Louis D. Brandeis and the Formation of a Positive Professional Identity

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I. INTRODUCTION

We are fortunate to live in a country where political liberty and economic opportunity are both possible, though many injustices remain. But we sometimes forget that it is the rule of law that provides the essential foundation for a free society. Our laws, however, are not self-executing. Without lawyers, the courts and the administrative agencies before they practice, contracts would not be binding, harms could be inflicted without remedy, and officials who would abuse their power would be unchecked. But we need more than competent representation from our attorneys—we need them to have a positive professional identity that enables them to serve both their clients and the public interest with distinction.

Our communities are fraying. Those binding institutions on which we used to rely to knit our communities together, such as local media, nonprofit organizations, and religious congregations, are shrinking or even disappearing.⁴ To respond, we need to find ways to build new frameworks and ways to help us preserve and protect the public health and welfare. Like the piers and girders in

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1. Copyright 2023 by R. Lisle Baker and Peter Scott Campbell. The authors wish to acknowledge the research assistance of Jessica Vandervort, Suffolk U. Law School ’24, as well as the helpful comments of reviewers Professor Laura Rothstein and Visiting Professor Marcia Ziegler of the Brandeis School of Law, University of Louisville, Louisville, KY; Louisville attorney, David Brandeis Tachau; former partners in the Boston law firm of Nutter, McElhenney & Fish, which grew out of Brandeis & Warren, attorneys Robert Fishman, and Michael Bohnen, the latter of who graciously shared his own collection of Brandeis-related writings; Brandeis biographer, Melvin Urofsky; and Christina Lee Brown, whose interest in the Brandeis legacy helped spark the idea for this article. Any errors, however, are the authors’ responsibility.


the bridges make safe travel possible, new or revitalized public or nonprofit institutions require a strong legal structure to work.

For good policy to become good practice, we need good lawyers in both senses of the word—not only professionally skilled, but also people of principle as committed to their community as they are to their clients. In short, we want our lawyers not only to know the law but also to shape it for the better, and to be at their best when we need their help. That means we all have a stake in how lawyers are educated, as law school is the place where our lawyers form their professional identities.5

The American Bar Association (ABA), which accredits American law schools, has recently adopted a new requirement that American law schools include “substantial opportunities for the development of a professional identity.”6 In the Interpretation, adopted at the same time, the ABA elaborated on the requirement:

Professional identity focuses on what it means to be a lawyer and the special obligations lawyers have to their clients and society. The development of professional identity should involve an intentional exploration of the values, guiding principles, and well-being practices considered foundational to successful legal practice. Because developing a professional identity requires reflection and growth over time, students should have frequent opportunities for such development during each year of law school and in a variety of courses and co-curricular and professional development activities.7

One way to undertake such an “intentional exploration” is to look at lawyers whose life and work can offer law students law positive “values, guiding principles, and well-being practices” which they might emulate.8 This article is intended to offer students one such lawyer, Louis D. Brandeis.

For those who do not know him, Louis D. Brandeis was both an eminent Boston lawyer and Supreme Court Justice. But he was born and grew up in Louisville, Kentucky.9 The Brandeis School of Law at the University of Louisville

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7. Id. at Interpretation 303-5.
8. Id.; see also Neil W. Hamilton and Louis D. Bilionis, Revised Standards 303(b) and (c) and the Formation of a Lawyer’s Professional Identity, Part 1: Understanding the New Requirements, NALP Bulletin (May 2022), https://www.nalp.org/revised-abas-standards-part-1 [https://perma.cc/H6X8-886D].
recently celebrated its twenty-fifth anniversary of renaming itself after him. In light of that anniversary, it may be valuable to review what his legacy might mean for today’s law students in light of this new ABA standard. Indeed, the standard implies that to develop a professional identity, it is important to understand what it means to be part of a profession rather than just an occupation. Here is what Brandeis had to say in that regard:

The peculiar characteristics of a profession as distinguished from other occupations, I take to be these: First. A profession is an occupation for which the necessary preliminary training is intellectual in character, involving knowledge and to some extent learning, as distinguished from mere skill. Second. It is an occupation which is pursued largely for others and not merely for one’s self. Third. It is an occupation in which the amount of financial return is not the accepted measure of success. Is not each of these characteristics found today in business worthy pursued?\textsuperscript{11}

Louis D. Brandeis was a lawyer who exemplified his own definition. After his early education and youth in Louisville, and studying abroad, he came to law school in Massachusetts and ultimately settled in Boston.\textsuperscript{12} He became known as “the people’s lawyer” for his unpaid advocacy for those in need.\textsuperscript{13} He also pioneered the use of social science research to influence courts toward a more just decision, ultimately serving on the U.S. Supreme Court.\textsuperscript{14} His legal scholarship effectively created the right to privacy.\textsuperscript{15}

As a lawyer, Louis Brandeis is considered to have been one of the most successful attorneys of his time.\textsuperscript{16} His mastery of corporate law led him to become

\textsuperscript{11} LOUIS D. BRANDEIS, BUSINESS – A PROFESSION 2 (1933 ed.).
\textsuperscript{12} See UROFSKY, supra note 9, at 22-45.
\textsuperscript{14} See id. at 27 (noting Brandeis’s use of sociological data in briefs and his Supreme Court appointment in 1916).
\textsuperscript{16} See UROFSKY, supra note 9, at 73 (highlighting Brandeis’s financial success).

Louis personally prospered and must be counted among the top-paid lawyers in the country . . . . In 1890, at the age of thirty-four, he earned more than $50,000 a year (well over $1 million in current value, and with no income tax) while 75 percent of the attorneys in the United States made less than $5,000.

Id.
one of the most sought-after business lawyers in Boston and the firm he co-founded, Brandeis and Warren, later Nutter, McClennen & Fish, maintains a thriving practice to this day.\textsuperscript{17} During this time, he also devoted much of his energy to performing public service, such as fighting transportation monopolies, creating savings bank life insurance for working families, and arbitrating strikes in the garment industry.\textsuperscript{18} In 1916, he was appointed to the U.S. Supreme Court, where he spent the next twenty-three years writing some of the most influential opinions in American legal history.\textsuperscript{19} He was unusual in having achieved eminence in two legal roles: practicing attorney and judge.

