

INSPIRING GREAT LIVES IN THE LAW

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“Let us now praise famous men” was not an exhortation for a gesture of pietistic generosity, the placing of verbal flowers on the graves of famous men. It is for our sake that we are to praise them, for, as Ecclesiasticus added, they have given us an “inheritance.” We commune with them to enlighten our understanding of the significance of life, to refine our faculties as assayers of values, to fortify our will in pursuing worthy ends.¹

Justice Felix Frankfurter, 1957

Law schools must provide students with “heroes for emulation[.]” . . . I am suggesting straightforward hero worship with the deliberate provision of heroes. The ultimate purpose, which I unequivocally urge, is to supply students with a variety of desirable models after which they can pattern their professional career.²

Professor Andrew S. Watson, 1968

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1. Felix Frankfurter, *The Supreme Court in the Mirror of Justices*, 105 U. PA. L. REV. 781, 781 (1957) (quoting *Ecclesiasticus* 44:1, 11).

2. Andrew S. Watson, *The Quest for Professional Competence: Psychological Aspects of Legal Education*, 37 U. CIN. L. REV. 91, 158 (1968). See Andrew S. Watson, *Some Psychological Aspects of Teaching Professional Responsibility*, 16 J. LEGAL EDUC. 1, 4–5, 9 (1963) (stating that each law student needs “an acceptable model with which to identify”).

I. INTRODUCTION

"Every lawyer needs a hero in the law."³ Heroes inspire us to accomplish great things; they reprove us when we consider acting contrary to our principles.⁴ Their examples counsel us when we are making difficult decisions; their life stories comfort us when we experience disappointment.⁵ They set a standard of professional and personal excellence for us to strive each day to achieve.⁶

This Article has two goals. The first is to show the important function a hero can play in the unfolding of a legal career. The second is to propose a two-credit elective legal-ethics course that would educate students about lawyer-statesmen in American history. I will discuss both the way the class could be taught and the materials and resources that could be used. I will also use three examples (and exemplars) of "great lives" drawn from American legal history to illustrate how the class could proceed—founding father John Adams, Nuremberg prosecutor Robert H. Jackson, and prison reformer Charles W. Colson. It is my hope that law schools will answer this Article's call by offering such an elective course in the future.

II. THE PEDAGOGICAL FUNCTION OF HEROES

In his diary entry for March 14, 1891, Supreme Court Justice Joseph P. Bradley put his finger on a favorite pastime for generations of lawyers.⁷ "As long as the

3. Howard M. Erichson, *Stewart G. Pollock: A Hero of Moderate Proportions*, 74 N.Y.U. L. REV. 1217, 1217 (1999). See Gerald F. Uelman, *Who is the Lawyer of the Century?*, 33 LOY. L.A. L. REV. 613, 613 (2000) ("Every lawyer should have a hero.").

4. See Uelman, *supra* note 3, at 613.

5. See Erichson, *supra* note 3, at 1217–18.

6. See ANTHONY T. KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* 12 (The Belknap Press 1993); A. JAMES REICHLEY, *RELIGION IN AMERICAN PUBLIC LIFE* 42 (The Brookings Institution 1985); Gretchen A. Jackson, Book Note, *The Lawyer's Myth: Reviving Ideals in the Legal Profession*, 179 MIL. L. REV. 228, 229 (2004).

7. See William G. Ross, *The Ratings Game: Factors that Influence Judicial Reputation*, 79 MARQ. L. REV. 401, 401–02 (1996).

Republic goes on," he wrote, "men will reread the Reports and ask, as we have been asking here: Who were the great Justices?"⁸ Curiosity and competition are natural human traits. We want to learn more about those who went before us in history, if for no other reason than that most of us find it interesting.⁹ Every summer, American families trek to presidential birthplaces or grassy battlefields to learn more about the patriots and heroes of ages past.¹⁰ They may go for historical inquiry or for a more abstract feeling that these places are something parents ought to share with their children. When families survey these historic spaces, when they consider the women and men who once lived or fought or marched there, they find a physical testimony to the immense potential of the human person.¹¹

This simple observation suggests that legal-ethics education can take something from another area of the law—historic preservation.¹² In her history of American preservation law, Kathryn Rand argues that the first of three stages of rationales underlying historic preservation is patriotic inspiration.¹³ Thus, the two earliest national preservation efforts were patriotically motivated: George Washington's Mount Vernon and the Gettysburg battlefield.¹⁴ In the latter instance, the question of preservation went all the way to the United States Supreme

8. Charles Fairman, *What Makes a Great Justice? Mr. Justice Bradley and the Supreme Court, 1870-1892*, 30 B.U. L. REV. 49, 102 (1950).

9. Thomas C. Grey, Commentary, *Unrepeatable Lessons*, 70 N.Y.U. L. REV. 524, 525 (1995).

10. See, e.g., Carol M. Rose, *Preservation and Community: New Directions in the Law of Historic Preservation* 33 STAN. L. REV. 473, 507 (1981).

11. Kathryn R. L. Rand, Note, *Nothing Lasts Forever: Toward a Coherent Theory in American Preservation Law*, 27 U. MICH. J.L. REFORM 277, 284-87 (1993).

12. See generally Rose, *supra* note 10.

13. Rand, *supra* note 11, at 284. See also Marilyn Phelan, *A Synopsis of Laws Protecting Our Cultural Heritage*, 28 NEW ENG. L. REV. 63, 107 (1993); Rose, *supra* note 10, at 479-80.

14. Rand, *supra* note 11, at 284-85.

Court.¹⁵ In a stirring opinion defending those hallowed grounds from private development, the Court said:

[T]he bravery and, indeed, heroism displayed by both the contending forces rank with the highest exhibition of those qualities ever made by man. . . . It would be a great object lesson to all who looked upon the land thus cared for, and it would show a proper recognition of the great things that were done there on those momentous days. By this use the government manifests for the benefit of all its citizens the value put upon the services and exertions of the citizen soldiers of that period. Their successful effort to preserve the integrity and solidarity of the great republic of modern times is forcibly impressed upon every one who looks over the field. . . . Such action on the part of Congress touches the heart, and comes home to the imagination of every citizen, and greatly tends to enhance his love and respect for those institutions for which these heroic sacrifices were made.¹⁶

In an eminent domain case affecting a historic site, the Supreme Court of Kansas used equal rhetorical flourish to praise the value of example:

[H]istory is inspirational. The Santa Fe and Oregon Trails are not merely old-time routes of trade and emigration, whose furrows in the earth's crust interfered with tillage when agriculture developed along their courses; they are highways of the indomitable spirit of man in earnest and arduous quest and fired with passion of purposeful endeavor. . . . If, therefore, the Shawnee Mission, rescued from private ownership, and restored, protected, and preserved by the state, will bear tidings to this and future generations of the vicissitudes, the perplexities, and the frustrations, the consecrated devotion, the dauntless bravery, and the splendid achievements denoted by the

15. *United States v. Gettysburg Elec. Ry. Co.*, 160 U.S. 668, 679-83 (1896) (interpreting the "public use" requirement of the Takings Clause, U.S. CONST. amend. V).

16. *Id.* at 681-82.

inscription on the state's great seal, "Ad astra per aspera,"¹⁷ and will do this with a power upon the hearts and lives of men and women which will make for better citizenship, the use is a public one.¹⁸

As legal ethics seeks new ways to teach law students the importance of personal character, professional satisfaction, and community service,¹⁹ we should start with what we already know about the inspirational power of those whom Matthew Arnold called "the noble and great who are gone[.]"²⁰ A quotation from Longfellow once recited by Judge John Noonan of the United States Ninth Circuit Court of Appeals sums it up well: "Lives of great men all remind us / We can make our lives sublime."²¹

Such an endeavor fits well with several currents already moving within academic legal-ethics circles.²² Two legal-

17. BENJAMIN F. SHEARER & BARBARA S. SHEARER, *STATE NAMES, SEALS, FLAGS, AND SYMBOLS: A HISTORICAL GUIDE* 25 (Greenwood Press, Inc. 1987) (translating from Latin "To the Stars Through Difficulties").

18. *State ex rel Smith v. Kemp*, 261 P. 556, 558–59 (Kan. 1927). *See also* *Flaccomio v. Mayor of Baltimore*, 71 A.2d 12, 14 (Md. 1950) ("The title to the land [the Star Spangled Banner House] will be taken in the name of the city . . . [T]he use, which is public, . . . can be of great educational value and inspiration.")

19. *See generally* James R. Elkins, *From the Symposium Editor*, 40 J. LEGAL EDUC. 1 (1990) (explaining that storytelling is an emerging and useful approach to teach students a variety of components encompassed in legal ethics).

20. MATTHEW ARNOLD, *Rugby Chapel*, in *POETRY AND CRITICISM OF MATTHEW ARNOLD* 174, 178 (A. Dwight Culler ed., 1961).

21. John T. Noonan, Jr., *Education, Intelligence, and Character in Judges*, 71 MINN. L. REV. 1119, 1119 (1987) (quoting H.W. LONGFELLOW, *A Psalm of Life*, in *THE POEMS OF HENRY WADSWORTH LONGFELLOW* 234, 235 (Black's Readers Service Company, 1932)). Admittedly, the praise of heroes runs against some trends in the social science of American history, but these are trends worth standing athwart. *See, e.g.*, STEVEN F. HAYWARD, *GREATNESS: REAGAN, CHURCHILL, AND THE MAKING OF EXTRAORDINARY LEADERS* 17 (Crown Forum 2005); Andrew Ferguson, *The Past Isn't What It Used to Be*, WKLY. STANDARD, Dec. 15, 2008, at 14; John J. Miller, *Sounding Taps: Why Military History is Being Retired*, Nat'l Rev., Oct. 9, 2006, at 44; Patricia Cohen, *Great Caesar's Ghost! Are Traditional History Courses Vanishing?*, N.Y. TIMES, Jun. 11, 2009, at C1; James Jay Carafano, *Abandoning the Study of Military History*, WASH. EXAMINER (last modified Mar. 15, 2012, 9:49 PM), <http://washingtonexaminer.com/article/33349>; Rich Lowry, *The Rout of Military History in the Academy*, REAL CLEAR POLITICS (May 29, 2007), http://www.realeclearpolitics.com/articles/2007/05/the_rout_of_military_history_i.html (all discuss the relative decline of diplomatic, military, and intellectual history and the rise of social history).

22. *See generally* Elkins, *supra* note 19, at 1–2 (describing how stories of past lawyer accomplishments and perseverance through struggles can remind lawyers how meaningful legal work can be).

ethics scholars have called for law schools to expand their ethics course offerings to include elective upper-class options.²³ Many law schools are trying new and innovative ways of communicating legal-ethics principles to students.²⁴

"[D]eep, internal learning—learning of the heart as well as the mind"—is how Professor Walter H. Bennett, Jr., of the University of North Carolina law faculty described ethics education.²⁵ While arguing for an oral history seminar, he praised the format for "bringing law students into intimate contact with the life and personality of another person who has chosen and lived (or is living) a life in the law."²⁶ The Army Judge Advocate General (JAG) Corps has adopted this approach as well, offering course credit at the JAG School for oral history reports on famous JAG lawyers and otherwise encouraging a "professional mythology through the stories of fellow lawyers."²⁷

Oral story sharing is one part of a larger literature urging legal ethics to incorporate more "story-telling."²⁸ As one leading advocate argues, stories "give us a closer, more intimate, as well as broader *experience* (even if only vicariously)."²⁹ Whether through oral history or biography,³⁰ these stories provide a new way to engage students by setting aside the Socratic method and casebook and instead diving into the fascinating, complex reality of a life in the

23. Roger C. Cramton & Susan P. Koniak, *Rule, Story, and Commitment in the Teaching of Legal Ethics*, 38 WM. & MARY L. REV. 145, 164 (1996).

