

# SPECIAL SYMPOSIUM EDITION: CHARACTER AND FITNESS FOR LEADERSHIP: EDUCATING LAWYERS FOR COMPASSION AND COURAGE AS WELL AS BRAINS -- THE WIZARD OF OZ WAS RIGHT

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## Reporter

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## Highlight

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### Abstract

*In the movie The Wizard of Oz, Dorothy has three companions on quests of their own: the Scarecrow seeking a brain, the Tin Man seeking a heart, and the Lion seeking courage. Much of the law school curriculum is designed for the law student as Scarecrow -- to develop the student's capacity for critical thinking. The curriculum, however, has not given as much attention to the Tin Man or the Lion among law students. This article examines ways of educating law students to enhance their strength of compassion not only for their clients but also their adversaries, as well the students' strength of courage to make that compassion effective, including standing up for their clients in the interests of justice when it might not be popular to do so.*

## Text

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### [\*290] I. Introduction

#### A. The Importance of Education for Character in Law School

The Reverend Dr. Martin Luther King, Jr. dreamed of a day when people would not be judged by the color of their skin but by the "content of their character."<sup>1</sup> We care about it in our lawyers too, as attested by the enduring popularity of Harper Lee's *To Kill a Mockingbird* and its portrayal of attorney Atticus Finch: [\*291] "We trust him to do right."<sup>2</sup> When lawyers, especially lawyers who are leaders, like President Richard Nixon or New York Governor Eliot Spitzer, resign from office in disgrace, a natural question is what roles should law schools have in helping their students avoid such a future? More important, perhaps, than avoiding such outcomes, is how to help law students and their future clients succeed because of the personal qualities they can bring to their future roles. Or as Professor Robert Cochran has written, "It may be that the problem in the legal profession is not too little attention to rules, but too little attention to character."<sup>3</sup> These issues are not, however, just personal issues for individual lawyers; they are also societal. In addition to serving their clients, lawyers make up a disproportionate cohort of leaders in government, business, and nonprofit organizations. The personal character and frame of mind they bring to leadership has wider impacts.<sup>4</sup> Therefore, "law schools' role of preparing leaders able to tackle pressing public problems is a matter of great public concern."<sup>5</sup>

[\*292] Good character has been defined as "the disposition to do the morally right thing even when no one is watching."<sup>6</sup> At the outset, it may be important to acknowledge that by the time students enter law school, personal character may be set. But just as the virtues of a physician are those of particular relevance to the role as healer,<sup>7</sup> so are virtues of particular importance to lawyers in their roles as advisors and advocates, and as leaders.

In an earlier article, the author explored the dimensions of character and fitness as aspirational rather than a minimum standard of conduct to qualify an applicant for admission to the Bar and explored learning interpersonal

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<sup>1</sup> Martin Luther King, Jr., *I Have a Dream* (Aug. 28, 1963).

<sup>2</sup> HARPER LEE, *TO KILL A MOCKINGBIRD* 270-71 (1960).

<sup>3</sup> Robert F. Cochran, Jr., *Lawyers and Virtues: A Review Essay of Mary Ann Glendon's A Nation Under Lawyers: How the Crisis in the Legal Profession is Transforming American Society and Anthony T. Kronman's The Lost Lawyer: Failing Ideals of the Legal Profession*, 71 NOTRE DAME L. REV. 707, 707 (1996).

<sup>4</sup> For a thoughtful exploration of the importance of moral virtues and the challenges of improving character, see CHRISTIAN B. MILLER, *CHARACTER AND MORAL PSYCHOLOGY* (2013); CHRISTIAN B. MILLER, *MORAL CHARACTER: AN EMPIRICAL THEORY* (2013); CHRISTIAN B. MILLER, *THE CHARACTER GAP -- HOW GOOD ARE WE?* (2018).

<sup>5</sup> Susan Sturm, *Law Schools, Leadership, and Change*, 127 HARV. L. REV. F. 49, 49 (2014). It may be instructive to note that character is an explicit focus at institutions like the U.S. Military Academy at West Point. See Kristin Schmid Callina, et al., *Developing Leaders of Character at the United States Military Academy: A Relational Developmental Systems Analysis*, 18 J. C. & CHARACTER 9, 10-11 (2017); Kristin Schmid Callina et al., *Character in Context: Character Structure Among United States Military Academy Cadets*, 48 J. MORAL EDUC. 439, 440 (2018) (describing ongoing longitudinal study (Project Arete) of character development of West Point cadets). See generally ROBERT L. CASLEN JR. & MICHAEL D. MATTHEWS, *THE CHARACTER EDGE: LEADING AND WINNING WITH INTEGRITY* (forthcoming 2020) (The authors are the former Superintendent and a current member of the faculty at West Point).

<sup>6</sup> EDMUND D. PELLEGRINO & DAVID C. THOMASMA, *THE VIRTUES IN MEDICAL PRACTICE* 179 (1993).

<sup>7</sup> See *id.* at 176.

relations as part of educating lawyers as leaders. <sup>8</sup>This article continues that inquiry about [\*293] character and fitness for leadership in another dimension -- developing good character for the practice of law, including the role of the lawyer-leader, by cultivating the virtues of compassion and courage. <sup>9</sup>To do so, the article draws on the familiar story of quests for those virtues in the fictional Land of Oz as a springboard to ask how law students might undertake similar quests of their own.

## B. A Thought (and feeling) Experiment -- A Law School in Oz

What if there were a law school in the Land of Oz? <sup>10</sup>Like its law school counterparts in Kansas and elsewhere, its curriculum would likely focus first on [\*294] educating its students in the intellectual capacity for reasoned analysis and critical thinking. <sup>11</sup>After all, in the movie, *The Wizard of Oz*, the Scarecrow sang "If I only had a brain." <sup>12</sup>As in another famous movie, a fictional Harvard Law School Professor Kingsfield said, "We do brain surgery here . . . . You come in with a skull full of mush . . . and you leave thinking like a lawyer." <sup>13</sup>

I want to be clear that the character of Professor Kingsfield is fictional and not typical of law professors I know. At the same time, while it is important to help a law student in Oz gain a brain, Dorothy had two other companions. Along the Yellow Brick Road she also met the Tin Man, who sang, "If I only had a heart." <sup>14</sup>Then she met the Lion who sang, "If I only had the nerve." <sup>15</sup>I believe that law schools have focused more on the Scarecrow than the Tin Man or the Lion among our law students. What might the faculty in the Oz School of Law do to help educate their students in all three aspects of their character? Or to put the aspirations of Dorothy's companions in

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<sup>8</sup> See R. Lisle Baker, *Character and Fitness for Leadership: Learning Interpersonal Skills*, 58 SANTA CLARA L. REV. 525, 528 (2018) (arguing that the Bar admission requirement of "character and fitness" can also be an aspirational goal to help provide a rationale for leadership education in law school, and that as interpersonal skills are an important part of leadership learning, it is helpful for law students to learn how to pay better attention to other people, be aware of their and others' strengths, and understand and acknowledge concerns that they and others have for appreciation, affiliation, autonomy, status, and a meaningful role).

<sup>9</sup> DEBORAH L. RHODE, *LAWYERS AS LEADERS* 5 (2013) (arguing that to be a successful leader, one must make his or her own self-interests subordinate to the greater good. This is known as the "'leadership paradox' or the 'paradox of power.'" Individuals reach top positions because of their needs for personal achievement. Yet to perform effectively in these positions, they need to focus on creating the conditions for achievement by others. *Id.* (citing Jennifer A. Chatman & Jessica A. Kennedy, *Psychological Perspectives of Leadership*, in *HANDBOOK OF LEADERSHIP THEORY AND PRACTICE* 159, 169, 174 (Nitin Nohria & Rakesh Khurana, eds. 2010))).

<sup>10</sup> For an elaboration of Oz as a law teaching metaphor, see Phillis Goldfarb, *Teaching Metaphors*, 20 S. CAL. INTERDISC. L.J. 39, 40 (2010), and for use in orientation, see Paula Lustbader, *You Are Not in Kansas Anymore: Orientation Programs Can Help Students Fly over the Rainbow*, 47 WASHBURN L.J. 327, 327 (2008) (arguing for teaching compassion, among other things).

<sup>11</sup> While critical thinking is the core of legal education, it is also important to recognize other aspects that contribute to legal excellence. See Michael D. Matthews et al., *Noncognitive Amplifiers of Human Performance*, in *HUMAN PERFORMANCE AND OPTIMIZATION: THE SCIENCE AND ETHICS OF ENHANCING HUMAN CAPABILITIES* 356 (2019).

<sup>12</sup> See *THE WIZARD OF OZ* (Metro Goldwyn Mayer 1939).

<sup>13</sup> See *THE PAPER CHASE* (20th Century Fox 1973).

<sup>14</sup> See *THE WIZARD OF OZ*, *supra* note 12.

<sup>15</sup> *Id.*

terms of more general educational objectives, in addition to reasoned analysis and critical thinking, how might the faculty of the Oz School of Law also help its students learn compassion and courage? <sup>16</sup>

**[\*295]** This article is designed to explore these questions, but with an invitation to readers to join the quest, as it represents the beginning, rather than the end, of a yellow brick road of inquiry about character education in law school. <sup>17</sup>Also, in a brief survey, some ideas worth **[\*296]** exploring will receive only a brief introduction, which is why reader feedback will be welcome. At the outset, however, it is important to distinguish the types of compassion and courage most important for lawyers to have before deciding how they might best be taught.

For compassion, it is helpful to distinguish among four kinds of compassion: a cognitive understanding of how others might think, a capacity to feel what they feel, and the ability to care for and seek to help them, as well as being compassionate to oneself. <sup>18</sup>For courage, it is important to distinguish between types of courage, as personal, moral and intellectual courage are more relevant than physical courage for lawyers to learn because they are more likely to arise in law practice or other roles lawyers undertake. Also, it may be helpful to explore when these aspects of compassion and courage might positively interact.

## II. Compassion

In the movie, *To Kill a Mockingbird*, attorney Atticus Finch is talking with his daughter, Scout, and says, "You never really understand a person until you consider things from his point of view . . . till you climb inside of his skin and walk around in it." <sup>19</sup>But what does that mean? For these purposes it includes at least two elements -- understanding how the other person might think and also feel. The first might be called cognitive compassion; the second, empathetic compassion.

