With Passion: An Activist Lawyer's Journey

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Twelve Tables Press
XII

www.twelvetablespress.com

P.O. Box 568
Northport, New York 11768

Library of Congress Cataloging-in-Publication Data

Name: Michael Meltsner
Title: With Passion: An Activist Lawyer's Journey
Description: Northport, New York: Twelve Tables Press, 2017
ISBN: 978-1-946074-10-2
Subjects: Law—United States/Biography
LC record available at https:lccn.loc.gov/

Twelve Tables Press, LLC
P.O. Box 568
Northport, New York 11768
Telephone (631) 241-1148
Fax: (631) 754-1913
www.twelvetablespress.com

Printed in the United States of America

For Lucy, Anna, Will, and Tessa

Contents

Author's Note

This is *not* a work of fiction. Names, characters, places, and incidents, including references to legal matters, are not products of the author's imagination and are not to be construed as fictitious or as composites of various realities. The depiction of events, locales, organizations, or persons living or dead is intended to be an accurate representation of what actually occurred. Occasionally, the text contains material that I have published elsewhere but which seems appropriate to include here. Wherever possible, documentary and other historical sources as well as interviews have been consulted as a check on memory but should readers have a contrary view be assured that the systematic clash of interests that characterizes our politics (and our legal system) supports the presence of different stories, voices, and points of view.

To understand the creating forces is to understand what is important.

(Adam Nicolson)

The pull that justice and its absurd procedures has for certain minds. . . . Find the explanation.

(Albert Camus, *Notebooks*, January 1942 to September 1945)

Preface

One dazzling spring morning in the early 1960s, a woman I knew from the neighborhood stopped me as I was walking briskly down Broadway toward the Eighty-Sixth street subway that would take me to my Columbus Circle office. She asked if she could interview me for a local newspaper that was just getting started in the hope of finding favor with Westside advertisers. Barely a year into working as a lawyer for the NAACP Legal Defense Fund, I was flattered by her attention. It was a time, before the passage of the 1964 Civil Rights Act, when the disgust of Northerners for the antics of Southern segregationists ran high but the Kennedy Administration, worried that passage of its legislative program was vulnerable, was totally confused about where to pledge its loyalty. A week later, I sat down to answer her questions about the cases I was working on. Then I forgot about our conversation until I saw the article that followed—introduced by a large-type, bold headline announcing "He Helps Them Overcome."

I felt like a fool. No one should think my choice of work was some sort of bending down to help the downtrodden. I was there for myself as much as for others. Wasn't it George Orwell, a man whose essays I read slavishly as a young person, who said saints should be presumed guilty

until proven innocent? I wanted immediately to go to the few Broadway newsstands that carried the paper to seize every copy before anyone saw it. Of course, my ardor soon cooled; I was forced to examine the embarrassment and shame I'd felt. Where did it come from? Why was I doing what I was doing, unlike almost every other member of my law school class safely settled in the womb of prominent private law firms? I had trained to be a lawyer and wanted to practice my craft. That must be it.

But it wasn't nearly the whole story: almost every day I realized that ending up as a civil rights lawyer, especially a white civil rights lawyer, was no accident, though the way I found the job was pure serendipity. Signals from my parents had a lot to do with my choice of work but so did growing up in New York City. Sometimes it was observed that many white civil rights lawyers and activists were Jewish. I was often asked about whether I was doing the work for that reason. Feeling a bit defensive, I'd reply that plenty of Jews had different views about civil rights and race than I did. Privately I believed that if any trait in my ethnicity brought me closer to the work I was doing it was that historically some Jews thought that not having a nation state of their own survival depended on taking personal responsibility for the condition of the society in which they found themselves. In the early 1960s before she was a celebrity, Susan Sontag told a New York audience that Jewish liberalism was a gesture of self-legitimization—Jews legitimized themselves through a political stance; homosexuals, she

added, through the aesthetic. It doesn't take much unpacking of her terse formulation to understand why both groups keep a keen interest in the paths taken by the body politic.

What follows is a zigzag search for the reasons that compete with the accidental to serve as an explanation but also a chance to excavate the meanings buried in the stories that served my passions for an improbable sixty-year life in the law. And I am driven toward discovery by mortality.

Reports from cancer patients are a growth industry; though heartrending, most are formulaic, and ultimately boring. I'd leave mine aside but I'm convinced ennui stands as a dam behind which emotions mass; to that bit of supposed wisdom, I add my belief that the deeper the sense of boredom, the more intense the rush of feelings crashing against the walls trying to break out. Six years ago, I was diagnosed with esophageal cancer. No surprise, having grown up in a household of smokers, starting myself at fourteen, and putting myself through college as a paid ($50 bucks a month) representative of the Philip Morris company by distributing free Marlboro's to overeager fellow students. Of course, I'd stopped smoking years before like everyone I know and my doctors were adamant: "There's no hard evidence the smoking had caused the cancer." But I thought this annoying doctorspeak and not at all persuasive. The cells have a history.

I'd been on the lookout for death for years, though my certainty that it would come when I was young disappeared over the horizon when I passed the early age (forty-seven)

when my father died. It turned out that in my youth I believed deeply if unconsciously that he and I were linked in everything that mattered. As a child the only distinction I was aware of was that he was bald and I was not. But it was clear when he faltered so would I. That I had no inkling of his real condition was not important; it was enough that there was a message of doom packed in the hidden crevices of his life that a son took in, no less powerfully for him being a most happy fella, a great lover of his wife, a doggerel poet, an optimistic gambler, die-hard liberal, and a covert outsider even though (after a struggle) a great success in his commercial doings. Because he believed most things were tentative and unsettled, a persistent looker under masks—a deconstructionist before there was deconstruction—I guess I learned to imagine what was behind his.