24. See generally Symposium, *Teaching Legal Ethics*, 58 LAW & CONTEMP. PROBS. 1 (1995) (providing several examples of how law schools have structured legal ethics courses).

25. Walter H. Bennett, Jr., *The University of North Carolina Intergenerational Legal Ethics Project: Expanding the Contexts for Teaching Professional Ethics and Values*, 58 LAW & CONTEMP. PROBS. 173, 174 (1995).

26. *Id.* at 178.

27. Jackson, *supra* note 6, at 234. A similar motive prompted Regent University Law Review's series of mini-biographies of famous Christian lawyers. See Douglas H. Cook, *Sir William Blackstone: A Life and Legacy Set Apart for God's Work*, 13 REGENT U. L. REV. 169 (2000); Jeffrey A. Brauch, *John Winthrop: Lawyer as Model of Christian Charity*, 11 REGENT U. L. REV. 343 (1998).

28. See Elkins, *supra* note 19, at 1-2.

29. Carrie Menkel-Meadow, *Telling Stories in School: Using Case Studies and Stories to Teach Legal Ethics*, 69 FORDHAM L. REV. 787, 792 (2000).

30. Grey, *supra* 9, at 525.

law.³¹ Professor James Elkins reminded us, "We relish tales of other lawyers, stories of the impossible accomplished and the awesome mastered, stories of skill demonstrated, and stories of dilemmas confronted and subdued."³² Similarly, retired college president Josiah Bunting argued in a book about the ideal undergraduate curriculum,

An individual life studied, known, loved (the love strengthened by our knowledge of its dark corners and failures as well as the titles it furnishes to greatness) is a more potent, more lasting illumination and fuel for our own, than an intellectual ability to consider issues of ethics in the abstract[.]³³

When an ethical dilemma is incarnated in the story of a particular person, it provides either an example of a virtuous triumph in tough circumstances or a dark chapter that humanizes the hero.³⁴ In either case, it is a valuable example for the student to study in the overall context of the person's life and career.³⁵

The goals for this course extend beyond simply the lives of the students who take such a class. "The Death of an Honorable Profession" has been widely lamented in the last two decades,³⁶ and recent survey research indicates that we

31. See Beryl Blaustone, *Teaching Evidence: Storytelling in the Classroom*, 41 AM. U. L. REV. 453, 455-58 (1992).

32. Elkins, *supra* note 19, at 1. See James D. Cox, *Heroes in the Law: Alford v. Shaw*, 66 N.C. L. Rev. 565, 565 (1988); Watson, *supra* note 2, at 158.

33. JOSIAH BUNTING III, AN EDUCATION FOR OUR TIME 170 (Regnery Publ'g, Inc. 1998) This is an excellent volume for anyone interested in education; it has exerted a powerful influence on my own thinking about these issues.

34. See Elkins, *supra* note 19, at 1-2.

35. See Donald H.J. Hermann, *Patterns of a Life in the Law: A Consideration of Contemporary American Legal Biography*, 24 DEPAUL L. REV. 853, 854-55 (1975).

36. Carl T. Bogus, *The Death of an Honorable Profession*, 71 IND. L.J. 911, 911 (1996); see also MARY ANN GLENDON, A NATION UNDER LAWYERS: HOW THE CRISIS IN THE LEGAL PROFESSION IS TRANSFORMING AMERICAN SOCIETY (Farrar, Straus, and Giroux, 1994); KRONMAN, *supra* note 6; Michael P. Schutt, *Oliver Wendell Holmes and the Decline of the American Lawyer: Social Engineering, Religion, and the Search for Professional Identity*, 30 RUTGERS L.J. 143, 144-46, 148-51 (1998); James M. Altman, Book Note, *Modern Litigators and Lawyer-Statesmen*, 103 YALE L.J. 1031, 1041-47 (1994) (reviewing ANTHONY T. KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* (The Belknap Press 1993)).

have more work yet to do.³⁷ Many learned commentators ask how the legal profession and legal education changed in ways that led to this current predicament.³⁸ Perhaps renewed attention to the lives and examples of lawyer-statesmen from the past will result in a new generation rising within the profession, equally equipped for statesmanship.

III. A TWO-CREDIT COURSE

One way that law schools can fulfill Justice Holmes' call to "teach law in the grand manner, and to make great lawyers"³⁹ is to educate students about the "lawyer-statesmen" of American history.⁴⁰ The call for law schools to do so has sounded at points in the past.⁴¹ This Article gives concrete, substantive form to such an endeavor.

37. Jeffrey A. Brauch, *And the Survey Says . . .*, THE BRAUCH BRIEF, (May 22, 2012), <http://brauchbrief.blogspot.com/2012/05/and-survey-says.html> (Less than half of third-year law students report "that law school contributed '[q]uite a bit' or '[v]ery much' to developing a personal code of values and ethics.").

38. See, e.g., William H. Rehnquist, *The Lawyer-Statesman in American History*, 9 HARV. J.L. & PUB. POL'Y 537, 554-56 (1986).

39. OLIVER WENDELL HOLMES, *The Use of Law Schools*, in COLLECTED LEGAL PAPERS 35, 37 (1920).

40. See generally KRONMAN, *supra* note 6, at 12 ("The lawyer statesmen - possessed of great practical wisdom and exceptional persuasive powers, devoted to the public good but keenly aware of the limitations of human beings and their political arrangements . . ."); Neil Duxbury, *History as Hyperbole*, 15 OXFORD J. LEGAL STUD. 477, 480 (1995) (reviewing ANTHONY T. KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* 12 (The Belknap Press 1993)); Rehnquist, *supra* note 38, at 9.

41. See, e.g., DEANS' LIST OF RECOMMENDED READINGS FOR PRELAW AND LAW STUDENTS 26 (Julius J. Marke ed., Oceana Publications 1958) (quoting William Hughes Mulligan, former dean of Fordham Law: "I think that if a student can become imbued with the spirit of some of the great men of the law, this might be more helpful in his own development than introductory materials which are more prosaic in nature."); Watson, *supra* note 2, at 158; Hermann, *supra* note 35, at 854 ("[T]here is much to be said for examining the lives of other persons who share one's life's work in order to gain a better understanding of the significance of work in the profession, and to search for inspiration in meeting the challenges presented in one's career. The contribution of biography in providing role models is one which needs stress in a time without heroes."); Lawrence Dubin, *Storytelling to Inspire Law Students*, MICH. BAR J., Dec. 2001, 50 ("Law students need positive role models who inspire them and validate their altruistic concerns. Many lawyers could serve as role models for today's law students. The problem is that in the absence of publicizing their efforts, law students will never know about these

In this section, I propose a two-credit course that would introduce students to great lives in the law, lives of men and women who exhibited “good heads prompted by good hearts”⁴² from past and present epochs of American legal history. The course would present these examples in an engaging, interactive way, drawing students into the life stories of these heroic lawyers. The class would meet twice a week for fifty minutes each class over the course of a standard semester for a total of roughly twenty class sessions. As much as possible, this class should be an exciting, multifaceted encounter between students and the great lawyers under discussion. Each of the class sessions would focus on the life, accomplishments, and trials of one particular lawyer from American history.

Admittedly, the “clergy knows how to conduct a canonization more considerately than we lawyers do.”⁴³ Selecting the right heroes to lift up in class will call for a law professor to exercise “an art of selection, discrimination, and balance.”⁴⁴ I start with the recognition that “[y]ou don’t need many heroes if you choose carefully[.]”⁴⁵ We must choose carefully and intentionally, being honest about the “values or agendas” that drive our own selections.⁴⁶ My agenda starts here: the subjects and stories I would select belong to “the small subset of lawyers and judges who make great biographical subjects [by] forg[ing] influential careers that are lived in public. They provide engaging narrative arcs, frequently with great heights and calamitous falls,

lawyers’ accomplishments.”); Vincent Robert Johnson, Note, *Law-givers, Story-tellers, and Dubin’s Legal Heroes: The Emerging Dichotomy in Legal Ethics*, 3 GEO. J. LEGAL ETHICS 341, 347–48 n.38 (1989) (“[A]verage persons can be heroes, that heroes have heroes, and that it is important for each attorney to personally identify and critically consider those who might serve as role models.”).

42. INAUGURAL ADDRESSES OF THE PRESIDENTS OF THE UNITED STATES FROM GEORGE WASHINGTON 1789 TO HARRY S. TRUMAN 1949, H.R. DOC. NO. 540, at 6 (Inaugural Address of John Adams, 1797).

43. Robert H. Jackson, *Why Learned and Augustus Hand Became Great*, 9 B. BULL. N.Y. CNTY. LAW. ASS’N 42, 42 (1952).

44. J. Woodford Howard, Jr., *Alpheus T. Mason and the Art of Judicial Biography*, 8 CONST. COMMENT. 41, 42 (1991).

45. Harold Hongju Koh, *Choosing Heroes Carefully*, 57 STAN. L. REV. 723, 723 (2004).

46. Marjorie L. Girth, *Facing Ethical Issues with Law Students in an Adversary Context*, 21 GA. ST. U.L. REV. 593, 602–03 (2005).

always punctuated by compelling passages and dramatic moments. The subjects of these biographies inspire and teach”⁴⁷

Since the course’s structure only allows for the entire class to study about twenty lawyers, my test necessarily sets a high bar. The professor’s goal should be to identify twenty lawyers, drawn from different eras of history and areas of practice, who were people of good character and who accomplished something noteworthy in life with a spirit of public service.⁴⁸ Although the occasional semi-obscure person may pass this test, one should focus on those figures with a “genuine, glorious reputation [that] strikes deep roots and has wide ramifications[.]”⁴⁹ The characters selected should exhibit the noble qualities we praise in lawyers; many have offered lists of such virtues.⁵⁰ My own preferred

47. Mark Fenster, *The Folklore of Legal Biography*, 105 MICH. L. REV. 1265, 1266 (2007). Of course, not everyone agrees that this ought to be the purpose of biographies, but that is a debate for a different day. See Richard A. Posner, *Judicial Biography*, 70 N.Y.U. L. REV. 502, 503–04 (1995) (describing different purposes for writing biographies). One can also argue about what kind of biographies we should read, and how the purposes of the author shape the emphasis of the work. See John P. Reid, *Irresponsible and Unimaginative – The Lawyer and the Historian as Judicial Biographer*, 57 LAW LIBR. J. 128 (1964) (comparing the focus, organization, and writing styles of two biographers writing about the same individual). Judicial biography may also face the particular challenge of an “authorized” biographer. But see Gerald Gunther, “Contracted” Biographies and Other Obstacles to “Truth,” 70 N.Y.U. L. REV. 697, 700–03 (1995).

48. See Constance Frisby Fain, *Characteristics of the Heroic Lawyer and Avoidance of Unprofessional Conduct*, 13 WIDENER L.J. 61, 98 (2003) (“[P]rofessionalism, competence, and commitment to principles that preserve and enhance our legal system should be goals of the heroic lawyer.”).

