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## Deborah L. Rhode in Memoriam: Three Stories and Ten Life Lessons

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# DEBORAH L. RHODE IN MEMORIAM: THREE STORIES AND TEN LIFE LESSONS

*Benjamin H. Barton\**

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## INTRODUCTION

Professor Deborah L. Rhode seemingly packed multiple lifetimes of scholarship, teaching, mentorship, and service to the bench and bar into one too short trip.<sup>1</sup> We have been asked to reflect on Deborah and her work here, and although that is seemingly an easy task (talk about a target-rich environment—Deborah’s life and work offer endless opportunities for praise

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\* Helen and Charles Lockett Distinguished Professor of Law, the University of Tennessee College of Law. Special thanks to Michele DeStefano for exceptionally helpful line edits. All errors are my own. This Essay was prepared for the Colloquium entitled *In Memory of Deborah Rhode*, hosted by the *Fordham Law Review* and co-organized by the Stein Center for Law and Ethics on October 21, 2022, at Fordham University School of Law.

1. I’ve decided to refer to Deborah Rhode as “Deborah” here, hopefully not as a sign of overfamiliarity or disrespect, but as a sign of love and friendship. Writing about “Rhode” (as I did in my first draft) felt formal and weird, so “Deborah” it is.

and reflection), I have struggled to write this Essay. What to say about my dear friend and mentor, Deborah Rhode?

I finally decided to follow Deborah's lead. Late in Deborah's exceptional career, her scholarship took a marked turn. Deborah published *Lawyers as Leaders* in 2013,<sup>2</sup> *What Women Want* in 2014,<sup>3</sup> and *The Trouble with Lawyers* in 2015.<sup>4</sup> Pause for a minute to digest this insane trio of books coming bang, bang, bang, right on top of each other. Each is typical of Deborah's work: crisply written, deeply researched, brilliantly argued, and written from a perspective that only Deborah could muster. She was the senior (and the best or among the best) scholar in each of these three areas—legal ethics, feminism and women in the law, and lawyers as leaders—and it shows in these works. In retrospect, these three books are capstones. She took three years and wrote out what she had learned from her decades of writing and leading in these areas. *The Trouble with Lawyers* is still one of my all-time favorite works of scholarship about the legal profession. It presents a comprehensive and searing (but extra fair) critique of the profession that she so loved and respected.

Then she seemingly took a left turn. She published *Adultery* in 2016,<sup>5</sup> *Cheating* in 2018,<sup>6</sup> *Character* in 2019,<sup>7</sup> and *Ambition* in 2021.<sup>8</sup> These four books with single-word titles brought Deborah's incredible breadth and depth of thinking to much bigger, more human, and more personal topics. She transcended even the three areas she founded and championed to become a true public intellectual, and she used her prodigious talents and wisdom to think about eternal human questions of life and how to live it.

I have always loved and admired Deborah's work in legal ethics, but I have a special place in my heart for these books, especially *Ambition* (discussed further below), which I understood as Deborah really struggling with her life's work and her own exceptionally strong ambition and drive. Obviously, no one becomes Deborah Rhode without a healthy (or unhealthy?) share of ambition. She starts *Ambition* with a personal anecdote about her father's untimely death from cancer and her favorite work of fiction, the Leo Tolstoy novella *The Death of Ivan Ilyich*.<sup>9</sup> *Ilyich* is a story of a man who reflects on a (relatively) wasted and meaningless life on his deathbed, and Deborah bravely discusses how the book reminded her of her own father and made her reflect on her own life.<sup>10</sup> I had the good fortune to see Deborah deliver the keynote remarks at a leadership conference at the University of Tennessee College of Law, and she started her talk with this anecdote. It was a

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2. DEBORAH L. RHODE, *LAWYERS AS LEADERS* (2013).

3. DEBORAH L. RHODE, *WHAT WOMEN WANT: AN AGENDA FOR THE WOMEN'S MOVEMENT* (2014).

4. DEBORAH L. RHODE, *THE TROUBLE WITH LAWYERS* (2015).

5. DEBORAH L. RHODE, *ADULTERY: INFIDELITY AND THE LAW* (2016).

6. DEBORAH L. RHODE, *CHEATING: ETHICS IN EVERYDAY LIFE* (2018).

7. DEBORAH L. RHODE, *CHARACTER: WHAT IT MEANS AND WHY IT MATTERS* (2019).

8. DEBORAH L. RHODE, *AMBITION: FOR WHAT?* (2021).

9. *See id.* at 1–3.

10. *See id.*

remarkably raw and powerful talk for any setting, let alone an academic conference.

Late in her life, Deborah's work took a turn to the personal as she opened her aperture to let more light into her writing and her life. When I reflected on this change, I decided to write this Essay straight from the heart as an homage to this late-life version of Deborah. So, I'll start with three stories I love to tell about how I had the unearned pleasure of becoming friends with the late, great Deborah Rhode. Then I'll pass along some life lessons I learned from Deborah, for what they are worth. Along the way, I'll try to capture why I so admired her and how much I miss her.

### I. THREE STORIES

The first is the story of the day we met. I arrived at the University of Tennessee College of Law in 2001 as an untenured law professor teaching primarily in our advocacy clinic. As a young scholar, my colleagues encouraged me to attend the Southeastern Association of Law Schools (SEALS) Annual Conference because it was easier to present one's work and to meet fellow travelers there than at the bigger and fancier annual Association of American Law Schools (AALS) Annual Meeting. SEALS was also typically held at a Florida beach resort, so it was quite informal. It was not atypical for attendees to chat by the pool or on the beach and for presenters to arrive in a bathing suit, flip-flops, and a Hawaiian shirt.

At one of my first SEALS conferences, a woman I had never met came to a legal ethics panel and sat right up front. She was impeccably dressed, with a lovely suit and a fancy hat. It would have been a relatively formal outfit at AALS, and it was well out of place at SEALS. Once the presentations were done, she raised her hand and gave spot-on, if occasionally somewhat harsh, comments on the papers, and I realized this woman was the legal ethics scholar I most admired, Deborah Rhode. Later when I got to know her, I figured out how funny it was that Deborah (surely mistakenly) ended up at SEALS and how uncomfortable the goofy and borderline slacker-like vibe must have made her. After we became friends, I repeatedly invited her back to SEALS and she always just laughed in my face: "Ha ha Ben! You know that conference is *not* for me." Yes, indeed I did.

When the SEALS panel and comments were over, I worked up my courage and introduced myself to Deborah. She was, as was her wont, extremely gracious as I stammered through how much I admired her and her work. When I told a colleague I had met Deborah, the colleague suggested I send my latest draft to Deborah to see if she would read it. My colleague said that this would remind Deborah who I was and, who knew, maybe she would even read it! I hesitantly followed this advice and sent my latest draft to Deborah. Deborah emailed back that she was buried under these sorts of requests, but that she considered giving feedback to younger legal ethics colleagues a critical way to help build and improve legal ethics scholarship, so she might find time for it. I assumed this email meant: "Don't hold your breath, kid."