[I]f justices were to be ranked, three names would appear on the top of most lists: Chief Justice John Marshall, Justice Oliver Wendell Holmes and Justice Louis D. Brandeis. Similarly, if practicing lawyers were to be ranked, nearly every list would include John Adams, Daniel Webster, Abraham Lincoln, Clarence Darrow and Brandeis. Notably, the only person on both lists is Brandeis.\textsuperscript{20}

And Brandeis did all this while maintaining a healthy work and home life balance. While he lived most of his life in Boston and Washington D.C., he never forgot his Kentucky roots. He and his wife, Alice Goldmark, are buried under the University of Louisville Brandeis School of Law portico.\textsuperscript{21} While on the Court, he was instrumental in aiding the construction of the Brandeis School of Law building.\textsuperscript{22} He gave his papers to the School of Law, which contains an extensive collection of writings by and about him.\textsuperscript{23}

The legal profession today is much different than it was when Brandeis practiced law in Boston. There are, however, themes that emerge from Brandeis’s

\textsuperscript{17} See Justice Brandeis’ Legacy at Nutter, NUTTER, https://www.nutter.com/values-legacy [https://perma.cc/5RJO-ND5A] (summarizing Brandeis’s success and impact on firm).


\textsuperscript{19} See Fowler, supra note 13, at 27 (discussing Brandeis’s groundbreaking work while serving in Supreme Court).


\textsuperscript{22} See id. (highlighting Brandeis’s financial contributions to Brandeis School of Law).

\textsuperscript{23} See id. (recognizing Brandeis’s donations to Brandeis School of Law). In recognition of his contribution and his example, the University of Louisville School of Law was renamed in his honor in 1997. Id. The school has a Brandeis Human Rights Advocacy program where fellows are selected to work in that domain, much of it involving the immigrant community. See Brandeis Human Rights Advocacy Program, UNIV. OF LOUISVILLE BRANDEIS SCH. OF L., https://louisville.edu/law/bhap [https://perma.cc/P5JX-NKAR] (outlining program’s mission). Also, in addition to some live client contact, each student is expected to spend thirty hours in uncompensated pro bono work to graduate, echoing Brandeis’s practice of working without fee for the public good. See Pro Bono Graduation Requirement, UNIV. OF LOUISVILLE BRANDEIS SCH. OF L., https://louisville.edu/law/careers/public-service/pro-bono-graduation-requirement [https://perma.cc/3V6C-69GZ] (outlining pro bono graduation requirement at Brandeis School of Law).
life that may be useful for both law students and lawyers seeking a role model to emulate.

But before we proceed further, we need to acknowledge that while, as explained below, Louis Brandeis was a powerful advocate for those working people who often had no champion, he was not as forceful, either as lawyer or as a Justice, in advocating specifically for equal justice for Black Americans.24 He suffers by comparison with his fellow native Kentuckian, Justice John Marshall Harlan, who authored the celebrated dissent from the separate but equal doctrine upheld in Plessy v. Ferguson.25 Brandeis did, however, speak in favor of equal opportunity.26 Before being appointed to the Court, Brandeis worked on a case to challenge racially separate passenger rail cars at the Interstate Commerce Commission.27 But his actions like these are not at the same scale or vigor as his other work for which he became highly regarded. At the same time, even his critics in this regard point out that his pathfinding briefs using social science research to help make his case enabled others to follow his lead, with the most important example being Brown v. Board of Education,28 where a unanimous Court reversed Plessy to hold that separate but equal public education was inherently unequal.29 As one of the commentators said:

[W]e ought to be clear on exactly who and what we purport to celebrate. One can begin to accomplish this by focusing less on contrived images of heroism, and more on heroic virtues. There is tremendous value in idealizing certain heroic attributes — intelligence courage, compassion, integrity, steadfastness— many of which Brandeis undoubtedly possessed. But to do so, we must first acknowledge and adhere to what we already know to be true—that real heroes are rarely heroic all the time. Only then can we freely admire persons such as Louis Brandeis, who exude heroic attributes, without compromising either the dignity of our subject or the legacy of our past.30

We suggest that, in accordance with this recommendation, it may be helpful for law students to revisit Brandeis as a positive exemplar through a lens that

26. See Louis D. Brandeis, Twin Evils of the Literacy Test, LAFOLLETTE’S MAG., April 1915, at 8 (arguing for racial equality and against literacy tests for immigrants). In a banquet speech in 1915, Brandeis said that “[d]emocracy rests upon two pillars: One, the principle that all men are equally entitled to life, liberty, development, and the pursuit of happiness; and the other, the conviction that such equal opportunity will most advance civilization.” Id.
29. See Bracey, supra note 24, at 901, 910 (criticizing Brandeis’s general failure to act on behalf of African Americans, but noting certain efforts); Brown, 347 U.S. at 494-95 (overturning Plessy).
30. Bracey, supra note 24, at 910 (emphasis added).
focuses less on his accomplishments and more on the positive attributes of how he lived his life as a lawyer. Even if we might not celebrate all of who he was and what he did, we can still learn useful lessons from his example. Specifically, to return to the new ABA Standard, what was Brandeis’s own professional identity, and what did being a lawyer mean to him and his sense of the special obligation lawyers have to their clients and society? How can exploring the values, guiding principles, and well-being practices of his life as a lawyer help guide aspiring lawyers in shaping their own professional identities in a positive way?

Here it may be helpful to look at these aspects of his life through two lenses which young law students will themselves be evaluated to become members of the Bar. In addition to passing an examination about their legal knowledge and skills, to become a member of the Bar in Massachusetts and most other jurisdictions—including Kentucky where Brandeis was born—applicants must also demonstrate the requisite “character and fitness” to practice law.

While character and fitness are framed as minimum requirements, they can also be viewed as an aspiration—what can we hope for from graduates, not just what we will accept. What might that involve if we look to Brandeis as an exemplar? His skills as a lawyer and as a Supreme Court Justice are still well recognized today. But what also sets him apart were qualities of character, such as compassion and courage.

As for fitness, he exemplified six positive aspects of a flourishing life: Relationships, Engagement, Vitality, Achievement, Meaning, and Positive emotions. These six elements—summarized by using their first letters to make the acronym REVAMP—derive from work in the relatively new field of positive psychology, which is the evidence-based study of how people can thrive.

31. See Standards and Rules of Procedure for Approval of Law Schools, supra note 6, at Interpretation 303-5 (outlining new ABA standard).
32. See id. (exploring definition of professional identity).

