A Lawyer's Lament: Law Schools and the *Profession* of Law

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This is certainly not a traditional law review article. It is not intended to be. It is an essay that closely mirrors the remarks I made at the symposium on the future of legal education held Friday, April 28, 2006, at Vanderbilt University Law School. Those remarks were merely one person's opinion; however, they rest upon almost forty years of practice that has provided an opportunity to work with clients throughout the United States. The remarks also rest upon extensive conversations with, and letters and emails from, a wide variety of practitioners who responded to my request for their opinions so that I might fold their responses into what would, hopefully, be a coherent presentation reflecting a diverse cross-section of experiences.

It is important to note that in no way is this essay a condemnation of the teaching of law or of those who teach it. I, for one, feel the greatest respect for the teacher-scholars who labor in America's law schools. Albeit as a "mere adjunct" for more than twenty years, I share some of the frustration and exhilaration of both teaching and scholarship.[1] *I recognize, and readily and enthusiastically*

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1. Many practitioners engage in scholarship. Granted, the extent and depth is vastly different from that produced by most academics. However, some practitioners do produce high

acknowledge, the vital component of American life that the scholar-teacher plays in exploring the principles of law that must be examined, expounded upon, and taught in order for American society, business, and government to function, flourish, and evolve.

However, that admiration and respect must not be allowed to dim the recognition that there are problems in the law and in the way that the law is practiced. As I initially acknowledge in my essay, one cannot simply point to the law schools as the cause of this problem. In fact, one should perhaps point to the practice of law and to American society as a "first cause." Yet, the way the law is taught in today's law schools plays an extremely significant part in setting the stage for later failures, stresses, and dysfunctional lawyers.

It is the goal of this essay to shine a light, however dimly, upon these failures and to begin a dialogue so that the practitioner and the scholar might come together to look not only at legal education but also at legal practice and say, "How collectively can we do this better? What mistakes are we making and how can we, how must we, cure those mistakes?"

It is or should be with a great deal of humility that a practitioner participates in a symposium such as this surrounded as he is by scholars of such obvious renown. It is also, however, the mark of a good lawyer that, no matter what the odds, he or she goes forward to do his best to address the issues and to seek to find a way. One hopes that the reader, with the same degree of humility and receptiveness, will do so as well.

I. INTRODUCTION TO "THE PROBLEM"

Many of you may wonder: "Why is *he* here?" "What does *he* have to add?" "*He* has practiced law for thirty-eight years; therefore, he has no role in an academic institution." You have all heard this before, and perhaps some of you have actually said it. Well, just consider me the consumer's representative. After all, it is the law firms and law departments who hire, who consume, the product of the law schools. They are the intermediate consumers of the product the law school produces, with the ultimate consumers being the men, women, and entities that actually use legal services. And someone must speak for the consumer in a discussion of legal education. Moreover, one might note that the reviled and revered *U.S. News &*

quality law journal articles and other scholarly works. An even larger number produce highly credible work in other venues. The American College of Real Estate Lawyers Papers and some, although not all, American Law Institute-American Bar Association course materials illustrate the point. In fairness, one might also observe that the scholarly output of many academics diminishes or even ceases after tenure.

World Report rankings respect practitioners' inputs as one criterion in the ranking process.

But the reader should also consider me as one who is gravely concerned about legal education because I am gravely concerned about the practice—the *profession*—of law. And it is that concern that I wish to discuss with you.

Let us all acknowledge at the outset that the practice of law is under stress from both internal and external sources. Candidly and sadly, a primary cause of the stress is the rise of greed and a corresponding focus on "self esteem." Too often lawyers, and citizens at large, look at every situation as one in which there must be a winner and a loser. This win-lose mentality leads to a shocking decline in civic engagement. Therefore, one should readily acknowledge that a great deal of the problem of internal and external stresses in the practice of law rests on the bar and on its members. However, that determination is not the entire answer.

The academy bears a significant share of responsibility as well. Indulge me for these few moments, therefore, to go to the heart of the lawyer's lament, to raise a far more important issue than the many, often-heard complaints about the practice of law and about legal education. Allow me to suggest a necessary adjustment in legal education that does *not* require structural upheaval in the academy.