### **[\*297] A. Cognitive Compassion**

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<sup>16</sup> See generally Kristin B. Gerdy, *Clients, Empathy, and Compassion: Introducing First-Year Students to the Heart of Lawyering*, 87 NEB. L. REV. 1 (2008) (arguing the need for law school curriculum to include education about compassion). This discussion is also informed by two major nonlegal works: COMPASSION: BRIDGING PRACTICE AND SCIENCE (Tania Singer & Mathias Bolz eds., 2013) (an online eBook consisting of sounds, images and text available at [www.compassiontraining.org](http://www.compassiontraining.org)) and MATTHIEU RICARD, ALTRUISM: THE POWER OF COMPASSION TO CHANGE YOURSELF AND THE WORLD (2015). Readers eager to dive deeper into the subject will find both sources helpful.

<sup>17</sup> Martin Luther King, Jr. wrote early in his life about the importance of education for character as well as intelligence:

Education must enable one to sift and weigh evidence, to discern the true from the false, the real from the unreal, and the facts from the fiction. The function of education, therefore, is to teach one to think intensively and to think critically. But education which stops with efficiency may prove the greatest menace to society. The most dangerous criminal may be the man gifted with reason, but with no morals . . . We must remember that intelligence is not enough. Intelligence plus character--that is the goal of true education. The complete education gives one not only power of concentration, but worthy objectives upon which to concentrate. The broad education will, therefore, transmit to one not only the accumulated knowledge of the race but also the accumulated experience of social living.

Martin Luther King, Jr., *The Purpose of Education*, MAROON TIGER, Feb. 1947, at 123-24; see also R. Lisle Baker, *supra* note 8; John J. Fitzgerald, *No Woe to You Lawyers: A Virtue-Based Approach to Happiness Within the Legal Profession*, 4 J. MORAL THEOL. 89, 89 (2015) (asserting that many lawyers find fulfillment in the profession by utilizing theological values).

<sup>18</sup> RICARD, *supra* note 16, at 53 ("In the affective dimension, I feel something for you; in the cognitive dimension, I understand you; and in the motivational dimension, I want to help you.").

<sup>19</sup> See *TO KILL A MOCKINGBIRD* (Universal 1962).

The first element of compassion is cognitive -- understanding the other person's thinking. But that is a general idea which can benefit from more specifics. For example, as a negotiator, it is important for a lawyer not only to understand the stated goals of the client, or an adversary, but also to understand the substance that underlies them and the procedure that forms the frame of reference. For instance, the substance of a goal might be both a specific position, such as a dollar amount of recovery, or a specific action. But the substance also should include the interests that underlie those positions, often reflected in the reasons for seeking the desired outcome. Skilled counsel will ask *why* or *why not* to help discern what may lie behind a stated position of a client--or even an adversary--in case there is an artful way of satisfying an underlying interest that is different from the position initially chosen to serve it, just like there may be more than one route to a destination. <sup>20</sup>

But more than the substance of positions and interests, understanding someone else's point of view can also involve being aware of some of the procedural aspects that influence how they think independent of a specific dispute or desired outcome. Beyond the procedure of how a conversation, a negotiation, or even a trial might be undertaken, these aspects of how someone can think can include structural issues in the background. These can include how they prefer to gain information and make decisions. <sup>21</sup>They can include **[\*298]** which of their moral values are at stake. <sup>22</sup>They can include core concerns about autonomy, affiliation, appreciation, status, and role. <sup>23</sup>They may even include basic beliefs that they may have about the world around them, such as it is interesting or dangerous, among others, all of which may in turn influence behavior. <sup>24</sup>In summary, to understand how people think may require more than simply asking what is on their mind. The point is that the lawyer (and law student as lawyer in the making) should remember not only that, as the late Christopher Peterson wrote, "other people matter," <sup>25</sup>but also what matters to other people.

## **[\*299] B. Empathetic Compassion**

While necessary, knowledge of what matters to other people may still be insufficient because part of what makes us human is the capacity to feel what others feel, particularly when someone we care about is also in distress. <sup>26</sup>This is the emotional side of empathy--feeling and identifying with the client. <sup>27</sup>The challenge for lawyers is

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<sup>20</sup> See generally ROGER FISHER & WILLIAM URY, *GETTING TO YES* (3d ed. 2011).

<sup>21</sup> See generally R. Lisle Baker, *Using Insights About Perception and Judgment from the Myers-Briggs Type Indicator Instrument as an Aid to Mediation*, 9 HARV. NEGOT. L. REV. 115 (2004) (analyzing how samples of the general public, lawyers, judges, and mediators compare in how they prefer to gain information and make decisions about it, and how mediator understanding of those different cognitive preferences can be an aid to the mediation of disputes).

<sup>22</sup> See JOHNATHAN HAIDT, *THE RIGHTEOUS MIND: WHY GOOD PEOPLE ARE DIVIDED BY POLITICS AND RELIGION* 147, 197 (2012) (elaborating moral frameworks); Jonathan Haidt, *Moral Psychology and the Law: How Intuitions Drive Reasoning, Judgment, and the Search for Evidence*, 64 ALA. L. REV. 867, 868-69 (2013) (highlighting gradual development of how lawyers think); see also Jonathan M. Hyman, *Beyond Fairness: The Place of Moral Foundations Theory in Mediation and Negotiation*, 15 NEV. L.J. 959, 969-77 (2015) (providing examples of moral frameworks contributing to mediation and negotiation outcomes).

<sup>23</sup> See generally ROGER FISHER & DANIEL SHAPIRO, *BEYOND REASON* (2006); Baker, *supra* note 8.

<sup>24</sup> See generally Jeremy D. W. Clifton, et al., *Primal World Beliefs*, 31 PSYCHOL. ASSESSMENT 82 (2019) (noting how inherent attitudes shape behaviors).

<sup>25</sup> CHRISTOPHER PETERSON, *A PRIMER IN POSITIVE PSYCHOLOGY* 249 (2006).

<sup>26</sup> Meghan L. Meyer, et al., *Empathy for the Social Suffering of Friends and Strangers Recruits Distinct Patterns of Brain Activation*, 8 SOC. COGNITIVE & AFFECTIVE NEUROSCIENCE 446, 446-54 (2013). For a thorough discussion of empathy in the context of law practice, including the lawyer psychodrama training by famed litigator Gerry Spence, see DOUGLAS O. LINDER & NANCY LEVITT, *The Good Lawyer is Empathetic*, in *THE GOOD LAWYER: SEEKING QUALITY IN THE PRACTICE OF LAW* 1-35 (2014).

not only how to feel with their clients but also to maintain enough professional distance and independence to offer wise counsel without being distressed by the experience themselves. <sup>28</sup>

### **[\*300] C. Caring Compassion**

The third dimension of compassion involves caring compassion -- an awareness of another person's suffering, coupled with a desire and a willingness to act to relieve it. Caring compassion implies a sincere feeling of concern, but it does not require that one mirror the other's suffering, as in the case of empathy carried to the point of empathic distress. <sup>29</sup>(Brain scans even indicate that feeling compassion apparently activates different parts of the brain than feeling empathy does.) <sup>30</sup>Caring compassion offers a way to respond positively to the suffering of other people without taking on their emotional distress. <sup>31</sup>

Much of what we value in the law--perceiving an injustice and doing something about it--might be wrapped into this third definition of compassion. In that sense, much of practicing law can be thought of as a compassionate act within a structured legal environment. Indeed, providing a legal means to respond **[\*301]** to difficulty offers a way to transcend the emotional fatigue of empathy by translating it into concrete action. It also can serve a larger societal function by addressing an individual injustice before it becomes systemic. Finally, helping others more than ourselves can be a recipe for greater personal happiness. <sup>32</sup>

Compassion for someone close to us is familiar. What is more challenging is extending compassion to those with whom we have no prior relationship, or even to someone with whom we disagree. For example, suppose we represent a defendant charged with a terrible crime. To provide an adequate defense, the attorney needs to have enough compassion for the accused to make that case, despite the nature of the crime, to assure that justice is done. But our law students will not just attend to clients--they will also need to respond to those who may be causing distress and the counsel that represent them. Compassion in these contexts requires an open heart--like the Tin Man--even for those with whom we may disagree or even oppose. <sup>33</sup>That does not mean

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<sup>27</sup> While empathy has its importance in relating to clients and being able to tell their stories, Professors Linder and Levitt caution about over-identification with the client. See LINDER & LEVITT, *supra* note 26, at 25-27.

<sup>28</sup> For example, the American Bar Association Model Rules of Professional Conduct provide: "In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation." MODEL RULES OF PROF'L CONDUCT r. 2.1 (AM. BAR. ASS'N 2016).

<sup>29</sup> RICARD, *supra* note 16, at 53.

<sup>30</sup> Tania Singer & Olga M. Klimecki, *Empathy and Compassion*, 24 CURRENT BIOLOGY 875, 875-76 (2014) (describing empathy to feel *with* someone and compassion to feel *for* someone).

<sup>31</sup> For a discussion of why compassion training is important for lawyers and judges, see Lee Norton, Jennifer Johnson, & George Woods, *Burnout and Compassion Fatigue: What Lawyers Need to Know*, 84 UMKC L. REV. 987, 998-1002 (2016); Jamey Hueston & Miriam Hutchins, *The Power of Compassion in the Court: Healing on Both Sides of the Bench*, 54 CT. REV. 96, 96 (2018); see also R. Lisle Baker & Jennifer List, *Delivering Bad News Well*, L. PRAC. TODAY (Jan. 14, 2019), <https://www.lawpracticetoday.org/article/deliver-bad-news-well/> [<https://perma.cc/7PYC-YWXQ>] (discussing how to deliver bad news to clients and do it well, based on learning from a medical protocol devised by palliative care physician, Dr. Chris Feudtner of Philadelphia, PA).

<sup>32</sup> S. Katherine Nelson et al., *Do Unto Others or Treat Yourself? The Effects of Prosocial and Self-Focused Behavior on Psychological Flourishing*, 16 EMOTION 850, 850 (2016) (arguing that helping others appears to produce more happiness than helping oneself).