All applicants for admission to the bar of this state must be of good moral character and general fitness requisite for an attorney. (1) Every applicant shall be of good moral character. The applicant shall have the burden of proving that he or she is possessed of good moral character. The term “good moral character” includes qualities of honesty, fairness, responsibility, knowledge of the laws of the state and the nation and respect for the rights of others and for the judicial process.

Id. The rule goes on to explain: “Fitness is the assessment of mental and emotional health as it affects the competence of a prospective lawyer. . . . A person may be of good moral character, but may be incapacitated from proper discharge of his duties as a lawyer by . . . illness or condition.” Id.
34. See Christopher Peterson, A Primer in Positive Psychology 4 (2006) (stating “[P]ositive psychology is the study of what goes right in life[,]”). While others were involved in specific aspects of positive psychology long before, the emergence of positive psychology as a field of study itself is widely credited to Dr. Martin E. P. Seligman, who used the occasion of his election to the presidency of the American Psychological
This Article therefore suggests that in addition to viewing aspects of his character, it is also helpful to examine the fitness of Brandeis’s life through these six REVAMP aspects. The hope is that the examination can provide law students with a positive professional identity framework for both assessing themselves and their situation and for responding to strengthen the aspects of themselves and their situation which are positive and remedying those which are not. With that dual character and fitness framework in mind, what can we learn from his example?

A. Character

As noted above, besides his formidable intellect, Brandeis had two attributes, among others, worth singling out because of their importance for lawyers: compassion and courage.  

Association in 1996 to recommend that in addition to responding to misery and suffering, the scientific method could also be applied to what makes life worth living. See Martin E.P. Seligman, Positive Psych. Ctr., https://ppc.sas.upenn.edu/people/martin-ep-seligman (https://perma.cc/27FH-TLQ7) (highlighting goals of American Psychological Association presidency). Over the next years, he and others examined the issues surrounding positive psychology, and one of the frameworks he later suggested for a flourishing life was what he called “PERMA,” short for Positive Emotions, Engagement, Relationships, Meaning, and Achievement, which he wrote about in detail in his book, Flourish. See generally Martin Seligman, Flourish: A Visionary New Understanding of Happiness and Well-being (2011). To these five aspects, others, such as Emiliya Zhivotovskaya, suggested adding Vitality, to become PERMA-V. See Elaine O’Brien, PERMA-V: Training with Rigor & Vigor, Positive Psych. News (Nov. 19, 2014), https://positivepsychologynews.com/news/elaine-obrien/2014111930383 (https://perma.cc/B795-KCBU) (noting Zhivotovskaya’s addition to PERMA model). Dr. Jordyn Feingold, a classmate of co-author Baker in the Master of Applied Positive Psychology program at the University of Pennsylvania in 2015-16, first conceived of reworking this PERMA-V framework into an order that was easier to recall: REVAMP. This Article builds on the foundation they all laid down. See generally R. Lisle Baker, Designing a Positive Psychology Course for Lawyers, 51 Suffolk U. L. Rev. 207 (2018) (outlining pedagogical choices involved in grounding students in positive psychology insights). Such insights can help students take advantage of opportunities for more meaningful and ethical service, improved performance and well-being, and greater resilience in the face of challenges of the profession. See id. at 219 (outlining goals of proposed positive psychology course). See generally R. Lisle Baker, Integrating Positive Psychology into Legal Education, 48 Sw. L. Rev. 295 (2019). This Article summarizes national positive psychology conferences organizing participant presentations thematically around important features of legal education—critical thinking, competition, independence, diligence, and professional values—and how those features can be complemented in ways to enhance the well-being and success of students, as well as the legal educators who teach them. See Baker, Integrating Positive Psychology into Legal Education, supra (emphasizing ability of positive psychology to assist in student well-being and success).

1. Compassion

Compassion is feeling for someone, as opposed to feeling with someone, which is empathy.36 What about Brandeis? As Michael Mooney said, two things that encompassed the Brandeis technique are “brilliance and tremendous compassion.”37

He was outraged when plant owners used armed guards against workers in the Homestead Steel Strike in Pennsylvania. From then on, he worked to improve the ethics of the business world with better legislation, as well as to protect the workers. He fought against lobby groups that tried to bribe legislators; he became involved in a movement to humanize institutions for the poor, and he fought against a powerful company that tried to control Boston’s transportation system. Additionally, he took on public interest cases for free for groups such as the Public Franchise League and the New England Policy Holders’ Protective League.38

Brandeis went so far as to give his own funds to a law partner, even though the firm had suffered a tough quarter and had a temporary setback, in recognition of good performance and hard work overall.39

The fight for Savings Bank Life Insurance was another example of his compassion at work. Brandeis was outraged that working people were paying far too much for life insurance that their heirs might never collect.40 This outrage led to his realization that perhaps these burdens could be mitigated by having low-cost life insurance made available through savings banks which could offer insurance at far lower costs to the consumers.41 Brandeis maintained that Massachusetts savings banks could sell life insurance at reduced rates by fixing the terms, examining the insured, and verifying the proof of death.42

36. See Tania Singer & Olga M. Klimecki, Empathy and Compassion, 24 CURRENT BIOLOGY 875, 875 (2014) (describing empathy to feel with someone and compassion to feel for someone).
38. Id.
39. Id.
40. Id.
41. See ALPHIEUS THOMAS MASON, BRANDES: A FREE MAN’S LIFE 153 (1946) (showing Brandeis’s dedication and compassion towards providing attainable life insurance); see also SBLI, Founder of SBLI: Louis D. Brandeis—“The People’s Attorney”, YOUTUBE (Aug. 28, 2012), https://www.youtube.com/watch?v=XjT53p-bkITk (commending Brandeis’s standing against insurance companies, despite unpopularity).
42. See id.
After World War I began and Brandeis heard about the suffering of the Jews in Europe, he took over and completely restructured the American Zionist movement to raise and to more efficiently spend funds for their relief.\textsuperscript{43} Law students desiring to emulate Brandeis should recognize that, in a way, seeing a wrong and trying to right it is a form of compassion. While empathy for people in need is an important first step, caring for them in response is the next.\textsuperscript{44}

2. \textit{Courage}

When Brandeis ran into opposition to his plan for life insurance, he began the “Massachusetts Savings-Bank Insurance League” which at some point had seventy thousand members, and ultimately drafted the needed enabling legislation enacted and put into practice.\textsuperscript{45} Brandeis once wrote:

