

Moving a Fairness Mantra into Action

FAITH GAY

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Every creature on this Earth—at least us two-legged ones—is driven by a dominant motif that emanates from the core of our being and repeats its mantra ever more loudly throughout our lives. For me, that motif—the trope most central to my life and vocation—is a burning commitment to fairness.

Born in 1960 in the rural South, I saw how separate but unequal schools had scarred the lives of my Black classmates by the time we were forcibly integrated in seventh grade. I saw ambitious young women whose opportunities for careers and financial independence outside the home were virtually nonexistent. I saw my father, a kind, ethical, openly gay man, harassed at church, fired from his job, and on the verge of suicide. None of this, of course, was remotely fair.

In school, I read *To Kill a Mockingbird* and wondered why the poor Blacks and poor whites in that dusty small town couldn't find a way to band together rather than letting a handful of overbearing wealthy white men like Atticus Finch rule their lives and drive a wedge between them, eviscerating a clear opportunity for poor peoples' majority rule and transformative political power. I wondered why Atticus didn't work a little harder to make sure he could put on a decent and comprehensive legal defense rather than expecting his falsely accused client, Tom Robinson, to be grateful for scraps of last-minute, court-ordered, highly reluctant free assistance. I wondered why Black people in the courthouse balcony bothered to stand up as Atticus walked by rather than screaming in rage as Tom was wrongfully convicted and then slaughtered like an animal.

From out of this simmering vortex came an obsessive calling: I wanted to be a story-telling, justice-seeking, Bible-thumping

advocate for fairness. My first thoughts were to run for Congress or to become an ordained minister committed to social justice and “*the last shall be first, and the first last.*” Those choices were pretty much unheard of for women, let alone a gay woman like me.

So I made a beeline for law school and soaked up the first year like a parched wanderer who stumbles on a secret oasis. I was riveted as tales of fairness, hope, and equal opportunity danced (and sometimes died) across the pages of my lawbooks. Whether it was constitutional law or property rights, I just couldn't get enough of the idea of giving everyone a fair shake.

By second year, my ardor had cooled. Tax law, corporations, and real estate were fascinating Rubik's Cubes, but as with all elegant math proofs, they were more closely analogous to high-rent, limited-access intellectual pastimes than the powerful vehicles for advancing human rights that lit my dreams.

I have to confess, my first years as an associate at the toniest Manhattan law firms were a crashing bore. I may have been the worst associate who ever put on a green suit and pink cummerbund in New York City. I felt more like a moderately skilled car mechanic than the fairness freedom fighter I hoped to become.

Becoming a Prosecutor

As luck would have it (and that is all it was), I failed my way up into a spot in the Criminal Division of the United States Attorney's Office. There I let my imagination run wild, evaded my supervisors, and learned to invent my own cases. I did a little of

everything: I put violence-prone housing redliners in jail (much to their surprise), used the Racketeer Influenced and Corrupt Organizations (RICO) Act to stop fraudster personal injury lawyers (much to their surprise), and indicted the players in some of the country's first environmental crimes cases (much to my surprise). I weaponized the law for good.

As a prosecutor, I did not wait for agents to bring me a case—a proactive habit I have never abandoned in the plaintiffs' side of my practice. I scoured the newspapers, and when an unjust practice caught my eye, off I went to the grand jury, statute book and ham sandwich in hand. The burrs in my saddle were the unrelenting harshness of massive federal sentences and the guilt-ridden pain of watching certain defense lawyers who couldn't be bothered to give clients the honest sweat of their brow. I wanted to win—badly—but I wanted a fair fight.

I loved my job as an AUSA as much for the cases I declined as for those I indicted. The ideal of seeking justice—working for the Department of Justice—meant sometimes walking away. I loved, and still love, the power and ethical duty of being the “decider.”

After a while, though, I tired of putting people in jail and realized that being a fed had started to flatten my skill set and narrow my worldview. I was good at assembling cases and translating evidence into a compelling courtroom narrative, but I wanted to try my hand in a world where I didn't have the government's subpoena power as a crutch. I wanted to bring fairness to all, including the victim and, somehow, the perpetrator. So I left government, crossing my fingers and praying that the best years of my career weren't now behind me.