49. *On Duties*, in CICERO: ON THE GOOD LIFE 142 (Michael Grant, trans., 1971).

50. Willard Hurst, *Who is the “Great” Appellate Judge?*, 24 IND. L.J. 394, 398 (1949) (identifying integrity, learning, and wisdom); Cynthia L. Fountaine, *In the Shadow of Atticus Finch: Constructing a Heroic Lawyer*, 13 WIDENER L.J. 123, 124 (2003) (listing courage, honesty, and compassion); Gail Heroit, *Songs of Experience*, 81 VA. L. REV. 1721, 1723 (1995) (book review) (insisting that good judgment and prudence require moral imagination); George R. Currie, *A Judicial All-Star Nine*, 1964 WIS. L. REV. 3, 3 (“Overall ability, prophetic vision, and judicial statesmanship perhaps best describe the qualities given most weight.”); W. Bradley Wendel, *Symposium Introduction: Our Love-Hate Relationship with Heroic Lawyers*, 13 WIDENER L.J. 1, 2 (2003) (“These ‘orienting stories’ [should] reveal the characteristics of the lawyer that we all ought to admire; the lawyer is shown to be the friend of the outcast, the rock of stability, or the conscience of the community.”). See also Richard A. Posner, *The Learned Hand Biography and the Question of*

definition comes from Stephen Hayward: "In three thousand years we have not surpassed the understanding of Aristotle, who summed up political greatness as the ability to translate wisdom into action on behalf of the public good. To be able to do this, Aristotle argued, requires a combination of moral virtue, practical wisdom, and public-spiritedness."⁵¹ And whenever possible, these should be *interesting* people, who lived exciting lives, did great things, and strived mightily in the doing.⁵² While these considerations may not set a bright-line rule that would satisfy Justice Scalia, they are an adequate starting point at least.

Moreover, the professor who teaches the class must go beyond the judicial hagiography that sometimes characterizes legal history⁵³ and instead select not only great judges and famed trial lawyers, but also lawyers who built American society in other ways.⁵⁴ A good syllabus

Judicial Greatness, 104 YALE L.J. 511, 524 (1994) (book review); Ross, *supra* note 7, at 403.

51. HAYWARD, *supra* note 21, at 17.

52. See Robert M. Spector, *Judicial Biography and the United States Supreme Court: A Bibliographical Appraisal*, 11 AM. J. LEGAL HIST. 1, 2 (1967) (acknowledging that some judges live "routine," "scholarly," and "prosaic" lives that lack "the color of a Napoleon or Lincoln.").

53. See Laura Kalman, *The Power of Biography*, 23 LAW & SOC. INQUIRY 479, 498-500 (1998); Norman Dorsen & Christopher L. Eisgruber, *Preface*, 70 N.Y.U. L. REV. 485, 487 (1995). I equally would try to go beyond the U.S. Supreme Court to embrace judges on other levels, though that effort is complicated by a lack of biographical material on judges of other courts. See Hurst, *supra* note 50, at 395, n.1. See also John Phillip Reid, *Commentary, Beneath the Titans*, 70 N.Y.U. L. REV. 653, 665-67 (1995) (providing a list of biographies of less famous jurists). Even with this information, though, the reality remains that the histories of courts are more likely to be remembered than the biographies of individual judges. See Philip B. Kurland, *Judicial Biography: History, Myth, Literature, Fiction, Potpourri*, 70 N.Y.U. L. REV. 489, 490 (1995).

Moreover, we are looking for people whose lives are interesting, exciting, and challenging for students. Judge Posner reports that "Few judges, however prominent, have been extraordinary individuals; few have led interesting lives[.]" Posner, *supra* note 50, at 512. Thus, while it may be appropriate to include a few judges and justices, the class should cover many non-judges as well.

54. We should be mindful that "history has a natural bias in favor of the strong leader. This is as true of judges as it is of Presidents. . . . In legal, as in political, history, exercise of power glamorizes." Bernard Schwartz, *The Judicial Ten: America's Greatest Judges*, 4 S. ILL. U.L.J. 405, 444-45 (1979). Similarly, our general conception of heroes is biased in favor of "warrior[s]," but we should remember as well that heroes can be "creators, scholars, pioneers, lovers, caregivers, or wise prophets." Ruth Anne Robbins, *Harry Potter, Ruby Slippers and Merlin: Telling the Client's Story Using the Characters and Paradigm of the*

could include a baseball commissioner,⁵⁵ a professor,⁵⁶ a military man,⁵⁷ a religious leader,⁵⁸ and a journalist.⁵⁹ Because communities have their own unique legal

Archetypal Hero's Journey, 29 SEATTLE U.L. REV. 767, 777 (2006). Thus, intentionally including a handful of role models who pursued non-traditional careers would benefit students who may be looking for permission or affirmation of their own choices to step outside the traditional practice of law, or to pursue areas of the law that are considered less prominent.

55. See BOWIE KUHN, *HARDBALL: THE EDUCATION OF A BASEBALL COMMISSIONER* 17, 34 (Univ. of Nebraska Press 1997) (Bowie Kuhn served as legal counsel to MLB's owners before he took over as commissioner in 1969); DAVID PIETRUSZA, *JUDGE AND JURY: THE LIFE AND TIMES OF JUDGE KENESAW MOUNTAIN LANDIS* 40 (Diamond Communications, Inc. 1998) (Kenesaw Mountain Landis, the first commissioner of baseball, sat on the U.S. District Court for the Northern District of Illinois). See also J. Gordon Hylton, *Maybe the Brewers Should Hire a Lawyer as Their Next Manager*, MARQUETTE U. L. FACULTY BLOG, Nov. 1, 2011, <http://law.marquette.edu/facultyblog/2011/11/01/maybe-the-brewers-should-hire-a-lawyer-as-their-next-manager>.

56. See, e.g., NICOLA LACEY, *A LIFE OF H.L.A. HART: THE NIGHTMARE AND THE NOBLE DREAM* (Oxford Univ. Press 2004); DAVID WIGDOR, *ROSCOE POUND: PHILOSOPHER OF LAW* (Greenwood Press 1974); WILLIAM R. ROALFE, *JOHN HENRY WIGMORE: SCHOLAR AND REFORMER* (Nw. Univ. Press 1977).

57. See, e.g., George R. Smawley, *By the Content of Character: The Life and Leadership of Major General Kenneth D. Gray (Ret.) (1966-1997), the First African-American Judge Advocate General Officer*, 195 MIL. L. REV. 128 (2008); George R. Smawley, *The Past as Prologue: Major General George S. Prugh, Jr. (Ret.) (1942-1975)—Witness to Insurgent War, the Law of War, and the Expanded Role of Judge Advocates in Military Operations*, 187 MIL. L. REV. 96 (2006); George R. Smawley, *The First Female Colonel of the U.S. Army Judge Advocate General's Corps: A Summary and Analysis of the "Oral History of Colonel Elizabeth R. Smith, Jr. (USA Retired) (1951-1978)"*, 179 MIL. L. REV. 171 (2004); George R. Smawley, *Shoeshine Boy to Major General: A Summary and Analysis of An Oral history of Major General Hugh R. Overholt, United States Army (Retired) 1957-1989*, 176 MIL. L. REV. 309 (2003); and George R. Smawley, *The Soldier-Lawyer: A Summary and Analysis of An Oral History of Major General Michael J. Nardotti, Jr. United States Army (Retired) (1969-1997)*, 168 MIL. L. REV. 1 (2001).

58. See PAUL PRESSLER, *A HILL ON WHICH TO DIE: ONE SOUTHERN BAPTIST'S JOURNEY* (Broadman & Holman Publishers 1999) (Judge Paul Pressler, a former Texas state legislator and Texas Court of Appeals judge, was a transformative lay leader in the "conservative resurgence" within the Southern Baptist Convention); D. MICHAEL QUINN, *ELDER STATESMAN: A BIOGRAPHY OF J. REUBEN CLARK* (Signature Books 2002) (J. Reuben Clark was an attorney and diplomat before serving as First Counselor to the President of the Church of Jesus Christ of Latter-Day Saints); Nancy Blodgett, *Bishop is a Lawyer*, 74 A.B.A. J. Mar. 1, 1988, at 33 (Cardinal Anthony Bevilacqua, the late archbishop of Philadelphia, held a J.D. from St. John's University).

59. H.R. Res. 1275, 110th Cong. (2008) (Honoring the life of Timothy John Russert, Jr.). Tim Russert, the late legendary host of NBC's Meet the Press, earned a J.D. from the Cleveland-Marshall College of Law of Cleveland State University. *Id.*

histories,⁶⁰ one or two subjects drawn from the law school's hometown or alumni would also be appropriate.

Each lawyer selected for study is still a person who “d[id] not necessarily live their lives in order to be role models for future [generations].”⁶¹ This is true of personal morality decisions, as well as political and legal decisions. “It is not easy for a lawyer to be a hero. Lawyers work with, work against, and work for good lawyers and bad lawyers. Lawyers have good clients and bad clients. Sometimes bad causes win and good causes lose.”⁶² Thus, our standard must be honest emulation, not praise of mythologized perfection. Similarly, a professor should resist the temptation to use the list to advance any political or judicial ideological agenda and instead aim to achieve a fair balance of lawyers known as liberals and conservatives.⁶³

Finally, another necessary criterion is “current accessibility of information about the individual’s career and accomplishments[.]”⁶⁴ Many lawyers throughout American history lead lives characterized by the virtues I have listed above,⁶⁵ yet their names are “written in the sands[.]” at most memorialized in the pages of a court’s reports or a state bar journal.⁶⁶ Thus, it is necessary that a professor select

60. See, e.g., Anna-Maria Marshall, *Communities and Culture: Enriching Legal Consciousness and Legal Culture*, 31 LAW & SOC. INQUIRY 229, 229–30 (2006).

61. Carol Sanger, *Curriculum Vitae (Feminae): Biography and Early American Women Lawyers*, 46 STAN. L. REV. 1245, 1281 (1994) (book review).

62. Fountaine, *supra* note 50, at 124.

63. See Jack Van Doren, *Is Jurisprudence Politics by Other Means? The Case of Learned Hand*, 33 NEW ENG. L. REV. 1, 19 (1998). See also G. Edward White, *The Canonization of Holmes and Brandeis: Epistemology and Judicial Reputations*, 70 N.Y.U. L. REV. 576 (1995) (noting how reputation is tied up with the triumph of a philosophy intimately identified with the lives of prominent proponents).

64. Uelmen, *supra* note 3, at 615. See Spector, *supra* note 52, at 24 (acknowledging that it is difficult to find source material for a biography of every member of the Supreme Court).

65. See, e.g., Michael S. McGinniss, *Virtue Ethics, Earnestness, and the Deciding Lawyer: Human Flourishing in a Legal Community*, 87 N.D. L. REV. 19, 21–22 (2011).

66. Carl Zollmann, *Lawyers Memorialized in Wisconsin Reports*, 9 MARQ. L. REV. 106, 106 (1925). See Joseph D. Kearney, *Remarks of Joseph D. Kearney at the Marquette Law Review Annual Banquet* (Apr. 13, 2007), in 90 MARQ. L. REV. 1069, 1069–71 (2007); Joseph D. Kearney, *In Memoriam Howard B. Eisenberg*, 86 MARQ. L. REV. (SPECIAL ISSUE) 203, 207 (2002) (stating that law reviews perform an

individuals whose lives have received sufficient scholarly and historical attention so materials are available for students to read and study.