<sup>33</sup> Martin Luther King, Jr., wrote:

[\*302] condoning such conduct but recognizing that there is enough common humanity to reach across the divide--sometimes called "fierce compassion."<sup>34</sup> For example, building a relationship with his adversary, F.W. De Klerk enabled Nelson Mandela to negotiate the end of Apartheid in South Africa.<sup>35</sup> These efforts sometimes [\*303] require recognizing the simple dignity afforded to another human being.<sup>36</sup>

#### D. Self-Compassion

Being able to care for others can be challenging, especially if the other is someone disliked. But sometimes those who can extend compassion to others may find it difficult to do the same for themselves. Extending compassion to oneself does not condone mistakes or avoid learning from them but involves acknowledging that such self-compassion may also be worth learning how to do, both for academic and professional reasons.<sup>37</sup>

#### III. Courage

While a compassionate heart is necessary, it needs to be supported by courage if the desire to act is to ripen into successful action to secure justice.<sup>38</sup> We can recall the [\*304] scene from the movie, *To Kill a*

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Love, even for enemies, is the key to the solution of the problems of the world . . . . Let us be practical and ask the question, " *How do we love our enemies?*". . . . We must recognize that . . . an element of goodness may be found even in our worst enemy . . . . This means that there is some good in the worst of us and some evil in the best of us. When we discover this, we are less prone to hate our enemies. When we look beneath the surface, beneath the impulsive evil deed, we see within our enemy-neighbor a measure of goodness and know that the viciousness and evil of his acts are not quite representative of all that he is.

Martin Luther King, Jr., STRENGTH TO LOVE, 44-45 (2010 ed. 2010). Bishop Desmond Tutu wrote:

Forgiveness does not relieve someone of responsibility for what they have done . . . . It is not about letting someone off the hook or saying it is okay to do something monstrous. Forgiveness is simply about understanding that every one of us is both inherently good and inherently flawed. Within . . . every seemingly hopeless person lies the possibility of transformation.

DESMOND TUTU & MPHOTO TUTU, THE BOOK OF FORGIVING: THE FOURFOLD PATH FOR HEALING OURSELVES AND OUR WORLD 58 (4th ed. 2014). The author is indebted to Professor John Makransky of Boston College Law School for bringing these quotations to his attention. Professor Makransky recommends remembering through deep and repeated meditation how we have been cared for so as to build a secure base to care for others. See generally *Foundation for Active Compassion*, [www.foundationforactivecompassion.org](http://www.foundationforactivecompassion.org) [<https://perma.cc/KG86-SQ6J>] (empowering people by providing "profound contemplative practices that support their aspirations to become better people and to make a better world").

<sup>34</sup> John Makransky, *Confronting the "Sin" Out of Love for the "Sinner": Fierce Compassion as a Force for Social Change*, 36 BUDDHIST-CHRISTIAN STUD. 87 (2016).

<sup>35</sup> See Robert Mnookin, BARGAINING WITH THE DEVIL -- WHEN TO NEGOTIATE, WHEN TO FIGHT, 106-36 (2010) (calling Nelson Mandela "the greatest negotiator of the 20th Century").

<sup>36</sup> See generally DONNA HICKS, DIGNITY--THE ESSENTIAL ROLE IT PLAYS IN RESOLVING HUMAN CONFLICT (2011) (analyzing dignity as a motivating force behind human interaction).

<sup>37</sup> See Christy Cassisa & Kristin Neff, *The Promise of Self-Compassion for Solos*, 36 GP SOLO 18 (2019); Kristin D. Neff et al., *Self-Compassion, Achievement Goals, and Coping with Academic Failure*, 4 SELF & IDENTITY, 263, 263 (2005). See generally KRISTIN NEFF & CHRISTOPHER GERMER, THE MINDFUL SELF-COMPASSION WORKBOOK (2018).

*Mockingbird*, where the father of a rape victim confronts attorney Atticus Finch before the trial of the accused defendant in the small Alabama town. In response to his question about what Atticus is going to do, Atticus responds, "I've been appointed to defend Tom Robinson, and that's what I intend to do."<sup>39</sup> The father then shouts an implicit threat after him, "What kind of man are you? You got children of your own."<sup>40</sup>

To understand how such courage might be taught, it is also important to distinguish among different types of courage: physical, personal, moral, and intellectual.

### A. Physical Courage

We hope our law students do not need the level of physical courage like those heroic people who ran toward, rather than away from, the Boston Marathon bombing.<sup>41</sup> At the same time, we admire such courage because it involves taking a risk for the benefit of other people. This [\*305] aspect highlights a dimension of courage that is important to emphasize at the outset--a moral purpose. Courage has been generally defined as "(a) willful, intentional act, (b) executed after mindful deliberation, (c) involving objective substantial risk to the actor, (d) primarily motivated to bring about a noble good or worthy end, (e) despite, *perhaps*, the presence of the emotion of fear."<sup>42</sup> The positive purpose is important to distinguishing the courage shown by a mugger or criminal assailant. This is especially important for lawyers who have unique access to the legal system and its ability to do both harm as well as good. "For a daring action truly to display courage it must be morally desirable, respectable, and lead to laudable results."<sup>43</sup>

### B. Personal Courage

This is the form of courage where individuals overcome a fear that may be apparent only to them, such as speaking in public, or consulting a therapist when in distress when the culture of law school or of law practice may seem to discourage students seeking help, especially out of concern for adverse impacts on their bar admission application.<sup>44</sup> Personal courage can also include the [\*306] important ability to speak up in relationships

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<sup>38</sup> See CHRISTOPHER PETERSON & MARTIN E. P. SELIGMAN, CHARACTER STRENGTHS AND VIRTUES: A HANDBOOK AND CLASSIFICATION 197-289 (2004) (including within virtue the character strengths of honesty, zest, bravery, and perseverance). "[T]o act courageously, one must ignore danger (bravery) and continue to act (persistence), follow one's convictions (integrity) and act with energy and enthusiasm [vitality]." Cynthia L.S. Pury & Robin M. Kowalski, *Human Strengths, Courageous Actions and General and Personal Courage*, J. POSITIVE PSYCHOLOGY 1, 3 (2007). Also, recent research indicates that courage can be important for resilience, an important aspect of well-being. See Maria Luisa Martinez-Marti & Willibald Ruch, *Character Strengths Predict Resilience Over and Above Positive Affect, Self-Efficacy, Optimism, Social Support, Self-Esteem, and Life Satisfaction*, 12 J. POSITIVE PSYCHOL. 110, 112 (2017) (predicting resiliency through study of character strengths).

<sup>39</sup> TO KILL A MOCKINGBIRD (Universal 1962).

<sup>40</sup> *Id.*

<sup>41</sup> Evidence indicates that circumstances can call forth strengths that might not have been obvious initially, such as the responses of some people to the Boston Marathon bombing's traumatic events. See Kevin Cullen, *Choosing to Focus on the Heroes, Not the Tsarnaevs*, BOS. GLOBE (May 16, 2015), <https://www.bostonglobe.com/news/nation/2015/05/16/choosing-focus-boston-marathon-heroes/g0fA1w58iajb4U0XFGvREI/story.html> [<https://perma.cc/9HQ7-PFM5?type=image>] (detailing heroic responses to Boston Marathon bombing).

<sup>42</sup> C. R. Rate, et al., *Implicit Theories of Courage*, 2 J. POSITIVE PSYCHOL. 80, 95 (2007).

<sup>43</sup> ROBERT BISWAS-DIENER, THE COURAGE QUOTIENT: HOW SCIENCE CAN MAKE YOU BRAVER 9 (2012).

<sup>44</sup> Legal educators can help law students in such situations who are concerned about disclosing such problems on their bar admissions applications by making them aware that an increasing number of jurisdictions are supportive of seeking treatment where needed, rather than trying to go it alone. Remarks of Marilyn Wellington, Exec. Dir., Board of Bar Exam'rs of the

with other people while being open to changing perspective and using language, both verbal and nonverbal, wisely.  
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### C. Moral Courage

For lawyers, and the judges that they may become, it is especially important that they be able to manifest moral courage, which involves standing up for principle even when it appears to involve risk to themselves, as did Atticus Finch in the earlier example. <sup>46</sup>Robert F. Kennedy put it this way: "Moral Courage is a rarer commodity than bravery in battle or great intelligence. Yet it is the one essential, vital quality for those who see to change the world which yields most painfully to change."<sup>47</sup>

### [\*307] D. Intellectual Courage

This kind of courage is like moral courage but as part of the role of the lawyer as someone who upholds honesty, fair dealing, and accuracy. This is the role of the lawyer in cross-examining expert testimony or offering adverse judicial authority to a court having to decide a difficult case. <sup>48</sup>It can also include the courage for a young associate to come forward with a quandary to a senior attorney in a firm, rather than simply trying to struggle along without seeking guidance. <sup>49</sup>

## IV. Educating for Compassion and Courage -- Come Threshold Issues

Highlighting the importance of compassion and courage is worthwhile. But at the same time, we need to be able to educate law students in these virtues. How to do that requires some background. Are these virtues that can be learned or are they just innate? If they are not **[\*308]** innate, are they just behaviors shaped by the context? If they can be learned, what means of instruction are available to legal educators to teach them? It is important to examine these threshold issues first.

### A. Are Compassion and Courage Virtues that can be Learned?

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Commonwealth of Mass., Address at Suffolk University Law School (Mar. 26, 2019). See generally Baker, *supra* note 8 (discussing character and fitness development).

<sup>45</sup> The author is indebted to Daniel Ellenberg, Ph.D., for pointing out how interpersonal communication with those close to us can also require courage. His colleague, Rick Hanson, Ph.D., also emphasized the importance of wise speech in the process. See *Friendly & Fearless, GREATER GOOD SCI. CTR.*, [https://ggsc.berkeley.edu/what\\_we\\_do/event/friendly\\_fearless\\_combining\\_kindness\\_and\\_assertiveness\\_in\\_important\\_relatio#tab-overview](https://ggsc.berkeley.edu/what_we_do/event/friendly_fearless_combining_kindness_and_assertiveness_in_important_relatio#tab-overview) [<https://perma.cc/Z7QL-2LVX>] (the agenda includes a section on "wise speech").

<sup>46</sup> "Moral implementation focuses on whether the professional has sufficient pertinacity, toughness, ego strength, and courage to implement his or her moral reasoning." Timothy W. Floyd, *Moral Vision, Moral Courage, and the Formation of the Lawyer's Professional Identity*, 28 MISS. C. L. REV. 339, 342 (2009); see also Silvia Osswald, et al., *What is Moral Courage? Definition, Explication, and Classification of a Complex Construct*, in CYNTHIA L.S. PURY & SHANE J. LOPEZ, *THE PSYCHOLOGY OF COURAGE -- MODERN RESEARCH ON AN ANCIENT VIRTUE* 149, 152 (2010).