Instead, four days later, I received lengthy (and exceptionally helpful) comments from Deborah, including some that were more severe than others. In particular, I remember that Deborah correctly pointed out that I had “over-footnoted” my article, and that she found it “obnoxious” and “overbearing” that I’d repeatedly given three or four citations for relatively obvious points. “Please don’t cite everything you’ve ever read just to show you’ve read it.” This was just after Deborah published her excellent *Harvard Law Review* article, *Legal Scholarship*, which noted the unfortunate practice of over-footnoting in law review articles.<sup>11</sup> I was so honored that she read my work and sent her an immediate thank you note. In the note, I pointed out that I over-footnoted for a reason: I was a junior faculty member working primarily in a clinic, which marked me as a “less serious scholar” in the snobbier corners of legal academia. I also noted that “she was Deborah Rhode, and I was nobody” as a further explanation. She again handled all of this with great class.

The second story is the first time Deborah Rhode remembered meeting me. We were both invited to speak at a symposium at Fordham University School of Law. It was the first time I had been invited, and I was thrilled and nervous. During the break, after I presented my paper, Deborah sought me out and introduced herself to me and said, “I liked that! We should take a walk together sometime.” I was not mad at all that she didn’t remember our earlier meeting because I understood that our prior interaction happened to her *all the time*. Junior people introduced themselves to Deborah and then foisted their drafts on her, which she generously read and edited to the point that Deborah had no recollection of who she had done it for. She was an enormously generous colleague (although not a softie in her comments!).

The third story is about when we became friends. After the Fordham conference, we did, indeed, take a lovely walk together and emailed back and forth a few times, but it was still very much a junior-senior professional relationship (and I’m sad to report that I was very nervous every time we interacted!). In 2016, Deborah came to the University of Tennessee College of Law as the keynote speaker at one of the first law and leadership conferences. When she accepted our invitation, she asked the dean: “Doesn’t Ben Barton teach at Tennessee? See if he’ll have dinner with me while I’m there.” I was again amazed that Deborah knew who I was, let alone wanted to eat with me. I fretted endlessly about where to take her to dinner and whom to ask to join us. I eventually settled on another attendee I knew well from my undergrad days (Garry W. Jenkins, now dean at the University of Minnesota Law School ) and what I considered to be the best restaurant in Knoxville at the time, an intimate, fancy farm-to-table place called Knox Mason.

In hindsight, I probably should have asked Deborah where she’d like to eat, as I later learned she likes Italian food and has limited patience for pretention. We sat down to order, and Deborah asked the waiter what beers

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11. See Deborah L. Rhode, *Legal Scholarship*, 115 HARV. L. REV. 1327, 1334–36 (2002).

they had. The waiter launched into a well-rehearsed list of hipster microbrews and IPAs. Deborah (politely) interrupted him and asked: “Do you have Miller High Life?” The waiter, stunned, said sheepishly: “Yes, in a bottle, but . . .” And before he could launch back into his spiel, Deborah said: “A Miller High Life then! With a glass of ice please.” When the beer arrived, damn if she didn’t pour it over ice and drink a Miller High Life like it was a hot day in 1957 Milwaukee. When it came time to order, the waiter again launched into the various fancy dishes, and Deborah first asked if they had any pasta dishes (sadly, no), then settled on plain chicken breast and roasted potatoes.

I tell this story because it was at that exact moment I thought: “Oh wow, I could be friends with this person.” Why? Politely stated, I liked her iconoclastic style and firmness. Or, more plainly stated, I recognized a fellow traveler—a weirdo with strong likes and dislikes and the fearlessness to act on them. From there, we were—as my grandmother would say—“off to the races,” and we were friends for the rest of her life. We became especially close during the last year of her life during the COVID-19 pandemic, when we Zoomed weekly and watched a movie or a stand-up special together, or just chatted about work and life. Now that Deborah is gone, I especially treasure those memories.

## II. TEN LIFE LESSONS

Now I turn to some life lessons from my friend, mentor, and hero.

### A. Lesson #1: Be Brave

Deborah grew up in Chicago in the 1960s and was a nationally ranked debater in high school, repeatedly facing off against former federal judge and current attorney general Merrick B. Garland.<sup>12</sup> Garland remembers that he and Deborah “were friendly rivals, but she was way better than me—she was better than everyone.”<sup>13</sup> Deborah was an exceptional student in high school and had her heart set on applying to Yale College, which had just gone coed a year earlier.<sup>14</sup> Deborah’s father disagreed and hoped that she would attend a women’s college. After all, this was Yale in 1970, the first year that women were represented in all four classes at Yale.<sup>15</sup> Women were still a decided

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12. See Sharon Driscoll, *Remembering Deborah L. Rhode: Legal Ethics Pioneer, Stanford Scholar, Mentor to Many*, STAN. LAW. (Jan. 11, 2021), <https://law.stanford.edu/stanford-lawyer/articles/remembering-deborah-l-rhode-legal-ethics-pioneer-stanford-scholar-mentor-to-many/> [https://perma.cc/Z9SG-WSLZ].

13. Harrison Smith, *Deborah Rhode, Stanford Law Professor and Authority on Legal Ethics, Dies at 68*, WASH. POST (Jan. 12, 2021, 9:04 PM), [https://www.washingtonpost.com/local/obituaries/deborah-rhode-dead/2021/01/12/e195f478-54ed-11eb-a817-e5e7f8a406d6\\_story.html](https://www.washingtonpost.com/local/obituaries/deborah-rhode-dead/2021/01/12/e195f478-54ed-11eb-a817-e5e7f8a406d6_story.html) [https://perma.cc/5YQV-ELFC].

14. See *A Timeline of Women at Yale*, YALE UNIV., <https://celebratewomen.yale.edu/history/timeline-women-yale> [https://perma.cc/2XSQ-V7D8] (last visited Feb. 6, 2023).

15. See *id.*

minority and not were fully integrated into the community or the classroom.<sup>16</sup> For example, Deborah reported that when Yale admitted its first class of women, the school described the incoming class as “a thousand male leaders and 250 women.”<sup>17</sup>

Nevertheless, Deborah enrolled at Yale and graduated Phi Beta Kappa and summa cum laude.<sup>18</sup> She also served as the first female president of Yale’s debate team (following in the footsteps of John Kerry and William F. Buckley, Jr., among others).<sup>19</sup> Deborah debated with “a steely, quiet strength and a marvelous fluency.”<sup>20</sup> Deborah was good enough that she was invited onto *60 Minutes* to debate then senator Lowell Weicker and William F. Buckley, Jr., on Watergate.<sup>21</sup> Buckley was so impressed that he made Deborah a frequent student panelist on the show *Firing Line*.<sup>22</sup>

Deborah arrived at Yale interested in issues of poverty but relatively dismissive of the women’s movement. In a 2018 interview, she said that as a first-year student, she considered the feminist movement a bunch of “bra burners” and not much more.<sup>23</sup> After a grad student suggested Simone de Beauvoir’s *The Second Sex*, everything changed for Deborah, and she was launched into a lifelong fight for women’s rights.<sup>24</sup> She started this mission in undergrad, creating what she called her “first little empirical research foray” by cataloging the few classes that engaged with women or feminism at Yale and the short shrift given to women’s issues even in classes where it was obviously relevant.<sup>25</sup> Deborah tells a hilarious story about a class she took on the American progressive movement from 1900 to the 1920s, in which the professor dedicated “one sentence” to the women’s suffragist movement of this era. Deborah thought: “Wow, there’s got to be more there to that!”<sup>26</sup> She also performed a survey of her Yale classmates and asked them to name just two leaders of the women’s rights movement (in the 1970s!), and only 10 percent could.<sup>27</sup>

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16. See Clay Risen, *Deborah Rhode, Who Transformed the Field of Legal Ethics, Dies at 68*, N.Y. TIMES (Jan. 25, 2021), <https://www.nytimes.com/2021/01/18/us/deborah-rhode-dead.html> [<https://perma.cc/Z684-JCGG>].

