

SLS JD Class Speech, June 2014

By Mark Feldman

[As prepared for delivery]

Good morning, Class of 2014. I would like to especially welcome our professors, staff, family, friends, and that one guy who attends every lunch talk. I'm sure he's here somewhere. It is a great honor to speak before you today.

Final Law School Reflection Paper # 97: Learning to Give a Damn.

Part 1 of 3: What is happening to me, and where are my goats?

We all arrived here strangers in a strange land. New to legal analysis, new to the courtroom, new to the soulless outdoor mall that is Silicon Valley.

I was perhaps stranger than most. Just three months before coming to law school, I was living in a mud house in rural Morocco. Three months before Civil Procedure, my name was Mbarek, I spoke a language called Tamazight, and every morning outside my kitchen window I could see two mountain ranges, a herd of goats and a shepherd who called me "aromi" which means foreigner, but really it means Roman (which means foreigner)-- because that's just how old and isolated that place is.

It was there, that I first decided to go to law school. Morocco was a rich, cultural experience, but throughout my time there, I encountered people in dire straits that I had no idea how to help. I heard about villages chaining the mentally ill in their houses because they lacked services to treat them. I saw doctors soliciting bribes from the poor for vaccinations that were supposed to be free.

I came to law school because I wanted to sharpen a tool I could use to become a more effective advocate for people at the margins. When I received that email from Dean Deal at a cyber café twenty-five kilometers from my village, I felt like Stanford was saying "Yes, Mbarek. We believe in you and what you want to achieve."

Three months later, people around me were engaging in vigorous debate about joinder rules and the rule against perpetuity, and I had no idea why I was there. It felt like someone had handed me the Federal Rules of Civil Procedure and said, "This is your life now." "And by the way, here is a leaflet with the three jobs you can do with a J.D."

It didn't help that law school was difficult and I felt terrible at it—Rule 12 seemed like the sort of thing lawyers care about, and I did not care at all. I couldn't see the connection between the rules and the people I wanted to help. I couldn't bring myself to give a damn.

Enrolling in law school felt like the most uninformed decision I had ever made, and I questioned whether law school would ever be what I wanted it to be. By the end of first quarter, I wanted to leave and get my life and my career possibilities and my goats back.

Thank god I didn't. Actually, thank you. Thank you to all the professors, students and especially my family, who told me to see what the law looks like in the real world before giving up. Who told me to seek out those I came here to help, before deciding that this wasn't the way to help them. Maybe I didn't want to be a law student, but that didn't mean I didn't want to be a lawyer.

Not sure of what I would find, or whether I would return, I took a deep breath, and stepped out into the world.

Part 2: How I learned to give a damn

My 1L summer, I accompanied an attorney on a visit to three men on death row in Livingston, Texas. The men were brought in, handcuffed, and placed in steel cages just big enough for one person—about 4 feet across and 8 feet high—on the other side of a Plexiglas barrier. We said "hello" by placing our palms up against the glass, then picked up the black plastic phones.

All three men were Mexican nationals convicted of murder in Texas. All three men were victims of severe abuse as a child, and all three men had histories of mental illness and substance abuse. At trial, they did not receive *zealous* representation. It is offensive to say they received representation at all. During closing argument-- his final chance to tell his client's story-- one defense attorney had told the jury, "I have done everything I can for this man. I hope I haven't offended you. I tried hard with what I've had to work with, and it wasn't much."

One of the men had been on death row for over twenty years. Given that he had twenty years of legal representation, I figured he might have some insights into the profession. So I asked him, "What makes a good attorney?" He didn't have to think about it. "A good attorney is someone who cares." That's it. "A good attorney is someone who cares."

That made me think about the state of the legal profession. This man has had a parade of attorneys appointed to his defense. So many of them have not cared about him, have not cared about his life or death that all he can hope for, his best-case scenario, is an attorney who cares??

This was just the beginning of my *legal* education. Time and again, I found myself meeting people in desperate, vulnerable places. And time and again, I saw the great, unmet need for legal services. Not to put too fine a point on it, but I learned that there are some terrible lawyers out there, and there are some terrible judges out there, and too many people are in prison—not because of the heinous nature of their crime, not because they're a danger to society, but because some lawyer or some judge or some agency official gave up on them, didn't care enough, and more often than not they were too poor to hire someone to put up a fight. That's what the system looks like.

