

# The *Quid Pro Quo* of Achievement

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Stanford Law School Graduation

## I.

This is a wonderful moment in your lives and I'm incredibly honored to share it with you. You are here today, your families are here today, we are here today, to celebrate with you. And you *should* really pause to celebrate, to soak up all the love and admiration your family and friends are so eager to shower upon you, to thank them for helping you along the way.

And yet I speak from experience in saying that it is easy for a day like this to slip away, to pass too quickly, to live on more in the pictures that will be taken than in your active memory. One reason for the fragility of this moment is that, like so many lawyers before you, you are by habit of mind and years of repetition all too well accustomed to burying one achievement in the construction debris of the next to come, moving past one milestone and, in the instant you pass it, in the very breath of relief you expel, converting it into something truly strange: both a foregone conclusion, a fait accompli, and an achievement whose present value is nevertheless suspended, contingent on reaching the next milestone toward which you are heading. So too for the next achievement, and the next one after that.

Nothing you achieve, in this habit of mind, ever constitutes being yourself and certainly no achievement is ever enough – everything done is but a preparatory step for things still left to do, for the self you later hope to be. It would be one thing if you ever arrived at this later self, content, complete, ready to bask in the glow of your success. But *being* yourself is the very thing that gets deferred. Degrees mark not what you have learned about the world and your place in it as much as the expectation of future achievement and earnings. A promotion is but a sign and promise of how

much higher you might yet rise – with it comes even more pressure to perform. Marriage is not a union in which you can safely lose yourself in the love of another or become stronger and wiser by being less concerned with your own needs than with those of another; it's a mere achievement on the checklist and a resource for further professional achievement.

According to this pernicious habit of mind, anything less than what Burton Bledstein calls regularly “scheduled [upward] mobility” on your part and on the part of those around you is *failure*. And not just failure in the sense of a slip or a bit of misfortune, but failure in a deeply personal and blameworthy sense – failure to be appropriately ambitious, disciplined, or industrious. Failure to do justice to your talents.

If your life, after today, does not have this regularly scheduled upward mobility, shortness of breath at the very edge of breathlessness, objective and well recognized markers of continued accomplishment as a lawyer or in some other professional endeavor for which the skills you have built here are relevant, then what does this milestone, the one we are supposed to be celebrating with you today, mean? What *will* it mean to you? How long will you wait to decide? Even if your life after today becomes a series of “booming” accomplishments, one after the other, are we celebrating anything more than a shared hope for this bright future today? Are we celebrating the habit of mind that yokes the present and all the ingenuity and hard work that led you to it to this heavily freighted future? Does this habit of mind produce the most competent professionals, the best leaders, the highest achievement?

## II.

In raising these questions and asking you to consider them with me, my point is not that you should avoid achievement and with it the risk of failure – that its better, and that you'll be happier, all things considered, if you make of your life a kind of sitcom about nothing.

You may recall the famous Seinfeld episode in which George Costanza is trying to help Jerry Seinfeld figure out what kind of show to pitch to executives at NBC:

[George and Jerry are seated across the table from each other at the cafe]

[George: *This* should be the show.

Jerry: What?

George: *This*. Just talking.

Jerry: Yeah, right.

George: No, I'm really serious, I think that's a good idea.

Jerry: Just talking... Well what's the show about?

George: Its about nothing.

Jerry: No story?

George: Nah. Forget the story.

Jerry: You gotta have a story.

George: Who says you gotta have a story...

Jerry: So everybody I know is a character on the show ... and its about nothing?

George: Absolutely nothing.

Jerry: So you're saying that I go into NBC and tell them I got this idea for a show and its about nothing?...

George: Yeah I think we really got something here.  
... *Everybody's* doing something, we'll do *nothing*.

Don't get me wrong, if someone is willing pay you millions of dollars to make people happy by inventing absolutely nothing, doing absolutely nothing, take the offer. Talk about it over coffee with friends, think about whether people will be laughing *at* you or laughing *with* you, but either way, you should probably take the offer. In this valley, you might even be able to get venture capital for the project.

Even if no one is willing to pay you anything to do nothing, it may still be worthwhile to do nothing at least some of the time. If you think this is strange advice, take it from Wallace Stevens rather than me. This is *The Snow Man*:

One must have a mind of winter  
...