My expectation of an end in my forties passed because of my shrink. He put aside his Viennese-trained recessives and had me bring him my father's autopsy. When I arrived weeks later with the dim photocopy and passed it to him, he immediately handed it back.

"Read it out loud," he ordered in his Viennese-inflected English. As usual I complied with this former student of Freud's commands, though this time reluctantly:

"Patient admitted in shock . . . blood pressure 40/0." "Febrile . . . presence of amyloid . . . jaundice . . . Massive G.I. bleeding . . ." and so forth. After an agony of pathologist's jargon and more grim particulars—brain weight (1375 g),

spleen (750 g) "markedly enlarged," "a number of Alzheimer's glia"—he passed judgment:

"Nothing in the least inheritable. Nothing genetic. Whatever is wrong with you his body is totally blameless."

I took this verdict as settling the matter. Indeed, if I had once been long obsessed with death the way the famous subjects whose last days are closely and evocatively rendered by Katie Roiphie in *The Violet Hour*, my preoccupation soon disappeared. To my amazement, I also lost a fear of flying that had haunted my air travel to Southern courtrooms during the civil rights era. No more did I have to counter and control the turbulence with alcohol or chain smoking, when, of course, I wasn't flying the plane in my head.

When the first endoscopy revealed the tumor, a team of amigos—a radiologist, a surgeon, and an oncologist—entered my life. They sent the cancer away for enough years so that I thought I had escaped. Just as I was ready to dismiss them, it returned. They reconvened again, came up with a new protocol, and cured me a second time. I suspect they were greatly surprised (certainly I was)—though given their professional faith in cures, they would probably deny it. The chemo and radiation, the tests and tubes, were awful but ordinarily awful so the details are unremarkable. You know them. I only retail all this because, as seems to regularly occur in cases like mine, the stories that follow are fused with an energy that comes from deciding that death is on the way and that dying is both hateful and unfair but

also totally normal. Not much into denial or extreme edge of the abyss methods, I found myself in the middle of the road, much like, I suspect, most of my fellow patients on the ninth floor of the Beth Israel Hospital in Boston.

My words to family and friends were something like, "I've made my peace." I want no obituary to report death "after a long and courageous battle with cancer." Maybe better, "He relied on the best science, doctors and nurses; then he let go." If you spend enough time suing bastards, contrarian impulses never go totally away. The taint of end-game heroism is, I believe, just another convention to leave behind. No Dylan Thomas "Rage, rage against the dying of the light." I didn't want to "burn and rave at the close of day"; certainly had no taste for "And Death Shall Have No Dominion." Nor was this the arrival of the last Kubler–Ross stage—acceptance—but rather simply death on my own terms. This dying business was, I thought, like a job and I usually loved my work.

Roiphe found a profound beauty in what she saw in the last days—"deranged seeming courage," "mad love"—of her main subjects—Susan Sontag, Freud, John Updike, Thomas, and Maurice Sendak. It's likely, I think, that immersion in the details of most of us at the end, not just the famous, will reveal and even fascinate. A steady reader of full-scale obituaries, a memorial service auditor, will not be surprised at what is told there or of one's ignorance of the lives lived by both celebrities and even close friends.

The courage and love, the missteps and misalliances, transcend the clichés of death notices.

But for me any drama was muted. In the months of treatment the observer was as strong as the participant. I gave my body over to the work but I also watched it happen. Perhaps this distracted me from thinking about the likely ending, which when it didn't come released a brief flood of tears. And disbelief. Of course, it took a while to get there. Was I kidding myself? Was I just pretending to be a good patient by showing a good front? I certainly doubted my resolve the whole way. Just like a death row prisoner, I fought off reality by visiting faraway places. Laying there on various slabs, beds, and scanner platforms while waiting for treatment, I counted the best orgasms I could remember, tried to recall the countries I'd visited, hikes taken, lectures given, cases both won and lost, clients I thought I'd helped, memorable books read, students who'd taken something of me away, encounters with friends and enemies, the regrets that remained from stupid mistakes, and the triumphs that had smothered some but not all of them before finally coming to rest on the joyous tangles, the ups and strange downs, of my incredible marriage in a way it was "arranged" (by the two of us) but only in the sense that we'd been together less than a month before it was settled, and then the images of my sleeping daughters when they were young, an even deeper connection with them as they came into their own.

This was, of course, life trying to push the inevitable away but then when it stepped forward in the unmistakable dress of endoscopy camera images and hospital paraphernalia, as opposed to previous murky fantasy and nebulous anxiety, to my utter surprise I actually believed I was ready to go.

A man I admired, the great doctor and drug researcher, Norman Zinberg, died in 1989 a short time after collapsing on an exercise machine at a Mexican health spa. At his home a few days later, fumbling over how to express my profound regrets, out of nowhere came the question I asked his widow, the Harvard lecturer Dorothy Zinberg:

"Did Norman feel he'd lived a good life?" (When asked a similar question after he was disgraced, Richard Nixon responded that "He didn't get in to that crap.")

Dorothy paused a few seconds before fleeing from my intrusion to the assembled mourners but she left me, indelibly, with a message I didn't want to hear—she wasn't at all sure he did.

That's the question I consoled myself with decades later passing time on the cancer floor while the bag of chemo emptied drip by slow drip into my left arm, and the sweet oncology nurses—I always fall in love with them—smiling their always-smiling smile, the most important question—how to live?—and if we can answer it well, then it's the best revenge—but really the only one we've got.