of contracts by legislating or pressing for onerous restrictions. (The usual euphemisms are “tort reform” and mythical consents to “standard form contracts.”

3. Given Harvard Law School’s many clinics (there was only one in 1955), there needs to be a deeper awareness of the distinction between charity and justice. For example, soup kitchens are a necessary charity in a society with widespread poverty. A just economy with livelihoods for all would prevent the daily hunger that flows from systemic impoverishment. Charitable work by lawyers is about immediate assistance, while advancing justice is structural work that foresees and forestalls the conditions that give rise to the ever-growing need for charity.

4. Lawlessness is far more prevalent, far more entrenched and far more above and beyond the unenforced rule of law. There are also the many laws enacted to provide privileges and immunities for the few over the many up and down the hierarchies of our society so grossly unequal in power, wealth and income. Corporate crimes, such as massive billing fraud in the health care industry continue year after year with disgracefully minimal enforcement. Professor Malcolm Sparrow, of the Harvard Kennedy School, author of License to Steal, while not in a position himself to quantify fraud and abuse losses precisely, believes evidence suggests that losses due to overpayments exceed ten percent of total health

care costs, and could be considerably higher. By my calculation, if just ten percent losses are applied to this year’s expected expenditure of \$3.5 trillion, then fraud and abuse are draining at least \$350 billion out of the U.S. health care system annually. The broad and deep range of commercial crimes, and examples of where there is no criminal law to curb criminogenic behavior, are reported weekly in the Corporate Crime Reporter (available in Harvard Law School’s great library).

5. Why are there no courses and seminars about lawlessness – regarding runaway presidential actions, widespread violations of environmental, consumer, labor, tax and civil rights laws, public corruption of procurement contracts, and the trampling of international law – to name a few sectors? The taxonomy of systemic violations, of non-compliance, of fudged reporting and intricate artifices of escape are demanding topics for any realistic curricula.

6. Why not evaluate how corporations exercise their rule of power over the rule of law even during occasional enforcement actions? Why not dig deeper into how governments run a criminal injustice system ranging from unwarranted arrests to the courts and prisons? Lawlessness should be a high-priority focus of the Law School’s curriculum.

7. Large corporate law firms are not a subject of regular study. They are noticed mostly for their pay scales and their hospitality to law students during annual recruitment periods. Yet they are the brain trusts, the enablers, the protectors of corporate power moving toward ever more concentration and the overall maturation of the autocratic corporate state. Because most of you will be working at corporate firms, it makes sense for you to know what you’re getting into. These law firms are creating far more deep and damaging injustice for our society, fortifying perpetrators and more corporate supremacy than is offset

by the intermittent pro bono work they do. If you want to use the law to help solve serious societal problems – here and abroad- look somewhere else.

8. Don’t trivialize your estimable talents for lucrative returns. Keeping your conscience at home while selling your talents is a very high price to pay during the fifty years or so you will practice law. Note it has become easier to perform conscientious work earlier because expanded financial aid lessens the burden of law student debt, in addition to other enabling programs post-graduation by Harvard Law School.

9. Take a course or two in legal history, or jurisprudence to absorb the big picture of the law over time. Don’t miss out on such broadening of your intellectual development because questions from such subjects are not asked on bar examinations. Know that bar exams are quite crammable with the help of result-directed cram courses.

10. Learn more about your professors. Knowing about their academic production, their accomplishments, their activism or lack thereof and, importantly, their moonlighting consultancies (reported to some degree on <http://hls.harvard.edu/>) will enrich the quality both of classroom experience and your seeking advice from them. They will benefit from your informed feedback as well. They know that Harvard Law School’s declared mission statement is “to educate leaders who contribute to the enhancement of justice and the well-being of society.”

11. Read some books and articles about what is going on in our political, technological and economic sectors. Such engagement will reduce the tedium of coursework and reify for you the old Roman adage that “out of the fact comes the law.” Facts about greed and power or about virtues and democracy fuel professional enlightenment. That extracurricular reading worked to get me interested in unregulated auto design hazards when I was a Harvard Law student.

12. Passionately attach yourself to some mission for more structural justice, to a cause with the civic community while you are at law school or from your clinical practice work. I was fortunate to venture into the civil rights arena during the nineteen fifties when there were very few women, African-Americans and other minorities at the law school.

But after Brown vs. Board of Education and Arkansas Governor Orville Faubus’s opposition to desegregation, you had to go outside of the law school to understand the law itself as an instrument of oppression.

13. Don’t get too mired into your day-after-day academic routine. Sample the public events at the Law School and the rest of this vast University. Amplify and render more intrepid your curiosity and your imagination by showing up at events and meeting people, often dynamic public interest lawyers, outside your inner circle – who know and who do justice – what Senator Daniel Webster generations ago called the “great work of man on Earth.” Know your law school’s history and your profession beyond their conventional and often mythic portrayals.