<sup>47</sup> Robert F. Kennedy, Address at the University of Capetown, Day of Affirmation Address (June 6, 1966) <https://www.jfklibrary.org/learn/about-jfk/the-kennedy-family/robert-f-kennedy/robert-f-kennedy-speeches/day-of-affirmation-address-university-of-capetown-capetown-south-africa-june-6-1966> [<https://perma.cc/9L7N-37MN>]. The author is indebted to Rep. Adam Schiff (D-Cal.) for learning of this quotation.

<sup>48</sup> See David L. Hudson, Jr., *Lawyers Have a Duty to Disclose Adverse Legal Authority even if It Hurts Their Case*, ABA J. (June 1, 2019, 1:15 AM), <http://www.abajournal.com/magazine/article/duty-to-disclose-adverse-legal-authority> [<https://perma.cc/X27M-47R7>].

<sup>49</sup> See Heidi K. Brown, *Fear and Lawyering: Create a Work Culture of 'Psychological Safety' that Encourages Taking Intellectual and Creative Risks*, ABA J. (May 1, 2019, 2:15 AM), <http://www.abajournal.com/magazine/article/fear-lawyering-psychological-safety> [<https://perma.cc/TKX3-V85S>].

If compassion and courage are traits we have--like eye color, which is not subject to change through education--then this can be a short article. We admire these traits when we observe them and go on with educating law students in critical thinking, which legal educators already teach. But it is apparent that these qualities can also be strengthened,<sup>50</sup> though in the case of courage, doing so may be "an art more than a science."<sup>51</sup>

## **B. While Powerful, the Context does not Always Control Behavior, so we Still Need to Cultivate Individual Virtue**

At the outset it is important to note that individuals act within a context, which can often control the situation. For example, a spectator cell phone conversation during an oral argument in court would be unlikely, even if it might occur on the sidewalk outside. **[\*309]** The premise of this inquiry is whether we can help strengthen the moral identity of law students so that they might transcend the countervailing influence of the context when it is important to do so in the interest of justice.<sup>52</sup> That is not to say that the context does not matter, and sometimes that the situation itself can be shaped in a positive way, but exploring how to do that is beyond the scope of this article, which focuses on enhancing the likelihood that law students will choose to act in an exemplary way whatever the situation they encounter.<sup>53</sup>

In the Biblical parable of *The Good Samaritan*, one stranger aids another stranger while others turn **[\*310]** aside and pass by.<sup>54</sup> This parable was the subject of a famous experiment where divinity students

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<sup>50</sup> Cynthia L. S. Pury, *Can Courage Be Learned?*, in 1 POSITIVE PSYCHOLOGY: EXPLORING THE BEST IN PEOPLE 109, 109-128 (S.J. Lopez ed., 2008). See generally Melissa Radey & Charles R. Figley, *The Social Psychology of Compassion*, 35 CLINICAL & SOC. WORK. J. 207 (2007) (discussing the strengthening of compassion in the social work context).

<sup>51</sup> MICHAEL D. MATTHEWS, HEAD STRONG -- HOW PSYCHOLOGY IS REVOLUTIONIZING WAR 135 (2014) ("[D]eveloping individual courage at this point is far more an art than a science.").

<sup>52</sup> See Karl Aquino et al., *Testing a Social-Cognitive Model of Moral Behavior: The Interactive Influence of Situations and Moral Identity Centrality*, 97 J. PERSONALITY & SOC. PSYCHOL. 123, 124 (2009).

<sup>53</sup> See, e.g., Paula Schaefer, *Behavioral Legal Ethics Lessons for Corporate Counsel*, 69 CASE WESTERN L. REV. 975, 975 (2019) (discussing behavior legal ethics in the context of corporate counsel). Indeed, on a personal note, the situational frame of reference about avoiding wrongdoing was my introduction to law practice. I was admitted to practice before the Supreme Judicial Court of Massachusetts in 1968 after having passed the Massachusetts Bar Examination which then contained no questions on legal ethics, as it now does. (I voluntarily took and passed the Multistate Professional Responsibility Examination several years ago.) At my swearing in, Justice Reardon of the Supreme Judicial Court spoke to us and said he had three pieces of advice for us as new lawyers. I still remember his words vividly, even fifty years later, because he delivered the advice so briefly and so emphatically: "Never mingle client funds with your own. Never mingle client funds with your own. Never mingle client funds with your own." Justice Paul Reardon, Address at Swearing In Ceremony at the Supreme Judicial Court in Massachusetts (Nov. 19, 1968).

<sup>54</sup> See Luke 10:25-37 (New International Version)

On one occasion an expert in the law stood up to test Jesus. "Teacher," he asked, "what must I do to inherit eternal life?" "What is written in the Law?" he replied. "How do you read it?" He answered, "'Love the Lord your God with all your heart and with all your soul and with all your strength and with all your mind'; and, 'Love your neighbor as yourself.'" "You have answered correctly," Jesus replied. "Do this and you will live." But he wanted to justify himself, so he asked Jesus, "And who is my neighbor?" In reply Jesus said: "A man was going down from Jerusalem to Jericho, when he was attacked by robbers. They stripped him of his clothes, beat him and went away, leaving him half dead. A priest happened to be going down the same road, and when he saw the man, he passed by on the other side. So too, a Levite, when he came to the place and saw him, passed by on the other side. But a Samaritan, as he traveled, came where the man was; and when he saw him, he took pity on him. He went to him and bandaged his wounds, pouring on oil and wine. Then he put the man on his own donkey, brought him to an inn and took care of him. The next day he took out two denarii and gave them to the innkeeper. 'Look after him,' he said, 'and when I return, I will reimburse you for any extra expense you may have.'" "Which

were asked to give a talk about the Good Samaritan across campus. Along the way to their speech, each student encountered an individual in distress. Many hurried on, but some [\*311] stopped to offer help.<sup>55</sup> Those who did not stop may have asked themselves what will happen to me? Those who did stop to help may have asked what would happen to him?<sup>56</sup> These positive exemplars illustrate that sometimes the context often does--but need not always--control what we do. Important examples include those "righteous Gentiles" who rescued Jews during the Nazi occupation, discussed more below.

Looking at the good people among us is not the way lawyers usually work. Indeed, one of the most eminent of American Jurists advised to look at the law as would "a bad man."<sup>57</sup> But what if, instead, we looked at it as would a good one and tried to learn from such lawyers? This is a question explored more below in the discussion of exemplars.

### **[\*312] C. Understanding the Importance of Degree Even with Virtues like Compassion and Courage**

Before getting into specific pedagogy for compassion and courage, it is important to clarify that each are similar but different from allied behavior. Recklessness and cowardice both involve action or inaction in the face of danger, as does courage, but are not esteemed. Empathy without caring may leave the lawyer exhausted, but shutting down is not a good alternative.<sup>58</sup> Distinguishing what to do and when is part of the task, and indeed, can call upon some of the "practical wisdom" of the Scarecrow.<sup>59</sup>

### **D. The Importance of Preparation and Small Steps**

A hallmark of effective lawyering involves careful preparation. Cultivating new habits takes time, so while it is possible to introduce some practices to law students, continuing them will require those practices to become more habitual.

### **E. The Importance of Motivation and the Desire to Improve One's Character**

It may be self-evident to say that learning requires motivation, and the law has long acknowledged that motive matters. A legal educator can decide that it [\*313] is important to educate law students for virtue, but if there is no interest among the students it will not likely succeed. At the same time, does anyone dispute that our society needs our lawyers--many of whom end up in leadership roles--to be at their best? Developing such motivation should not

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of these three do you think was a neighbor to the man who fell into the hands of robbers?" The expert in the law replied, "The one who had mercy on him." Jesus told him, "Go and do likewise."

*Id.*

<sup>55</sup> John M. Darley & C. Daniel Batson, "From Jerusalem to Jericho": A Study of Situational and Dispositional Variable in Helping Behavior, 27 J. PERSONALITY & SOC. PSYCHOL. 27(1), 100-08 (1973).

<sup>56</sup> Martin Luther King, Jr. on the parable of the Good Samaritan: "I imagine that the first question the priest and Levite asked was: 'If I stop to help this man, what will happen to me?' But by the very nature of his concern, the good Samaritan reversed the question: 'If I do not stop to help this man, what will happen to him?'" MARTIN LUTHER KING JR., STRENGTH TO LOVE 34 (1963).

<sup>57</sup> "If you want to know the law and nothing else, you must look at it as a bad man, who cares only for the material consequences which such knowledge enables him to predict, not as a good one, who finds his reasons for conduct, whether inside the law or outside of it, in the vaguer sanctions of conscience." Oliver Wendell Holmes, Jr., *The Path of the Law*, 10 HARV. L. REV. 457, 460 (1897).

<sup>58</sup> For a discussion of the importance of balance, see Ryan M. Niemiec, *Finding the Golden Mean: The Overuse, Underuse, and Optimal Use of Character Strengths*, 32 COUNSELING PSYCHOL. Q., 453, 458-61 (2019).

<sup>59</sup> B. SCHWARTZ & K. SHARPE, PRACTICAL WISDOM: THE RIGHT WAY TO DO THE RIGHT THING 5-12 (2010).

be ignored but is itself likely to require a longer article than is available here. Suffice it to say that this article presumes that a law student would like to have greater compassion and courage and is willing to work to strengthen them.

## F. Virtue Education as the Beginning of a Journey

For purposes of this discussion, the article will assume that the virtues of compassion and courage can be learned, and therefore taught, while recognizing that the means to do so need far more exploration. Nonetheless, like Dorothy on the Yellow Brick Road in Oz, she had to start somewhere; so here.

## V. Educating Law Students in Compassion

Helping law students understand and practice cognitive, empathetic, and caring compassion--for others and themselves--is important for educating the Tin Man among our law students.<sup>60</sup> Certainly enlisting the Scarecrow to explain compassion and courage, as outlined above, is important at the outset, but if it is not only knowledge, but also behavior, that we want to help [\*314] law students to learn, how can we help them do that? Other law faculty have offered suggestions such as learning from literature, reflection, and experience, drawing on precedents in medical education.<sup>61</sup> A psychologist has suggested student reflections on compassion (or lack of it) or classroom discussions and experiential exercises.<sup>62</sup> Here are a few suggestions for teaching compassion which I have found helpful or have learned about and wish to explore.