And have been cold a long time  
To behold the junipers shagged with ice,  
The spruces rough in the distant glitter

Of the January sun; and not to think  
Of any misery in the sound of the wind,  
In the sound of a few leaves,

Which is the sound of the land  
Full of the same wind  
That is blowing in the same bare place

For the listener, who listens in the snow,  
And, nothing himself, beholds  
Nothing that is not there and the nothing that is.

I say this lovingly because I do admire how connected you are to each other, but your generation is especially prone not to pause, not to stop, not to allow nothing to happen. Have a free minute? – better check email and facebook – nothing there? – send a text, answer one. Those of you who have had me in the classroom know I don't allow laptops or any other electronic devices – I'm more strict than the Federal Aviation Administration about this. What you may not know is that for the first week or so of class I can see you twitching with the pangs of portable electronic device separation anxiety. You don't quite know what to do with your hands. You fondle the pockets and backpacks where your digital mini-me's are silently waiting, gathering an avalanche of data for you, and it must now be said, *about* you.

Stevens is right. There is insight to be found in the emptiness of open observation and reflection. Just thinking. Freed from machines and direct labor the deeper faculties of the mind – the original and still most powerful electronic device you own – light up.

But even if there are existential rewards in it, my main point is not that you should seek to do nothing. My point is rather that today is a very good day to pause and think seriously about your disposition toward *doing*, particularly your disposition toward achievement. You are to be lawyers – much of what you will do, much of what you accomplish, certainly the most important things you accomplish *as lawyers*, will not be for yourselves in the first instance, but rather for the clients you serve. We represent the interests of others. So we need to be particularly conscious of our disposition toward achievement.

But in the pernicious habit of mind I have been describing, this disposition can get twisted up, turned on its head. Accomplishments like finishing law school can multiply anxieties about reaching future goals rather than making you feel more self-assured; professional accomplishments can amplify rather than diminish your aversion to risks and thus make you wary of opportunities that lie off the path leading to the next most obvious and readily available marker of success; the clients you have can seem less important than the ones you hope to get even as you become increasingly reluctant to tell the clients you have anything they don't want to hear; and even modest success can make failure and setbacks seem akin to professional death when mistakes are the acts from which you stand to learn the most about your craft and yourself. Very quickly, in a word, accomplishment takes you out of the present.

This disembodiment is most pernicious because the present is all we actually have. Wherever you think you are going, wherever you want to be, right now you are nowhere but here, surrounded by people who love you and have nurtured you – people who, like me, are more proud of you than words can explain. Nothing is missing, nothing is not here.

And yet, august as this day is, I do understand how hard it is to believe that – how hard it is to be here and nowhere else. The reasons are legion. To begin with, some of your loved ones are already gone and will have no living role in your future. My father died at the age of 51, six months before I finished law school. While he was not the only person I wanted to

celebrate graduation with, he had handed me my admission letter three years earlier (I can still see the smile on his face when he did) and so as I sat then where you are now, I longed for him to see me cross this stage. I spent the whole day with his ghosts, worrying what I would accomplish by the age of 51, worrying if I'd even make it to 51. I was anywhere but here. Most of you were born as the Berlin Wall fell and the Cold War ended, but as you have witnessed while coming of age, other threats loom, threats that force your minds forward to the *next* economic, environmental, and geopolitical crisis. Even if you didn't have existential anxiety about the future built-in when you came to law school, six figure student loans, due and payable very soon could certainly incline you in that direction. You could be working for the financial freedom of a future self for a very long time.

### III.

What then *should* we be celebrating today if not the unique capacities for deferred gratification you have cultivated and the deferred gratification this degree promises?

This is an important question. On the one hand, much in the way of dissatisfaction, malaise, and even misconduct in the legal profession can be traced to the pernicious habit of mind I have been describing – this strange, anxiety-laced disposition toward achievement in which clients become means to *our* ends rather than our talents and judgment serving to help them reach *theirs*. The problem is certainly not unique to lawyers – it's a regrettably general pathology of the modern professions (medicine, accounting, brokerage, architecture, politics, journalism all have their versions – you are only as good as your next surgery – each patient a proving ground rather than a person in pain).