Perhaps we can also all acknowledge a growing disconnect between legal education and the practice of law. Hopefully, we can also admit that many professors, some might say most professors, embrace that disconnect because they feel, and because they exhibit, a disdain both for the practice of law and for those of us who practice.[2] (You know that this is so. Professors have told me that it is so, and many of you have told me that it is so. More significantly, most, if not all of you, have discussed this disdain and the feeling of disconnection that results from it.) For some in the academy, it would be well if they could acknowledge that the issues with which many practitioners grapple are as intellectually challenging as those facing the scholar. Often the practitioner finds a solution only after her own scholarly inquiry.

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2. Disdain for the practice and a failure to appreciate its opportunities and responsibilities were illustrated in a fictional setting in KERMIT ROOSEVELT, IN THE SHADOW OF THE LAW (2005). This popular fiction mystery is set in a large Washington, D.C. law firm. The author, now an assistant professor at the University of Pennsylvania Law School, followed the familiar pattern of a U.S. Supreme Court Clerk: from a brief tenure in private practice to a law school teaching position. His novel has a significant character who ignores his professional responsibilities in order to polish an article needed as the final key to unlock the door to an academic position. One assumes that fiction mirrors fact in this instance as in so many others.

Finally, all must overcome the odious envy of overpaid lawyers.[3] We should simply acknowledge it as a fact and acknowledge as well that the demands upon the lawyer earning that wage go far beyond the accepted level of tolerance.

This disdain or distance is exacerbated as more professors enter faculties with advanced degrees in subjects other than the law and with an interest in highly specialized fields far removed from the practice generally. These professors bring an important ingredient to legal education and scholarship. But do they know and care about the law? Do they take the time to appreciate and to pass on qualities inherent in protecting the law? Some certainly do; some could care less.

II. AN IMPORTANT THRESHOLD QUESTION

So let me begin my discussion by asking a very important question: How can one teach, indeed train, would-be lawyers when one exhibits by word and deed disdain for lawyers? Deflecting the question, many academics will answer that it is "the law" and not lawyers with which he or she is concerned. It is scholarship, not teaching, that is one's primary responsibility. Certainly professors are not concerned about the "greedy associates" but rather the intellectual development of the law. Many law faculties will also say that "the men and women we turn out do not really matter." This is a reflection of the perception that the "big firms" want warm bodies just as World War I generals needed troops for the trenches.

Impressively cynical, and sadly, at least in part, accurate, one should still ask, "Is this answer true enough? Is it truly valid?" If one cares about "the law," which I do and assume, indeed sincerely believe, that the reader of this essay does as well, shouldn't one care more about how it is practiced? To those who answer "no," to those who are ambivalent, or to those who only worry about the best and brightest in the class, I say: You undervalue—seriously undervalue—the purpose of a legal education.

The approach of so many faculty members, in identifying the best and the brightest students and spending an inordinate amount of classroom and particularly out-of-classroom time with this cohort is particularly alarming. First, in all too many cases, this special time is spent attempting to steer these "special" students away from the practice and into clerkships initially and, ultimately, onto faculties.

3. One business world example of many regarding the public perception of the cause and effect of salary inflation can be found in Cameron Stracher, *Cut My Salary, Please*, WALL ST. J., Apr. 1, 2006, at A7.

The emphasis is on an alternative to law practice rather than encouraging these exceptional students to become engaged in the practice of law and bring to that practice their special skills and capacity. If they were to do so, it would enrich the law as a profession.

Another aspect of the focus on the best and the brightest is that many students are treated differently when they are presumed inadequate. This presumption of inadequacy may be because of race, social class, gender, or other reasons. And yet, in many cases, it is the less-focused-upon students that ultimately become the core of successful lawyers in firms, large and small, throughout the United States. Reflecting on my law school experience of almost forty years ago, I now realize that certain students received a different level of professorial involvement and had relationships that went far beyond those I or my immediate circle experienced. In no way do I complain, for I believe that I have succeeded quite well in the practice; however, looking back, I do realize what more could have been gained if everyone had a greater opportunity to have that contact.