Those who won our independence believed that the final end of the state was to make men free to develop their faculties; and that in its government the deliberative forces should prevail over the arbitrary. They valued liberty both as an end and as a means. They believed liberty to be the secret of happiness and courage to be the secret of liberty. They believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that without free speech and assembly discussion would be futile; that with them, discussion affords ordinarily adequate protection against the dissemination of noxious doctrine; that the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of the American government.\textsuperscript{46}

Brandeis’s public service campaigns came at a personal cost.\textsuperscript{47} At one point an intimate of many of Boston’s social elite, his fights against railroad monopolies and the abuses of the life insurance companies were seen by his friends as attacks against their way of life, and he was ostracized by many of them.\textsuperscript{48} One prominent example was Henry Lee Higginson. Higginson was an investment banker and one of Boston’s most prominent philanthropists.\textsuperscript{49} Higginson entertained Brandeis at his house a number of times, and his wife was one of the first

\textsuperscript{43} See Urofsky, \textit{supra} note 9, at 405 (emphasizing Brandeis’s incredible efforts in providing World Zionist Organization leadership during World War I).

\textsuperscript{44} See Baker, \textit{supra} note 35, at 300-01 (explaining caring compassion needed to remedy suffering of others in need).

\textsuperscript{45} See Urofsky, \textit{supra} note 9, at 172 (noting creation and operation of Massachusetts Savings-Bank Insurance League); \textit{id.} at 176 (noting Brandeis’s drafting of legislation).

\textsuperscript{46} Whitney v. California, 274 U.S. 357, 375 (1927) (Brandeis, J., concurring).

\textsuperscript{47} See SBLL, \textit{supra} note 40, at 34-05 (discussing relationships Brandeis lost due to his pro bono work).

\textsuperscript{48} See \textit{id.} (noting how former friends deemed Brandeis socialist and ostracized him).

\textsuperscript{49} See Urofsky, \textit{supra} note 9, at 193-94 (highlighting Higginson’s line of work and success therein).
people in Boston to visit the Brandeises after their marriage. But Brandeis’s public service activities so angered Higginson that not only did he drop him, but he also helped lead the fight against Brandeis’s nomination to the Supreme Court. The loss of friends must have hurt Brandeis and his wife on some level, but there is no record of them ever complaining about it. They simply surrounded themselves with like-minded friends and carried on as before.

For law students seeking to strengthen their own courage, among other things, it is often helpful to remember that in their role as lawyers, they are expected to take on difficult challenges in the interest of justice.

B. Fitness

As indicated above, we believe it is useful to view fitness in six aspects of well-being, Relationships, Engagement, Vitality, Achievement, Meaning, and Positive emotions (REVAMP). These are not the only indices of well-being, as other aspects can be usefully explored, such as autonomy, competence, and relatedness. But, as a way to help law students learn and adopt well-being practices, the REVAMP framework offers a way of helping them be aware of these aspects of their well-being and consider ways to enhance them if possible.

1. Relationships

A famous multi-decade study indicated that the most important index of a life well-lived is the quality of our relationships. Nevertheless, the study and practice of law often involves more solitary activity than some other professions where teamwork is more common. Having other people as friends and valued colleagues can help provide an important buffer to the challenges that arise.

50. See id. at 193-94 (noting close personal relationship between Higginson and Brandeises).
51. Id. (emphasizing Higginson’s “vitriolic attacks” against Brandeis’s nomination to Supreme Court).
52. Id. at 367 (explaining reactions of Louis Brandeis and Alice Goldmark Brandeis to loss of friendships).
54. See, e.g., Lawrence S. Krieger & Kennon M. Sheldon, What Makes Lawyers Happy?: A Data-Driven Prescription to Redefine Professional Success, 83 GEO. WASH. L. REV. 554, 564-65 (2015) (discussing self-determination theory). While there is some overlap with the REVAMP framework, some elements of Self-Determination theory, like autonomy, are often beyond individual control but a function of the situation, worth attending to as well. See Baker, Integrating Positive Psychology into Legal Education, supra note 34, at 308-09 (discussing importance of situation). The REVAMP framework, however, includes other elements, and its six elements are generally available to law students and lawyers to evaluate and respond to their individual circumstances, beyond illuminating other exemplary aspects of the life of Louis Brandeis.
Brandeis knew the importance of relationships, beginning with those at home. He maintained a regular correspondence with his brother, Alfred, who lived in Louisville. They apparently wrote each other nearly every day, and Alfred would often give his reactions to Brandeis’s crusades and fights. Unfortunately, we do not know much of what they talked about because most of their letters were destroyed after Brandeis’s death, but we do know that on occasion the brothers would recall to each other the family trips they went on together as children, for one such letter from Brandeis to Alfred recalled, “we arrived in Trieste 33 years ago, today.”

To translate Brandeis into current law student life, having supportive friends matters. While those you study or work with can be good personal friends, in addition, it can be an advantage to have someone who cares about you and your welfare. In the military, soldiers are encouraged to pair up with a “battle buddy,” someone who they can turn to and be turned to in return. Having a law school “buddy” you can confide in from time to time can be an asset. This person need not be a trained counselor, any more than a swim lesson buddy needs to be a lifeguard. But this person can be more than an acquaintance and maybe even become a friend.

Brandeis’s “law school buddy” was Samuel Warren. Warren’s GPA at Harvard was supposedly right behind Brandeis’s, but there was never any rivalry between them, and they remained close friends until Warren’s death. After graduation from law school, they founded a firm together (which later became Nutter, McClennen & Fish). They were eager to start a firm which combined “social needs with practical business-based principles.” Warren also co-authored with Brandeis “The Right to Privacy,” the article that first articulated the

56. See Urofsky, supra note 9, at 357 (noting frequent correspondence and visits between Louis and Alfred).
57. Id.
59. As one student explained to co-author Baker: “Last year, during a tumultuous 1L experience, I became friends with my now law-school ‘buddy.’ We are accountability partners, walking buddies, and dear friends. She is not only a friend in law school, but out of it, and is often one of the first people I go to when I have had a stressful day, or need advice.” Email from Jessica Vandervort, Juris Dr. Candidate, Suffolk Univ. L. Sch., to co-author R. Lisle Baker, Professor of L., Suffolk Univ. L. Sch. (Nov. 8, 2022) (on file with authors).
60. See Korobelnik, supra note 37, at 6 (noting how Brandeis and Warren finished at first and second in law school class, respectively).
61. See id. (explaining start of “Warren & Brandeis,” and how firm is now named “Nutter, McClennen, & Fish”).
62. Id.
constitutional right “to be let alone.”\(^{63}\) It is one of the most impactful law review articles ever published.\(^{64}\)