17. John Roemer, *The Moral Force of Deborah Rhode*, STAN. MAG. (Sept. 2017), <https://stanfordmag.org/contents/the-moral-force-of-deborah-rhode> [<https://perma.cc/ANC5-FUBQ>].

18. See Driscoll, *supra* note 12.

19. See *id.*

20. Kathrin Day Lassila, “A Steely, Quiet Strength,” YALE ALUMNI MAG. (Apr. 2021), <https://yalealumnimagazine.org/articles/5274-a-steely-quiet-strength> [<https://perma.cc/4J4G-7X7K>] (quoting Ralph C. Cavanagh, Deborah’s widower).

21. See *id.*

22. See *id.*

23. SHS Oral History Program, *Deborah Rhode: Developing an Interest in Women’s Issues*, YOUTUBE, at 0:20 (Feb. 26, 2021), <https://www.youtube.com/watch?v=lb9Y3yDyTJQ> [<https://perma.cc/5HSK-FZWY>].

24. See *id.* at 0:50.

25. *Id.* at 1:32.

26. *Id.* at 1:50.

27. See *id.* at 2:40.

*B. Lesson #2: Be Appalled (and Empirical)*

Deborah then attended Yale Law School, where she was an editor of the *Yale Law Journal* and director of the moot court board.<sup>28</sup> Characteristically, for an academic who was unusually preoccupied with real-world problems, Deborah's fondest memories (and most important contributions) at Yale Law School were not in the classroom. Instead, they occurred while Deborah interned at the local legal aid office:

Like most legal aid offices, both then and now, the office was under-funded and over-burdened. Because of a flood of needy clients, the lawyers in these offices had no choice but to try to triage, choosing cases of greatest need or greatest impact. Divorce is, and has long been, a particularly acute area of need . . . .

Self-help is one obvious solution for clients that have gone unserved because of resource constraints. In 1975, the over-worked lawyers of New Haven's legal aid clinic responded by developing a do-it-yourself divorce kit to assist the vast numbers of poor people left without representation. The local bar responded by threatening to sue the clinic for unauthorized practice of law ("UPL"). Precedent at the time suggested that the suit might be successful, and the staff attorneys decided not to distribute the kit. I was appalled.<sup>29</sup>

Faced with this injustice, Deborah took it upon herself to conduct a first-of-its-kind empirical study that demonstrated that protections against the unauthorized practice of law were driven more by lawyer self-interest than by a desire to protect the public.<sup>30</sup> It is an amazing piece of scholarship. Deborah published this empirical study in 1976, almost twenty years before empirical legal studies really took off (at least in law schools).<sup>31</sup> It is also a full-frontal assault on a long-standing object of worship of the American legal profession from a (then unknown and not yet employed) law student in the mid-1970s.

Here, Deborah showed many of the attributes that would define her spectacular career. First and foremost, Deborah had no stomach for injustice whatsoever. I absolutely love her three-word summation of how she reacted to the local bar using the unauthorized practice of law as a cudgel to deny poor people self-help divorces: "I was appalled."<sup>32</sup> Fair and accurate. The situation was, in fact, appalling! Here, Deborah showed her secret weapon

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28. See Driscoll, *supra* note 12.

29. Deborah L. Rhode & Benjamin H. Barton, *Rethinking Self-Regulation: Antitrust Perspectives on Bar Governance Activity*, 20 CHAP. L. REV. 267, 267 (2017) (footnotes omitted).

30. See generally Ralph C. Cavanagh & Deborah L. Rhode, *The Unauthorized Practice of Law and Pro Se Divorce: An Empirical Analysis*, 86 YALE L.J. 104 (1976).

31. The founding of the *Journal of Empirical Legal Studies* in 2004 is a decent benchmark. See *Overview*, J. EMPIRICAL LEGAL STUD., <https://onlinelibrary.wiley.com/page/journal/17401461/homepage/productinformation.html> [<https://perma.cc/L6F2-VPVN>] (last visited Feb. 6, 2023).

32. Rhode & Barton, *supra* note 29, at 267.



as an academic—if she saw something that struck her as wrong, whether legally, morally, logistically, or logically, she sought to address it.

Deborah was no fool. She knew that it was a long row to hoe to battle sexism and the access-to-justice crisis. Nevertheless, she was a joyful and tireless warrior on these issues. The great bulk of her legal ethics scholarship is centered around this exact moment of appalling lawyer hypocrisy and how to fix it, including some true classics in the field: *Access to Justice*,<sup>33</sup> *The Trouble with Lawyers*, and *Ethics in Practice*.<sup>34</sup> This exact same emotion motivated her exceptional feminist scholarship as well. The treatment of women in America—and especially in the legal field—was wrong, and Deborah was there not only to chronicle it, but also to propose solutions in books like *Justice and Gender*,<sup>35</sup> *What Women Want*, and *Speaking of Sex*.<sup>36</sup>

Second, Deborah was particularly interested in the facts on the ground—the law as lived by people rather than the law as an abstract concept. This was a departure from the educational experience at Yale, which is famously more theoretical than practical.<sup>37</sup> This bravery continued as a legal ethics scholar. In the 1970s, the best legal ethics work tended to be more philosophy-based.<sup>38</sup> This is not to say that Deborah ignored the academic and philosophical aspects of the field (she did not),<sup>39</sup> but rather, that her special skill was a dedication to real-world issues. As Professors David Luban and W. Bradley Wendel put it: “[Deborah] combined theory and sophisticated multidisciplinary analysis of regulatory issues such as the bar’s moral character requirement and its prohibition on unauthorized practice. Moreover, she gave attention to the necessary institutional aspects of the emerging field, such as casebooks, professional centers, and mentoring junior scholars.”<sup>40</sup> Professor Nora Freeman Engstrom concurs: “In [Deborah’s] view, it wasn’t enough to memorize rules or espouse airy principles . . . . Legal ethics—and legal ethics scholars—would have to refocus on what matters: access to justice, integrity, accountability, and equality.”<sup>41</sup>

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33. DEBORAH L. RHODE, *ACCESS TO JUSTICE* (2004).

34. *ETHICS IN PRACTICE: LAWYERS’ ROLES, RESPONSIBILITIES, AND REGULATION* (Deborah L. Rhode ed., 2000).

35. DEBORAH L. RHODE, *JUSTICE AND GENDER: SEX DISCRIMINATION AND THE LAW* (1989).

36. DEBORAH L. RHODE, *SPEAKING OF SEX: THE DENIAL OF GENDER INEQUALITY* (1997).

37. Consider Yale Law School dean Heather K. Gerken’s list of “Yale Law School jokes”: “‘Anything X School can do, Yale can do meta.’ ‘The only course taught at Yale is Law and Me.’ And trust me, you don’t want to know how many Yale grads it takes to change a lightbulb.” Heather K. Gerken, *Resisting the Theory/Practice Divide: Why the “Theory School” Is Ambitious About Practice*, 132 *HARV. L. REV. F.* 134, 136 (2019).