However, the main point I wish to make simply focuses on where the professor seeks to steer her best students. Many of those best students should be steered into the practice of law with an injunction that it can be a most rewarding and valuable service as well as a personally and financially rewarding vocation.

II. WHAT SHOULD THE PURPOSE OF LEGAL EDUCATION BE?

Let me share my sense of what the purpose of legal education should be. I should note that this discussion is not simply a reflection of one practitioner but is based upon a series of interviews with a host of practitioners, general counsel, academics, and business people.[4]

Some argue, with conviction and persuasiveness, that the goal of legal education should be to teach the student to "think like a lawyer."[5] One could observe, of course, that the oft-heard phrase "thinking like a lawyer" would require another extensive article to

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4. The author wishes to thank the many practitioners and academics who took the time to talk, and demonstrated genuine interest in the topic. In addition to numerous members of the Board of Governors of the American College of Real Estate Lawyers, several deserve special recognition and my appreciation. These include: William R. Breetz, Janet L. Bozeman, Celeste M. Hammond, Edward J. Hardin, Geoffrey C. Hazard, Jr., Evan McKenzie, Portia O. Morrison, Terrence O'Connor, David Alan Richards, Michael H. Rubin, and Donald H. Siskind.

5. Learning to "think like a lawyer" has its own negative consequence. In the author's experience, it is vital for one to learn "to think like a lawyer but talk like a person." The ability to communicate and especially to communicate complex principles in a comprehensible, acceptable manner is just as (and perhaps more) important as thinking about these principles. All too often a legal education dulls innate communication skills when present in a student, and certainly does little to develop them when not present before.

define what it truly means. Happily, there is an excellent effort in this regard by a very bright young lawyer.[6] But assuming that there is some general consensus on what it means to think like a lawyer,[7] one could ask, "Is that enough?"[8]

This view of the purpose of legal education is good as far as it goes, but it is overly simplistic. Looked at as an academic exercise in "lawyer think," the entire process may become a self-fulfilling prophecy of producing men and women who may have highly skilled academic acumen within a narrow channel of teaching and testing but no capacity to deal with the realities of the practice of law in a meaningful, professional way. Let me try to explain.

Legal education is only as good as its end product: men and women who employ that education in the profession, in business, and in their daily lives. A measure of success is how well these graduates execute the "traditional skills" of a lawyer. These skills are those most commonly described as "thinking like a lawyer." Thus, the intermediate consumer, law firms and law departments, look for certain analytical, intellectual, and communication skill sets. However, the intermediate consumer and the ultimate consumer, the public at large, also look, or certainly should look, for far more. They weigh the quality of the education by the standards of professionalism that the graduate embodies and should discern whether a way of *acting* like a lawyer is as engrained as the habit of *thinking* like a lawyer. Thus, the answer to the question "Is thinking like a lawyer enough?" is "no." Anyone can be taught to think a certain way. Being a lawyer—being a professional—requires far more.

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6. See Bethany Rubin Henderson, *Asking the Lost Question: What is the Purpose of Law School?*, 53 J. LEGAL EDUC. 48 (2003), for a summation of the perceived failures in legal education, especially from the students' perspective. The article also examines possible sources for the concerns about legal education and sets forth the strengths and weaknesses in the "blame game."

7. *See id.* at 52. Henderson wrote:

> In this paper I propose that the source of legal education's problems is that law schools' practices, which are based on the way law schools have been operating for more than 100 years, do not correspond to the purpose of law school today. I first explore the fundamental question: what is the current purpose of law school? I conclude that the purpose of law school is to teach a heterogeneous group of people, who come from widely different backgrounds and with widely different goals, to think like lawyers.

Id. I certainly agree with Ms. Henderson's analysis; however, as seen in the text of this essay, I would take her position a step further. From her articulation, albeit briefly, of the importance of a "comprehension of professional norms and responsibilities," *id.* at 62, I suspect she would agree with me.

8. *See id*. at 57-62 (describing the "functional component" of what it means to think like a lawyer).