Rejoining Big Law

I rejoined Big Law as a partner and found that the only way to avoid the disaster of my associate years was to quickly grab control of my fate. I turned my focus on fairness to the outside world.

I knew better than to waste much time working the levers of power inside the elite law firms where I worked. These closed societies had a calcifying pecking order that only mattered to the identically dressed men who ran these firms. How could they even tell each other apart, except by the size of their paychecks? While I adored many of my colleagues, I never ever let the institution be my whole world, or my only measuring stick.

Instead, I created a parallel universe outside the law firm that allowed me to survive and flourish inside. By leaning out rather than in, I found fairness passions in the world outside Big Law: I got a divinity degree and read deeply in systematic and liberation theology. I did parish ministry during COVID: hospital visits, sermons in the open air, immigrant advocacy, weddings (in the snow), and beautiful country funerals for those whose lives were snuffed out by opioid addiction.

I immersed myself in opera, literature, public theater—avenues increasingly open to exploring the essence of social justice. I learned to fly small planes so I could teach others how to access that unparalleled freedom and beauty. I raced in a sculling quad so that I could lose myself in the soul of a team. I did as many free cases as Big Law would allow.

Every time I went deep into a new space—tumbled into a beautiful, alluring black hole—interesting and significant work followed. I learned new habits of being, new ways of seeing logic and beauty and justice and fairness. I met folks who never would have been in my normal orbit. And somehow, new clients, new causes, new theories of justice appeared like manna from heaven.

This never would have happened if my only world had been “the firm.” I explored the continuity of love, forgiveness, regeneration, hope, justice, and fairness outside of institutional walls. Because of that journey, that alternative but discernible path, I became a very good trial lawyer who could speak the language of fairness that transcends every case, that infuses every cause.

In the blink of an eye, 35 years passed by. The days were full, long, and exhausting, but the years were a quick-moving blur of richly rewarding and creative practice, causes, people, and places. And every single day, I walk out of the masonic cult of Big Law into the Technicolor chaos of so-called real life with all of its hopes and dreams of fairness and justice. Unless I am actually in trial, I make it a point of discipline to inhabit other, compelling but less comfortable, worlds than the gleaming office tower and nest of brilliant, big-city lawyers where I work.

As an advocate—as a trial lawyer—I am relentlessly searching for radical community with the unknown and the unknowable. I am hoping for intimate communication with 12 strangers who barely know my name but whose attention I will hold when I speak the bottom-line truth about fairness and justice. When we stay in our own sealed-up worlds—as elite lawyers do—our connection with life becomes brittle and attenuated; our experience, empathy, and the quest for fairness are reduced to the tin-eared range of a-b, a-b, a-b. Beautifully reasoned and executed, for sure, but severely limited, highly removed from life, and eventually irrelevant, even dead. Great trial lawyers must be exposed. They have to engage.

Living in Proximity

My great hero, Bryan Stevenson, calls it living in proximity. I sure haven't done it like Mr. Stevenson does it, but my family and I long ago made a commitment to live our lives in a place that is not chock-full of other global knowledge workers just like us. We have a pulsing desire to know our neighbors, to feel the land we together inhabit, to take heart and head out of the skyline lairs of late-stage, debt-financed capitalism, to give others the

substantial gift of our time. We want a life of connection and continuity, not segmentation. Our profession—our calling—requires it. So does our country.

The finest advocates are capable of extreme neighborliness, radical modesty, and, as they say in the theater, breaking the fourth wall. We trial lawyers practice neighborliness and seek community and intimacy in speaking with passion to the unknown other—the jury or the judge. We likewise practice radical modesty by acknowledging that while we are different from those in the jury box or with the gavel, we still seek the same things: fairness and justice. We frankly acknowledge that there is a gulf between us and that we have the pleasure, the honor, and the temerity of attempting to bridge it, knowing that the gap is wide and the stakes are high. We seek common ground.