14. During the past two years, Harvard Law students published What Harvard Law Students Need to Know, and just last October, Pete Davis 3L issued his challenging, timely report. Our Bicentennial Crisis: A Call to Action for Harvard Law Schools Public Interest Mission. The facts and conclusions might constructively startle you into public interest law activity – that is, if you have a proper estimate of your own significance over the next half century. These publications are online at hlrecord.com, with print copies available at the offices of the Harvard Law Record, which is your voice on the law writ large. (See also Public Citizen Litigation Group’s book, Courting Justice.) Should you wish to delve deeper into the conduct of the legal profession itself, the latest edition of Regulation of Lawyers by NYU Law Professor Stephen Gillers is a robust read.

15. It is not too early to envision the collective significance of your classmates once they become the alumni classes of 2018, 2019 and 2020. It took our class of 1958 a while to do this; but when we started the Appleseed Network (appleseed-network.org) in 1993 to establish law and justice Centers in numerous states, we were the first alumni class in American legal history to embark on such extensive institution building. You’re cordially invited to stand on our shoulders. If the law is to mean anything, it must be the institutional vanguard for a just society. Replacing complicity with conscience, you can be both its sentinels and its tribunes.

Deconstructing the perpetual war machine

How Democrats and Republicans keep us constantly engaged in conflict

By LEONARD C. GOODMAN

I know it’s bad form to say anything positive about President Donald Trump. But his decision to call off a planned air strike against Iran last month should be applauded.

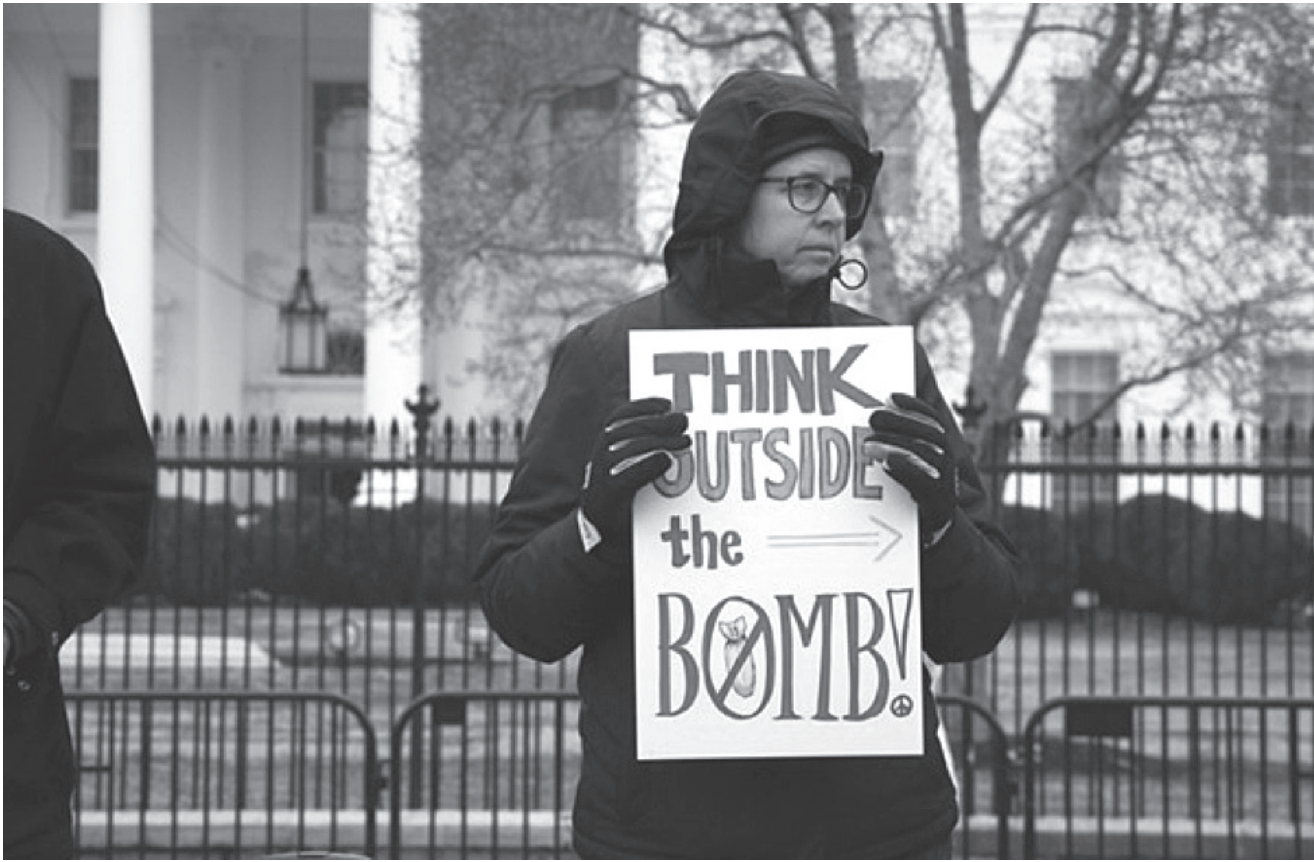
The decision was made, according to the New York Times, with planes already in the air and targets picked out. John Bolton, Trump’s national security adviser, urged the strike to retaliate against Iran for shooting down an American surveillance drone. The easy thing for Trump to do would have been to let the generals blow things up and kill people.