38. See David Luban & W. Bradley Wendel, *Philosophical Legal Ethics: An Affectionate History*, 30 *GEO. J. LEGAL ETHICS* 337, 338–39 (2017).

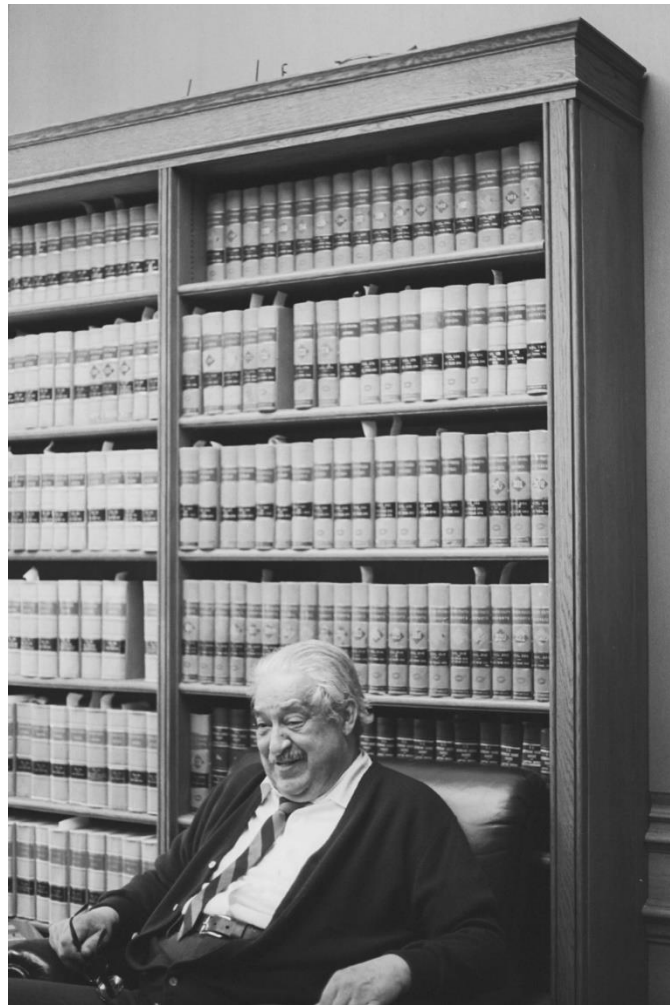
39. See, e.g., Deborah L. Rhode, *Ethical Perspectives on Legal Practice*, 37 *STAN. L. REV.* 589 (1985).

40. Luban & Wendel, *supra* note 38, at 344 (footnote omitted).

41. Risen, *supra* note 16.

*C. Lesson #3: Choose Your Mentors Well*

Deborah graduated from Yale Law School in 1977 and then clerked for U.S. Supreme Court Justice Thurgood Marshall.<sup>42</sup> At a time when some justices were only hiring male clerks, Deborah was one of two women hired by Justice Marshall.<sup>43</sup> Deborah loved and admired Justice Marshall. She profiles Justice Marshall and his work in her book *Character* as an exemplar of a virtuously lived life.<sup>44</sup> Deborah was also an amateur, but excellent, photographer and took some lovely portraits of Justice Marshall during her year as a clerk. Here's an example<sup>45</sup>:



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42. See Driscoll, *supra* note 12.

43. See Deborah L. Rhode, *Character: What It Means and Why It Matters*, STAN. LAW. (Nov. 22, 2019), <https://law.stanford.edu/stanford-lawyer/articles/character-what-it-means-and-why-it-matters/> [<https://perma.cc/PS6Q-BT58>].

44. See generally RHODE, *supra* note 7, at 175–86.

45. This photo comes from Rhode, *supra* note 43.

The thing I love about this naturalistic, unstaged photo is the warmth and admiration for the man that comes through, as well as Justice Marshall's kindness and jocularity.

*D. Lesson #4: Be Brave (Part II)*

After clerking, Deborah joined the Stanford Law School faculty in 1979. She was just the third woman to do so, and eventually, just the second woman to be granted tenure.<sup>46</sup> When she arrived at Stanford, she asked the dean if she could teach gender and the law, and the dean refused, telling her to pick a "real subject."<sup>47</sup> Deborah dutifully took up contracts. Later, she attended a retirement party for that dean at which a stripper performed, and she thought: "To hell with contracts . . . [This] law school needs a course on gender."<sup>48</sup>

This was not the only advice that Deborah received from the dean at the outset of her career. Deborah told me that the dean likewise discouraged adopting too great a scholarly focus on legal ethics, which he considered a "backwater" at the time. The irony, of course, is that the dean was not completely off track in that opinion. In 1993, then Professor Paul A. Brest summed up the prior attitude about legal ethics and how it had improved by the 1990s. In the 1970s, the American Bar Association (ABA) mandated a class in legal ethics as a response to the Watergate scandal:

[L]aw schools now purport to teach legal ethics to all students. "Purport" gets it about right, for most faculties have, at best, approached the task halfheartedly. The reasons vary from the assumption that the subject has no intellectual content, to the belief that courses in ethics will not change anyone's behavior, to simple laziness and inertia. In fact, during the past several decades, legal ethics has been transformed from an academic backwater to the subject of much excellent scholarship . . .<sup>49</sup>

There were, of course, legal ethics scholars from as far back as the nineteenth century, such as Professors David Hoffman and George Sharswood.<sup>50</sup> But Deborah was a big part of the transition from backwater to scholarly hotbed. As Deborah's friend and colleague Nora Freeman Engstrom put it:

The field of legal ethics predated Deborah Rhode—but it was a faint shadow of its current self . . . When Deborah came along, she transformed it; she infused it with intellectual rigor and insisted that it wouldn't just be

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46. See Smith, *supra* note 13.

47. Risen, *supra* note 16.

48. Roemer, *supra* note 17.

49. Paul Brest, *Plus Ça Change*, 91 MICH. L. REV. 1945, 1951–52 (1993) (footnote omitted).

50. See generally DAVID HOFFMAN, A COURSE OF LEGAL STUDY; RESPECTFULLY ADDRESSED TO THE STUDENTS OF LAW IN THE UNITED STATES (1817); SHARSWOOD'S *Professional Ethics*, 3 AM. L. REG. 193 (1855).

about dry rules or abstract principles. Legal ethics would—and would have to—stand for justice, access, integrity and equality.<sup>51</sup>

But again, note the bravery and hard-headedness. From Deborah’s very first piece of scholarship, she wrote about a topic she *burned* to discuss: access to justice and the lawyer’s responsibilities to the country as a whole. She would not be sidelined from this pursuit, regardless of the current valuation of the topic area. If legal ethics was a backwater, so be it. She’d help drag it into respectability.