On the subject of bridges, the same principles apply to the profound relationships we must build with our clients to effectively seek fairness and justice for them. I recently had the honor of representing—along with the wonderful trial lawyer Bruce Zimet—Marissa Alexander, a victim of domestic violence who spent years in confinement for firing a single warning shot at her serially abusive husband as he threatened and attacked her. Ms. Alexander’s case shed light on how unfairly Florida’s “Stand Your Ground” defense is applied. Despite a long history of abuse by her husband, and despite the fact that no one was injured by her warning shot fired from a licensed gun acquired for her own safety, the court disregarded Ms. Alexander’s “Stand Your Ground” defense entirely. She received a 20-year sentence while George Zimmerman was acquitted, through the very same “Stand Your Ground” defense, of killing an unarmed Black teenager in the same state, under the same law, in the same year.

We took the appeal and retrial and, thankfully, Ms. Alexander was soon out of prison and advocating for other victims of domestic abuse who suffer the double injustice of criminal punishment for the very act of fighting back against their abusers. To win Ms. Alexander’s case, we first had to acknowledge that we would never know what it feels like to be a Black woman who has experienced constant and violent abuse by her (once) beloved husband. We had to acknowledge that we would never know what it is like to choose to stay with an abuser. We had to acknowledge that we would never know what it was like to fire a shot at the person we once loved most in the world while our children were close to the line of fire. And we had to convince the judge that while neither he nor we would ever stand in the shoes of Ms. Alexander, we could find a common thread of justice and fairness across these barriers.

Ms. Alexander’s case is but one example of what makes me jump out of bed in the morning and run to the office. I live to help clients whose backs are against the wall—to make a way out of no way, to find a vision of fairness to which the judge and jury can both relate and help effectuate. And I know that,

in helping my clients, they, in turn, help me. Marissa Alexander, along with every other client I have served closely, has changed my life. The client relationship is one of real intimacy, dedication, neighborliness, modesty, selflessness, and community—regardless of whether that client is an organization or an individual.

Founding a Law Firm

Fast-forwarding to the present, I am often asked why I left a lucrative and meaningful partnership in Big Law to found my current firm. The impetus comes back to my obsession with simple fairness. My co-founders and I set out to create a unique work environment with tenets of community, excellence, and fairness.

Fifty percent of our firm’s equity is held by female partners, based on merit alone. We want our female partners to wield economic and decisional power in a way that Big Law has not yet attempted. Our firm is not dominated by a single leader or by an all-powerful management committee. All our partners have a say, and so do our associates. We are not a corporation in disguise; rather, we are partners committed to supporting each other at every career stage.

LGBTQ+ attorneys make up close to a quarter of the firm and play a major, comfortable, highly respected role. At a time when states are rolling back legal protections, we want our LGBTQ+ lawyers to know they are admired, supported, and beloved—and that we support their families.

We share a passion for excellence and innovation in our craft that extends equally to plaintiff and defense, and to paying and nonpaying clients. As I write, we have seven cases going to trial in the next 10 months, ranging from a high-dollar matrimonial matter to a financial fraud case. Associates are handling key witnesses, making dispositive arguments, and guiding strategy at the highest level of importance. These “trial junkies” come to us because they don’t want to spend years trying to get trial experience in Big Law or to be forced to become prosecutors to get access to the courtroom.

We practice proximity. We have a single office and don’t plan to expand elsewhere. We know that the best way to find new solutions is to get in a single room—indeed, down on the floor with the evidence. We make sure all of our lawyers have the chance to “be in the room where it happens.”

We believe you can do good by doing well, and vice versa. We only take cases in which our ethical commitments align with our clients’. We are pursuing cutting-edge public-interest litigation concerning student debt relief, utility/grid access, lending fraud prevention, refugee assistance, conversion therapy, and the January 6 uprising, among many other fairness-infused matters.

To be a courtroom advocate at this moment in history is a duty and an honor, an opportunity and a responsibility not to stand on the sidelines. This is my notion of fairness. ■