Today is not the day to set out the case, but I suspect it's an even broader cultural problem: If some is good, more is surely better; buy two get one free; you can no longer supersize your order at McDonalds, but last fall you could get a Blitz Box (2,940 calories for just \$14.99). I would not have thought a good cup of coffee needed an incentive system beyond the

caffeine, but even Starbucks now has a frequent buyer rewards program. “Collect 30 Starbucks ‘stars’ within 12 months and you’re at the Gold Level.” Gold Level is, however, a fleeting, contingent achievement – both desire and status anxiety are triggered the instant status is conferred. As the promotional materials put it: “Once you reach Gold Level, keep those benefits for another 12 months by earning another 30 Starbucks stars.” The benefits of *being* Gold Level are of course established by invidious comparison to lesser status. “With Gold Level, you get all the Welcome Level and Green Level benefits (free coffee on your birthday, and free refills, respectively), plus a personalized gold card so your barista will know you’re somebody special when you place an order.”

You get the point: you are what you want, you can never have enough, and what you have isn’t what you want as soon as you get it.

So what are the alternatives to this pathology? We have taught you many things over the last three years, but I worry that we have not covered this.

You could displace or surrender your ambition and adopt the attitude toward work displayed by the employees of Dunder Mifflin on the tv show *The Office*: you go because you need the paycheck, but work is essentially a site of existential despair. Pick your favorite character, and with him or her, your favorite flavor of despair. But the key ingredient is the same – as Robert Frost once put it “The brain is a wonderful organ; it starts working the moment you get up in the morning and does not stop ... until you get to the office.” This doesn’t quite capture the Michael Scott character – the boss, played by Steve Carell. On the one hand, it looks like *he’s* having fun at work, he certainly wants to be there, and he’s not without ambition for himself or his staff. On the other hand, it’s not clear that he has a brain ... that starts working during any part of the day, or a soul for that matter. In almost every scene involving Michael on the show, we see that obliviousness and no small amount of cruelty toward others, particularly subordinates, are the endpoints of disembodied ambition – empty ambition as an end in itself. A truly bitter flavor.

If you have the fortitude, you could of course adopt Muhammad Ali's view of his work as your own. Ali famously said:

"It's just a job. Grass grows, birds fly, waves pound the sand. I beat people up."

Add to this his attitude about competition ("If you even dream of beating me you'd better wake up and apologize") and you have a potent recipe for professional success ... without much in the way of anxiety, ambivalence, or self-doubt. Ali's accomplishments are impressive enough to suggest that he genuinely believed what he said – one certainly has the sense that he *owned* his accomplishments rather than his accomplishments owning him. (Look, I certainly wouldn't pick a fight about it with him.) But I suspect that even for him, these statements were more an exercise in public relations than a complete expression of his inner relationship to boxing and the mortal fear of failure, the fear of mortality itself, that goes with stepping into the ring.

In any case, Ali's first statement translates awkwardly to the practice of law. It fits a theory of litigation as battle, but that's a debased theory, and I can't figure out how to tweak it for those of you heading into transactional work. "Grass grows, birds fly, waves pound the sand. I insert contingent remainders into wills?" "I write negotiable instruments?" "Grass grows, birds fly, waves pound the sand. I convert the synergy of business transactions into legally binding and enforceable agreements?"

The happiest ambitious person I have ever met was a prisoner, incarcerated for over 20 years for killing a drug dealer who had threatened his brother. I represented him pro bono. I used to visit him at Folsom Prison outside Sacramento. Folsom is *not* a high-tech prison with slick concrete walls. It's the second oldest prison in California, opened in 1880. The walls are made of massive solid granite blocks quarried on site. As soon as you pass through the thick iron gates, the weight of cold stone envelops you – you *feel* like a prisoner whether you are or not. Even the guards look like they aren't quite sure they can get out.