Just as the overall class should expose students to a number of famous lawyers drawn from different eras and areas, each session should give students a view of the various facets of a particular lawyer's life. Students should come to each class having received a brief overview of the subject's entire life and particular readings focused on the ethical topics or events for discussion.

Since oratorical prowess is one important attribute of a lawyer-statesman,⁶⁷ the class should incorporate multiple opportunities for students to speak in public. At the beginning of each class, one student should give a five-minute overview of the subject's life, prepared after reading a book-length biography of the person. After this presentation, another student should stand in front of the class to give an oration originally delivered by the lawyer of the day. In and out of the courtroom, lawyers have made many noteworthy contributions to American letters, and we should celebrate these rhetorical accomplishments. At the bar of the court, one recalls Clarence Darrow's plea for mercy at the trial of Leopold and Loeb or his closing argument in the *Sweet* trial.⁶⁸ Lawyers of a previous generation may have looked to oral arguments delivered by Daniel Webster, Rufus Choate, William Seward, or Edwin Stanton.⁶⁹ Many lawyers also gave stirring speeches in non-

important function as repositories of professional memory). Of course, that does not mean we should not pause to appreciate these lawyers' contributions to our country. As Justice Jackson said in his tribute to the country lawyer: "A free and self-governing Republic stands as a monument for the little known and unremembered as well as for the famous men of our profession." Robert H. Jackson, *The County Seat Lawyer*, 36 A.B.A. J. 497, 497 (1950).

67. See Rehnquist, *supra* note 38, at 555 (praising the "remarkable proficiency with the spoken and written use of the English language" exhibited by Alexander Hamilton, Thomas Jefferson, Abraham Lincoln, and Stephen Douglas).

68. *The Crime of Compulsion Leopold and Loeb, Chicago, 1924*, in ATTORNEY FOR THE DAMNED 16 (Arthur Weinberg ed., Jonathan Cape Ltd. 1957); *You Can't Live There! The Sweet Case, Detroit, 1926*, in ATTORNEY FOR THE DAMNED 229 (Arthur Weinberg ed., Jonathan Cape Ltd. 1957).

69. GREAT SPEECHES BY GREAT LAWYERS: A COLLECTION OF ARGUMENTS AND SPEECHES BEFORE COURTS AND JURIES BY EMINENT LAWYERS, 67-83, 149-90, 247-

legal capacities—in the past century, we think of Adlai Stevenson, Learned Hand, Robert Kennedy, Barbara Jordan, and Barack Obama.⁷⁰ In a class with such a focus on statesmanship, students should be given the opportunity to both deliver and hear these powerful expressions of the American spirit.⁷¹

Next, if possible, an audio or video clip drawn from the person's life should be incorporated into the class. Students arrive at law school already immersed in a multimedia world filled with electronic story-telling.⁷² Sometimes professors may try to “force” multimedia offerings into a class where they do not fit well; here, the use of video fits like a glove.⁷³ And although video or audio clips are an “imperfect means . . . to be borne back in time,” they can still render a valuable approximation that engages students in the real drama of great lives.⁷⁴ A brief audio clip from the peroration of William Jennings Bryan's philippic against

324, 325–42 (William L. Snyder ed., New York, Baker, Voorhis, & Co. Publishers 1881).

70. See JOHN MARTIN, ADLAI STEVENSON AND THE WORLD: THE LIFE OF ADLAI E. STEVENSON 351–52 (Double Day & Co. 1977) (Address to the 1952 Democratic National Convention.); GERALD GUNTHER, LEARNED HAND: THE MAN AND THE JUDGE 547–52 (Alfred A. Knopf, Inc. 1994) (“The Spirit of Liberty”—Addresses on the Fourth of July.); EVAN THOMAS, ROBERT KENNEDY: HIS LIFE 321–23 (Simon & Schuster 2000) (“Address at the University of Capetown.”); RAY E. BOOMHOWER, ROBERT F. KENNEDY AND THE 1968 INDIANA PRIMARY 135–36 (Indiana Univ. Press 2008) (“Remarks on the Assassination of Martin Luther King, Jr.”); BARBARA JORDAN: SPEAKING THE TRUTH WITH ELOQUENT THUNDER 27–31, 35–40 (Max Sherman, ed., Univ. of Texas Press 2007) (“Statement on the Articles of Impeachment” and “Address to the 1976 Democratic National Convention.”); DAVID REMNICK, THE BRIDGE: THE LIFE AND RISE OF BARACK OBAMA 5, 17–18 (Alfred A. Knopf, Inc. 2010) (“Address to the 2004 Democratic National Convention.”).

71. See Rehnquist, *supra* note 38, at 555. See, e.g., Zollmann, *supra* note 66, at 107.

72. John Batt, *Law, Science, and Narrative: Reflections on Brain Science, Electronic Media, Story, and Law Learning*, 40 J. LEGAL EDUC. 19, 28 (1990). See Johnson, *supra* note 41, at 98.

73. See Watson, *supra* note 2, at 158 (“Other means for bringing about identification are to be found in some of our modern electronic gadgets. It is now possible, and one hopes it will be done, to record for all time the detailed and candid behavior of our great men. There have been some movies taken of great judges, and at the present time there is a series being developed on great law teachers. These presentations could also be utilized for discussion about the person as a professional man.”).

74. See Kearney, *supra* note 66, at 1069.

those who would “crucify mankind upon a cross of gold[.]”⁷⁵ an interview on the set of *Meet the Press* with Tim Russert,⁷⁶ or a video of Robert F. Kennedy’s eulogy of Martin Luther King, Jr.,⁷⁷ can impress a lasting memory on students.⁷⁸

The bulk of the class, about half an hour, should be spent studying a few particular “case studies in character” from the life of the lawyer of the day. In the last decades, the concept of story-telling has gained prominence throughout legal academia.⁷⁹ This emphasis on story-telling is particularly pronounced in the legal-ethics arena, where teachers often ask students to place themselves in a particular situation or ethical conundrum.⁸⁰ Legal-ethics professors teach classes in this way because it best prompts students to discuss and think critically about the issues presented.⁸¹ Here, rather than drawing cases from the pages of state bar journals or advisory opinions, the situations are drawn from the lives of great lawyers. The three profiles that follow will offer specific examples of the kinds of questions that these “case studies in character” will allow a class to broach.

75. William Jennings Bryan, *The Cross of Gold: Address to the 1896 Democratic National Convention* (1896), in *AMERICAN SPEECHES*, 492, 500 (Wayland Maxfield Parrish & Marie Hochmuth eds., Longmans, Green & Co. 1954). See *Address to the 1896 Democratic National Convention*, <http://www.americanrhetoric.com/speeches/williamjenningsbryan1896dnc.htm>.

76. See Interview by Karen Herman with Tim Russert, News Executive and Moderator, NBC, in Washington, D.C. (Oct. 12, 2003) (describing his early years growing up in Buffalo and his decision to attend law school), available at <http://www.emmytvlegends.org/interviews/people/tim-russert>; Chris Smith, *What Makes Russert Run*, New York, Dec. 7, 1992, at 48, available at <http://www.youtube.com/watch?v=g6YaH5gZTX8> (I suggest watching from 1:22 to 8:55).

77. Videotape: *Great Speeches Volume V* (The Educational Video Group 1989); BOOMHOWER, *supra* note 70, at 135–36, available at <http://www.americanrhetoric.com/speeches/rfkonmlkdeath.html>.

78. Batt, *supra* note 72, at 28–29.

79. See, e.g., Symposium, *Pedagogy of Narrative: A Symposium*, 40 J. LEGAL EDUC. 1 (1990).

80. See Ian Johnstone & Mary Patricia Treuthart, *Doing the Right Thing: An Overview of Teaching Professional Responsibility*, 41 J. LEGAL EDUC. 75, 98–99 (1991).

81. See Gregory L. Ogden, *The Problem Method in Legal Education*, 34 J. LEGAL EDUC. 654, 656, 661–62 (1984).

No article proposing a new law school class would be complete without a few words on grading. Two previously mentioned activities should receive some weight. This Article proposes that each class open with a brief oral-biography report on the person whom the class will study for that day. This assignment should be ten percent of the overall grade in the class and constitute "gimme" points as long as students show up and do a good job with their particular presentations. Another ten percent should be assigned to general class participation, in the hopes that a grade incentive will draw students into discussing these otherwise compelling ethical questions. A majority of the grade should be based on a twenty to thirty page paper due at the end of the semester. Each student's paper should focus on an American lawyer he or she is considering adopting as his or her own legal hero.⁸² The first ten or so pages should offer a brief sketch of the subject's personal and professional life and accomplishments. The second decade should take a single instance of an ethical dilemma from the person's life and describe how he responded. The student should then also give reasons why he agrees or disagrees with the decision made by his hero. Finally, the student should devote a few pages to what drew him to this particular lawyer—what shared personal trait, inspiring story, or other fact drove the selection. Also, all papers should include a picture of the subject, so that the student knows where to find one in the future if he decides to adorn his office walls in such a manner. Professor Gerald Uelmen of Santa Clara University School of Law offers,

For fifteen years I kept a portrait of [Clarence]
Darrow hanging over my desk, and I frequently

82. Some may observe that throughout the paper, and again here, I have pointed to only American figures. Certainly, there are other lawyers from history that one could reasonably consider as lawyer-statesman, from Cicero in ancient days to Coke and Blackstone more recently. If a student really wanted to do his or her paper on a lawyer from another country (for instance, a Catholic student who desired to write about the patron saint of lawyers, St. Thomas More, or an international law student who wanted to select a leading figure in international public or commercial law), I think I would permit it. Generally, though, the class should retain an exclusive focus on American lawyers. As it is, deciding on a diverse set of twenty American lawyers worthy of inclusion in such a class is a challenge.

found myself gazing up and asking, "Would Clarence Darrow turn down this case? What would Clarence Darrow have to say about that?" That's what heroes are for: to inspire us and to serve as role models.⁸³

By making students focus on the lives of great lawyers from American history, lawyer-statesmen like John Adams, Robert H. Jackson, and Charles W. ("Chuck") Colson, we provide them with role models and inspiration.

IV. THREE EXAMPLES

In this section, I review the lives of three great American lawyers from across our nation's history: John Adams, Robert H. Jackson, and Chuck Colson. For each, I sketch the major moments of his life, discuss key ethical decisions, and identify speeches and videos for use in the classroom along the lines outlined in the previous section. My goal in presenting these three examples is to give law professors considering such a class a concrete starting point on a syllabus. Moreover, these three lives are excellent examples of the "great lives" that every lawyer should consider as role models.

A. John Adams

John Adams was a leading colonial lawyer-statesman in the years leading up to the American Revolution,⁸⁴ authoring important works explaining the legal case for Americans' individual rights.⁸⁵ A graduate of Harvard College at age twenty, Adams read law in the office of a local attorney before his own admission to the bar.⁸⁶ He first

83. Uelmen, *supra* note 3, at 613.

84. Robert F. Boden, *The Colonial Bar and the American Revolution*, 60 MARQ. L. REV. 1, 6 (1976).

85. See, e.g., John Adams, *Instructions of the Town of Braintree to Their Representative*, in THE REVOLUTIONARY WRITINGS OF JOHN ADAMS 37-41 (Thompson ed. 2000). See also Boden, *supra* note 84, at 6, 10, 13, 19.