An apt example comes from a piece of literature that has nothing, yet everything, to do with the law and legal education. In his seminal text, *Mere Christianity*, C.S. Lewis, the son of a Belfast barrister, wrote about virtues. In that context he said:

> There is one further point about the virtues that ought to be noticed. There is a difference between doing some particular just or temperate action and being a just or temperate person. Someone who is not a good tennis player may now and then make a good shot. What you mean by a good player is the man [or woman] whose eye and muscles and nerves have been so trained by making innumerable good shots that they can now be relied on. They have a certain tone or quality which is there even when he is not playing, just as a mathematician's mind has a certain habit and outlook which is there even when he is not doing mathematics. In the same way a man who perseveres in doing just actions gets in the end a certain quality of character. Now it is that quality rather than the particular actions which we mean when we talk of "virtue."[9]

It is also this "quality," rather than the particular actions that might result from "thinking like a lawyer," that one should mean when talking about being a professional. It is a "certain tone or quality" that the intermediate and ultimate consumers should be able to rely upon.

The conference that prompted this essay was about new approaches (but approaches nonetheless) that are consistent with the vital aspect of today's law school: scholarship and high-quality research. In no way do I reject this aspect of legal education. I am talking about something not inconsistent with the importance of scholarship and research, but rather about something that in many ways is so old-fashioned that it is too often out of fashion today. That is leadership and character.

When I began my teaching career as an adjunct professor in the mid 1980s,[10] I kept on my desk a copy of an article by Dean John Wade on the role of a law professor.[11] That article repeatedly reminded me that the test of an effective professor had three prongs, reflecting teaching, scholarship, and public service.[12] Said from a different perspective but making a similar point, Paul Cadenhead, a distinguished member of the Atlanta Bar who is now retired but who still represents high-quality professionalism, commented that the role

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9. C.S. LEWIS, MERE CHRISTIANITY 79-80 (Harper Collins 2001) (1943).

10. The author served as an Adjunct Professor at Emory University School of Law from 1983-2002, and at Vanderbilt Law School from 1998-2002. He taught one semester each at California Western Law School (1983) and the University of Georgia School of Law (1999). He was told that his student evaluation of teacher scores were "excellent" or "outstanding." If this be true, one reason for this is that he made a genuine effort to teach the theory and legal principle of his courses within the context of the practice of the course.

11. John W. Wade, *Legal Education and the Demands for Stability and Change Through Law*, 17 VAND. L. REV. 155 (1963).

12. *See id.* at 158-63 (describing the "teaching methods" and "professional responsibility" aspects of legal education).

of a lawyer should be reflected in three stages: "preparation, practice, and payback."[13] Both of these well-regarded men were making clear that leadership and character are inherent parts of being a professional.

Let me hasten to add, however, that I am not asking law schools to teach the specifics of the practice, the trade craft if you will, or to "teach" character. There are many reasons that it is not the responsibility of the law school to do so. First, it is not the professor's job or purpose. Second, it is not consistent with the true objective of a law school. One should never allow the debate over turning out a better "product" to obscure the importance, indeed the vital role, of scholarship and research. Third, law schools do not have the time to undertake such a broad responsibility. Fourth, and I say this with great respect, in many cases, if not in most, law schools professors do not have the requisite skill sets to teach the actual specifics of the practice of law.

However, the students do need a sense, a connection, and an appreciation of the law as a *profession* and as a worthwhile endeavor. They also need an in-depth understanding of the essential qualities that should be present in a member of the legal profession. For them to gain this connection and this appreciation, the academy must posses it as well.

Without that connection or appreciation, the newly minted lawyer may be paid well but will soon be unhappy. Lawyers of all ages are overstressed, but the young lawyer will find herself or himself lost in an environment in which she or he has limited ability to conceptualize and certainly no ability to control. They will be, in a phrase, rudderless and without a compass.

III. WHAT IS MISSING?

What can the law school do to address the problems that I have identified? I have selected four essentials out of what could be a much larger list:

- professionalism and integrity;
- the ability to read and to understand people;
- the ability to solve, not just spot, problems; and
- an understanding of the multidisciplinary nature of most transactions.