Brandeis also had a close relationship with Felix Frankfurter, whom he once described as “half brother, half son.”\(^{65}\) Brandeis mentored Frankfurter and helped him get his position at Harvard, while Frankfurter worked with Brandeis on Zionist activities and acted for Brandeis in various chores Brandeis needed done.\(^{66}\)

His concern for maintaining relationships extended to his clients. He once said that “I would rather have clients, than to be somebody’s lawyer.”\(^{67}\) By that he meant that he wanted clients who would let him be involved enough with them to learn their situation, business or otherwise, so he could help fashion the most creative solution to a problem.\(^{68}\) At the same time, he managed his client relations carefully, as time was important. Brandeis’s relations with his clients were warm but brisk and efficient. He set up a rigid schedule and expected his clients, and all other visitors, to adhere to it. To discourage people from lingering in his office, he kept it as uncomfortable as possible. It was sparsely furnished, and he deliberately kept the temperature low.\(^{69}\)

2. Engagement

Over 90 percent of lawyers surveyed chose the ability to “listen respectfully and attentively” as one of the top ten things that young lawyers needed as an important foundation for the practice of law.\(^{70}\) Brandeis was engaged with his work. He kept a journal during law school too, although unfortunately he did not keep up that practice after he graduated. In his journal he wrote:

> Even if you are able to read a good book and understand it, even this is not all; you must think of it after you have ceased reading, and not allow your mind to be immediately taken up by your own little petty affairs the moment you set the book aside. To profit by what you read not only concentration of mind is necessary whilst reading but after thought.\(^{71}\)

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66. See Urofsky, *supra* note 9, at 337, 502-05.


69. See Strum, *supra* note 18, at 38.


For law students wishing to follow Brandeis’s example, two practices can be helpful. In his confirmation hearing before being appointed to the U.S. Supreme Court, his role in helping resolve complex matters was described as being “counselor for the situation.”72 The ethical challenges and responses about such a role have been explored elsewhere.73 However, students looking to engage with their material can improve their situation by removing things that might compete for their attention with their studies. This process can be as simple as clearing the visual field in the reading or writing space of books or papers, as well as turning off cell phones and putting them out of sight, as the modern fear of missing out can be a distraction.74

The other part of managing the situation involves minimizing internal distractions. Research indicates that almost half the time our minds are somewhere other than the present task.75 For a time, this situation seemed to be beyond repair.76 But research on training attention indicates that we can learn to notice our wandering minds and bring them back to what we want to attend to.77 Like building strength by lifting weights, it takes time and practice, but it can pay dividends in enhanced engagement.78

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72. See generally Geoffrey C. Hazard, Jr., Lawyer for the Situation, 39 Val. U.L. Rev. 377 (2004) (exploring Brandeis’s role better explained as joint representation with parties’ consent). See John S. Dzienkowsk, Louis D. Brandeis: The Contributions of Louis Brandeis to the Law of Lawyer, 33 Touro L. Rev. 177, 179-80 (2017) (explaining criticisms of Brandeis from a litigation, rather than a business counsel, perspective). The ethical implications of joint representation are, however, beyond the scope of this article but worth understanding as peacemaking is an important role that lawyers can play.

73. See generally id. (explaining ethical issues surrounding scope of lawyers’ duties).


76. Indeed, the celebrated founder of American Psychology, William James, once wrote that:

[T]he faculty of voluntarily bringing back a wandering attention, over and over again, is the very root of judgment, character, and will . . . . An education which should improve this faculty would be the education par excellence . . . . But it is easier to define this ideal than to give practical directions for bringing it about.

WILLIAM JAMES, PSYCHOLOGY: THE BRIEFER COURSE 228 (1892).


78. As one of co-author Baker’s students pointed out:

Making time for concentration practice . . . has been a great way to gain focus prior to starting work/reading/studying or regain focus after our attention has been diverted from . . . work. I initially only used it for schoolwork, but began to use it prior to starting work at the firm, when no one was in the office yet.

Email from Caroline McCarty, Juris Dr. Candidate, Suffolk Univ. L. Sch., to co-author R. Lisle Baker, Professor of L., Suffolk Univ. L. Sch. (on file with authors).
Part of what made Brandeis such a successful lawyer was that he genuinely loved the law. While he was in law school he wrote to his sister: “Law seems so interesting in all its aspects—it is difficult for me to understand that any of the initiated should not burn with enthusiasm.”

In a letter to his daughter, he wrote, “I always found so much of romance and of adventure in securing a new client and in their confidences that the ordinary essays of the imagination presented by all but the best novels or stories seemed pretty poor by comparison.” Brandeis’s practice was extensive, and his “technique” involved not only thorough knowledge of the law, but complete mastery of the facts involved in each case. In a notebook, Brandeis wrote:

Know thoroughly each fact. Don’t believe client witnesses. Examine documents. Reason; use imagination . . . . Far more likely to impress clients by knowledge of the law. Know not only specific cases, but the whole subject . . . . Know not only the facts which bear on direct controversy, but know all the facts and laws that surround.

When Brandeis’s firm was starting up, one of its first clients was Warren’s father’s paper mill. Brandeis familiarized himself with the business by interviewing the plant’s staff and workers.

He once said,

[T]hinking is not a heaven-born thing, that intelligence is not a gift that merely comes. It is a gift men make and women make for themselves. It is earned, and it is earned by effort. There is no effort, to my mind, that is comparable in its qualities, that is so taxing to the individual, as to think, to analyze fundamentally. The brain is like the hand. It grows with using.