86. JOHN P. KAMINSKI, THE FOUNDERS ON THE FOUNDERS 18 (2008).

came to political prominence in 1765 as a vocal opponent of the Stamp Act.⁸⁷ He drafted a set of instructions from the inhabitants of his hometown of Braintree to its representatives in the Massachusetts legislature. His words on the Act's courts of admiralty are well-suited to be read aloud in class:

But the most grievous innovation of all, is the alarming extension of the power of courts of admiralty. In these courts, one judge presides alone! No juries have any concern there! The law and the fact are both to be decided by the same single judge, whose commission is only during pleasure, and with whom, as we are told, the most mischievous of all customs has become established, that of taking commissions on all condemnations; so that he is under a pecuniary temptation always against the subject. Now, if the wisdom of the mother country has thought the independency of the judges so essential to an impartial administration of justice, as to render them independent of every power on earth,—independent of the King, the Lords, the Commons, the people, nay, independent in hope and expectation of the heir-apparent, by continuing their commissions after a demise of the crown, what justice and impartiality are we, at three thousand miles distance from the fountain, to expect from such a judge of admiralty?⁸⁸

Adams developed his theories further that year by anonymously publishing four articles in the *Boston Gazette*, which were later collected and titled *A Dissertation on the Canon and Feudal Law*.⁸⁹ The "Braintree Instructions" were not Adams' only encounter with the courts of admiralty: three years later the Attorney General of Massachusetts

87. Adams once wrote in a letter to his wife Abigail, "From my earliest Entrance into Life, I have been engaged in the public Cause of America." Letter from John Adams to Abigail Adams (Oct. 7, 1775), in *THE ADAMS PAPERS: SERIES II: ADAMS FAMILY CORRESPONDENCE*, at 295 (L.H. Butterfield ed., 1963).

88. John Adams, *Instructions of the Town of Braintree to Their Representative*, in *THE REVOLUTIONARY WRITINGS OF JOHN ADAMS* 37–41 (Thompson ed. 2000). See generally Matthew P. Harrington, *The Legacy of the Colonial Vice-Admiralty Courts (Part II)*, 27 *J. MAR. L. & COM.* 323, 336–37 (1996) (commenting on Adams' position and the admiralty courts of the day).

89. John Adams, *A Dissertation on the Canon and Feudal Law*, in *THE REVOLUTIONARY WRITINGS OF JOHN ADAMS* 19–35 (Thompson ed. 2000).

approached Adams about accepting a royal appointment as Advocate General in the Court of Admiralty.⁹⁰ Many attorneys would wish to hold such a position; Adams reports that it was “lucrative in itself, and a sure introduction to the most profitable Business in the Province: and what was of more consequence still, it was a first Step in the Ladder of Royal Favour and promotion.”⁹¹ Yet Adams rejected the offer out of hand, telling the Attorney General that the King’s policies were “wholly inconsistent with all my Ideas of Right, Justice and Policy, and therefore I could not place myself in a Situation in which my Duty and my Inclination would be so much at Variance.”⁹² When the Attorney General returned in three weeks to ask Adams if he had reconsidered his decision, he remained steadfast in his determination.⁹³

We can be thankful as a profession that often times our members are offered job opportunities which provide significant financial remuneration.⁹⁴ Yet certainly there are appropriate ethical limits to what kind of job a lawyer will take for money.⁹⁵ John Adams found one in this situation—he refused to take a job that would require him to compromise his convictions. He refused to work for an employer whom he believed to be illegitimate; money was no matter on this question of principle. After establishing with students that Adams made the right decision in this instance, a professor can ask what *other* reasons should

90. Diary and Autobiography of John Adams, Part One to October 1776, in THE ADAMS PAPERS: SERIES I: DIARIES, at 287 (L.H. Butterfield ed., 1964). The Attorney General, Jonathan Sewall, was a dear friend of Adams at the time, although a loyalist Tory to the last. See DAVID MCCULLOCH, JOHN ADAMS 65 (2001) (“He always called me John and I [always called] him Jonathan,” remembered Adams, “and I often said to him, I wish my name were David.”).

91. Diary and Autobiography of John Adams, *supra* note 90.

92. *Id.* at 288.

93. *Id.* at 288–89.

94. See Schiltz, *infra* note 96, at 895–97.

95. THOMAS D. MORGAN & RONALD D. ROTUNDA, MODEL RULES OF PROFESSIONAL CONDUCT AND OTHER SELECTED STANDARDS ON PROFESSIONAL RESPONSIBILITY 181–82, 193, 409–10 (Foundation Press 2008).

compel a lawyer to turn down a lucrative job offer?⁹⁶ Some students may answer that they would not take on a client whom they believed to be engaged in immoral activities or that they would not defend a client they believed was clearly guilty. The life of John Adams would have something to say in the latter situation as well, as students turn their attention to the Boston Massacre trial.

In 1770, a rambunctious crowd of several hundred American colonists were protesting outside the Custom House, which was guarded by a small detachment of British infantry.⁹⁷ The situation deteriorated and the soldiers fired into the crowd, killing five Americans in a clash that would come to be known as the "Boston Massacre."⁹⁸ The redcoats were arrested on criminal charges and numerous Boston-area lawyers refused to take their case.⁹⁹ Finally, John Adams agreed to represent them knowing that it would hurt his reputation and cost him clients.¹⁰⁰ He wrote in his diary that he took the cause out of "what indeed was and ought to be all in all, sense of duty."¹⁰¹ Adams forged ahead, zealously representing his clients before the jury and the wider court of public opinion.¹⁰² He ended up winning the case—six soldiers were acquitted altogether, and two who fired directly into the crowd were convicted of manslaughter rather than murder.¹⁰³ Adams' vindication came not only from the jury, but from the voters and his own conscience.¹⁰⁴ After he took the case, but before he presented his arguments at trial, his neighbors elected him to the colonial legislature.¹⁰⁵ Later in life, he would write that his defense of the soldiers was "one of the most gallant, generous, manly

96. See Patrick Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871, 896–97, 921–24 (1999).

97. *Id.* at 65.

98. *Id.* at 66.

99. *Id.*

100. *Id.*

101. *Diary and Autobiography of John Adams*, *supra* note 90, at 79.

102. MCCULLOCH, *supra* note Error! Bookmark not defined.90, at 67, 68.

103. *Id.* at 68.

104. *Id.*

105. *Id.* at 71.

and disinterested Actions of my whole Life, and one of the best Pieces of Service I ever rendered my Country.”¹⁰⁶ His work in the case and the principle that it established supports Russell Kirk’s observation in a chapter on Adams that liberty “is the creation . . . of heroic exertions by a few brave souls.”¹⁰⁷

The entire episode receives appropriately dramatic attention in the HBO Films series *John Adams*, which is a perfect example of the kind of video clip that can enhance a class’s consideration of a topic.¹⁰⁸ Students will appreciate the significance of the case, the highly-charged atmosphere of the community, and the emotions weighing upon and motivating the various characters in the story much better after seeing them portrayed on screen. After watching the episode, a class should ask whether a lawyer has a “sense of duty” that should compel him or her to take unpopular cases. Even if he knows it will cost him or her clients. Does it matter if the lawyer is financially responsible for supporting his family? Does it matter whether he believes his client to be guilty or innocent? These are tough, important questions, and students should wrestle with them in light of the actual circumstances of a real lawyer like Adams.

John Adams went on to render many other excellent services to his country. He represented Massachusetts in the First and Second Continental Congresses from 1774-77.¹⁰⁹ During that time, he was the leading advocate for independence. Jefferson hailed him as the Declaration of Independence’s “ablest advocate and defender” on the floor of Congress.¹¹⁰ Congress sent Adams as its representative on several diplomatic tours of duty in Europe, including as America’s first ambassador to Great Britain, a task

106. Diary and Autobiography of John Adams, *supra* note 90.

107. RUSSELL KIRK, *THE CONSERVATIVE MIND: FROM BURKE TO ELIOT* 99 (7th ed. 1986).

108. See generally *John Adams* (HBO Films 2008).

109. *Id.* at 71, 167.

110. Letter from Thomas Jefferson to William P. Gardner, (Feb. 19, 1813), in *THE WORKS OF THOMAS JEFFERSON: VOLUME XI*, at 281 (Paul Leicester Ford, ed., 1905).

requiring a delicate touch in the years following the Revolution.¹¹¹ The first citizen in Massachusetts, he continued writing about public affairs from afar, producing numerous legal treatises and newspaper columns.¹¹²

After two relatively uneventful terms as Vice President,¹¹³ Adams succeeded George Washington as President in 1797.¹¹⁴ His term focused on foreign policy as the young nation tried to balance its appreciation to France with its cultural ties to Britain.¹¹⁵ Law students know his tenure best for the Alien and Sedition Acts, which criminalized public criticism of the federal government and empowered the President to deport foreigners he considered “dangerous.”¹¹⁶ After just one term in office, he lost the Electoral College vote to his Vice President, Thomas Jefferson, in the election of 1800.¹¹⁷ This led to the second act for which law students know Adams: his appointment of the so-called “midnight judges,” most notably Chief Justice John Marshall.¹¹⁸

111. See, e.g., MCCULLOCH, *supra* note 90, at 174–79.

112. Benjamin Rush, in two letters to Adams, described the tremendous impact of his writings: “Some talked, some wrote, and some fought to promote and establish [the American Revolution], but you and Mr. Jefferson thought for us all.” Letter from Benjamin Rush to John Adams, Feb. 17, 1812, *in* THE FOUNDERS ON THE FOUNDERS 59 (John P. Kaminski, ed., 2008). “Your style is bold, original, occasionally brilliant, and at all times full of nerve. There is not a redundant word in it It is the artillery of language.” Letter from Benjamin Rush to John Adams, Sept. 4, 1811, *in* THE FOUNDERS ON THE FOUNDERS 59 (John P. Kaminski, ed., 2008).

113. Not because these were uneventful days for the young republic, but because no one knew what exactly the vice president ought to do except preside over the Senate. Which he did—in fact, Adams cast the most tie-breaking votes of any president of the U.S. Senate in history with twenty-nine votes. *Vice President of the United States*, SENATE.GOV, http://www.senate.gov/artandhistory/history/common/briefing/Vice_President.htm (last visited Sep. 23, 2012).

114. MCCULLOCH, *supra* note 90, at 467.

115. *Id.* at 517.

116. An Act Respecting Alien Enemies, § 2, U.S. Statutes at Large (1798) (authorizing the President to cause anyone to be arrested and tried who presented a danger to the public peace or safety), *available at* http://avalon.yale.edu/18th_century/alien.asp.

117. MCCULLOCH, *supra* note 90, at 562.

118. *Id.* at 560, 562–63.