These are examples of what is missing and the consequences of that lack. I am not suggesting that there is a need for special courses

13. Bill Torpy, *Reunion Celebrates an Era of Service: Emory Law Grads Bonded by WWII*, ATLANTA J.-CONST., Oct. 1, 2005, at E1.

to teach these qualities; in fact, I would caution against creating such courses. Rather, let me pick up a comment from Robert D. Cooter's remarks at the symposium on the future of legal education in his presentation on Law and Economics: He said that he realized that the Law and Economics movement had reached a significant point of success when the subject disappeared as a distinct topic and instead was found throughout the curriculum itself.[14] Likewise, the qualities necessary to be a professional should be embedded not like raisins in a loaf of bread but like the yeast that permeates the entire loaf. From twenty-plus years of teaching, I know that to do this is not only possible but also will be well-received. But one must have the ability and especially the willingness to try.

Let us look briefly at the four missing essentials.

A. Professionalism and Integrity

At the outset, it would be interesting to ask the reader: Does your law school teach professionalism? Is it taught by a senior faculty member, or is it pushed off to a junior who finds herself or himself "stuck" with teaching such a course? A more important set of questions would be: Does your faculty see the topic as unessential to the practice of law, and what subtle and not-so-subtle signals do you send to your students in class and after class about the topic of professionalism? Finally, what do you value as the standard(s) of a professional? Professionalism, as I use the term, does not mean compliance with the Code of Professional Responsibility or similar codes and statutory prescriptions.

There is a significant difference between ethics and professionalism. The simplest, yet most descriptive distinction is as follows. *Ethics* set out how we are to act—what we are to be—because there are rules telling us how to do so. *Professionalism*, on the other hand, defines how we should act even when no one is watching, or more importantly, when no one is enforcing a rule. Professionalism rejects the myth that the "client comes first" when that aphorism is interpreted to mean "first **and** only." Professionalism redefines winning so that it does not mean "winning at all costs." And winning does not mean that the other party must lose.

Professionalism reminds us that fidelity and loyalty to clients are to be balanced with the lawyer's obligations to the procedures and institutions of the law and the administration of justice broadly defined. Professor Evan McKenzie, writing in a different context,

14. Robert D. Cooter, Remarks at the Vanderbilt Law School Symposium: The Future of Legal Education (Apr. 28, 2006).

provided an interesting observation: "[T]he law school focus on abstract rules and adversarial interests does not prepare lawyers to understand the role of law in a community or in personal relationships. This produces lawyers who are unprepared to appreciate the complexity of roles . . . in a common interest community."[15]

One can apply McKenzie's comment well beyond the context of common interest communities. I would suggest doing so with one minor modification: "lawyers who are unprepared to appreciate the complexity of *people* in today's legal environment" is a broader but equally apt observation.[16]

A lawyer should have at least four commitments: to the client, to integrity, to the profession, and to the community. The commitment to the client is all about roles and relationships. It is often complicated by the troublesome word "zealous," and it is too often misapplied as a standard for representation of clients. Zeal means eager interest, and zealous means diligent. It calls for "hard work not hardball," as Professor Geoffrey Hazard has pointed out.[17] Commitment to the client essentially requires a lawyer to place the client's interest be placed before that lawyer's self-interest.

Two eminent jurists have paraphrased this commitment briefly but completely. The late judge, Richard S. Arnold, wisely observed: "Sometimes a client needs a friend, instead of just an advocate, to place a situation in perspective. So the true definition of zealous . . . should encompass some form of restraint."[18]

Said a different way, Justice Hardy Gregory of the Georgia Supreme Court, in his discussions of professionalism, noted: "There is a time to take a stand, and there is a time to find a way. Good lawyering is knowing the difference."[19]

Justice Gregory's comment is reminiscent of a line that the Reverend Dr. Martin Luther King, Jr. borrowed from a well-loved

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15. Evan McKenzie, *Doing Well, Doing Good, or Doing Both? Rethinking the Practice of Community Association Law*, 2 J. COMMUNITY ASS'N L. 38, 40 (1999)

16 Attached as an appendix is the Statement of Professionalism of the American College of Real Estate Lawyers. It is one approach for an ongoing effort to instill a sense of professionalism in students, not as a separate course but as a part of each and every class.

17. Interviews with Prof. Geoffrey C. Hazard, Jr., Trustee Professor of Law, University of Pennsylvania, in Washington, D.C. (May 14-17, 2001).