It was important to him that his reading served a positive purpose. “Giving has always seemed better to me than receiving—[w]hy always absorb—why be forever reading, reading, reading—[and] never produce, never give anything in return?” Also, Brandeis was not only engaged in the law. Brandeis was a lover

81. MASON, supra note 40, at 69.
82. UROFSKY, supra note 8, at 50 (explaining beginnings of Warren & Brandeis).
83. See id. (emphasizing Brandeis’s efforts in learning business of his clients).
85. FAMILY LETTERS, supra note 79, at 6.
of literature and would reread many classics (particularly Greek plays) and could quote from them at will.86

3. Vitality

While we often think of physical vitality as something required for a military or an athletic career, it is not often associated with legal studies or the practice of law, though it can be beneficial.87 Louis Brandeis, however, was a person who knew the value of diligence, but also of maintaining his physical and emotional balance so that he could conduct his practice. He learned early on that his health was foundational to his professional identity.

Long night hours of reading law under flickering gas lights at Harvard weakened his eyes to the point that his law career nearly ended before it even began. All of the eye doctors in Boston told him that his eyes would not recover and that he would have to drop out of law school.88 Finally, he went to a doctor who told him that he needed to “read less and think more.”89

Brandeis’s first year after graduating from Harvard was spent in St. Louis where he contracted malaria.90 The illness wasn’t life threatening, but it was debilitating, and he was plagued with spells of exhaustion for the rest of his life.91

Brandeis overcame these two setbacks by zealously guarding his time and making sure he always got plenty of rest. Whenever conferences in the Supreme Court started to run long, Brandeis would get up and leave, saying to the Chief Justice, “Your jurisdiction has expired, and that of Mrs. Brandeis has begun.”92

Mrs. Brandeis returned the favor. His wife, Alice (who as mentioned earlier is buried with him at the Brandeis School of Law), was vigilant in keeping him from overtaxing himself and making sure visitors did not overstay their time.93

He bought a home in Dedham, Massachusetts, to use for exercise and would take time out of his week, to spend many hours riding horseback at the polo club.94 He spent most Sundays performing physical activities with his wife and

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86. See UROFSKY, supra note 9, at 358-359 (emphasizing Brandeis’s knowledge of Greek plays).
88. See FAMILY LETTERS, supra note 79, at 14 n.2 (explaining Brandeis’s eye condition and doctors’ urging he drop out of law school).
89. Id.
91. See UROFSKY, supra note 9, at 80 (noting long-term effects of malaria on Brandeis).
92. Id. at 675.
93. Id. at 722.
daughters, such as canoeing and tennis.\textsuperscript{95} While law students may not be able to
do the same, a good walk can help.\textsuperscript{96}

When asked about his August vacations, he once said that he could do twelve
months’ work in eleven months but not in twelve.\textsuperscript{97} And when Dean Acheson
was his clerk, Brandeis once told him, “More men . . . have gotten into trouble
by the inability to say no, and the failure to take vacations than by more familiar
vices.”\textsuperscript{98} While law students may not be able to take a month of vacation, taking
a break can be beneficial in itself, especially if outdoors.\textsuperscript{99} Just recently, a major
Boston law firm, Goodwin Procter, announced that it would pay the cost of a
week’s vacation of its employees.\textsuperscript{100}

Brandeis wasn’t only concerned about rest for himself and other lawyers. He
was also concerned by the effects of overwork on others, hence his involvement
in working conditions involved in \textit{Muller v. Oregon}.\textsuperscript{101} Brandeis was insistent
on the need for leisure. Hours spent away from work that were not only devoted
to rest and raising a family, but also for improving one’s mind:

In order that men may live and not merely exist—in order that men may develop
their faculties, they must have a reasonable income; they must have health and
leisure . . . The best of wages will not compensate for excessively long working
hours which undermine health. And working conditions may be so bad as to
nullify the good effects of high wages and short hours. The essentials of

\textsuperscript{95} See id. (emphasizing how Brandeis spent time with family on weekends).
\textsuperscript{96} “I took time to go on walks last year, and that became a habit. Now, I love to go on walks during my
breaks and I find myself craving the exercise on days where I have to spend more time indoors.” Email from
Jessica Vandervort, Juris Dr. Candidate, Suffolk Univ. L. Sch., to co-author R. Lisle Baker, Professor of L.,
Suffolk Univ. L. Sch. (Nov. 8, 2022) (on file with authors).
\textsuperscript{97} \textit{MASON, supra note} 40, at 78.
\textsuperscript{98} \textit{DEAN ACHESON, MORNIN\textsuperscript{G AND NOON} 78 (1965)}.
\textsuperscript{99} “Just the other day, when I was experiencing low energy in the afternoon, I spent 30 minutes walking
around the Boston Common and sitting in the sun. It made all the difference in ensuring I was productive
throughout the afternoon.” Email from John Dube, Juris Dr. Candidate, Suffolk Univ. L. Sch., to co-author R.
Lisle Baker, Professor of L., Suffolk Univ. L. Sch. (Nov. 8, 2018) (on file with authors). Another student stated:

As students who are often confined to an inner city (beautiful) concrete building, predominantly sitting
for most of the day, it’s important to get exposure to nature and fresh air . . . . Regardless of the weather
outdoors, I have made it a priority to get outside at least once during the day while studying—a practice
I plan to continue into my career, when I know most of my time will be spent indoors sitting.

Email from Caroline McCarty, Juris Dr. Candidate, to co-author R. Lisle Baker, Professor of L., Suffolk Univ.
L. Sch. (Nov. 7, 2022) (on file with authors).
\textsuperscript{100} Karen Sloan & Sara Merken, \textit{Want Lawyers to Take Time Off? This Law Firm is Bankrolling Vacations,
improves restorative well-being).
\textsuperscript{101} 208 U.S. 412 (1908).
American citizenship are not satisfied by supplying merely the material needs or even wants of the worker.102

And:

The welfare of our country demands that leisure be provided for. This is not a plea for indolence. Leisure does not imply idleness. The provision for leisure does not contemplate working less hard. It means ability to work not less, but more—ability to work at something besides bread-winning—ability to work harder while working at bread-winning, and ability to work more years at bread-winning.103

Brandeis was prescient about vitality as important for lawyer well-being. In a major study of lawyer satisfaction, Psychologist Ken Sheldon and Professor Larry Kreiger noted that the “correlation strengths of vacation days and exercise with well-being are noteworthy, because they equal, and in some cases greatly exceed, the effect size for well-being of increasing income, decreasing debt, better grades, law review participation, or law school ranking.”104

4. Achievements (and Setbacks)

Law students are well aware of the need for achievement. What may not be as clear is how prospects for achievement can be advanced or measured. Here is what Louis Brandeis had to say about achievement: “[T]he real success in life is to be measured by one’s own accomplishments in advancing the welfare of the community, and that most men will be doomed to disappointment if they measure accomplishment by the degree of appreciation which they receive.”105