*E. Lesson #5: Be Fox-y*

In his classic essay *The Hedgehog and the Fox*, Isaiah Berlin riffs on a line from the ancient Greek poet Archilochus: “The fox knows many things, but the hedgehog knows one big thing.”<sup>52</sup> Berlin argues that this line describes “one of the deepest differences which divide writers and thinkers, and, it may be, human beings in general”: the “great chasm” between generalists and specialists.<sup>53</sup> Hedgehogs “relate everything to a single central vision, one system . . . a single, universal, organizing principle.”<sup>54</sup> Foxes, by contrast, “pursue many ends, often unrelated and even contradictory” and “lead lives . . . that are centrifugal rather than centripetal.”<sup>55</sup>

Berlin then divides a series of writers and philosophers into the two camps. Dante, Dostoevsky, Hegel, Ibsen, Lucretius, Nietzsche, Pascal, Plato, and Proust are hedgehogs.<sup>56</sup> That’s a pretty good list! Aristotle, Balzac, Erasmus, Goethe, Herodotus, Joyce, Molière, Montaigne, Pushkin, and Shakespeare are foxes.<sup>57</sup> Again, this is a strong group. Berlin knows that these are “over-simple classifications,” but argues persuasively that the distinction is still helpful as a “point of view from which to look and compare, a starting point for genuine investigation.”<sup>58</sup> Berlin then goes on to ask which of these archetypes best fits Tolstoy, arguing that Tolstoy defies categorization because “Tolstoy was by nature a fox, but believed in being a hedgehog.”<sup>59</sup>

Given Deborah’s love for Tolstoy generally, and especially the novella *The Death of Ivan Ilyich*, it seems fitting to use Berlin’s brilliant essay as a launching point for discussing Deborah, the scholar. Berlin’s essay has since been adapted to characterize the two sides as being in an eternal intellectual and professional struggle—the generalists versus the specialists.<sup>60</sup>

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51. Smith, *supra* note 13.

52. ISAIAH BERLIN, *THE HEDGEHOG AND THE FOX: AN ESSAY ON TOLSTOY’S VIEW OF HISTORY 1* (Henry Hardy ed., 2d ed. 2013).

53. *Id.* at 2.

54. *Id.*

55. *Id.*

56. *See id.*

57. *See id.*

58. *Id.* at 2–3.

59. *Id.* at 4.

60. *See* DAVID EPSTEIN, *RANGE: WHY GENERALISTS TRIUMPH IN A SPECIALIZED WORLD* 221–24 (2019).

Here you might be tempted to assume that Deborah was a hedgehog. You are reading this Essay in a (richly deserved) Festschrift about Deborah's indelible mark on legal ethics. Deborah is, after all, considered the greatest-ever scholar in legal ethics by acclimation. She is the most cited scholar in legal ethics by a sizable margin.<sup>61</sup> Deborah's obituary in *The New York Times* called her "a law professor who transformed the field of legal ethics from little more than a crib sheet for passing the bar exam into an empirically rich, morally rigorous investigation into how lawyers should serve the public."<sup>62</sup> *The Stanford Daily* called her a "lion in her field" and a "legal ethics pioneer."<sup>63</sup> These tributes were, if anything, underselling Deborah's impact on the field of legal ethics. Deborah's impact in legal ethics does lead one to imagine that she must have been an über-hedgehog, burrowing ever deeper into a single area of expertise.

And yet, Deborah Rhode was the opposite—a fox's fox. Even if she had never written a word in legal ethics, she would have been a decorated scholar and public intellectual, standing among the giants in the field of feminist legal thought and having founded the burgeoning study of leadership in the legal profession. Just as Engstrom rightfully praised Deborah's place in legal ethics,<sup>64</sup> Deborah's peers in leadership and feminism were equally effusive. Professors Joanna L. Grossman, Katherine T. Bartlett, and Deborah L. Brake called Deborah a "co-author, friend, and feminist co-conspirator" and wrote:

[Deborah] was one of the nation's leaders in the law of sex discrimination . . . [and it] would be hard to think of a gender law scholar whose work was both so widely cited and so broad in scope. Among the many subjects she tackled were bias in the legal profession, the history of the legal profession, glass ceiling issues, structural and unconscious bias, sexual harassment, pregnancy discrimination, women in leadership, bias in courtrooms, gender discrimination in education, and appearance discrimination.<sup>65</sup>

Professor Leah Teague likewise called Deborah "one of the earliest champions for leadership development in law schools," a friend and a mentor:

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61. See Brian Leiter, *10 Most-Cited Legal Ethics/Legal Profession Faculty in the U.S. for the Period 2013–2017 (1st Draft)*, BRIAN LEITER'S L. SCH. REPS. (Oct. 15, 2018), <https://leiterlawschool.typepad.com/leiter/2018/10/10-most-cited-legal-ethicslegal-profession-faculty-in-the-us-for-the-period-2013-2017-1st-draft.html> [<https://perma.cc/24P8-KBGE>].

62. Risen, *supra* note 16.

63. Sam Catania & Julia Ingram, 'Lion in Her Field,' *Legal Ethics Pioneer and Professor Deborah Rhode Dies at 68*, STAN. DAILY (Jan. 11, 2021, 9:55 PM), <https://www.stanforddaily.com/2021/01/11/lion-in-her-field-legal-ethics-pioneer-and-professor-deborah-rhode-dies-at-68/> [<https://perma.cc/UG32-6K3M>].

64. See Smith, *supra* note 13.

65. Joanna L. Grossman, Katharine Bartlett & Deborah L. Brake, *Remembering Deborah Rhode: Co-Author, Friend, and Feminist Co-Conspirator*, VERDICT (Jan. 12, 2021), <https://verdict.justia.com/2021/01/12/remembering-deborah-rhode-co-author-friend-and-feminist-co-conspirator> [<https://perma.cc/T3LP-2WPV>].

Rhode was a giant spirit in a diminutive body known for her wisdom, prolific scholarship, and her tenacious devotion to improving the legal profession . . . . She topped the invitation list for speakers on leadership topics. Her scholarship contributions led the way in this evolving field of lawyer leadership. Her book, *Lawyers as Leaders*, sparked a great deal of interest in the profession. Her voice and her leadership will be missed.<sup>66</sup>

Deborah authored over thirty books, and they are among the most important and foundational works in our area. But Deborah's best-selling (and probably best-known) book was her 2010 masterwork *The Beauty Bias*,<sup>67</sup> a brilliant feminist take on the massive damage caused by our cultural preoccupation with attractiveness.

By contrast, Deborah knew that her books criticizing the legal profession would be a tough sell for the general public and especially for lawyers because "it's very hard to get lawyers to buy a book that's critical about [the profession—]I mean they hear it enough from cab drivers."<sup>68</sup> Still, Deborah wisely knew that her work would "influence the debates" around the profession, law schools, and access to justice.<sup>69</sup> Deborah knew that there was a difference between what lawyers wanted to hear and what lawyers *needed* to hear.

Deborah's range as a scholar was likewise an act of bravery. The first piece of advice given to an aspiring law professor is to become an expert in a discrete area of law and to publish multiple, lengthy law review articles in that area.<sup>70</sup> This makes sense, of course. Even for someone like Deborah Rhode, it is hard to master an area of the law sufficiently to become a leading scholar in that field. Why try to replicate the feat? Each new area requires a massive amount of new research and background reading. If you are familiar with Deborah's writings, you know this was especially true for her, because her work is so richly researched and comprehensive. Deborah could never have just picked up a topic and tossed something off, so each new area required a massive amount of work and effort.

