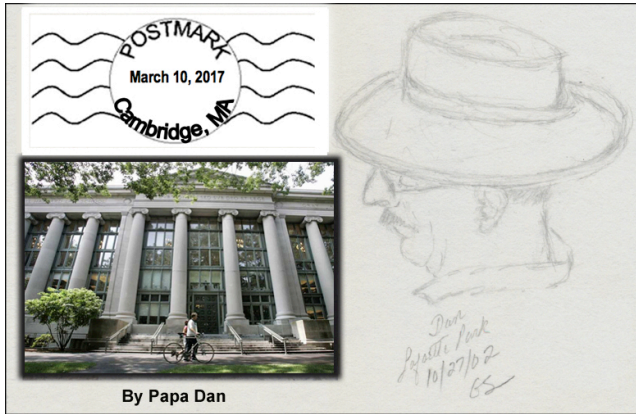


A Guy Walks Into a Bar

By Dan Sapone



**“You teach yourselves the law
but I train your minds.
You come in here with a head full of mush,
and you leave thinking like a lawyer.
But ... it may not be enough.”**

— Professor Charles W. Kingsfield
from “The Paper Chase”
(a 1973 movie set at Harvard Law School)

Walking down Massachusetts Avenue, on his way back to his fraternity, a first-year law student found himself in the middle of an unexpected downpour without an umbrella. As luck would have it, he was passing a popular watering hole frequented by Harvard Law students and professors. From habit, he mentally acknowledged the weird fact that The Grafton Street Pub & Grille was actually on Massachusetts Avenue; but it was forgiven for its convenient location right beside Harvard Square. Gratefully, he ducked into the dark, leather-appointed bar, since he was clearly unprepared for the inclement conditions outside. He calculated that the storm was likely to continue for just as long as it would take to sit down at the bar with a class of “Maker’s Mark,” and he could be on his way once conditions had improved. Not a bad way to pass the middle of an otherwise worthless afternoon.

Apparently, others had the same idea — the place was packed. In fact, there was just one empty barstool, at the end of the bar next to an older well-dressed gentleman — probably a professor, he reasoned. So, he took his place, and signaled to the barkeep: “Makers’ Mark neat, please.”

As the drink arrived with a bowl of nuts, the gentleman to his left cast a sidelong glance at him without turning his head, “I see you were unprepared for the forecast.”

“Well, I didn’t think ...”

“So I surmised,” he said without letting him finish.

“Well, sure, uh, cheers ... sir.” He figured he might as well pass the time with some idle conversation. The guy seemed rude but harmless. Start with flattery. “I haven’t seen you in here before. Are you a visiting professor?”

“Visiting? I suppose one could say that. I’ve been away a very long time.”

“My name is Hart. Kevin Hart.” He extended his hand, a courtesy that was not returned. Maybe he didn’t notice, he thought. “Where have you been so long?”

“Well, young man ... ” and he finally turned to look at him directly. “I don’t suppose you’ve read any Dante.”

“The Inferno?”

“Il Purgatorio. On my way up and out, hopefully, but it seems I need to pass through *here* first. Unfinished business, perhaps.”

Kevin didn't quite know what to make of this. He decided to humor him. No need to be rude; and who knows, he may find himself in this fellow's classroom one day. “What do you teach?”

“Contracts. Or so I did at one time. Clearly with less success than I had hoped.”

“I had Professor Warren for Contracts. Pretty straightforward, I thought. You say, ‘With less success’ than you had hoped ... Why do say that?”

“Leaving the impression of ‘pretty straightforward’ doesn't speak well for a course of that complexity; but I have to say that the evidence suggests that I didn't do much better. As far as I can see, the notion of ‘Contracts’ hasn't been well-assimilated in this society. I suppose Harvard Law, *AND I*, have some responsibility for that failure.”

“Well, [defensively] it seems that Harvard Law has made some significant contributions, wouldn't you say? I mean, a number of Presidents have come from here. That would seem to suggest at least some success. Obama came from here, as did both Roosevelts and Kennedy ... ”

“And both Adams’,” [he makes a face], George W. Bush [sighs loudly and takes a deep drink of his whiskey], Rutherford B. Hayes [his eyes roll] ... but I'm quite sure that isn't the ideal figure-of-merit for an institution that purports to make a difference in society. There are elements of the law — especially contract law — that seem to have fallen into disrepair of late. Not sure Harvard Law, or any educational institution up and down the spectrum, can be proud of that.”

“Well, I feel the need to speak up for my school, I think I am receiving a quality education, yes, in Contracts, and other areas.

“Go ahead. [For just the second time, he turns to look at Kevin directly.] Defend your school. Tell me about Contracts.”

Now he's on the spot ... it feels like an oral exam. He waves to the bartender and points at the two empty glasses on the bar to order another round. He begins. “Written contracts are perhaps the most forceful self-managing tools in our society. We have well-established norms that are clearly enforceable and fairly efficiently litigated. Binding contracts between known entities, signed and witnessed, are ... ” [He's interrupted.]