18. The Honorable Richard Sheppard Arnold, Address at the 78th Annual Dinner of the American Law Institute (May 16, 2001), *in* 78 A.L.I. PROC. 448, 453 (2002).

19. Justice Harold G. Clarke, *Professionalism: Repaying the Debt*, 25 GA. ST. B.J. 169, 171 (1989) (quoting Justice Hardy Gregory of the Georgia Supreme Court "in a speech to a group of lawyers assembled for the administration of the oath of admission"), *reprinted in* Harold G. Clarke, *The Judiciary as the Guardian of Professionalism*, *in* A.B.A. SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, TEACHING AND LEARNING PROFESSIONALISM 65, 79 (1997).

spiritual: There will be "a way out of no way."[20] Is not that the mark of a great scholar? Is not that the mark of a great lawyer? When one finds a way out of no way, one is using all of the scholar's and the lawyer's skills. One is not simply looking for the opportunity to "beat" someone else, but rather is seeking creative solutions that reflect the qualities of a professional, including the use of character, integrity, and judgment.

What does a professional owe a client? I suggest that Judge Arnold and Justice Gregory and many others would say faithfulness, competence, diligence, good judgment, balance, and a willingness to say, "That is not the thing to do." This conclusion leads us to a discussion on the commitment to integrity. Professor Stephen Carter, in his book *Integrity*, claims that one with integrity has both a responsibility to say "no" and a responsibility to ask "why?"[21] He points out that one can be honest without having integrity but one cannot have integrity without being honest.[22] Too often these concepts are nowhere to be found in any classroom discussion on any topic.

One may teach these concepts without ever using the word "integrity" and without compromising the substantive point of the lesson. However, when one fails to teach the importance of integrity, in the profession and in the practice of law, one helps to perpetuate the all-too-common stereotype of the lawyer who has no integrity at all. Integrity requires that one discern right from wrong and that one act on that discernment without regard to the cost to himself or herself. A person of integrity is a whole person the same yesterday, today, and tomorrow. Said another way, Harold S. Kushner points out, "For the person of integrity, life may not be easy but it is simple: Figure out what is right and do it. All other considerations come in second."[23]

Yet, frequently the antonym of integrity—what I would call "applied situational ethics"—is the touchstone in the classroom as well as in society. The consequences, however, are draconian, for with ever-changing context and situations, the student and then the young lawyer change. The young lawyer comes not to know which him or her is actually him or her. Burnout is expedited, dissatisfaction increases, and with the loss of reputation comes a loss of ability. After all, what

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20. Dr. Martin Luther King, Jr., Presidential Address to the Tenth Anniversary Convention of the Southern Christian Leadership Conference: Where Do We Go from Here? (Aug. 16, 1967), *reprinted in* 2 THE VOICE OF BLACK AMERICA 464 (Philip S. Foner ed., Capricorn Books 1975) (1972).

21. *See* STEVEN CARTER, INTEGRITY 10-11 (1996) (delineating the first two of three steps to living with integrity: discerning right from wrong and doing what one believes is right).

22. *Id.* at 10.

23. HAROLD S. KUSHNER, LIVING A LIFE THAT MATTERS 88 (2001).

comprises our capacity to persuade, to bring a deal to closure, or to solve a problem ultimately rests on our credibility, our respect, and our innate persuasiveness. These contexts all fluctuate as one changes in the face of applied situational ethics.

I have had professors ask me why some of their excellent students are now so unhappy in the practice of law despite the fact that they appear to be extraordinarily well-paid and seem to deal with very interesting and exciting legal challenges. A great and enduring, if very regrettable, answer is that the young lawyer has fallen victim to the consequences of this situational ethic alternative to integrity.

B. Ability to Read and to Understand People

One extraordinarily successful and keen evaluator of the practice and practitioners pointed out that "lawyers learn nothing about interpersonal relations, management, and the arts of leadership" in law school.[24] He went on to lament lawyers' lack of character, their inability to read and understand people, and their lack of related skills. Among these skills are anger management, the ability to negotiate, and the ability to convince another party (note I did not say "adversary") of one's position.