Adams enjoyed an extraordinarily long post-presidency, in the years before that was a distinct position in the world.¹¹⁹ His correspondence with Thomas Jefferson is rightly considered one of the great epistolary exchanges in American history—158 letters spread over fourteen years.¹²⁰ Adams would live to see his son, John Quincy Adams, serve as the sixth President of the United States, and he died on July 4, 1826, within hours of his friend and rival Jefferson.¹²¹

Students can learn a tremendous amount from John Adams as lawyer, scholar, politician, and leader; he embodied the lawyer-statesman ideal.¹²² A class on Adams ought to close by commissioning students with his “moral or religious creed, which has, for fifty or sixty years, been contained in four short words: ‘Be just and good.’”¹²³

B. Robert H. Jackson

Justice of the U.S. Supreme Court, Attorney General of the United States, chief counsel for the prosecution at Nuremberg: Robert H. Jackson reached the pinnacles of his chosen profession in a lifetime of public service.¹²⁴ In so many ways, “Jackson’s life was more dramatic and appropriate for storytelling than that of most jurists.”¹²⁵

After only a year of formal legal education, Jackson gained admission to the bar in western New York where he

119. *Id.* at 563, 644–46 (lasting from Feb. 1801 until Jul. 1826).

120. *See generally*, CORRESPONDENCE OF ADAMS AND JEFFERSON: 1812–1826 (Paul Wiltach ed., Capricorn Books, 1966) (providing a readable selection of these letters).

121. MCCULLOCH, *supra* note 90117, at 646–50.

122. *See, e.g.*, Letter from Benjamin Rush to John Adams, Feb. 17, 1812, *in* THE FOUNDERS ON THE FOUNDERS 59 (John P. Kaminski, ed., 2008).

123. *See* Letter from John Adams to Thomas Jefferson, (Dec. 12, 1816), *in* Paul Wiltach, ed., CORRESPONDENCE OF ADAMS AND JEFFERSON: 1812–1826 (Capricorn Books 1966).

124. Eugene C. Gerhart, *The Legacy of Robert H. Jackson*, 68 ALB. L. REV. 19, 19 (2004).

125. Kurland, *supra* note 53, at 498.

would begin life as a country lawyer.¹²⁶ Even before he was admitted to practice, he found himself as an advocate before a court.¹²⁷ A group of union workers went on strike in his hometown of Jamestown, an immensely unpopular decision in the community that led to laborers collective indictment under the syndicalism statute.¹²⁸ In a decision reminiscent of John Adams and the Boston Massacre, Jackson stepped forward and sought permission to represent them when no licensed lawyer in town would.¹²⁹ He did so ably, securing both the workers' acquittal and his own reputation as a trial lawyer.¹³⁰

Jackson spent the first twenty years of his legal career in Jamestown, New York. There he was "a country lawyer," a label he embraced fully.¹³¹ He was "[t]he county-seat lawyer, counsellor [sic] to railroads and to Negroes, to bankers and to poor whites, who always gave to each the best that was in him . . ." ¹³² Justice Jackson delivered many excellent speeches that would be perfect for a class such as the one this article proposes; choosing between them is a difficult decision indeed.¹³³ One strong candidate is Jackson's tribute to "the country lawyer":

[T]his vanishing country lawyer left his mark on his times, and he was worth knowing. He "read law" in the Commentaries of Blackstone and Kent and not by the case system. He resolved problems by what he called "first principles." He did not specialize, nor did he pick and choose

126. GLENDON SCHUBERT, *DISPASSIONATE JUSTICE: A SYNTHESIS OF THE JUDICIAL OPINIONS OF ROBERT H. JACKSON* 11 (1969).

127. John Q. Barrett, *Albany in the Life Trajectory of Robert H. Jackson*, 68 *ALB. L. REV.* 513, 519 (2004).

128. John Lord O'Brian, *Introduction to: The Role of the Country Lawyer in the Organized Bar and the Development of the Law*, in *MR. JUSTICE JACKSON: FOUR LECTURES IN HIS HONOR* 10 (1969).

129. *Id.*

130. *Id.*

131. Gerhart, *supra* note 124, at 19; *See also* Robert H. Jackson, *The County-Seat Lawyer*, 36 *A.B.A. J.* 497, 497 (1950).

132. Robert H. Jackson, *The County-Seat Lawyer*, 36 *A.B.A. J.* 497, 497 (1950).

133. H.R. Doc. No. 110, at 5104 (July 2012) (speaking in favor of naming a courthouse after Robert H. Jackson, Congressman Higgins described Jackson's oral arguments at Nuremberg as "among the greatest speeches of the 20th century" as well as citing Jackson's other speaking engagements).

clients. He rarely declined service to worthy ones because of inability to pay. Once enlisted for a client, he took his obligation seriously. He insisted on complete control of the litigation—he was no mere hired hand. But he gave every power and resource to the cause. He identified himself with the client's cause fully, sometimes too fully. He would fight the adverse party and fight his counsel, fight every hostile witness, and fight the court, fight public sentiment, fight any obstacle to his client's success. He never quit. He could think of motions for every purpose under the sun, and he made them all. He moved for new trials, he appealed; and if he lost out in the end, he joined the client at the tavern in damning the judge—which is the last rite in closing an unsuccessful case, and I have officiated at many. But he loved his profession, he had a real sense of dedication to the administration of justice, he held his head high as a lawyer, he rendered and exacted courtesy, honor and straightforwardness at the Bar.¹³⁴

Friends say that though Jackson left small-town Jamestown for the capital city of the world's most powerful nation, through all his years of public service he never lost his humility, his humor, and his style as a country lawyer.¹³⁵

Jackson was "forever a champion of the Organized Bar. From the moment that he became a member of the profession, he gave his encouragement and support to the local bar associations of his county."¹³⁶ While a country lawyer, Jackson helped organize the Federation of Bar Associations of Western New York.¹³⁷ He also served as chairman of the National Conference of Bar Association Delegates within the ABA.¹³⁸ His devotion to bar work continued throughout his life. When he held higher offices, he gave dozens of speeches to state and regional bar

134. Jackson, *supra* note 132, at 497.

135. Gerhart, *supra* note 124.

136. Memorial Address of Franklin R. Brown, *presented at The Annual Meeting of the New York State Bar Association* (Jan. 29, 1955), *reprinted in THE PROCEEDINGS OF THE BAR AND OFFICERS OF THE SUPREME COURT OF THE UNITED STATES AND PROCEEDINGS BEFORE THE SUPREME COURT OF THE UNITED STATES IN MEMORY OF ROBERT HOUGHWOUT JACKSON* 102, 104 (1955).

137. SCHUBERT, *supra* note 126, at 285, 287.

138. *Id.*

associations, to practitioner associations, to law-reform groups like the American Judicature Society, and to law schools.¹³⁹ Many of these speeches, along with his other writings, were published in bar journals and law reviews.¹⁴⁰ He chaired a special committee of the ABA that conducted a comprehensive national survey of criminal law and procedure.¹⁴¹ Given all this service, the ABA chose Jackson to deliver the keynote address at the laying of the cornerstone for the ABA Center in Chicago.¹⁴²

Jackson's lifelong commitment to bar work should prompt students to ask what their own obligations are to the profession which they seek to join. Although he was a simple country lawyer, Jackson thought, spoke, and led on bar organization, legal education, and law reform.¹⁴³ No lawyer is ever forced to serve on a bar committee, to mentor a law student, or to set up a CLE conference; each does it because he or she believes in the work of the organization and the profession as a whole. Jackson's example should admonish students to get involved in some endeavor—the alumni association of their alma mater, their local bar association, the Legal Aid Society—as a worthy response to opportunities to benefit their profession and the broader community.

Jackson left his county-seat practice for Washington, D.C., when President Franklin D. Roosevelt, who had met Jackson several times while governor of New York, asked him to join his administration as general counsel to the Bureau of Internal Revenue.¹⁴⁴ In what a friend rightly

139. H.R. Doc. No. 5104.

140. See generally The Robert H. Jackson Center, <http://www.roberthjackson.org> (for helpful bibliographical information and a selection of Jackson's speeches with PDF and HTML copies).

141. SCHUBERT, *supra* note 126, at 287.

142. See Robert H. Jackson, *A Testimony to Our Faith in the Rule of Law*, 40 A.B.A.J. 19, 19–21 (1954). This Address, titled "A Testimony to Our Faith in the Rule of Law," would also make for an excellent reading at the beginning of class. Whereas for some subjects, it may be a struggle to find an appropriate oration, with Justice Jackson, the difficulty is settling on one among the many outstanding candidates.

143. Philip Halperin, *Robert H. Jackson: 1892–1954*, 8 STAN. L. REV. 3, 6 (1955).

144. Gerhart, *supra* note 124, at 19.

described as “one of the fastest progressions in legal history,”¹⁴⁵ Jackson quickly rose to Assistant Attorney General for the tax division, then for the antitrust division, then Solicitor General, then Attorney General, then Justice of the United States Supreme Court.¹⁴⁶

Justice Louis Brandeis once said Jackson should have been Solicitor General for life, for he was always an advocate at heart.¹⁴⁷ His record proves his competence—out of 44 cases argued, he lost just six.¹⁴⁸

While Attorney General, Jackson gave a speech titled “The Federal Prosecutor” that has been deservedly described as “a classic of criminal law.”¹⁴⁹ His words are a timeless tribute to the work done by the men and women of America’s law-enforcement system:

Nothing better can come out of this meeting of law enforcement officers than a rededication to the spirit of fair play and decency that should animate the federal prosecutor. Your positions are of such independence and importance that while you are being diligent, strict, and vigorous in law enforcement you can also afford to be just. Although the government technically loses its case, it has really won if justice has been done.¹⁵⁰

Although offered as a salute to the assembled prosecutors, they are also words of admonition. Jackson reminded the nation’s U.S. Attorneys of the tremendous power they wield, of the potential damage done to reputation, finances, and family from an unfair or overly-aggressive indictment and that such power must be taken very seriously. Students should discuss Jackson’s whole

145. Whitney North Seymour, *General Introduction, in MR. JUSTICE JACKSON: FOUR LECTURES IN HIS HONOR* 10 (1969).

146. *Id.*

147. Kurland, *supra* note 53, at 498.

148. Halperin, *supra* note 143, at 6.

149. Orin Kerr, *Robert H. Jackson, The Federal Prosecutor*, VOLOKH CONSPIRACY (Sept. 25, 2008, 12:35 AM), <http://www.volokh.com/posts/1222317352shtml>.

150. Robert H. Jackson, *The Federal Prosecutor*, 31 AM. INST. CRIM. L. & CRIMINOLOGY 3, 4 (1941).

speech, including the power of the prosecutor and his definition of a “real win.”

Jackson was nominated, confirmed, and sworn in as a Supreme Court Justice within one month in the summer of 1941.¹⁵¹ Evaluating his time on the Court, a memorial resolution judged that in the eleven and a half years he served, he “made a contribution to our federal jurisprudence seldom excelled in the history of the Republic.”¹⁵² He wrote just over 150 majority and plurality opinions and about an equal number of concurrences and dissents combined.¹⁵³

Once on the bench, Justice Jackson understood that his role had changed. As Attorney General, he was an advocate responsible for asserting the prerogatives of the Executive Branch. As a Justice, his job was different. Writing in an opinion where he adopted a position opposite one which he had advocated as Attorney General, Jackson quoted good-naturedly, “The matter does not appear to me now as it appears to have appeared to me then.”¹⁵⁴ Then-Judge John Roberts invoked Justice Jackson’s example in his confirmation hearing for Chief Justice in response to a question about his previous statements on executive power made while he was working in the Executive Branch.¹⁵⁵ Others also praised Jackson’s courage in acknowledging the nature of his new position.¹⁵⁶ Yet students may also think of a criticism here: the correct meaning of the Constitution does not change based on the position of the lawyer

151. SUSAN NAVARRO SMELCER & KENNETH R. THOMAS, FROM SOLICITOR GENERAL TO SUPREME COURT NOMINEE: RESPONSIBILITIES, HISTORY, AND THE NOMINATION OF ELENA KAGAN 12 (2010).