“Let me ask you, Mister, uh ...” [gestures his question as the second round of whiskeys arrives]

“Hart. Kevin Hart.” [Deflated a bit, he was just getting started.]

“Mister Hart. As you teach yourself the law, as ‘straightforward’ as you say it is, perhaps there are questions worth exploring that you, and others of recent generations, may have overlooked. Examples: Are contracts binding only on those present for, as you say, the ‘signing and witnessing?’ Must the specifics of societal agreements be written on a piece of paper? Are there responsibilities by which one generation, for example, should be held accountable to another generation? Are there values, principles, and expectations that should provide continuity and social identity in a society over time?”

In a familiar professorial speech pattern, he doesn't wait for an answer. "I argue that there are standards of acceptable logic and quality thinking that have historically been accepted, and expected, that have all but disappeared from public and private discourse. Standards for the assumption of truth and accuracy were practiced in my day without the necessity of challenge. I assert that Americans have a collective responsibility to understand how our institutions work and to pass that understanding on to generations that follow us."

Kevin recognizes the pedantic behavior. "My grandfather told me about a professor who said something like that to him — something about teaching himself the law — he was a tough old bird. He used to ask questions that sounded simple but tangled grandpa in knots. Said the guy made him lose his breakfast one morning."

Kevin took advantage of a pause while both of them sipped from their glasses. He tried consciously to extricate himself from the feeling of sitting in a lecture hall and the urgent need to be taking notes; but to no avail ...

"So, young man, to answer the question that is likely to be on your partially trained mind, I do feel some responsibility, shared though it is with the rest of American education and upbringing, for the fact that the quality of American decision-making has demonstrably diminished in recent years, wouldn't you say? You pointed out that Harvard Law provided a list of American presidents, albeit of mixed quality, along with other prominent decision-makers and thought-leaders; but I assert that Harvard Law is now contributing more professionals to Wall Street than to the halls of government [rolls his eyes again.], which is not exactly a feather in its cap. I also assert that the current abominable level of intellectual application that has created your current societal disorder is the product of abysmal application of educational principles. The Socratic method of instruction, which I grew up with and which I employed during my career, is useless on an audience without the prerequisite skill in logic, knowledge of factual precedent, means and ends, and the ability to recognize and apply common sense. The absence of those attributes, among both educators and members of society *writ large* has led to some dismal decision-making. I read your newspaper this morning and could not believe what I was reading. It sounded like a poorly written comic novel."

Kevin was feeling the need to say *something* to avoid assenting to the lecturing nature of this conversation; so, "I agree that my country has made some terrible decisions at all levels, in the halls of government, in the voting booth, as well as on the street — heck, I came out today without an umbrella, that's what brought me in here. But I am in law school to prepare myself to do something useful — to be part of a solution. So, professor, what is your plan to mitigate all of that? You suggest that you have some responsibility to admit and some damage to repair. So, what's your plan? Have you come back to Harvard simply to admire the problem and confess your culpability, or do you offer a solution?"

For a third time, the professor turns to address the student directly. "I have two answers. First is to attack the crisis in Civics Education. The problem is not just my complaint about Harvard Law School, the deficiency exists at all levels of education. Among the American population, knowledge of the three branches of government, how they work, why they matter, how they balance and check each other is at the lowest point in our history. Even those appointed to the



highest levels of government service seem to have a dangerously unrealistic understanding of the scope of a president's power. Equally lacking is our understanding of the importance of the news media as the backstop to protect against egregious mistakes. A public figure while I was still at Harvard Law, Daniel Patrick Moynihan, famously taught us: "Everyone is entitled to their own opinions but they are not entitled to their own facts." America has made serious mistakes in our history, but our strength has always been in learning from them and trying not to repeat them. Right now, I warn you, because of the ignorance of our institutions coupled with an inability to recognize facts, there are serious mistakes that you will have to make, and learn from, *all over again*. Some of those mistakes are beginning to happen right now. Education is the only way to avoid doing that and it's not going to be a quick fix.

"My second solution is *you*." He pauses for effect, keeping his eyes on the student while he drains the last of his whiskey. "I think the best thing I can do is to turn this responsibility over to you. I've given you enough to proceed on your own. You have said that you plan to graduate and fulfill some dream of making a difference. We've identified some fields you can plow in that effort. Perhaps the challenge can be met in the field of education or rhetoric, or maybe you will be the eighth president to come from this institution. That rests squarely on your shoulders. So, now that I've assigned the problem to a qualified student, I think I've spent enough time *here*." He gestures grandly at the inside of the Grafton Street Pub. "I claim that I have fulfilled the requirements of Dante's '*Purgatorio*.' I'm going to call it done. Let's agree that it's your responsibility now. Thank you for the drink and try to stay out of the rain. I wish you well Mister . . . what was it?"

"Hart. Kevin Hart. And you, professor? I didn't catch your name."

"Kingsfield. Charles Kingsfield."

For those interested in the need for an improvement in Civics Education in America, a national initiative with that goal has come out of the Second Circuit of the Federal Court system.

It's called "Justice for All."

Take a look here: <http://justiceforall.ca2.uscourts.gov/>