Suddenly I found myself caring—deeply—about every seemingly insignificant rule, down to the italicized periods—*anything* that contributed to this. And I remember thinking, this was exactly what I came to law school to learn.

Part 3: What giving a damn looks like

Once my eyes were open, law school had much to show me, inside and outside of the classroom. At SLS and in the real world, I have met professors, attorneys and other students who are fighting the good fight with every inch of their soul; they are my role models for the type of attorney, and the type of person, I want to be.

But the most important lesson came earlier this year, from one of my clients.

I was working on a motion for a habeas case. This case is a grave injustice. My client is serving 30 years to life in prison for allegedly taking 91 dollars from a Pizza Hut. He was unarmed and no one was injured.

As you might know about habeas, it is a procedural minefield. There are a million ways to lose before the court ever reaches the merits of the case. We were trying to make our way through one of the minefields, but the law was not good. The more I researched the motion, the more I became convinced that we might lose.

The week before filing, I went to visit my client. I was nervous to tell him what I thought about our chances. He had always been so optimistic in his letters. He ended every one, "Give 'em hell counselor!"

But there I was sitting across from him, and he asked me the dreaded question: "Are we going to win?"

I had to be honest. I told him I really wanted to win, but I didn't know if we would. I tried to pick things up-- I said "But you know what, if we lose, and I'm not saying we will, but if we lose, we're still in this. We have another shot down the line and I think we can win it. Don't worry, we'll play the long game if we have to."

He sighed and said, "Man. The long game? Every moment the state delays, I'm in prison. So what, we might win someday. But what good will it do me if they grant habeas and release me after 15 years?"

That night, I stayed up thinking about our conversation, and I re-wrote the conclusion to the brief. This time I didn't reiterate why we should win the procedural argument; I said what was really going on. A man is serving a horribly unjust sentence—a man who never received a fair trial—and he has been wasting away in prison for over a decade while the state has tried, over and over again, to drop him and his constitutional violations through procedural black holes.

We won. About a week later, I opened a letter from my client. I imagined he would be pretty satisfied with the result. Sure enough, the first line read, "Now *that's* what I'm talking about

counselor!" But as I read on, he wasn't saying anything about the decision. He didn't know about the decision. He was responding to the brief.

Throughout the letter, he quoted parts of the conclusion like each one was a punch thrown on his behalf. First you said this and you went on the attack with that and THAT'S WHAT I'M TALKING ABOUT COUNSELOR! Reading that letter was hands down the best moment I had in law school.

The theme of this speech comes from something Professor Marshall said last year at a talk on the death penalty. He told us to "have the courage to give a damn." Before law school, I think I would have asked—"why courage?" Don't you just give a damn, and that's it? But that's because my principles had never really been tested. That's because I had never confronted the very real prospect of giving a damn, giving a damn *so* much that you care about the little things, the font size and italicized periods, and failing.

Looking back, because I thought we would lose the motion, because the law was "bad," I had unconsciously lowered my expectations for what the system owed my client. I had lowered my expectations for justice. But my client reminded me of what was at stake. He taught me that, regardless of the narrow, technical, even hopeless question before the court, a good attorney is someone who cares enough to believe that the system should be better than this. Who cares enough to say what's really going on. Who cares enough to make others care too.

Class of 2014-- what I loved about doing this alongside all of you, is that so many of you care deeply about whatever it is that you fight for. Especially over the last two years in clinic, as we found our footing, and our passion, and we gave a damn—together—it was inspiring.

I am grateful to Stanford for this transformative education. We know—justice is not naturally occurring. Not in this system. But we also know how to demand it. We have the tools, we speak the language. This is our chance. This is *our* legal system. This is our clients' legal system. This is the system of those who do not have a lawyer. Push back against the tendency to narrow the argument into comfortable, innocuous places. Tell the story—the whole story, the difficult story—the human story. Make the system hear those caught within it.

Have the courage to give a damn, and give em hell, counselor.