#### F. Lesson #6: Follow Your Passions and Become Über-Fox-y

A lesser version of Deborah would have made these choices strategically, jumping from one growing and hot area of study to another, each adding to her citation count and reputation. That was not how I experienced Deborah or her work at all. I think she took her wandering path out of sheer

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66. Leah Teague, *Making Progress in Legal Education: Leadership Development Training in Law Schools*, 73 BAYLOR L. REV. 1, 9 (2021) (footnote omitted).

67. DEBORAH L. RHODE, *THE BEAUTY BIAS: THE INJUSTICE OF APPEARANCE IN LIFE AND LAW* (2010). Rhode noted that *The Beauty Bias* was her best-selling book, to me personally, but also at an interview. See *Q&A with Deborah Rhode*, C-SPAN, at 42:45 (July 28, 2015), <https://www.c-span.org/video/?327346-1/qa-deborah-rhode> [<https://perma.cc/E7AG-28Y6>].

68. *Q&A with Deborah Rhode*, *supra* note 67, at 42:05.

69. *Id.* at 42:15.

70. See, e.g., Brad Areheart, *Advice on Becoming a Law Professor*, UNIV. OF TEX. SCH. OF L., <https://law.utexas.edu/career/paths/academic/advice-on-becoming-a-law-professor/> [<https://perma.cc/8SA7-4QBT>] (last visited Feb. 6, 2023).

intellectual curiosity and a passion for writing rather than any grand plan to become a leading scholar or a most-cited professor. Deborah's interest in leadership is instructive. Her works on women as leaders, *The Difference "Difference" Makes*<sup>71</sup> and *Women and Leadership*,<sup>72</sup> were natural outgrowths of her feminist and gender studies work. But when she attended a conference at Harvard for the 100 most influential scholars on leadership, Deborah realized that she was the only lawyer present, thought "hmmm, maybe there's more here," and launched into her study of lawyers as leaders.<sup>73</sup>

Almost every time I talked to Deborah, she asked me, "What are you working on?," followed quickly by "and what's next?" After answering, I would ask her the same, and she always had a next project—and sometimes a next few—lined up in her mind. In tracking these projects over the years, you can see how one project jarred loose an interest in another project, which in turn led to the next project. Access to justice led to legal ethics and the study of pro bono work. Gender studies led to women in leadership, which led to lawyers as leaders.

But you can also see a wandering mind, a peregrine falcon ever scanning the terrain for something that caught her eye. Because she worked so hard and was so deeply committed to her projects, she chose carefully and steered into areas that she was passionate about. Deborah worked in areas that hit three sweet spots, a Venn diagram in which her interest, society's benefit, and a scholarly vacuum overlapped. This sweet spot is easy to describe but brutally elusive, yet Deborah found it repeatedly in her life.

This was especially clear to me in the last few books I mentioned above. Deborah could have *easily* coasted, with *three* burgeoning areas of interest. Her symposium invitations alone could have carried her for decades. Instead, her roving eye led her to slide up a level of generality and to consider what she had learned and what she had to share about bigger questions of human nature. These books asked the hardest questions about the nature of our existence—ethics at the grandest scale. Here, Deborah reached the final level of law-fox, at which point you cease your intellectual wanderings and gather what you've learned into a unified theory. These books are brilliantly written, assiduously researched, and quintessentially Deborah. Longtime fans of her work will see how seemingly disparate areas of study came together into a seamless whole. These books were such a gift to her readers. Wide-ranging and brilliant, Deborah pulled from a lifetime of study and applied it to these huge topics. These books are historical, philosophical, and anthropological—each a masterwork in its own right.

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71. THE DIFFERENCE "DIFFERENCE" MAKES: WOMEN AND LEADERSHIP (Deborah L. Rhode ed., 2003).

72. DEBORAH L. RHODE, WOMEN AND LEADERSHIP (2017).

73. See Deborah L. Rhode, Ernest W. McFarland Professor of L., Stanford L. Sch., and Dir., Ctr. on the Legal Pro. at Stanford L. Sch., Opening Remarks at the University of Pennsylvania Carey Law School Seminar on Leadership in a Time of Change: Women, Law, and Leadership 2 (2020), <https://www.law.upenn.edu/live/files/11338-wll-report-part-2-leader-interview-transcripts> [<https://perma.cc/3Z89-CGHD>].

*G. Lesson #7: Put in the Work. Earn the Trust. Leverage Your Position. Build the Institutions.*

I hope you are now convinced that Deborah was a once-in-a-generation legal scholar. But it would *grossly* underrate Deborah to only talk about her scholarship. In my mind, her true greatness showed in her service. Deborah wanted to change the world and was not satisfied to criticize from an ivory tower. She went out and did the work. I know the most about her work on the legal profession, but I will note that she built institutions in gender studies and leadership as well. The Clayman Institute for Gender Research at Stanford University has a lovely description of Deborah's leadership of that institution from 1986 to 1990.<sup>74</sup> The center praises Deborah's transformative leadership, from changing its name—from “the Center for Research on Women” (the inapt “CROW”) to “the Institute for Research on Women and Gender”—to shepherding the center “from its formative period to a more secure position at Stanford” by “presid[ing] over that change with grace, dignity, and humor.”<sup>75</sup> Deborah likewise was a key player in creating the AALS Section on Leadership.<sup>76</sup> In 2008, Deborah founded the Stanford Center on the Legal Profession (now named in her honor) and launched the Roadmap to Justice Project.<sup>77</sup> She also helped launch Stanford Law School's Legal Design Lab, which is run by Margaret Hagan.<sup>78</sup> When Deborah died, Margaret told me that she would not have her current job without Deborah's support and mentorship.

But in my mind, her dedication to changing the legal profession for the better was her singular achievement. Just read the list of the awards she received over the course of her career:

She received the American Bar Association's Michael Franck award for contributions to the field of professional responsibility; the American Bar Foundation's W. M. Keck Foundation Award for distinguished scholarship on legal ethics, the American Foundation's Distinguished Scholar award, the American Bar Association's Pro Bono Publico Award for her work on expanding public service opportunities in law schools, and the White House's Champion of Change award for a lifetime's work in increasing access to justice.<sup>79</sup>

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74. See *Remembering Deborah Rhode*, CLAYMAN INST. FOR GENDER RSCH. (Jan. 21, 2021), <https://gender.stanford.edu/news-publications/gender-news/remembering-deborah-rhode> [https://perma.cc/GM6R-CPDV].

75. *Id.*

76. See Barbra Elenbaas, *Spotlight on Sections: Leadership*, AALS NEWS (2018), <https://www.aals.org/about/publications/newsletters/aals-news-spring-2018/spotlight-on-sections-leadership/> [https://perma.cc/6HNF-45X5].

77. See Driscoll, *supra* note 12.

78. See Terry Nagel, *Stanford Center on the Legal Profession Announces New Legal Design Lab*, STAN. L. SCH. (Feb. 2, 2016), <https://law.stanford.edu/press/stanford-center-on-the-legal-profession-announces-new-legal-design-lab/> [https://perma.cc/Q99M-QJ8B].

79. *Deborah L. Rhode*, STAN. L. SCH., <https://law.stanford.edu/directory/deborah-l-rhode/> [https://perma.cc/DDZ9-VRQE] (last visited Feb. 6, 2023).