152. RESOLUTION ON BEHALF OF THE COMMITTEE, by SIDNEY S. ALDERMAN (Apr. 4, 1955), *reprinted in* PROCEEDINGS OF THE BAR AND OFFICERS OF THE SUPREME COURT OF THE UNITED STATES AND PROCEEDINGS BEFORE THE SUPREME COURT OF THE UNITED STATES IN MEMORY OF ROBERT HOUGHWOUT JACKSON 13 (1955).

153. *Id.*

154. *McGrath v. Kristensen*, 340 U.S. 162, 178 (1950) (Jackson, J., concurring) (quoting *Andrews v. Styrap*, 26 L.T.R. (N.S.) 704, 706 (1872)).

155. Linda Greenhouse, *By Invoking a Former Justice, the Nominee Says Much but Gives Away Little*, N.Y. TIMES, Sept. 14, 2005, at A1.

156. RESOLUTION OF THE BAR OF THE SUPREME COURT OF THE UNITED STATES, by SIDNEY S. ALDERMAN, (Apr. 5, 1955), *reprinted in* PROCEEDINGS OF THE BAR AND OFFICERS OF THE SUPREME COURT OF THE UNITED STATES AND PROCEEDINGS BEFORE THE SUPREME COURT OF THE UNITED STATES IN MEMORY OF ROBERT HOUGHWOUT JACKSON 18 (1955).

analyzing it. Should lawyers follow a consistent theory of the law across cases and positions, or may they vary their conclusions based on the interests of their clients?

Jackson's unique experience at the top of both the executive and judicial legal departments may have contributed to his most famous opinion. Law students everywhere know Jackson for one opinion that is a foundational analysis of separation of powers: his concurrence in *Youngstown Sheet & Tube Co. v. Sawyer*.¹⁵⁷ The steel-seizure case concerned the power of President Truman to federalize the nation's steel factories to avoid a crippling strike in the midst of the Korean War.¹⁵⁸ The case prompted seven opinions, but it is Justice Jackson's concurrence that has become the standard framework for analyzing the powers of the presidency.¹⁵⁹ Legal historian Sanford Levinson of the University of Texas has called it "the greatest single opinion ever written by a Supreme Court [J]ustice."¹⁶⁰

Though Jackson rendered distinguished service on the bench, his life's role was as lead counsel for the prosecution in "the greatest criminal trial the world has known"—Nuremberg.¹⁶¹ At the beginning of the trial he playfully remarked, "This is the first case I have ever tried when I had first to persuade others that a court should be established, help negotiate its establishment, and when that was done, not only prepare my case but find myself a court room in which to try it."¹⁶² In other words, Jackson was an integral part of every facet of the Nuremberg process.

157. 343 U.S. 579, 634–55 (1952).

158. *Id.* at 582–83.

159. *See id.* at 634–55; Harold H. Bruff, *Judicial Review and the President's Statutory Powers*, 68 VA. L. REV. 1, 11–12 (1982).

160. Sanford Levinson, *Why the Canon Should be Expanded to Include the Insular Cases and the Saga of American Expansionism*, 17 CONST. COMMENT. 241, 242 n.2 (2000).

161. CHARLES S. DESMOND, "The Role of the Country Lawyer in the Organized Bar and Development of the Law," in MR. JUSTICE JACKSON: FOUR LECTURES IN HIS HONOR 7, 23 (1969).

162. Remarks of Gordon Dean (Apr. 5, 1955), in PROCEEDINGS OF THE BAR AND OFFICERS OF THE SUPREME COURT OF THE UNITED STATES AND PROCEEDINGS BEFORE THE SUPREME COURT OF THE UNITED STATES IN MEMORY OF ROBERT HOUGHWOUT JACKSON 40 (1955).

Running throughout was “an almost obsessive concern” for “[t]he integrity of the judicial process.”¹⁶³ Looming over the entire proceeding was the stark reality that, in Jackson’s own words, “the record on which we judge these defendants today is the record on which history will judge us tomorrow.”¹⁶⁴ The tribunal heard the trials of twenty-two of the top Nazi leaders, eleven of whom were executed for their crimes.¹⁶⁵ The story of the trials, with a particular focus on Robert H. Jackson as the leading character, was dramatized in the made-for-TV movie *Nuremberg*, starring Alec Baldwin as Jackson.¹⁶⁶

Jackson returned to the States and to service on the Supreme Court after the trials.¹⁶⁷ He passed away while still on the bench at the age of only sixty-two.¹⁶⁸ A friend reports that “[h]is heart had warned him before that his burdens were too heavy, but his courageous nature and sense of duty did not admit slippered ease as a tolerable alternative.”¹⁶⁹ Jackson suffered a previous heart attack in

163. Remarks of Paul A. Freund (Apr. 5, 1955), in *PROCEEDINGS OF THE BAR AND OFFICERS OF THE SUPREME COURT OF THE UNITED STATES AND PROCEEDINGS BEFORE THE SUPREME COURT OF THE UNITED STATES IN MEMORY OF ROBERT HOUGHWOUT JACKSON* 52 (1955).

164. Remarks of Gordon Dean, *supra* note 162, at 39.

165. EUGENE C. GERHART, *ROBERT H. JACKSON: COUNTRY LAWYER, SUPREME COURT JUSTICE, AMERICA’S ADVOCATE* 434 (2003).

166. *NUREMBERG* (TNT Films 2000).

167. GERHART, *supra* note 165, at 455.

168. Whitney North Seymour, *General Introduction*, in *MR. JUSTICE JACKSON: FOUR LECTURES IN HIS HONOR* 1, 1 (1969).

169. Whitney North Seymour, “General Introduction,” in *MR. JUSTICE JACKSON: FOUR LECTURES IN HIS HONOR* 1, 1 (1969). See Remarks of John Lord O’Brien, April 5, 1955, in *PROCEEDINGS OF THE BAR AND OFFICERS OF THE SUPREME COURT OF THE UNITED STATES AND PROCEEDINGS BEFORE THE SUPREME COURT OF THE UNITED STATES IN MEMORY OF ROBERT HOUGHWOUT JACKSON* 34–35 (1955) (“When, toward the end, we remonstrated against his working habits, he always replied with a smile that he would prefer to carry out what he conceived to be his duties, even though it meant a shorter life, rather than to seek release from those obligations by living an easier life. With this gallant and characteristic gesture of high-mindedness and fortitude he left us.”); Halperin, *supra* note 159, at 8 (“In the spring of 1954 he suffered a heart attack, but he returned to the bench on May 17, 1954 in order to demonstrate by his personal presence his support of the anti-segregation decision which was handed down that day. Despite warning of the risk of a recurrence of his ailment, he chose to continue at the work to which he had dedicated his life to the end.”).

1954, and was hospitalized for several weeks.¹⁷⁰ “His doctors gave him the choice between years of comparative inactivity or a continuation of his normal activity at the risk of death at any time. With characteristic fortitude he chose the second alternative.”¹⁷¹ This may sound grand in a memorial; it may also have been cold comfort to his wife, children, and colleagues. While his life is full of many great lessons, we should not quickly pass by the lesson in his passing. Lawyers, like law students, lead busy lives, and they often deal with controversial cases, stressful situations, and demanding deadlines. Not only can this take a toll on relationships, but it also can exact a significant physical price. Students should discuss whether the greater service may be found in slowing down and staying around longer for kids and community and country.

We may close this section by agreeing with another memorial to Jackson: “Every life leaves lessons for those who follow—and Robert Jackson’s life was too full of lessons for full telling here.”¹⁷² Yet these lessons are open and available; “[t]he future will have no difficulty in learning what he meant and what he stood for.”¹⁷³ If the professors who teach such a class do their jobs well, students should leave eager to brush aside the dust on a library volume like *America’s Advocate* because they know that its pages contain the life story of a great lawyer.¹⁷⁴

170. RESOLUTION OF THE BAR OF THE SUPREME COURT OF THE UNITED STATES, by SIDNEY ALDERMAN, (Apr. 5, 1955), in PROCEEDINGS OF THE BAR AND OFFICERS OF THE SUPREME COURT OF THE UNITED STATES AND PROCEEDINGS BEFORE THE SUPREME COURT OF THE UNITED STATES IN MEMORY OF ROBERT HOUGHWOUT JACKSON 8 (1955); GERHART, *supra* note 165, at ix.

171. RESOLUTION OF THE BAR OF THE SUPREME COURT OF THE UNITED STATES, *supra* note 170, at 8.

172. Charles S. Desmond, *The Role of the Country Lawyer in the Organized Bar and the Development of the Law*, in MR. JUSTICE JACKSON: FOUR LECTURES IN HIS HONOR 7, 25 (1969).

173. Robert H. Jackson, Memorial for Justice Pierce Butler, *quoted in* Remarks of Gordon Dean, (Apr. 5, 1955), in PROCEEDINGS OF THE BAR AND OFFICERS OF THE SUPREME COURT OF THE UNITED STATES AND PROCEEDINGS BEFORE THE SUPREME COURT OF THE UNITED STATES IN MEMORY OF ROBERT HOUGHWOUT JACKSON 45 (1955).

174. EUGENE C. GERHART, *AMERICA’S ADVOCATE: ROBERT H. JACKSON* (1958). Those who are interested in Justice Jackson or the history of the Supreme Court more broadly should be sure to join the Jackson List, an outstanding free email

C. Charles W. Colson

Chuck Colson's story is known as one of the great religious conversions of the twentieth century—truly a man “born again.”¹⁷⁵ As special counsel to President Richard Nixon, Colson was the designated “hatchet man” responsible for various nefarious endeavors.¹⁷⁶ After pleading guilty to obstruction of justice, he served seven months in a federal penitentiary.¹⁷⁷ In the days following his release, he realized his calling to a life of prison ministry.¹⁷⁸ In the ensuing decades, he founded and led one of the largest ministries to prisoners in the world.¹⁷⁹

As a young man, Colson signed up to serve as an officer in the Marine Corps.¹⁸⁰ Returning to the United States, he studied for his law degree at George Washington University, graduating with high grades.¹⁸¹ He returned to public service, working as an assistant secretary in the Department of the Navy and as a senior aide to a senator.¹⁸² Upon leaving office, he co-founded Colson & Morin, a law firm with offices in Boston and Washington and numerous blue-chip clients, particularly defense contractors.¹⁸³ Colson worked long hours as a lobbyist, and sometimes he drank heavily.¹⁸⁴ His wife stayed home tending their three young children alone.¹⁸⁵ Colson admits in his autobiography that “my personal life was suffering from my preoccupation with

newsletter from Prof. John Q. Barrett:
<http://www.stjohns.edu/academics/graduate/law/faculty/profiles/Barrett/JacksonList.sju>.

175. CHARLES W. COLSON, *BORN AGAIN* 11 (Spire Books ed., Fleming H. Revell Co. 1977).

176. *Id.* at 55–57.

177. *Id.* at 230–32, 249–51, 338–40.

178. JONATHAN AITKEN, *CHARLES W. COLSON: A LIFE REDEEMED* 274–76 (2005).

179. *Id.* at 297, 378, 408.