### A. Offer Law Students Positive Exemplars

One part of my courses in *Positive Psychology for Lawyers* and *Leadership and Character Strengths* involves students finding positive exemplars in the legal profession that they can admire, identify with, and emulate. During the courses, I invite exemplary lawyers to the class, such as senior partners in law firms or a former President of the Massachusetts Bar Association, so that the students can interact directly with highly regarded legal professionals. I also invite students to write about exemplars of their own, asking them to discuss whom they admire and why.<sup>63</sup> Exemplars can also help educate law students about compassion.<sup>64</sup> Here are two examples:

[\*315] Dr. Daniel Brown is a psychologist in the Department of Psychiatry at Harvard Medical School.<sup>65</sup> He tells a remarkable story about the late Robert F. Kennedy seen through the eyes of a 14-year-old busboy. Some readers may remember Juan Romero as the young man whose distraught image was caught on camera cradling

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<sup>60</sup> Hooria Jazaieri, *Compassionate Education from Preschool to Graduate School -- Bringing a Culture of Compassion into the Classroom*, 11 J. RES. INNOVATION TEACHING & LEARNING 22, 29 (2018) (reporting prior reports of law school discouraging compassion).

<sup>61</sup> See Gerdy, *supra* note 16, at 52-61.

<sup>62</sup> See Jazaieri, *supra* note 60, at 50.

<sup>63</sup> For a thoughtful discussion of the importance of moral exemplars, see LINDA TRINKAUS ZABZEBESKI, EXEMPLARIST MORAL THEORY 1-29 (2019).

<sup>64</sup> See, e.g., Lee Rawles, *Meet 8 ABA Members who Inspired Us in 2018*, ABA J. (Dec. 27, 2018, 11:08 AM), <http://www.abajournal.com/news/article/meet-8-members-who-inspired-us-in-2018> [<https://perma.cc/MD5S-5XJC>].

<sup>65</sup> Daniel P. Brown, Ph.D., is Associate Clinical Professor of Psychology in the Department of Psychiatry, Harvard Medical School. Dr. Brown frequently testifies as an expert witness on trauma and abuse issues, including testimony at the War Crimes Tribunal at The Hague. He is the senior author of Brown, Schefflin, and Hammond, *MEMORY, TRAUMA TREATMENT, AND THE LAW* (1999), among other works. See also *About Daniel T. Brown*, DANIEL P. BROWN, <https://www.drdanielpbrown.com/daniel-brown> [<https://perma.cc/T862-FYTP>].

the head of a dying Senator Kennedy just after he was assassinated in the Ambassador Hotel in Los Angeles on June 5, 1968. <sup>66</sup>Dr. Brown interviewed Juan Romero late in life and learned what happened. <sup>67</sup>

Dr. Brown reported that Juan Romero grew up with his mother and stepfather in Mexico and then immigrated to the United States. Dr. Brown learned that Juan had been beaten as a child and had low self-esteem. He didn't feel seen and felt like he didn't matter in life. Several weeks before the Robert Kennedy assassination, Juan had heard Robert Kennedy, along with Cesar Chavez, speak at a rally in support of the rights of Mexican American immigrant farmworkers. Juan **[\*316]** recalled that Robert Kennedy acknowledged these immigrants as hard-working citizens worthy of respect, dignity, and fair treatment. Immediately following the talk, Kennedy became Juan's new hero. He felt that he and his people had been seen and acknowledged. The weekend before the Kennedy assassination, Juan was temporarily brought in as a busboy at the Ambassador Hotel. When he heard a room service call come down from Kennedy's room he said to the headwaiter, "This really means a lot to me. I'll volunteer to wait tables for 2 weeks if you let me deliver this order." Juan wanted to meet his new hero and went up to see if Kennedy was genuine or not. He nervously knocked on the door. Kennedy was on the phone and asked him if he would wait. Upon ending the call Kennedy warmly smiled, offered him both hands, and said, "Now, tell me who you are." Forty-five minutes later, Juan reported that he left feeling that he had been truly seen and that he had been acknowledged by someone likely to be the next President of the United States: "You could tell when he was looking at you that he's not looking through you -- he's taking you into account. And I remember walking out of there like I was 10 feet tall." <sup>68</sup>He told Dr. Brown, "For the first time in my life I felt like I mattered." <sup>69</sup>Yet, because of his low self-esteem doubt set in. He greatly needed to find out if Senator Kennedy would at all remember him. Several days later, the day of the assassination, Juan had learned that Kennedy was coming through the hotel kitchen after his speech. <sup>70</sup>He went to the kitchen and positioned **[\*317]** himself right in Kennedy's path. Juan was not certain Kennedy would remember him. <sup>71</sup>When Kennedy came by, he saw Juan, gave him a big smile and said, "Hello, Juan. Nice to see you again." <sup>72</sup>Juan immediately felt acknowledged thinking, "The next President of the United States knows who I am. I matter." <sup>73</sup>Excitedly he shook Kennedy's hand and wouldn't let go. <sup>74</sup>Then the shots rang out. <sup>75</sup>

Dr. Brown said that for years, Juan Romero blamed himself for Kennedy's death because he believed that if he hadn't held Kennedy's hand so vigorously and so long, then the angle of the gun might have been different, Juan having even received a letter blaming him. <sup>76</sup>Yet, Kennedy had indeed paused to acknowledge him. Later,

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<sup>66</sup> *Image of RFK Immediately After He Was Shot on June 5, 1968*, WIKIPEDIA, [https://en.wikipedia.org/wiki/Assassination\\_of\\_Robert\\_F.\\_Kennedy#/media/File:Rfk\\_assassination.jpg](https://en.wikipedia.org/wiki/Assassination_of_Robert_F._Kennedy#/media/File:Rfk_assassination.jpg) [<https://perma.cc/FV7N-9HC2>].

<sup>67</sup> Interview with Dr. Daniel Brown (June 4, 2019) (notes on file with the author and assertions made with Dr. Brown's review and approval) [hereinafter *Interview*].

<sup>68</sup> Jud Esty-Kendall, *The Busboy Who Cradled a Dying RFK Recalls Those Final Moments*, NPR: MORNING EDITION (June 1, 2018), <https://www.npr.org/2018/06/01/615534723/the-busboy-who-cradled-a-dying-rfk-recalls-those-final-moments> [<https://perma.cc/6PJE-XRDL>].

<sup>69</sup> *Interview, supra* note 67.

<sup>70</sup> See Esty-Kendall, *supra* note 68.

<sup>71</sup> *Interview, supra* note 67.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.*

<sup>75</sup> See Esty-Kendall, *supra* note 68.

Juan Romero reported visiting Kennedy's gravesite to express his regret, buying and wearing the first suit he had ever had as a sign of respect: "I felt like I needed to ask Kennedy to forgive me for not being able to stop those bullets from harming him . . . When I wore the suit and I stood in front of his grave, I felt a little bit like that first day that I met him. I felt important. I felt American. And I felt good."<sup>77</sup>While this story has a tragic ending, Kennedy's death should not obscure that for Juan Romero, Robert F. Kennedy, who was himself a lawyer, exemplified compassion in acknowledging a young busboy as worthy of recognition. How many of us acknowledge the many people in the varied roles who enable us to do what we do?

**[\*318]** Another example is provided by compassion for an opponent. Sara Tucholsky of Western Oregon was at bat in a softball game with Central Washington on April 26, 2008.<sup>78</sup>A senior, she had never hit a home run before, but did so that day.<sup>79</sup>Unfortunately, in rounding first base, she missed it, and in turning back, tore a ligament in her right knee.<sup>80</sup>The umpire ruled that if her teammates tried to carry her around, she would be ruled out, and if a pinch runner were inserted to take her place on base, the home run would be a single.<sup>81</sup>Then two teammates from the opposing team asked if they could carry her around the bases instead, which apparently violated no rule.<sup>82</sup>Then they did, making a chair with their hands so she could be lowered to touch each base, allowing her to score a home run.<sup>83</sup>Watching the video of this act helps demonstrate not only the importance of compassion for someone who might be an adversary, but also the elevating and uplifting effect it had on those who witnessed this positive act.<sup>84</sup>

**[\*319]** Finally, legal educators are role models. "By exercising compassion and showing empathy toward our students, faculty members model the very behaviors we want them to emulate--but when faculty members treat students with indifference and even disdain, they cannot blame anyone but themselves when students are uncaring and cold with others."<sup>85</sup>

## B. Help Students Experience Elevation and Other Positive Emotions

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<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> *The Sara Tucholsky Home Run: 10 Years Later*, GREAT NORTHWEST ATHLETIC CONF. (Apr. 26, 2018), <http://www.gnacsports.com/news/archives/2017-18/10721/the-sara-tucholsky-home-run-10-years-later/> [<https://perma.cc/5CY2-9JPE>] [hereinafter *Sara Tucholsky*]. The author is indebted to Stanford psychologist Kelly McGonigal for this example. See KELLY MCGONIGLE, *THE SCIENCE OF COMPASSION: A MODERN APPROACH FOR CULTIVATING EMPATHY, LOVE, AND CONNECTION* (2016).

<sup>79</sup> See *Sara Tucholsky*, *supra* note 78.

<sup>80</sup> See *id.*

<sup>81</sup> See *id.*

<sup>82</sup> See *id.*

<sup>83</sup> *Id.*

<sup>84</sup> See Keith Sharon, *The Western Oregon Home Run that Won an ESPY and Changed College Softball Forever*, OREGONIAN (Dec. 16, 2014), [https://www.oregonlive.com/sports/2014/12/the\\_western\\_oregon\\_home\\_run\\_th.html](https://www.oregonlive.com/sports/2014/12/the_western_oregon_home_run_th.html) [<https://perma.cc/PT53-4P8L>]. See generally Sara B. Algoe & Jonathan Haidt, *Witnessing Excellence in Action: The 'Other-Praising' Emotions of Elevation, Gratitude, and Admiration*, 4 J. POSITIVE PSYCHOL. 105 (2009) (discussing the psychological effects of witnessing the positive acts of others).