Trump explained in a tweet thread that he canceled the planned attack after being informed by a general that roughly 150 people would die in the assault. He decided that the possible loss of life was “not . . . proportionate to shooting down an unmanned drone.”

In the corporate press, there was some recognition that Trump’s calculation might be correct—the downed drone was not worth 150 lives and a potential new war in the Mideast. Yet the New York Times editorial board expressed concern with Trump’s “chaotic decision-making process,” finding it “strange and disturbing” that Trump would have considered the “possible death toll only at the last minute.”

While I don’t endorse chaotic thinking about foreign policy, it is worth recalling what normal-thinking foreign policy looks like. Past wars in the Mideast were professionally sold to the American people with massive propaganda campaigns run through the press. Normal presidents first dehumanize the enemy, then ignore civilian casualties.

In 1990, when Iraqi troops led by Saddam Hussein invaded Kuwait, a PR campaign was launched to convince Americans to send our troops halfway around the world to defend the oil-rich fiefdom. We were told again and again about babies torn from incubators by Iraqi soldiers. Years later, it was quietly reported that the incubator story was a lie told by a member of the Kuwaiti royal family who’d been coached by the



The perpetual war machine is a bipartisan creation, fed by Republicans and Democrats alike.

CREDIT: MARIA OSWALT / UNSPLASH

PR firm Hill & Knowlton. Corporate media sanitized its coverage of the war, known as Desert Storm, almost entirely ignoring the human cost.

The campaign of lies and propaganda that got us into the second war against Iraq in 2003 is well known. Besides false reporting about mobile chemical weapons labs and shipments of uranium from Africa, we were fed more reports of brutality, rape, and torture by Saddam’s sons Uday and Qusay.

The two Iraq wars combined were responsible for the deaths of hundreds of thousands of Iraqi troops and civilians, and thousands of American soldiers.

The same pattern was repeated in 2011 by the Obama administration to get us geared up for the NATO war in Libya. There, the official lies were that Muammar Gaddafi was supplying his troops with Viagra to

encourage mass rape, and that he was planning to massacre civilians in Benghazi. The NATO bombing plunged Libya into a humanitarian disaster, killing thousands of people and displacing hundreds of thousands more, transforming Libya from the African country with the highest standard of living into a war-torn failed state.

Today, Democrats are raising questions about Trump’s authority to bomb Iran without getting authorization from Congress. In response, Secretary of State Mike Pompeo says that Trump can use the 2001 AUMF—the Authorization for Use of Military Force passed after 9/11—as justification for a new war with Iran.

Democrats dispute Trump’s reading of the AUMF, which only authorizes attacks against the terrorists who attacked us on September 11, 2001. But their position is weakened

by the fact that President Obama used the AUMF 19 times to justify new bombing campaigns in Pakistan, Yemen, Syria, Libya, and Somalia, all without any action by Congress. Obama even used the AUMF to justify the killing of a U.S. citizen, Anwar al-Awlaki, in Yemen in September 2011. Then ten days later, another drone strike killed al-Awlaki’s 16-year-old son, Abdulrahman al-Awlaki, also an American citizen. No justification has ever been given for the attack on the boy.

The perpetual war machine is a bipartisan creation, fed by Republicans and Democrats alike. It is the inevitable result of a capitalist system that lets private companies profit from killing and war coupled with a political system that allows our national leaders to take campaign checks from these same war merchants. The result is a vicious cycle

of wars that can never end because they are designed to spread violence and chaos. Then later, more military spending and war are required to deal with the new dangers created by the past wars.

Under this dysfunctional system, the main job of a commander in chief is to maintain enough conflict zones around the globe to keep the war machine funded to the tune of about a trillion dollars annually. On June 19, the Democratic-controlled House of Representatives passed a nearly \$1 trillion appropriations bill, the vast majority of which was for defense funding.

Trump deserves credit for at least acknowledging the influence of the for-profit war industry on his foreign policy. “Don’t kid yourself,” Trump told Fox News, “you do have a military industrial complex. They do like war.”

As an example, why are we helping Saudi Arabia and its murderous Crown Prince Mohammed bin Salman fight its cruel and brutal war in Yemen, targeting civilians, bombing hospitals, factories, mosques, schools, using starvation and disease as weapons of war? Trump will tell you why. We do it for the weapons contracts with the Saudis. But Obama, the president who got us into the war in Yemen, while he also negotiated huge weapons contracts with the Saudis, never offered any coherent explanation.

Accepting that you have a problem is the first step to changing course. Remember, Trump won the White House promising a noninterventionist foreign policy. “Look, I said I want to get out of these endless wars, I campaigned on that, I want to get out,” he told reporters in the Oval Office on June 20. Normal thinking about foreign policy has produced a cycle of endless wars for corporate profit. Chaotic thinking may be what it takes to break that cycle.

Leonard C. Goodman is a Chicago criminal defense attorney and co-owner of the newly independent Chicago Reader. This piece originally appeared in the Chicago Reader.