180. *Id.* at 41–44.

181. *Id.* at 59, 65.

182. *Id.* at 61–63.

183. *Id.* at 77–82.

184. *Id.* at 65–67, 95–96.

185. COLSON, *supra* note 175, at 30.

politics and business.”¹⁸⁶ The two separated and eventually divorced.¹⁸⁷ When Colson remarried, he and his new wife were denied an application for adoption because “Colson had become too busy, too self-centered, and too career-oriented to be a good father in the conventional sense of the term during his children’s most formative years.”¹⁸⁸ Whether students will begin their careers as junior associates at big law firms or struggling solo practitioners trying to make ends meet, many students can find a cautionary tale about work-life balance in Colson’s years in private practice.

After taking a leave of absence from his firm to work as counsel on Richard Nixon’s presidential campaign in 1968, Colson returned to government as Special Counsel to the President on the White House staff.¹⁸⁹ While at the White House, Colson worked on all the major issues of the day as the chief of public liaison, pushing important constituencies to support the President’s agenda.¹⁹⁰ This role gave him a significant hand in shaping strategy for the 1972 reelection campaign.¹⁹¹ He also contributed to legal and personnel decisions made by the White House.¹⁹²

In addition to these activities, Colson was the “hatchet man” of the Nixon White House.¹⁹³ It started early in his time there; Nixon asked Colson to draft a particular order pronto, and Colson did so by cutting through red tape and bypassing several key players.¹⁹⁴ Nixon loved it, and soon Colson was “arm twisting, making deals, leaking stories to cut down opponents and promote friends.”¹⁹⁵ He was indicted in the wake of Watergate and chose to plead guilty to a charge of obstruction of justice.¹⁹⁶ He served seven

186. *Id.*

187. *Id.*

188. AITKEN, *supra* note 178, at 107.

189. *See id.* at 112, 120. *See also* COLSON, *supra* note 175, at 32.

190. *See* COLSON, *supra* note 175, at 35–36; AITKEN, *supra* note 178, at 122.

191. AITKEN, *supra* note 178, at 127–32.

192. *Id.* at 124–26.

193. COLSON, *supra* note 175, at 57.

194. *Id.* at 35–36.

195. *Id.* at 36.

196. *Id.* at 230–32, 249–51, 338–40.

months for his crime.¹⁹⁷ Sadly, lawyers sometimes end up behind bars as white-collar criminals because their zeal to win, or to make big money, leads them from counseling clients regarding the law to breaking it themselves. Though Colson's story is high-profile, it is not unique.

It was during this time that Colson read C.S. Lewis's classic *Mere Christianity* at the suggestion of a friend.¹⁹⁸ His faith helped him get through his time in prison, and soon after leaving he began the next stage of his life developing a ministry for prisoners.¹⁹⁹ He founded Prison Fellowship, which has become an international ministry of tremendous importance.²⁰⁰ Prison Fellowship is active in all fifty states and 112 nations around the globe, making it the largest prison ministry in the world.²⁰¹ Through Prison Fellowship, Colson visited scores of prisons, sharing his testimony based on his own time behind bars and his own faith.²⁰² A companion ministry, Justice Fellowship, tackles difficult justice-reform issues, like efforts to combat prison rape or to challenge conventional wisdom among conservatives on corrections policy.²⁰³ Drawing on the example of 18th century British abolitionist William Wilberforce, Colson based his public-policy work on a strong theological understanding of the appropriate relationship between God and government²⁰⁴ (the title of a Colson book²⁰⁵).

197. *Id.*

198. *Id.* at 112–14.

199. AITKEN, *supra* note 178, at 251–53, 256–60, 295–97, 408.

200. *Id.* at 408–09.

201. *See id.*; Nathaniel Odle, *Privilege Through Prayer: Examining Bible-Based Rehabilitation Programs Under the Establishment Clause*, 12 TEX. J. C.L. & C.R. 277, 280 (2006).

202. AITKEN, *supra* note 178, at 305–06.

203. *Id.* at 323–25.

204. AITKEN, *supra* note 178, at 315, 412.

205. *See* CHARLES W. COLSON, *GOD & GOVERNMENT* (2007). Professors may want to show this YouTube clip of Colson explaining his book: PFMBreakPoint, *Charles Colson on Politics & the Christian Faith DVD*, YouTube (Sept. 23, 2008), <http://www.youtube.com/watch?v=pazKW0ld8Xo> (stop at 2:45).

When Colson received the Templeton Prize in 1993 for his leadership of Prison Fellowship,²⁰⁶ he delivered a powerful address at the University of Chicago that reflected on religious freedom in the modern age:

[O]n this, at least, we must agree: The right to do what I've just done—to state my faith without fear—is the first human right. Religious liberty is the essence of human dignity. We cannot build our temples on the ruins of individual conscience. For faith does not come through the weight of power, but through the hope of glory. It is a sad fact that religious oppression is often practiced by religious groups. Sad—and inexcusable. A believer may risk prison for his own religious beliefs, but he may never build prisons for those of other beliefs.²⁰⁷

Colson donated the cash reward attached to the prize, one million pounds, to further the work of Prison Fellowship, as he did the royalties from all his books and speaking fees.²⁰⁸

The integration of Colson's work and his Christian faith asks all lawyers to consider how their own religious and ethical values interact with the work they do. The vital ministry of Prison Fellowship should bring home the real-world consequences law enforcement has on the perpetrators of crime and should prompt us to ask how we as lawyers think about the real people we sue, prosecute, regulate, or represent. Finally, Colson's inspirational story of reform and redemption challenges all lawyers to consider how they can make the world a better place by volunteering, giving pro-bono hours, or even working full-time for a non-profit organization.

Colson's inclusion in a class on legal heroes aligns well with his own advice to young people:

[W]e need to learn, and encourage others to learn, the classic virtues and to study the lives of

206. COLSON, *supra* note 205, at 372–77.

207. CHARLES W. COLSON, CHUCK COLSON SPEAKS 7 (2000).

208. AITKEN, *supra* note 178, at 372–73.

great men and women who have exemplified those virtues. Heroes fulfill an important role. My friend Bill Bennett has shown us that people often learn more from moral literature than from moral philosophy.²⁰⁹

V. CONCLUSION

It is said that one Sunday after church, Abraham Lincoln was asked to opine on the pastor's sermon. Lincoln answered that the minister "forgot the most important part of a sermon. He forgot to ask us to do something great."²¹⁰ During the course of law school, students will learn torts and criminal law, civil procedure and alternative dispute resolution. But after three years with students, the school should not forget to ask students to do something great. This Article proposes an entire class that asks students to do something great, to follow in the footsteps of lawyer-statesmen of generations past who have done so.

Thus, even though the class is backwards-looking, its goal is to shape the future—to encourage a new generation of ethical lawyer-statesmen. If this class works, if the professor and students all invest themselves in the enterprise, then the students will leave with, in Justice Holmes's phrase, "hearts . . . touched with fire . . . [knowing] . . . that life is a profound and passionate thing."²¹¹

VI. APPENDIX

Some early readers of this Article pointed out that I suggested a class covering twenty "great lives" but only provided details for three. Who else, they wondered, would make the proverbial cut into such distinguished company?

209. COLSON, *supra* note 207, at 78.

210. *Id.*

211. ELIZABETH DOLE, HEARTS TOUCHED WITH FIRE: MY 500 FAVORITE INSPIRATIONAL QUOTATIONS 9 (2004).

Here are a few other candidates for study in a legal-ethics course:

Joseph Story: Scholar and Supreme Court Justice;²¹²

Daniel Webster: Senator and Supreme Court advocate;²¹³

Abraham Lincoln: Illinois attorney and President;²¹⁴

Edwin M. Stanton: Supreme Court advocate and Secretary of War during the Civil War;²¹⁵

David J. Brewer: Supreme Court Justice;²¹⁶

Louis D. Brandeis: Public-interest advocate and Supreme Court Justice;²¹⁷

John W. Davis: Politician, diplomat, law-firm founder, and Supreme Court advocate;²¹⁸

J. Reuben Clark: Diplomat and religious leader;²¹⁹

William Jennings Bryan: Orator, diplomat, and populist hero;²²⁰

Clarence Darrow: Trial lawyer of the century;²²¹

Robert F. Kennedy: Attorney General of the United States;²²²

Archibald Cox: Scholar and Solicitor General;²²³

212. *See generally* R. KENT NEWMYER, *SUPREME COURT JUSTICE JOSEPH STORY: STATESMAN OF THE OLD REPUBLIC* (1985).

213. *See generally* ROBERT V. REMINI, *DANIEL WEBSTER: THE MAN AND HIS TIME* (1997).

214. *See generally* MARK E. STEINER, *AN HONEST CALLING: THE LAW PRACTICE OF ABRAHAM LINCOLN* (2006).

215. *See generally* BENJAMIN P. THOMAS & HAROLD M. HYMAN, *STANTON: THE LIFE AND TIMES OF LINCOLN'S SECRETARY OF WAR* (1962).

216. *See generally* MICHAEL J. BRODHEAD, *DAVID J. BREWER: THE LIFE OF A SUPREME COURT JUSTICE 1837-1910* (1994).

217. *See generally* Ervin H. Pollack, *The Life and Contributions of Mr. Justice Louis D. Brandeis*, in 7 *THE BRANDIES READER* (Centenary ed. 1956).

218. *See generally* WILLIAM H. HARBAUGH, *LAWYER'S LAWYER: THE LIFE OF JOHN W. DAVIS* (1973).

219. *See generally* DAVID H. YARN JR., *YOUNG REUBEN: THE EARLY LIFE OF J. REUBEN CLARK JR.* (1973).

220. *See generally* MICHAEL KAZIN, *A GODLY HERO: THE LIFE OF WILLIAM JENNINGS BRYAN* (2006).

221. *See generally* CLARENCE DARROW, *THE STORY OF MY LIFE* (1932).

222. *See generally* EVAN THOMAS, *ROBERT KENNEDY: HIS LIFE* (2000).

223. *See generally* KEN GORMLEY, *ARCHIBALD COX: CONSCIENCE OF A NATION* (1997).

Thurgood Marshall: Civil-rights advocate and Supreme Court Justice;²²⁴

Barbara Jordan: Civil-rights advocate and congresswoman;²²⁵

Bowie Kuhn: Legal counsel, then commissioner, of Major League Baseball;²²⁶

Sandra Day O'Connor: Community leader and Supreme Court Justice;²²⁷ and

Tim Russert: Journalist.²²⁸

224. *See generally* JUAN WILLIAMS, *THURGOOD MARSHALL: AMERICAN REVOLUTIONARY* (1998).

225. *See generally* MAX SHERMAN, *BARBARA JORDAN: SPEAKING THE TRUTH WITH ELOQUENT THUNDER* (2007).

226. *See generally* BOWIE KUHN, *HARDBALL: THE EDUCATION OF A BASEBALL COMMISSIONER* (1987).

227. *See generally* JOAN BISKUPIC, *SANDRA DAY O'CONNOR: HOW THE FIRST WOMAN ON THE SUPREME COURT BECAME ITS MOST INFLUENCE JUSTICE* (2005).

228. *See generally* TIM RUSSERT, *BIG RUSS AND ME: FATHER AND SON: LESSONS OF LIFE* (2004).