<sup>85</sup> Gerdy, *supra* note 16, at 58.

Thomas Jefferson described the feeling of uplift when we hear or observe examples of compassionate behavior, like the two above.<sup>86</sup> Like these feelings, awe also can help change perspective, such as what occurs in viewing the earth from space.<sup>87</sup> But we do not need to [\*320] leave the atmosphere to gain similar perspectives. Even sixty seconds of observing tall trees produces more helpful behavior than sixty seconds of observing a tall building.<sup>88</sup> That article inspired me to take my class outside to observe the tall trees in the Granary Burial Ground across the street from Suffolk University Law School, just to help reinforce experientially the science just learned, as well as the importance of natural systems amidst the urban hardscape.

These experiences are fleeting and raise the tantalizing question of how peak experiences can sometimes change perspectives toward more prosocial behavior on a more durable level.<sup>89</sup> The challenge is that such transcendent experiences are not ones that we choose, but appear to happen spontaneously, like the blinding light experienced by Saul (later Paul, the Apostle) on the road to Damascus.<sup>90</sup> Also, depending on Divine Intervention is not a viable pedagogic strategy for helping educate law students in compassion, miraculous as it may be.<sup>91</sup>

### **[\*321] C. Have Them Write a Special Gratitude Letter**

On a more structured level, research indicates that compassion itself may be taught over an extended period.<sup>92</sup> However, such a long-term educational program may not always be possible for law students. Are there other options?

Dr. Katherine Nelson-Coffey is a psychologist focusing on care-giving behavior. Dr. Nelson-Coffey has been working on strengthening the experience of caregiving for both parents and children, specifically to enhance the compassion that parents can bring to their roles as caregivers, especially where they as children may not have had such compassionate parental care themselves.<sup>93</sup> At the Sixth World Congress on Positive Psychology in Australia, Dr. Nelson-Coffey presented some preliminary research on a gratitude-based intervention that showed promise in enhancing parental compassion among her study participants. Specifically, she asked participants in her

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<sup>86</sup> "When any . . . act of charity or of gratitude, for instance, is presented either to our sight or imagination, we are deeply impressed with its beauty and feel a strong desire in ourselves of doing charitable and grateful acts also." Algor & Haidt, *supra* note 84, at 106 (quoting Thomas Jefferson, Letter to Robert Skipwith, in THE PORTABLE THOMAS JEFFERSON 349 (M.D. Peterson ed., Penguin Books, 1975) (1771)).

<sup>87</sup> See David Bryce Yaden et al., *The Overview Effect: Awe and Self-Transcendent Experience in Space Flight*, 3 PSYCHOL. CONSCIOUSNESS: THEORY, RES., & PRAC. 1, 4-6 (2016) ; see also Stacy Shaw, *The Overview Effect*, PSYCHOL. IN ACTION (Jan. 1, 2017), <https://www.psychologyinaction.org/psychology-in-action-1/2017/01/01/the-overview-effect> [<https://perma.cc/R4R8-QM5V>] (noting a cognitive shift in worldview that occurs to astronauts when they experience the Earth from Space).

<sup>88</sup> See Paul K. Piff et al., *Awe, the Small Self, and Prosocial Behavior*, 108 J. PERSONALITY & SOC. PSYCHOL. 883, 893-95 (2015) (reviewing study with test subjects looking at tall trees or tall buildings).

<sup>89</sup> See generally BEING CALLED -- SCIENTIFIC, SECULAR AND SACRED PERSPECTIVES (David Bryce Yaden, Theo D. McCall, & J. Harold Ellens eds., 2015) (providing a discussion on positive psychology and its relation to prospection); David Bryce Yaden et al., *The Varieties of Self-Transcendent Experience*, 21 REV. GEN. PSYCHOL. 143 (2017) (analyzing self-transcendent experiences and how they pertain to human behavior).

<sup>90</sup> Acts 9:3 (NRSV).

<sup>91</sup> For an interesting discussion of these issues, see MILLER, *supra* note 4, at 219-48.

<sup>92</sup> See generally Hooria Jazaieri, et al., *Enhancing Compassion: A Randomized Controlled Trial of a Compassion Cultivation Training Program*, 14 J. HAPPINESS STUD. 1113 (2013) (overview of a study on compassion).

<sup>93</sup> Katherine Nelson-Coffey, Ph.D., Presentation to the Sixth World Congress on Positive Psychology in Melbourne, Australia (July 20, 2018) (author's recollections of this event are confirmed by Dr. Nelson-Coffey).

study to write a letter of thanks (without needing to deliver it) addressed to someone who in the past helped make them feel especially cherished, protected, or accepted, describing in specific terms why they were grateful to this individual and how his or her behavior affected their lives. <sup>94</sup>If Dr. [\*322] Nelson-Coffey's research results confirm the value of such an intervention, it might also prove helpful for helping law students learn compassion.

#### **D. Ask Them to Befriend a Stranger and Appreciate an Adversary**

For example, we can ask students to undertake certain experiences, and then write journal entries about them, like befriending a stranger, and even appreciating an adversary. <sup>95</sup>This is an activity I ask my students to undertake. <sup>96</sup>This is an important skill when a difficult matter is being negotiated, as in those situations, the adversary needs to be persuaded of the value of a deal or a settlement from the adversary's point of view. <sup>97</sup>

#### **E. Ask Them to Undertake Appropriate Contemplative Practice to Extend Their Boundary of Caring Concern**

[\*323] Aside from specific activity, students can also learn through contemplative practice. As we are often distracted, I have found it helpful to lay down a foundation of enhanced ability to pay attention, useful for all four kinds of compassion. Because research indicates that our brains are more plastic than previously thought, contemplative practice to improve attention can pay dividends over time. <sup>98</sup>Building on that foundation, I also invite students to undertake a contemplative practice of extending their boundary of caring concern through what is sometimes called "loving-kindness meditation," where goodwill is extended from those we naturally care for, like family and friends, to others outside of our natural "circle of concern." <sup>99</sup>Research shows that, when compared to a control group, "loving-kindness meditation" helps generate positive emotions, themselves important for our students' well-being. <sup>100</sup>A student in my *Leadership* [\*324] course reported that the practice

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<sup>94</sup> *Id.*

<sup>95</sup> See Appendix, *infra*. A student in my fall 2017 course Positive Psychology for Lawyers wrote in her final paper: "As I mentioned in class, I once walked into a store and struck up a conversation with the cashier, who ultimately became a good friend of mine by the end of the conversation. We still make an effort to see each other." Leah Kofos, Final Paper (Dec. 2017) (on file with author). Another student in the fall 2017 course wrote: "For example, this semester I am working with a challenging opposing counsel. Instead of treating her with anger in response to her hostility, I treat her with compassion and kill her with kindness. This is more effective with court staff and, in turn, more advantageous for my client." Morgayne Mulkern, Final Paper (Dec. 2017) (on file with author).

<sup>96</sup> See Appendix, *infra*.

<sup>97</sup> The late Harvard Law School Professor Roger Fisher once told me that in negotiation, "the judge is on the other side of the table." Conversation with Roger Fisher, Former Law Professor, Harvard University (1969).

<sup>98</sup> R. Lisle Baker & Daniel P. Brown, *On Engagement: Learning to Pay Attention*, 36 U. ARK. LITTLE ROCK L. REV. 348, 362, 365-69 (2014) (discussing attention and how to develop it through concentration practice).

<sup>99</sup> See Richard Weissbourd, Lecture at the Harvard Medical School's Continuing Medical Education: Positive Psychotherapy: Fostering Resilience and Well-Being (May 10, 2014) (notes from the event on file with author). Richard Weissbourd, a professor at the Harvard School of Education, introduced me to his version of this practice with his expanding circle of concern exercise. See *id.*

<sup>100</sup> See Bethany E. Kok et al., *How Positive Emotions Build Physical Health: Perceived Positive Social Connections Account for the Upward Spiral Between Positive Emotions and Vagal Tone*, 24 PSYCHOL. SCI. 1123, 1129-30 (2013) (concluding upward spiral dynamic may set path to greater emotional and physical health). The practice of loving-kindness meditation has been associated with possible beneficial effects on aging (at least for women) as indicated by telomere length. See Elizabeth A. Hoge et al., *Loving-Kindness Meditation Practice Associated with Longer Telomeres in Women*, 32 BRAIN BEHAV. & IMMUNITY 159, 161 (2013). The authors noted that shorter telomeres, which are often associated with chronic stress, may indicate that a person will age faster than others. *Id.* at 159. The study found that individuals who practiced loving-kindness meditation for several years had relatively longer telomeres than those who did not. *Id.* at 161.

enabled him to deal with an often grouchy colleague, as well as keep his head in a crisis on the subway to work.  
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## F. Help Them Also Learn Compassion for Themselves as well as Others

As indicated above, psychologist Kristin Neff has worked on helping people develop self-compassion, a sense of in effect being their own best friend in the circumstance, and giving themselves permission to engage the parasympathetic nervous systems--the "tend and befriend" system, rather than fight, flight, or freeze response<sup>102</sup>Self-compassion is distinct from self-esteem. Self-esteem is often how we feel compared to others, and it is a less successful way of coping with difficulty.<sup>103</sup>

### [\*325] VI. Educating Law Students for Courage

Like compassion, courage may be cultivated. Here again are a few ways to help students face and overcome their fears.

#### A. Offer Law Students Courageous Exemplars

As with compassion, exemplars can be an aid. Psychologist Dr. Cynthia Pury, who has studied courage extensively, suggests creating "a book of courageous role models, just for you."<sup>104</sup>These can include times where you acted courageously in the past, as events to recall, as well as when you saw friends and family acting courageously.<sup>105</sup>Older readers may recall the film portrayal of Sir Thomas Moore who refused to take an oath in which he did not believe in order to validate King Henry's divorce of his wife who had not yet given him an heir.<sup>106</sup>In other contexts, such as business ethics, educators have argued that "exposure to moral exemplars in fiction will help students to build the moral courage they need to carry out ethical decisions in the workplace."<sup>107</sup>

Psychologist Robert Biswas-Diener reports a story of a young lawyer who discovered a mistake in transactional documents in his client's favor but still **[\*326]** raised it with the partner in charge as an error that should be corrected, even though he was concerned it might adversely affect his career.<sup>108</sup>Former President John F. Kennedy's *Profiles in Courage* tells of political leaders who acted courageously to put the welfare of the country first.<sup>109</sup>Professors Douglas Linder and Nancy Levitt have offered riveting portraits of four lawyers who were themselves profiles in legal courage, well worth reading.<sup>110</sup>One is John Adams, who defended the British

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<sup>101</sup> E-mail from Steve Pageau to author (June 13, 2019) (on file with author).