Inherent in the case method is a failure that affects both the ability to read and understand people, and the ability to solve, not just spot, problems. Certainly one can argue that a professor cannot teach common sense nor develop in a student the ability to be "a people person" when that student does not come into the classroom with a minimal level of people skills. However, the creative structures in legal education can go a long way toward enhancing preexisting skills,.

Another commentator illustrates my point, asserting that he was "often disappointed or frustrated with an outside counsel providing advice that often seems more like a law review article than practical advice applicable to the issue at hand."[25] Without the ability to take the principles one learns in the classroom and apply them in a people-smart manner, one is less than a complete lawyer and certainly not a professional.

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24. Interview with Edward J. (Jack) Hardin, Founding Partner of Rogers & Hardin LLP, in Atlanta, Ga. (Oct. 25, 2005).

25. Email from Terrence O'Connor, General Counsel of Forbes, Inc., to author (Dec. 6, 2005) (on file with author).

C. Ability to Solve, Not Just Spot, Problems

One commentator lamented that too frequently professors find it difficult to teach transactional law because they have never done transactions.[26] Another commentator, a very successful lawyer-scholar-teacher-father, pointed out that many professors do not know enough to teach a real world thought process.[27] The case method "is dependant upon a reiteration of what is in the case book not how to get to yes," he observed.[28] This is all part of the standard approach in law school of spotting, but not solving, problems.

Spotting issues is, of course, important, but that is only the beginning of the process. Most practitioners would probably share the observation that spotting problems is the easiest part of the practice since so many problems seem simply to be thrust upon us. Finding or creating appropriate solutions is the true challenge.

Just as Mike Rubin made the comment that most law students are not taught how "to get to yes," I would observe that the little monogram "*Getting to Yes*" simply sums up many of the concerns in this essay. That book,[29] one of the bestselling books of all time, sets out a system of negotiation that is designed to be nonconfrontational and one in which all parties can find that they have won something. Most law students scoff at such an approach.

I experienced this while teaching negotiations at Vanderbilt University Law School. Students would roll their eyes when I made the argument that truly successful negotiations were not predicated upon causing the other side to lose. I finally resorted to a book by famed sports agent, Leigh Steinberg, entitled *Winning with Integrity,* to provide credible support for the basic principle that solving problems in a nonconfrontational manner was an essential part not only of being a professional but also of being a successful business person.[30] Steinberg observed:

> Today . . . we all feel squeezed—and in many cases, trapped—by the competing necessities and economic realities of our obligations and responsibilities to our professions, to our families, and to ourselves. As a result of such pressure, it's easy for

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26. Telephone Interview with Celeste Hammond, Professor and Director, Real Estate Law Program, The John Marshall Law School (Oct. 25, 2005).

27. Telephone Interview with Michael H. Rubin, Member of McGlinchey Stafford, PLLC (Oct 25, 2005). Interestingly, and illustrative of the fact that "the apple does not fall far from the tree," Mike is Bethany Rubin Henderson's father. Bethany Henderson authored *Asking the Lost Question: What is the Purpose of Law School?*, *supra* note 6.

28. Rubin Interview, *supra* note 26.

29. ROGER FISHER, WILLIAM URY & BRUCE PATTON, GETTING TO YES: NEGOTIATING AGREEMENT WITHOUT GIVING IN (2d ed. 1991).

30. LEIGH STEINBERG WITH MICHAEL D'ORSO, WINNING WITH INTEGRITY (1998).

> our fundamental values, which are so important to us when we were younger, to be compromised or pushed aside.

This is an unfortunate result. The amount of success, economic or otherwise, achieved by abandoning or ignoring one's values cannot compare to the degree of success, satisfaction, and fulfillment achieved by applying those values to the process.[31]

D. An Understanding of the Multidisciplinary Nature of Most Transactions.

This last example of what is missing requires no elaboration: it speaks for itself. In today's world, most legal transactions—certainly those faced by the vast majority of lawyers—are no longer single-shot transactions reflecting one area of the law. The complexity of today's world and every transaction, whether personal, governmental, business, or otherwise, is too multifaceted to approach issues as if they were susceptible to legal analysis based upon a single area of the law. Perhaps this point harkens back to Bob Cooter's comment that Law and Economics permeates the curriculum, and thus, the movement has succeeded.[32] Perhaps I am merely asking for the application of "Law and Reality," since in reality, few questions facing today's lawyer are unidimensional and clearly cut from a single strand of legal reasoning. When problems are approached in the classroom as if they stood all alone, we are shortchanging both our students and the profession.

