

LETTER TO A YOUNG PUBLIC INTEREST ATTORNEY

*Erwin Chemerinsky**

I feel presumptuous giving advice to anyone other than my children, but I was too flattered by this invitation to write to decline the opportunity. I was inspired to go to law school by the great civil rights lawyers of the 1950s and 1960s. They demonstrated that law is the most powerful tool for social change and that as lawyers we have the capacity to change the world. Although the last few decades since I graduated from law school have shown me that social change is far more difficult than I could have imagined, I continue to believe in

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the power of law to make an immense positive difference in people's lives and in society. But this only happens if lawyers are willing to dedicate their time to doing so.

First and foremost, I would tell anyone wanting to be a public interest lawyer to do it. It is possible to come up with endless excuses and rationalizations for not doing it: jobs are scarce, student loan debt is crushing, other places will provide training before entering public interest practice. But the reality is that there are jobs, especially if one is willing to search broadly. There are many different places to use law for public service: legal services, non-profits, and many government offices and agencies. I am mindful of how much debt many young lawyers face and law schools and the profession must do more to make this manageable by those who want to do public interest work. And the best training comes from doing, especially when there is an experienced lawyer mentor.

For those who for whatever reason cannot do public interest work full-time, there are countless opportunities to do pro bono work. Courts of appeals will assign even new lawyers the responsibility for briefing and arguing appeals for pro se litigants. Legal services and public interest organizations of all types rely on volunteer lawyers. Young lawyers can gain enormous experience handling pro bono cases, as well as make a difference through their work and their advocacy.

I have now had the chance to watch the career paths of my former students for over 30 years. I have seen many say that they will do pro bono work later in their careers and focus on other things at the early stages. But these lawyers seem rarely to end up doing the pro bono work; there are always infinite demands for time and easy rationalizations for postponing public interest work. On the other hand, I have seen students upon graduation immediately embark on public interest work, sometimes in a full-time job and sometimes in volunteer work. Almost invariably, this becomes a pattern that lasts a lifetime. We make time for what matters to us. If you want to do public interest work, then do it.

Second, find happiness – indeed find joy – in the practice of law. For me, the hardest part of being a law professor is hearing from former students that they are unhappy in their careers as lawyers. I am in touch with many students that I have taught since I began as a law professor in 1980. Many are enormously happy in their careers.

Their experience reassures me that it truly is possible to find great pleasure in being a lawyer.

But some are terribly unhappy. National studies confirm that many lawyers are not happy. A University of Chicago study, entitled “Job Satisfaction in the United States,” found that being an attorney is the second most prestigious profession in the United States, but that lawyers are not in the top 12 professions in terms of satisfaction and happiness.¹

This would be a strange message from a law school dean and a law professor except for the fact that in every study a majority of lawyers do express happiness and satisfaction with their careers. I have absolutely no doubt that one can find joy in being a lawyer.

But it may not come in your first job or even your second. The reality of the hiring process is that of all the possible positions that lawyers can hold, only a narrow range hire right out of law school. Countless positions – being an in-house counsel, being a federal prosecutor, holding many positions in federal, state, or local governments, working in many small law firms, being a law professor – require some experience.

If you are not happy with your job, change, and if needed change again. I know that this is difficult in our current job market, but that makes it no less important. There is so much you can do with your law degree, there is no need to settle for less than a very high level of happiness and satisfaction in your professional career.

We all spend too much of our lives at work – and we all have worked too hard to get here – to settle for anything less than happiness in our professional career.

Third, keep, protect, and follow your moral compass. I have spent a lot of time thinking about how lawyers get in trouble. The answers are remarkably the same over and over again.

Sometimes, in a desire to please a client, lawyers cross lines that should not be crossed. Lawyers are remarkably good at rationalizing and justifying their behavior. Why, after all, did brilliant lawyers – some of the best and the brightest of their generation – write memos justifying brutal torture? I do not believe that those who wrote those memos were evil people, but they justified evil actions and evil resulted. The end somehow came to

justify the means and the means became abhorrent. I have to believe that they wrote these memos to please their powerful clients, including the President and Vice President of the United States, and then rationalized what they were doing. They did incalculable harm to the nation and its reputation. I have no doubt that when the full story of our economic crisis is told, it will be lawyers' advice that played a key role in encouraging loans that they knew would fail and then basing the economy upon them.

In your jobs – whether in firms, or public interest, or government – there will be pressure to please your clients. I fear that the economic crisis will make this worse as law firms want desperately to keep their clients.

But there are simply lines that we must not cross as lawyers. The temptations may be great. We want to help our clients who made mistakes; we want to win; we want the recognition and rewards that will come from those victories. But my late colleague and dear friend Charlie Whitebread said it best, in addressing the temptations that can get a lawyer in trouble, “when that big green door slams shut, remember which side you want to be on.” There are times when you just need to say no – no to your clients, no to your supervisors, and no even to the most powerful in our society.

Sometimes lawyers get in trouble, too, by telling themselves that they'll do it just this once. Just this once, they'll hide a document or borrow from client funds. The first time they anguish over it and do it. The second time is easier and then it is their pattern until they get caught.

The adversary system, too, provides a convenient excuse for bad behavior. Far too many lawyers, and especially recent law school graduates, take this as an excuse to be unpleasant, even obnoxious, and to cross lines that should not be crossed.

They falsely tell themselves that they need to do this to prevail. After over 30 years as a lawyer, I can tell you that is nonsense and just a rationalization for bad behavior. Some of the very best and most successful lawyers I know are scrupulously ethical and bend over backwards to be collegial and pleasant to all they deal with.

In fact, I have seen over and over again that bad behavior is counterproductive. I once heard a federal court of appeals judge (now President of Oklahoma City University), Robert Henry, give a

speech in which he asked an audience of lawyers what is the most important part of a legal brief. His answer, as a judge, was the lawyers' names on the cover. If you have the reputation of being ethical and decent, you will get countless breaks. The reverse also is true. I have seen lawyers suffer greatly from judges who did not trust or respect them.

I think that the answer to all of this is to keep, protect, and follow your moral compass. For everything you do, ask how you will feel about it if it is on the front page of the newspaper. If you would be embarrassed, don't do it. For everything you do, ask how your favorite professor would assess your actions. If you would be embarrassed by their reactions, don't do it. For everything you do, ask how you would have felt about it before going to law school. That is the moral compass you came here with, follow it.

Fourth and finally, make a difference. Over and again, we hear people say that there is a problem and someone should do something about it. As lawyers, you are the ones who can do something.

As lawyers, we can make a difference in the lives of individuals. People come to lawyers when they are at their most vulnerable and in need of help: when they or a loved one is arrested, when going through a divorce, when facing foreclosure, when seriously injured. Lawyers can really matter for them.

Lawyers, whether in government employment or private practice or at public interest organizations, can use their skills to deal with society's most serious problems. The work of generations of public interest lawyers shows how much such work really can make a difference.

As I said at the outset, I feel presumptuous giving advice. In answer to the request for advice to young public interest lawyers, perhaps the best I can do is to say that I hope you will use your careers to do good and enjoy them immensely.

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