<sup>102</sup> See generally KRISTIN NEFF, SELF-COMPASSION: THE PROVEN POWER OF BEING KIND TO YOURSELF 64 (2011) (ebook).

<sup>103</sup> See Juliana G. Breines & Serena Chen, *Self-Compassion Increases Self-Improvement Motivation*, 38 PERSONALITY & SOC. PSYCHOL. BULL. 1133, 1133 (2012) (noting the "evaluative" nature of self-esteem, and the negative characteristics associated with self-esteem); Serena Chen, *Giving Yourself a Break: The Power of Self-Compassion*, 96 HARV. BUS. REV. Sept.-Oct. 2018, at 116, 118.

<sup>104</sup> Pury, *supra* note 50, at 128.

<sup>105</sup> *Id.*

<sup>106</sup> A MAN FOR ALL SEASONS (Columbia Pictures 1966).

<sup>107</sup> Debra R. Comer & Michael Schwartz, *Highlighting Moral Courage in a Business Ethics Course*, 146 J. BUS. ETHICS 703, 703 (2017).

<sup>108</sup> BISWAS-DIENER, *supra* note 43, at 101-02.

<sup>109</sup> JOHN F. KENNEDY, PROFILES IN COURAGE (1956).

soldiers in the Boston Massacre. <sup>111</sup>Another is Justice Department Civil Rights lawyer John Doar, who single-handedly averted a likely bloody clash between protesters and police in Jackson, Mississippi in 1963, as well as later won convictions of many of those responsible for killing civil rights workers. <sup>112</sup>Another is German Judge Lothar Kreyssig who defied the Nazis and hid Jews at his home after his forced retirement. <sup>113</sup>Their last profile is of African-American Tennessee lawyer Noah Parden, who defended an African-American defendant in a rape trial in 1906 and won a criminal contempt case in the U. S. Supreme Court against the perpetrators who lynched his client while his appeal was pending. <sup>114</sup>More recent examples include Nancy Hogshead-Makar, Founder and CEO of Champion Women, who brought justice to the victims of sexual abuse in the world of athletics, resulting in new federal legislation. <sup>115</sup> [\*327] Exemplars such as these offer law students people to emulate, even in a small way.

## B. Help Them Make Their Bodies Their Allies

Many of us remember Anna's song from the musical *The King and I* that "whenever I feel afraid, I hold my head erect, and whistle a happy tune so no one will suspect I'm afraid." <sup>116</sup>

It turns out that the song was closer to science than its composer might have imagined.

Acting *as if* can apparently aid the mind. <sup>117</sup>Just as when we are sad, we tend to withdraw; when we are confident, we fill the space. <sup>118</sup>Psychologist Amy Cuddy has written how the effect can work both ways--rather than the feeling inducing the posture, the posture can induce the feeling. <sup>119</sup>She advises that adopting a positive [\*328] physical aspect can help improve performance, <sup>120</sup>like practicing before (not during) a challenging performance by striking a winning pose with your arms in the air, or the Superman or Wonder Woman stance with arms on the hips to appear confident. <sup>121</sup>For law students, this advice can be helpful, but it is also

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<sup>110</sup> See LINDER & LEVITT, *supra* note 26, at 36-65.

<sup>111</sup> See *id.* at 37-38.

<sup>112</sup> See *id.* at 40-49.

<sup>113</sup> See *id.* at 57-58.

<sup>114</sup> *Id.* at 58-65.

<sup>115</sup> See CHAMPION WOMEN, [www.championwomen.org](http://www.championwomen.org) [<https://perma.cc/P7SM-2LG>].

<sup>116</sup> "Whenever I feel afraid, I hold my head erect And whistle a happy tune, So no one will suspect I'm afraid While shivering in my shoes, I strike a careless pose And whistle a happy tune, And no one ever knows I'm afraid The result of this deception, Is very strange to tell, For when I fool the people, I fear I fool myself as well I whistle a happy tune, And every single time, The happiness in the tune, Convinces me that I'm not afraid Make believe you're brave, And the trick will take you far, You may be as brave, As you make believe you are." THE KING AND I MUSICAL, WHISTLE A HAPPY TUNE (1951).

<sup>117</sup> Shannon Polly, *Acting "As If,"* POSITIVE PSYCHOL. NEWS (June 25, 2015), <https://positivepsychologynews.com/news/shannon-polly/2015062531882> [<https://perma.cc/6CF2-6NFH>].

<sup>118</sup> If the author can be forgiven a marine metaphor, we can close up like a clam or reach out like a starfish.

<sup>119</sup> Dana R. Carney, Amy J.C. Cuddy, & Andy J. Yap, *Power Posing: Brief Nonverbal Displays Affect Neuroendocrine Levels and Risk Tolerance*, 21 PSYCHOL. SCI. 1363, 1363 (2010).

<sup>120</sup> *Id.* at 1367.

<sup>121</sup> Psychologist Robert-Biswas Diener recommends a practice of progressive muscle relaxation to respond to tension. See BISWAS-DIENER, *supra* note 43, at 58. See generally AMY CUDDY, PRESENCE: BRINGING YOUR BOLDEST SELF TO YOUR BIGGEST CHALLENGES (Little, Brown and Co., 2015) (analyzing the effect of a body language).

important that the necessary preparation be done as well, just as actors rehearse their lines, or a solid written brief lies behind successful oral argument.

### **C. Help them Learn How to Distinguish Between their Fear and their Willingness to Act, and then Decrease the Former or Increase the Latter, or Both**

Psychologist Robert Biswas-Diener distinguishes courage in the face of physical danger from courage in the face of a private fear, such as speaking in public. <sup>122</sup>He has written that both can be remedied by diminishing the fear, increasing the willingness to act, or both. <sup>123</sup>For example, students afraid of public speaking may ease their fear if they can move their focus from themselves to their audience, and increase their willingness to act by recognizing that failure is a learning opportunity rather than a defeat. <sup>124</sup>Again, we can ask students to practice this learning and then report the results in journal entries recording their use of these practices, such as the student who reported changing her behavior in class in a positive way. <sup>125</sup>

### **D. Introduce them to the Courage Calendar**

Psychologist Robert Biswas-Diener recommends making a Courage Calendar. He suggests putting a particular fear or challenge on the calendar, making a conscious effort to overcome that fear and then marking it off on the calendar once done. <sup>126</sup>For example, a student who has difficulty speaking up in class might mark it on and check it off on the calendar to get more used to it. Regular activity is important because "courage is a habit . . . a practice, and . . . a skill that can be learned." <sup>127</sup>

### **E. Help them Remember their Noble Purpose**

Why we do things matters, and emphasizing a noble purpose may help. An example includes the speech of Col. Joshua Chamberlain before the battle of <sup>128</sup>Gettysburg to enlist soldiers from Maine that had mutinied into a battle that they were fighting "to set other men free."

### **F. Remember the Power of a Sense of Duty Inherent in a Role**

Sometimes courage, especially physical courage, involves a sense of duty inherent in a role. Indeed, we call police and firefighters "first responders" because of our expectation that their roles will lead them to put themselves in harm's way for our safety's sake. When the expectations inherent in a role are not met, the personal consequences can be severe, as in the case of the security officer charged with criminal neglect to care for the victims of the Parkland shooting. <sup>129</sup>Such a sense of duty to act can grow out of a perception of the role, such

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<sup>122</sup> BISWAS-DIENER, *supra* note 43, at 10-11 (describing the courage quotient as an index composed of two separate processes each of which may be modified such as by deflating fear or increasing the willingness to act).

<sup>123</sup> *Id.* at 11.

<sup>124</sup> *Id.* at 52-53. See generally CAROL S. DWECK, MINDSET: THE NEW PSYCHOLOGY OF SUCCESS (Random House 2016) (2006).

<sup>125</sup> See Appendix, *infra*. A student in my 2017 Positive Psychology for Lawyers course wrote in her final paper: "Before this class, I had not once raised my hand to answer a question, even if I knew the answer, just because I was afraid of being wrong. After reading this book, I have raised my hand countless amounts of time. I have stopped letting fear paralyze me from accomplishing my goals, and it is a great feeling." Taylor Russo, Final Paper (Dec. 2017) (on file with author).

<sup>126</sup> BISWAS-DIENER, *supra* note 43, at 64.

<sup>127</sup> *Id.* at 16.

<sup>128</sup> See Baker, *supra* note 8, at 541 (citing GETTYSBURG (Turner Pictures 1993)) (citing the speech of Col. Joshua Chamberlain).

as when a teacher confronted and disarmed a shooter,<sup>130</sup> or **[\*331]** a boy who was a hall monitor went back to help classmate victims of an earthquake.<sup>131</sup> For a fictional but still illuminating example of the power of role to cultivate courage, it is helpful for students to hear Henry V's "Saint Crispin's Day" speech before the battle of Agincourt where his troops defeated a French force five times larger than his army.<sup>132</sup>

While these examples involved physical courage, they can help students think about how assuming the **[\*332]** role of a lawyer shapes our conduct in difficult situations. The remarks by Atticus Finch about his duty to defend his client is another example.<sup>133</sup> This is consistent with the idea that courage can occur as working out a consistent sense of one's identity.<sup>134</sup>

Also, as a clue to what may be helpful in developing the capacity to act when needed is preparation. As with military service, first responders are trained how to act in difficult situations. Lawyers do the same in preparing for trial, for example, and preparation is the hallmark of superior legal representation. What may be necessary here, then, is to learn from these examples and use the same diligence in preparation for the challenges that may come.

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<sup>129</sup> See Jennifer Smith, *PICTURED: Coward in Cuffs: Parkland School Sheriff's Deputy Stands Forlorn with his Wrists Shackled After Being Charged with Neglect for Doing NOTHING as Gunman Slaughtered Students and Teachers*, DAILY MAIL (June 5, 2019, 1:20 PM), <https://www.dailymail.co.uk/news/article-7108721/PICTURED-Coward-Parkland-school-resource-officer-handcuffs-court.html> [<https://perma.cc/H6DM-R46P>].