Note that two of these awards came from the ABA, an organization that she repeatedly (and fairly) criticized.<sup>80</sup> And yet, she did the work to stay relevant at the ABA level. In a 2015 C-SPAN interview about her book *The Trouble with Lawyers*, host Brian Lamb noted Deborah's harsh treatment of the ABA in the book and then asked why, nevertheless, Deborah had been so involved with the ABA.<sup>81</sup> First, Deborah rattled off her various ABA bona fides: "I chaired their Commission on Women in the Profession. My Center on the Legal Profession just cosponsored a national summit around issues of access to justice and legal innovation. I've been chair of their Litigation Section [and the] Ethics Committee."<sup>82</sup> Then the host followed up: "Why have you spent so much time with the ABA?"<sup>83</sup> Deborah's extemporaneous quip is a classic and emblematic moment: "Why [does a bank robber] rob banks? That's where the money is. [I work with the ABA because] that's where the power to change things is."<sup>84</sup> I love this quote not only because it captures Deborah's quick and incisive wit, but also because it captures her spirit. She had limited interest in carping against the ABA from the sidelines without doing the work to change the institution. Her critiques were doubly powerful and effective because she showed up and served, and thus had legitimacy within the ABA.

She was also the president of the AALS.<sup>85</sup> She made promoting pro bono in law schools her signature issue and helped found the AALS Commission on Pro Bono and Public Service Opportunities and the AALS Section on Pro Bono & Access to Justice.<sup>86</sup> It is not an exaggeration to say that Deborah's work inspired tens of thousands of hours of pro bono work in law schools and firms all over the country, a career-defining legacy that was basically a sideline for her. This work led to her ABA award for pro bono, an award that she rightfully treasured.<sup>87</sup> Deborah was likewise "really proud of the work [she] did as chair of the Commission on Women in the Profession and the reports that [they] produced on sort of lingering discrimination, balanced work lives, sex[ual] harassment in the profession, [and] the particular problems of women of color."<sup>88</sup>

Before we leave this topic, I think it is worth noting the personal cost associated with this sort of effort on Deborah's part. Deborah was keenly

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80. See, e.g., DEBORAH L. RHODE, *IN THE INTERESTS OF JUSTICE: REFORMING THE LEGAL PROFESSION* 51–64 (2000); RHODE, *supra* note 4, at 121–29.

81. *Q&A with Deborah Rhode*, *supra* note 67, at 55:56.

82. *Id.*

83. *Id.* at 56:25.

84. *Id.* at 56:30.

85. See *Remembering Former AALS Presidents Rennard Strickland and Deborah L. Rhode*, AALS NEWS (2021), <https://www.aals.org/about/publications/newsletters/aals-news-winter-2021/remembering-former-aals-presidents-rennard-strickland-and-deborah-l-rhode/> [<https://perma.cc/95GT-9WFS>].

86. See Sande Buhai, *Tribute to Deborah Rhode*, AALS SECTION ON PRO BONO & ACCESS TO JUST. (Jan. 25, 2021), <https://www.sectiononprobono.org/index.php/2021/01/25/tribute-to-deborah-rhode/> [<https://perma.cc/6A5S-Q8YG>].

87. See *Q&A with Deborah Rhode*, *supra* note 67, at 57:07.

88. *Id.* at 56:42.

aware that “[t]ime is usually academics’ most precious commodity.”<sup>89</sup> There are, of course, academics who love and value meetings, but Deborah was not among them. In her great 2006 book on academia, Deborah starts her section on committee meetings with two great witticisms describing meetings:

Committee: A group of people who individually can do nothing but together can decide that nothing can be done.

Alternative: A group of the unfit, appointed by the unwilling, to do the unnecessary.<sup>90</sup>

Pause for a moment and reflect on all of the meetings that Deborah attended in pursuit of her goals. Consider the hours and hours she spent in the old-fashioned ground war of face-to-face meetings at the ABA, the AALS, Stanford, and elsewhere. She knew that these meetings were required to accomplish her goals, and so she made the time. But also remember that Deborah was an unusually busy and ambitious person, so she was *acutely* aware of the sacrifice. Every minute spent on these issues was a minute not spent on mentoring colleagues or students, writing another book, or preparing an exceptional class.

Deborah (of all people) was well aware of the informal “scorecard” of success for a professor at a law school like Stanford. She was a scholar without peer—the most cited author in legal ethics.<sup>91</sup> But the time she spent on these issues was harder to tally and, in some ways, her ABA work was a hobby. If she had done none of it, I sincerely doubt that her reputation and standing at Stanford would have changed that much. And yet, there she was, hustling away in the salt mines, playing a game of inches, trying as hard as she could to have a real-world impact on our profession—and, to her great credit, succeeding over and over again.

*H. Lesson #8: Be an Open-Minded, Lifelong Learner, Even When It Doesn't Come Naturally*

Deborah and I wrote several articles and book chapters together, with a special emphasis on the regulatory issues associated with the rise of new legal technologies.<sup>92</sup> It has been a theme of my work for a while now, and Deborah was an enthusiastic and generous coauthor on the subject.<sup>93</sup> On one hand, it made sense. In a lifetime of varied academic and legal pursuits, access to justice was Deborah’s first and most abiding love, and she was convinced (as

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89. DEBORAH L. RHODE, IN PURSUIT OF KNOWLEDGE: SCHOLARS, STATUS, AND ACADEMIC CULTURE 104 (2006).

90. *Id.*

91. See Leiter, *supra* note 61.

92. See generally Benjamin H. Barton & Deborah L. Rhode, *Access to Justice and Routine Legal Services: New Technologies Meet Bar Regulators*, 70 HASTINGS L.J. 955 (2019); Rhode & Barton, *supra* note 29; Benjamin H. Barton & Deborah Rhode, *The United States of America: Legal Services Regulation in the United States—a Tale of Two Models*, in INTERNATIONAL PERSPECTIVES ON THE REGULATION OF LAWYERS AND LEGAL SERVICES 27 (Andrew Boon ed., 2017).

93. For my earlier work on the topic, see BENJAMIN H. BARTON & STEPHANOS BIBAS, REBOOTING JUSTICE (2017).

am I) that emerging technologies could make a huge difference in this area, especially if bar regulators were to allow it. Deborah was also rightfully concerned, based on a lifetime of study and bitter experience, that bar regulators and lawyers might get in the way, again more for selfish purposes than for consumer protection. I missed Deborah particularly this fall when California stifled efforts at creating a legal regulatory sandbox in that state.<sup>94</sup> She would have been “appalled” once again.

If you knew Deborah, you would have understood if she had decided that technology was not part of the solution to the access-to-justice crisis. After all, she was among the least technologically capable people I have ever known (and I am not speaking out of school; she would have agreed). Deborah was one of those people that was like a Bermuda Triangle for technology: things just broke or acted up near her, often unaccountably. She had a hard time working her TV remote. She made the Stanford Law computer tech people come to her home office repeatedly during the COVID-19 lockdown (masked, distanced, and safely, of course) because she couldn't access her email or files kept crashing. In coauthoring with her, I was always gobsmacked by the state of our formatting when I would get a draft back. In one of our pieces, the default language for part II of the article had been changed to Portuguese for reasons Deborah could not explain. She did not speak Portuguese and obviously did not mean to make the change, and yet, somehow, she did! It got to where I would set aside extra time to try to fix the formatting after every new series of Deborah's edits.