My client, who I'll call Les, had such an immaculate record of programming and rehabilitation that prison officials put him to work as a "pre-release counselor," advising inmates who would soon be released on how to get by on the outside without reoffending. He was by all accounts exceedingly good at that job, using theories of restorative justice, a profound capacity for empathy, and lessons drawn from his own life to ensure that those he worked with would not come back to prison. His record was so spotless and inspiring that you'd have thought he'd make an easy case for parole himself. But every year he came up for parole he was complemented on his accomplishments and then summarily denied release.

For several years before I met Les, he had been teaching himself the law of habeas corpus and pursuing a sophisticated litigation strategy in both state and federal court. Each of these lawsuits failed. Most of the work I did for him also failed, spectacularly. I would spend hundreds of hours writing briefs running dozens of pages and gathering facts for six inches of supporting exhibits only to see the courts return one sentence orders curtly denying relief.

When I met with him to convey disappointing news about the denial of each new petition I expected Les to be angry, frustrated, impatient, or perhaps torn between these emotions and a desire to show me that he remained duly remorseful and held no sense of entitlement about getting out. I expected at least to see disappointment because he was striving so hard, and over decades of striving in prison he had accomplished remarkable things, but the most immediate and obvious thing toward which it seemed to me that he was striving (release on parole) was constantly being dangled in front of him and then yanked away. Indeed, as the courts would finally recognize, years after I began representing him, the state had been arbitrarily denying him parole in violation of California law and his due process rights.

*I* was certainly angry, frustrated, impatient, and disappointed. And to be perfectly honest, with each failure I felt no small embarrassment at the

thought of having to explain to Les why I, a *Stanford* lawyer, was faring no better in the courts than he had on his own.

Here was a man who, having tragically failed in life (squandering his talents early, committing the highest of crimes, breaking up his own family and the family of the victim too) nevertheless turned himself around in prison. And yet the State would not follow the law and let him go. As if to add insult to injury, he spent his days preparing arguably less deserving prisoners for their release.

I would have gone mad if I were in his shoes. I know this. That makes his response to the vexing situation he was in all the more astonishing to me. With no reasonable expectation of future vindication, Les not only persevered, he continued to strive and to achieve – and not just to be released or to perfect his paper record of rehabilitation. He strived relentlessly to perfect his mind, his heart, and his capacity to inspire other prisoners to move beyond the minima of rehabilitation – beyond the *quid pro quo* of achievement – to habits of mind that would help them heal and improve the communities to which they would eventually return. Deprived of any certainty or rational predictability about his ultimate liberation, any meaningful relationship to a future self or future freedom, he had invented a kind of spiritual choreography, an audacious vertical movement of the soul, outside of the ordinary laws of time, all while sitting in a prison cell – the most constraining space we put people other than a straightjacket or a coffin – *acutely* aware of his failures.

From his perspective, as I have come to understand it, the state could neither give nor take anything from him. And no part of him was waiting to *be* something in the future, least of all a parolee. Les was never anywhere other than the present – still ... and yet pulsing with kinetic energy. Alight. Ambitious. Funny. Loving. Humble. Joyful, in precisely the way that the blues is joyful. Inside a prison or out, I've never met a less imprisoned soul in my life. There is no snow in Folsom, California, but Les had

a mind of winter ...

who listens in the snow,  
And, nothing himself, beholds  
Nothing that is not there and the nothing that is.

Les passed away a couple years ago not long after he was released. I miss him. I miss working for him. I also regret deeply that I thought I was too busy to visit him before he passed away. Whenever I catch myself worrying about regularly scheduled upward mobility, when I find myself on the edge of breathlessness from effort and anticipation, worrying about what I have or what I want, worrying about the *quid pro quo* of achievement – the next objective, the next well recognized marker of accomplishment as a lawyer and a teacher and a writer and a husband and a father – or when I make a mistake, as I often do; I don't stop striving. But I do try to pause and think about Les. To think about nothing that is not there, before me, in that moment of effort or failure, and the nothing that is.

If you should catch yourself in a pernicious habit of mind, perhaps it will help to think of Les too. Or, better yet, why not make the object of your celebration today, here, now, a graduation from that pernicious habit of mind? You have earned it.

I am going to miss having you in my classroom, *your* pulsing kinetic energy, and I am honored and proud and joyful to be celebrating this day with you. You are dear to me, this day is dear to me, and I will hold fast to the memory of it.           Thank you.