One of Brandeis’s first public service campaigns was in 1883 when he successfully opposed a railway company’s plan to lay tracks across Boston Common. Earlier in his public service career, Brandeis had failed to prevent the passage of a state bill that granted the Boston Elevated Railway Company a charter.106 This charter lessened government oversight and allowed the company to keep from reducing its fares for thirty years.107 Brandeis learned from this failure, and a few years later fought back when the same company tried to get the Massachusetts legislature to grant it a charter to build a subway line at terms

102. Brandeis, supra note 11, at 367.
103. Id. at 29.
104. Kreiger & Sheldon, supra note 54, at 609.
106. See Urofsky, supra note 9, at 132 (noting Brandeis called achievement his “first important public work”).
107. See id. at 133 (discussing Brandeis’s initial fight against Boston Elevated Railway Company).
extremely favorable to it. This time Brandeis gathered a team of like-minded people on his side, and through a campaign of lobbying, publicity, and a visit to the governor, Brandeis was able to secure passage of bill that was much more favorable to the public, protecting the people and the Boston Common.

In a 1902 shoe factory strike, Brandeis mediated talks between the factory owner and the union about the factory owner’s proposed pay cut during the slow times. The factory owner argued that the workers were paid well and that this should be appropriate. Brandeis listened to the workers and agreed that while the workers were paid well for the seasonal work, it provided less income stability in the worker’s lives. As a solution, Brandeis created a plan to resolve the issue of a consistent year-round production of the shoes which provided the workers with a stable income, and this ended the shoe factory strike. Brandeis came up with his solution only after lengthy interviews with both the managers of the plants and leaders of the workers’ unions.

Brandeis’s proudest achievement was creating Savings Bank Life Insurance. When Brandeis first examined life insurance, the idea of a Savings Bank Life Insurance policy was not only unprecedented, it was unimaginable. Prior to his involvement in the venture, Brandeis had little to no knowledge of economics, but ever the people’s attorney, he saw a need for which no answer “within the bounds,” seemed to be found. Thus, with a bit of research, ingenuity, and much perseverance, Brandeis taught himself what was necessary to understand the failures of the current system and began to develop a concept that would reshape the concept of life insurance entirely. For two years he brought home suitcases full of Commissioner reports, every night studying them and going back the next day for another load. He studied insurance across our nation and abroad, eventually concluding that savings banks could be adapted to also write life insurance policies. Pushing for overhaul, he reached out to leading actuaries. He went to bank trustees, and formed a savings-bank insurance league, drafted a bill, and somehow managed to get that bill through legislative committee hearing after committee hearing. Two years later, the bill would pass, much to the surprise of many of Brandeis’s opponents. But Brandeis had prevailed, not because of his grit alone, but because of his willingness to look outside of the

108. See id. at 135 (explaining favorable terms of proposed charter).
109. See UROFSKY, supra note 9, at 135-39 (highlighting Brandeis’s efforts and support from colleagues).
110. See Fowler, supra note 13, at 26 (explaining circumstances behind pay dispute).
111. See id. (noting factory owner’s argument).
112. See id. (highlighting Brandeis’s understanding of underlying issue).
113. See id. (commending Brandeis’s solution).
114. See UROFSKY, supra note 9, at 63 (highlighting Brandeis’s efforts to consult both sides of disagreement and learn their perspectives).
115. Id. at 179.
116. See MASON, supra note 40, at 157 (noting how others saw situation “incurable”).
117. Id.
118. Id.
119. Id. at 171.
assumed bounds for the solution. Having no personal stake, Brandeis had still fought valiantly for the interests of those who were voiceless in the matter which affected them the most.

Many of Brandeis’s earlier attempts at public service, however, were failures and these taught him the necessity of forming teams to help him and how to use publicity to drum up support for his causes. He also kept things in perspective. He once told his daughter as she was starting her career as a lawyer: “You will recall the advice given me in 1878 by a wise litigant: ‘Don’t expect to win all your good cases or to lose all your bad ones.’”

5. Meaning

Meaning and purpose are important for law students to keep in mind, particularly why they chose to come to law school. Recent research suggests that having a purpose larger than one’s self-interest leads to a greater willingness to take on difficult, and sometimes monotonous, work to realize that goal.

As indicated earlier, at the Brandeis School of Law, students are expected to spend time in service. Louis Brandeis believed that a life well-lived included a life of service. Brandeis and his brother, Alfred, (and their children) seem to have inherited their parents’ belief in the obligation of paying back to the community. It wasn’t enough to make money from your community; you had to give back to it as well. Brandeis’s father and uncle were members of multiple boards and associations in Louisville, and that legacy carried on in Brandeis’s creation of the Savings Bank Insurance system, in his fight against the transportation monopoly in Boston and New England, in his fight against the usurious rates charged by the gas companies in Boston, in his support of Zionism—including the rebuilding of a Jewish homeland in what is now Israel—and in his support of other causes.

Brandeis’s brother Alfred and his daughters assisted Brandeis in his efforts to uplift the University of Louisville, and they also all had their causes and associations that took up much of their spare time. For them, it wasn’t just an obligation or a duty—it was something they truly enjoyed doing.

120. Letter from Louis D. Brandeis to Susan Brandeis (Sep. 29, 1925), in Family Letters, supra note 79, at 410. The special challenges of resilience for lawyers has been explored by one of the co-authors with two psychologists. See Baker et al., supra note 58 (explaining concept of resilience and challenges in legal setting).

121. David S. Yeager et al., Boring but Important: A Self-Transcendent Purpose for Learning Fosters Academic Self-Regulation, 107 J. PERSONALITY & SOC. PSYCH., 559, 559 (2014). While law school is much different, psychiatrist Viktor Frankl wrote of how having a purpose in life helped those in concentration camps survive. See generally VIKTOR FRANKL, MAN’S SEARCH FOR MEANING (Beacon Press 2006) (1946). Psychologist Daniel P. Brown reported in his work with judges that having then reconnect their role with their larger purpose in life was, along with how to improve their concentration, what they found most valuable. Interview by co-author Baker with Daniel P. Brown, Ph.D. (May 6, 2020).