She had a good sense of humor about it, but she also had a deep, earned, and abiding mistrust of technology. That was part of why I was so amazed by her support for new legal technologies. It would have been easy (and maybe more natural) for her to be distrustful: How will they keep the data secure? How will they make it accessible and clear to those who need it? Can't we have a more “human” response to the access-to-justice crisis? These are all complaints or critiques I have heard from well-meaning lawyers and law professors, but not Deborah. She was a lifelong learner, and she kept an open mind to anything that could help, even if she would have struggled to operate it personally.

*I. Lesson #9: Be Critical, but “Be Not Too Hard, for Life Is Short”*

The penultimate lesson I learned from Deborah is to “be not too hard, for life is short.”<sup>95</sup> At Deborah's memorial service, we heard a short, lovely excerpt from Deborah's 2006 book *In Pursuit of Knowledge* about finding meaning in an academic life. I've read maybe a dozen of Deborah's books, but I had missed this one, so I immediately ordered it and read it, crying on and off as I recognized my friend's voice and passion. But I also cried

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94. See Stephanie Francis Ward, *California Bill Signed into Law Restricts State Bar Sandbox Proposals*, ABA J. (Sept. 21, 2022, 1:42 PM), <https://www.abajournal.com/news/article/california-bill-signed-into-law-restricts-state-bar-sandbox-proposals> [<https://perma.cc/WN3N-7LDL>].

95. JOAN BAEZ, *Be Not Too Hard*, on JOAN (Vanguard Records 1967).

because I thought the book was brutally critical of American academia and, by implication, kind of tough on Deborah herself.

Deborah could be a lacerating critic. She was invariably fair and supported by overwhelming data. But still, sometimes a fair and thorough critic is especially brutal. For example, she held the legal profession to its loftiest ideals and repeatedly demonstrated its hypocrisy and shortcomings. In some ways, this was an act of love and respect. She believed the profession could do better, and she believed that demonstrating its failings could help. This is an oddly life-affirming way to bring criticism. As her friend and peer Kathleen M. Sullivan put it: “Deborah has a wonderful and rare scholarly optimism—a belief that careful study and fair analysis can produce better outcomes for our profession and our society. She models all that is best about our profession.”<sup>96</sup>

And Deborah did not spare herself from her own discerning and critical eye. *In Pursuit of Knowledge* presents a scalding critique of American academic culture. Here’s how she starts the book:

“The examined life was easily overrated.” That was the judgment of the dissolute English professor in John Gardner’s *Mickelson’s Ghosts*. And despite our aspirations to the contrary, most academics appear to operate on that assumption. Although we live the “life of the mind,” we generally lack opportunities to think systematically and self-critically about what that means on a daily basis, and about the gap between our principles and practices.<sup>97</sup>

Longtime readers of Deborah’s will smile at “the gap between our principles and practices,” as that was the organizing principle of all of her best work. Others will recognize that Deborah, unlike most of us, did not skip many “opportunities to think systematically and self-critically” about her life. Here are some more quotes from her self-examination of academia:

For faculty, the scramble for status can be even more corrosive.<sup>98</sup>

The Pursuit of Meaning: A final challenge for the academic profession lies in reconciling the pressures of money and status with deeper needs for meaning and community.<sup>99</sup>

[H]istory does not record a case of any public intellectual “who has actually become more charming as he became more successful.”<sup>100</sup>

While the pursuit of status can be a constructive spur to excellence, it also can become an end in itself and subvert other more crucial values.<sup>101</sup>

Each of these statements is very, very true. They also apply to Deborah’s life in ways that made me uncomfortable reading through them. What did it

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96. Roemer, *supra* note 17.

97. RHODE, *supra* note 89, at 1 (footnote omitted).

98. *Id.* at 11.

99. *Id.* at 26.

100. *Id.* at 143 (quoting DAVID BROOKS, *BOBOS IN PARADISE: THE NEW UPPER CLASS AND HOW THEY GOT THERE* 175 (2000)).

101. *Id.* at 169.

mean that the most successful academic I knew was so critical about the enterprise itself? And by “successful,” I hardly mean “most cited.” I mean she was the person who most embodied the best of academia and the legal profession, and who walked the walk most briskly after talking the talk.

I was then reminded of her last published book *Ambition*, which is likewise quite self-critical. Deborah describes her experience of writing the book: “[W]orking on this book offered me a sobering personal reminder of the costs of misplaced ambitions. Those misdirected priorities are responsible for what I most wish I had done differently in my own life.”<sup>102</sup> And that’s in the last paragraph of the book!

The book itself is largely negative about ambition, listing and dismissing the desire for recognition from others, money, power, and sex as empty and shameful reasons for why one might be ambitious. I had the good fortune to read a draft of the book and noted to Deborah that I thought she had been too hard on ambition in spots. “After all,” I said, “it worked out pretty well for you!” And I meant that sincerely and honestly. Deborah lived a model life as a scholar, teacher, mentor, and activist, and much of it was the result of her ambition. But I’m not sure she saw it that way. Now that she’s gone, I can see how hard it must have been to try to live up to her own lofty ideals. It pains me to think that she was so hard on herself over “misdirected priorities” and other perceived failings in her life. If Deborah Rhode looked back at her life as an academic with regret, what hope is there for the rest of us?

*J. Lesson #10: Don’t Dwell on Legacy*

This leads me to my last lesson, which sadly, is not one that Deborah personally followed. As noted above, *Ambition* begins with Deborah sharing her love for the Tolstoy novella *The Death of Ivan Ilyich*.<sup>103</sup> She discusses rereading the novella after a possible cancer diagnosis and thinking that “the looming possibility of mortality has often encouraged [her] to revisit priorities and to think about what [she] would like said at [her] memorial service while there is still time to make some changes.”<sup>104</sup> She also wondered: “[If I] die[d] of cancer tomorrow[,] . . . what would I have accomplished? Even the most influential legal scholarship generally has only a fleeting shelf life . . . . ‘I am not writing for the ages here . . . .’ ‘I am not Hegel.’”<sup>105</sup>

I pushed back with Deborah after reading the book, and on this point especially. Who compares themselves to Hegel? How is that the right measuring stick? The older I get, the more assiduously I avoid thinking about issues of legacy. It is hard enough to try to live up to one’s principles (just ask Deborah), but to do so with the added burden of trying to create a legacy is too much to bear.

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102. RHODE, *supra* note 8, at 197.

103. See RHODE, *supra* note 8, at 1–3.

104. *Id.* at 2.

105. *Id.*

## CONCLUSION: MAY HER MEMORY BE A BLESSING

But let's not end on a critique. I love and emulate Deborah. So here, I ask us to remember her as a model of an academic life well lived. She pursued her interests and passions wherever they led. She wrote not only with depth and expertise, but also with clarity and humor. Most importantly, she put her money where her mouth was by mentoring innumerable students and colleagues, changing the study of the practice of law for the better, and transforming the practice itself. She was an inspirational colleague, a devoted mentor to many, and an especially dear and treasured friend. I miss her daily.