IV. CONCLUSION

In conclusion, I would make one final point. What I am asking to be taught is consistent with the best of scholarship and teaching. In fact, it defines great teaching. One can teach what it means truly to be a lawyer as one teaches courses of personal scholastic interest. One can teach principle and practice in the same classroom setting. And that, I truly believe, is what practitioners of law are asking of teachers of law. As you teach and expand the law, teach what it means to be a lawyer as well as how to think like one.

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31. *Id.* at 21. Several students told me that the injection of Steinberg raised their acceptance levels. We can and should look for the Steinbergs to make the points in class.

32. Cooter Remarks, *supra* note 14.

APPENDIX

STATEMENT OF PROFESSIONALISM[33]

The American College of Real Estate Lawyers stands for the highest standards in the practice of real estate law. In furtherance of the standards of the College, its Members have adopted this Statement of Professionalism and aspire to the following tenets.

1.COMMITMENT TO THE CLIENT.

Members must adopt the highest standards of excellence in the practice of law, fulfill the fiduciary duties owed to each client, and place the interests of the client, the legal profession and the administration of justice above self-interest.

Members should endeavor to achieve the client's lawful objectives in matters as expeditiously and economically as possible.

Members should keep the client informed of the progress of the matter for which the Members have been retained or engaged, including the costs and fees.

2.COMMITMENT TO INTEGRITY AND CIVILITY.

Members must adhere strictly to applicable legal and ethical standards of professional responsibility, acting with fairness, honesty, personal dignity and professional integrity.

Members must scrupulously honor commitments made and extend civility and courtesy to all persons.

Members should advise clients that civility and courtesy are not to be equated with weakness but are consistent with vigorous advocacy and zealous representation.

In the conduct of negotiations, Members should conduct themselves with dignity and fairness and refrain from conduct meant to harass or annoy the opposing party.

Members should (a) in pursuing the objectives of the client act in the best interests of the client but at all times in a professional manner consistent with this Statement, (b) conduct civil, honest and open negotiations, (c) draft understandable documents consistent with the understandings of the parties, and (d) disclose to the other party obvious drafting errors inconsistent with those understandings.

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33. AMERICAN COLLEGE OF REAL ESTATE LAWYERS, STATEMENT OF PROFESSIONALISM (2005), *available at* http://www.acrel.org/Documents/Seminars/ACREL%20Statement%20of%20Professionalism.DOC .

Members will clearly identify, for other counsel or parties, all changes and revisions made to documents.

Members will scrupulously refrain from making misleading statements of law or fact, whether by omission, inference, or implication.

3.COMMITMENT TO THE PROFESSION.

Members should, at a personal level, encourage excellence in the law by one or more of the following activities: promoting a stringent program of continuing legal education, engaging in professional speaking and writing that expands the knowledge and practice skills of all members of the bar, training and mentoring new and less experienced lawyers, and voicing respect for the legal system.

Members should avail themselves of professionalism courses to remain abreast of developments in this important area.

Members should strive to provide role models and examples of balanced lives and professional practice for law students and young lawyers.

4.COMMITMENT TO THE COMMUNITY.

Members must provide pro bono or reduced fee legal services to low income members of the community or legal services to public or private organizations designed to address needs or persons of limited means and should perform public and community service for the public good.

Examples of this commitment include, among others, providing legal assistance to non-profit neighborhood and community development organizations and offering negotiating and drafting skills to resolve local "not in my backyard" issues.

5.COMMITMENT TO THE ORGANIZATION.

Members should advance the dialogue on professionalism in the legal profession by participating in ACREL CLE professionalism programs, writing articles on professionalism, and engaging other lawyers in professionalism discussions.

Members should nominate those candidates for admission into ACREL who have exhibited high levels of professionalism in their practices.

Members should observe and practice the tenets set forth in this Statement of Professionalism.