122. See Pro Bono Graduation Requirement, supra note 23.
He said, “[t]he true happiness in life is not to donate, but to serve.” 123 A favorite quotation of his was by the English poet Matthew Arnold: “Life is not a having and a getting, but being and becoming.” 124 One way was through his donated public service, which he explained this way:

Some men buy diamonds and rare works of art, others delight in automobiles and yachts. My luxury is to invest my surplus effort, beyond that required for the proper support for my family, to the pleasure of taking up a problem and solving, or helping to solve it, for the people without receiving any compensation. Your yachtsman or automobilist would lose much of his enjoyment if he were obliged to do for pay what he is doing for the love of the thing itself. So I should lose much of my satisfaction if I were paid in connection with public service of this kind. 125

One very specific way he lived out his meaning and purpose, was by transcending the norm. A famous example was his work on Muller v. Oregon, which he argued before the Supreme Court in 1908, defending an Oregonlaw protecting women from shifts longer than ten hours per day. 126 While most legal briefs, up until this time, had relied solely on comparing the case in question with the past legal precedents or on stare decisis, Brandeis saw a way to transcend this framework. Brandeis believed the reasons that courts had lagged behind the times was because of their limited understanding of social justice. “The judge came to the bench unequipped with the necessary knowledge of economic and social science[,]” and “judgment suffered likewise through the lack of equipment in the lawyers who presented the cases.” 127 In short, Brandeis felt that a judge could not adequately decide on a case unless the case before him had been adequately presented. In response, Brandeis presented the Supreme Court a brief that contained one hundred pages of social science and nonlegal data. He bolstered his constitutional arguments with empirical data and in the process, not only aided working women, but also transformed appellate advocacy.

Finally, while not every lawyer can be as successful as Brandeis, it is interesting to note his view of money as a means rather than an end:

[I] never let money earn me. . . . I saw the value of it because it gave a man freedom. . . . I was never willing to sacrifice my freedom for money. The only use that it could have would be:

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124. Urofsky, supra note 9, at 110.
125. The Curse of Bigness: Miscellaneous Papers of Louis D. Brandeis, supra note 84, at 266.
126. See 208 U.S. 412, 416-17 (1908) (stating issue of case).
127. Brandeis supra note 11, at 361.
To give freedom
To do what you wanted to do
To be what you wanted to be
To accomplish what you wanted to accomplish[.]\(^{128}\)

6. Positive Emotion

Positive emotions can be an important buffer against adversity and can help build creative capacity.\(^ {129}\) The positive emotion of compassion was one which Brandeis displayed, as noted earlier. But he also was grateful for the opportunities that he had. One of his favorite quotations was that of Goethe, which his mother encouraged him to read. “You must labor to possess that which you have inherited.”\(^ {130}\) But he wanted others who did not fare as well to have similar opportunities. For example, the right to privacy—including the right to be let alone—was not designed to allow individuals to “pursue lives of private fulfillment,” but to serve the instrumental purpose of helping them “develop their abilities and imaginations, to be applied creatively to the needs of those around them, free from the deadening weight of government or group pressure.”\(^ {131}\)

One positive emotion that is associated with Brandeis is serenity. In their later years, Alice wrote to an old friend that she was, “glad to say Louis is as usual—serene and helpful whenever he can be.”\(^ {132}\) She would write that same sentiment a year later when he was nearing the end, as did Interior Secretary Walter Fisher, when reminiscing about Brandeis’s last days.\(^ {133}\)

Another of the positive emotions is evident in his love of music. He and Alice lived well but simply at home, yet whenever they rented a summer home, they shipped their piano on ahead of them, and their travel accounts show they spent more money on books than furnishings.\(^ {134}\) Brandeis came from a family that placed a high value on culture. When his extended family first settled in Madison, Indiana, from Europe, they brought with them two grand pianos.\(^ {135}\) Music played an important role in Brandeis’s family as he grew up, as did books and

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\(^{128}\) Campbell, supra note 90, at 42.

\(^{129}\) See Barbara L. Fredrickson, The Role of Positive Emotions in Positive Psychology: The Broaden-and-Build Theory of Positive Emotions, 56 AM. PSYCH. 218, 220 (2001). Dr. Frederickson identified some such emotions: joy, interest, contentment, pride, and love. Id. at 220.


\(^{132}\) UROFSKY, supra note 9, at 752.

\(^{133}\) Id. at 748.

\(^{134}\) Id. at 354.

\(^{135}\) MASON, supra note 40, at 18.
literature.\textsuperscript{136} His love of culture blossomed during his early years in Boston and served him in good stead. He attended some of the first concerts put on by the Boston Symphony Orchestra and advised friends on art purchases.\textsuperscript{137} Literature was also one of his favorite means of relaxation. He was a voracious reader, both of classic and contemporary works, such as the Sherlock Holmes stories. His favorite authors were Heine and Euripides, and he could quote entire stanzas of their work.\textsuperscript{138}

Two other positive emotions—interest and awe—were on display during one Kentucky visit when his brother Alfred took Louis to visit racing horses. Louis wrote home to his daughter that they had seen a “wonderful collection of thoroughbreds and colts,” and to his wife he wrote that the stallions had “revolutionized [his] ideas of race horses.”\textsuperscript{139} He called them the most beautiful living creatures he had ever seen: “The only comparison seems to me the . . . wonderful Greek marbles . . .”\textsuperscript{140}

One positive emotion which law students can cultivate deliberately is gratitude. All of us who are lawyers are privileged to serve our students, clients and communities, and it is worth remembering to appreciate those who have enabled us to follow this path. What better way to put Brandeis’s example into practice than from the simple act of thanking them from time to time.

\section*{II. Conclusion}

Louis D. Brandeis cannot be distilled into a few pages, but looking at these aspects of his life through the lenses of character and fitness, including the REVAMP framework, may be of help to aspiring lawyers who would like to follow his example, even as they shape their own professional identities in positive directions. As law firms have less time for training, law schools can do more to expose students to those whose professional lives can be instructive. We hope this new view of Brandeis will inspire others as his life has already done for so many.

\begin{footnotesize}
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\item \textsuperscript{136} Strum, supra note 68, at 7.
\item \textsuperscript{137} Campbell, supra note 90, at 40.
\item \textsuperscript{138} Urofsky, supra note 9, at 359.
\item \textsuperscript{139} Id. at 358.
\item \textsuperscript{140} Id. (referencing famous marble statues by Greek sculptor, Praxiteles).
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