<sup>130</sup> According to one narrative:

A fifty-year old teacher, a survivor of a school shooting, attributed his rescue of students to the helping norms inherent in his teaching role. He entered a classroom where a fourteen-year-old boy had killed a fellow teacher and shot three of his classmates. The shooter had walked into the classroom and shot one student point-blank, then another sitting behind the first, and then a third--all of them in the same row . . . He said he was going to take a hostage.

And the teacher responded:

And I guess I volunteered; I don't remember doing it. So he motioned me to come toward him and he said, "I'm going to put this gun in your mouth." . . . And at that time I was about five or six feet away, and I knew it was probably my best chance to end the situation. So I charged him and pinned him with my body against the wall and also grabbed the gun with his hands on it and pinned it against the wall.

In reflecting on the reasons behind his brave act, he told us . . . "I'm a teacher."

SAMUEL P. OLINER, *DO UNTO OTHERS: EXTRAORDINARY ACTS OF ORDINARY PEOPLE* 97-98 (Westview Press, 2004).

<sup>131</sup> A nine-year-old Chinese boy was a hall monitor in his school when there was a massive earthquake during which the ceiling of the school fell, killing many of the children. The young boy escaped and while running noticed other children struggling to get out; he ran back and saved them. When asked why he ran back, the boy replied, "I was the hall monitor! It was my duty, it was my job to look after my classmates!" Philip Zimbardo, *What Makes a Hero?*, GREATER GOOD MAG. (Jan. 18, 2011), [https://greatergood.berkeley.edu/article/item/what\\_makes\\_a\\_hero](https://greatergood.berkeley.edu/article/item/what_makes_a_hero) [<https://perma.cc/5U9A-SMM2>].

<sup>132</sup> Baker, *supra* note 8 (quoting HENRY V (Renaissance Films 1983)).

<sup>133</sup> See LEE, *supra* note 2, at 270-71.

<sup>134</sup> See Melissa Koerner, *Courage as Identity Work: Accounts of Workplace Courage*, 37 ACAD. MGMT. J. 63, 63 (2014).

## G. Help them Untangle the Fear they Feel

Professor Heidi Brown has written a thoughtful and helpful book, *Untangling the Fear in Lawyering*, recommending that the fear we encounter in law school or law practice can be deconstructed to aid in responding to it.<sup>135</sup> A basic insight from her book is that

The gift, the key, the challenge for us in this journey toward untangling fear is to identify specific and concrete scenarios in our lives in which we feel incredibly brave and powerful, even though those environments might, or even probably would, invoke fear in someone else. Then, we can extract exactly what drives our [\*333] boldness, courage, and strength in those circumstances.<sup>136</sup>

To reframe fear into fortitude, law students and lawyers can engage in a four-step process: (1) identify scenarios in our personal and professional lives that *should* induce fear but do not, and those that arguably should *not*, but do; (2) reframe and reboot our mental approach to fear in lawyering--using vulnerability, authenticity, and humility to tap into personal power; (3) cultivate an athlete's mindset toward the physicality of fear; and (4) foster a culture of fortitude in tackling individual legal challenges and helping others.<sup>137</sup>

## H. Recall, Replay, Revise, and Foretell

Daniel Brown, Ph.D., has a powerful guided meditation designed to cultivate courage. It has four steps: (1) Recall a time when you acted courageously in as much detail as you can, including the thoughts and feelings; (2) Recall a time when you did not do so, and wish you had acted differently, including those thoughts and feelings; (3) Imagine you had acted in that second situation as you wish you had, what would it have been like to do so, and how would it have felt? (4) Imagine carrying that courage from the first courageous act and the act you wanted to do over into a future situation you can foresee encountering? What is might it feel like to do that?<sup>138</sup>

### [\*334] I. Practice Confronting Moral Challenges

Those advocating educating nurses in moral courage have argued for training through experiential learning of encountering situations requiring moral awareness, decision-making, and action.<sup>139</sup>

## VII. Combining Compassion and Courage

### A. Heroic Altruism

It may be instructive that in *The Wizard of Oz*, Dorothy finally destroys the Wicked Witch by throwing water on the Scarecrow to put out the fire the witch has set, which also splashes on the witch. Dorothy's purpose to help her

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<sup>135</sup> See generally HEIDI K. BROWN, UNTANGLING FEAR IN LAWYERING: A FOUR STEP JOURNEY TOWARD POWERFUL ADVOCACY (2019).

<sup>136</sup> *Id.* at 149.

<sup>137</sup> See *id.* at 131-214.

<sup>138</sup> Daniel Brown, Ph.D., Presentation in Newton, Massachusetts (Aug. 14, 2019) (notes from the presentation on file with author).

<sup>139</sup> See Erin Gibson, *Longitudinal Learning Plan for Developing Moral Courage*, 14 TEACHING & LEARNING IN NURSING 122, 122-24 (2018).

friend gave her the capacity to act, despite describing herself initially as "Dorothy, the small and meek."<sup>140</sup>What happens when compassion and courage are combined?

Compassion for others carried to a positive extreme involves what is known as heroic altruism, where a concern for the welfare of others leads to putting one's own life at risk, as in the case of the righteous gentiles who sheltered Jews in Nazi-occupied Europe during the Second World War.<sup>141</sup>These are extraordinary acts combining compassion and courage.<sup>142</sup>The people **[\*335]** involved had a personal ethic of care that they felt compelled to act, almost as if they had no choice. More modern examples include the Carnegie Heroes, those otherwise ordinary individuals who voluntarily came to the aid of others at their own risk, like running in front of a train to pull a wheelchair bound woman to safety,<sup>143</sup>or pulling a passenger out of a burning car.<sup>144</sup>In the case **[\*336]** of heroic altruism, decisions to help by these everyday heroes were "overwhelmingly dominated by intuition" and "significantly more intuitive than a set of control statements describing deliberative decision-

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<sup>140</sup> THE WIZARD OF OZ, *supra* note 12.

<sup>141</sup> Mordecai Paldiel, *Righteous Gentiles and Courageous Jews: Acknowledging and Honoring Rescuers of Jews*, 30 FRENCH POL., CULTURE & SOC. 134, 134 (2012).

<sup>142</sup> Ordinary people are capable of both heroic and conventional altruism and that they are ordinary members of a moral community who have internalized the ethics of caring, virtue, and social responsibility from their loved ones, as well as being in contact with other moral leaders in a certain period of their life. They have internalized the notion that persecution, oppression, and the lack of helping others is not an acceptable part of their moral universe.

OLINER, *supra* note 130.

<sup>143</sup> An example is a

forty-nine-year-old man risked his life to save a paralyzed woman from being hit by an oncoming train--the spokes of her wheelchair had become stuck between the tracks. He told [researchers] that he was heading south alongside the tracks when he noticed the woman crossing the tracks while the gates were lowering, signaling the approaching train. She was shaking the wheelchair and crying out for help. So he just stopped his car and jumped out. He saw the train was coming; it was about fifty yards away and fast approaching . . . When asked why many others might not risk their lives in a similar life-threatening situation, he offered the following: "I think there might be some liability they're afraid of; something might happen . . . Well, I don't think that's right. I think you have a certain degree of responsibility, if you see something happen like that, to try and offer some kind of help."

OLINER, *supra* note 130, at 99-100.

<sup>144</sup> Another rescuer had feelings of empathy when he was attempting to rescue a young woman from her burning car.

My arms were getting all torn up, my face was getting burned, my eyebrows were catching on fire. So I almost had her out. It was to the point where I was completely exhausted and I was about ready to give up. But I wouldn't have left her. I would have died there with her, I think . . . I know. I have a very vivid memory, and I know that seeing her that way, begging for my help, and just knowing that she was relying on me for her life, and then if I [had] failed, I never would have been able to live with it. I would have stayed right there. I couldn't have left.

*Id.* at 103.

making." <sup>145</sup>"This remained true [even] when the Carnegie medal winners had enough time to think before they acted, suggesting that the gut-level decision overrode any deliberative process. <sup>146</sup>

We hope that our law students need not be called upon to act in mortal danger with such compassion and courage. Yet caring compassion combined with moral courage may be required of them at some point in their careers to help achieve justice. If we are to prepare them adequately for the challenges of the legal profession they are entering, we should be aware of and help them cultivate these important virtues.

## B. Combining Compassion and Courage Pedagogy

**[\*337]** Looking at compassion and courage together, rather than separately, also has the benefit of considering the pedagogy which may be common to both. For example, cultivating compassion involves small and progressive steps, which can be true of cultivating courage. Both can benefit from encouragement--either from others but also from oneself, if that can be done with some self-awareness. Both can reinforce each other in that it may take courage to be compassionate with oneself.

Finally, a common element in educating lawyers for compassion and courage may be to focus on identity rather than action. While it involved testing for honesty, research indicated that the injunction to be honest was far less effective than the injunction to be an honest person. <sup>147</sup>In other words, educating lawyers for compassion and courage may involve helping them form a self-concept as compassionate and courageous people which they then will better uphold than if simply urged to be compassionate or courageous. In this regard, it may be worthwhile to return to the exemplar of Sir Thomas More, who refused to take an oath which he found repugnant to his conscience: "Well, as a spaniel is to water so is a man to his own self. I will not give in because I oppose it--I do not my pride, not my spleen, nor any of my appetites, but / do--!" <sup>148</sup>

## VIII. Conclusion.

When our students walk down their own yellow brick road toward a successful career, their well-being **[\*338]** and success requires that they bring compassion and courage to help their capacity for legal reasoning. As legal educators, we can help enhance their journey by teaching the Tin Man and the Lion as well as the Scarecrow among them. After all, to go home, Dorothy needed all three of her companions to succeed.

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<sup>145</sup> David G. Rand & Ziv G. Epstein, *Risking Your Life Without a Second Thought: Intuitive Decision-Making and Extreme Altruism*, 9 PLOS ONE, Oct. 2014, at 1.

<sup>146</sup> *Id.*

<sup>147</sup> Bryan, C. et al., *When Cheating Would Make You a Cheater: Implicating the Self Prevents Unethical Behavior*, 142 J. EXPERIMENTAL PSYCHOL.: GEN. 1001, 1001 (2013).

<sup>148</sup> A MAN FOR ALL SEASONS (Columbia Pictures 1966).