

Michigan Law Review

Volume 91 | Issue 8

1993

The Growing Disjunction Between Legal Education and the Legal Profession: A Postscript

Harry T. Edwards

U.S. Court of Appeals for the District of Columbia Circuit

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Legal Education Commons](#), and the [Legal Profession Commons](#)

Recommended Citation

Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession: A Postscript*, 91 MICH. L. REV. 2191 (1993).

Available at: <https://repository.law.umich.edu/mlr/vol91/iss8/17>

This Symposium is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact mlaw.repository@umich.edu.

THE GROWING DISJUNCTION BETWEEN LEGAL EDUCATION AND THE LEGAL PROFESSION: A POSTSCRIPT

Harry T. Edwards*

In October 1992, in the pages of this law review, I expressed my deep concern about “the growing disjunction between legal education and the legal profession,” in an article with the same title.¹ My thesis was as follows:

I fear that our law schools and law firms are moving in opposite directions. The schools should be training ethical practitioners and producing scholarship that judges, legislators, and practitioners can use. The firms should be ensuring that associates and partners practice law in an ethical manner. But many law schools — especially the so-called “elite” ones — have abandoned their proper place, by emphasizing abstract theory at the expense of practical scholarship and pedagogy. Many law firms have also abandoned *their* place, by pursuing profit above all else. While the schools are moving toward pure theory, the firms are moving toward pure commerce, and the middle ground — ethical practice — has been deserted by both. . . .

. . . .
This article is my response to . . . legal academicians who disdain law teaching as an endeavor in pursuit of *professional* education. My view is that if law schools continue to stray from their principal mission of *professional* scholarship and training, the disjunction between legal education and the legal profession will grow and society will be the worse for it.²

The response to the article has been nothing short of extraordinary. Humility causes me to understand that this has had more to do with the subject than with the author.

In my experience, it is rare for a law review article to touch a nerve

* Circuit Judge, United States Court of Appeals for the District of Columbia Circuit. B.S. 1962, Cornell; J.D. 1965, University of Michigan. Judge Edwards practiced law with Seyfarth, Shaw, Fairweather & Geraldson in Chicago, Illinois, between 1965 and 1970; he then served as a tenured professor of law at Michigan Law School (1970-75, 1977-80) and Harvard Law School (1975-77). Since joining the D.C. Circuit in 1980, he has continued to teach part-time at various law schools, including Pennsylvania, Harvard, Duke, Georgetown, Michigan and, most recently, New York University. — Ed.

The author wishes to acknowledge and express his appreciation for the assistance of Brandt J. Goldstein, J.D. 1992, Yale University, in the preparation of this article.

1. Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34, 34 (1992).

2. *Id.* at 34, 41.

of public reaction. I wrote "The Growing Disjunction" because I felt strongly that the "disjunction" of which I speak "calls into question our status as an honorable profession."³ In the article, I noted that I had heard many others express similar concerns in recent years;⁴ indeed, it was my view that, rather than saying something "wholly original,"⁵ I was articulating a set of concerns that already permeated the legal community. I was unaware, however, that these concerns are as deep and widespread in the legal community as the response to the article suggests.

I recognize that the article deals with some issues that many members of the profession — for various reasons — have been unable or unwilling to address. Given the response to the article, however, it is clear that the subject of "The Growing Disjunction" does not cover virgin territory; the article is novel only in the sense that it has focused attention on matters of great concern to many. My view of the nature and magnitude of the problems facing the academy and the profession today is, of course, open to debate.⁶ It may be, for instance, that I have overstated the negative influence of "impractical" scholars and scholarship.⁷ But there can be little disagreement, I think, that we presently face a serious problem in the legal profession. As a former dean of an "elite" law school wrote, "[u]ndeniably, there is a great deal of truth in what you had to say."⁸

I have several reasons to believe that the article's subject has struck a nerve. This symposium, of course, constitutes the most immediate evidence of the interest in the disjunction between the teaching and the practice of law. But the symposium is only one manifestation. The Editor-in-Chief of this law review advised me that the decision to publish a symposium was made because "[t]he response [to the article] has been so overwhelming"; he noted the "strong and widespread reac-

3. *Id.* at 34.

4. *See id.* at 35.

5. *Id.* at 41.

6. *Cf.* THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION, AMERICAN BAR ASSOCIATION, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT — AN EDUCATIONAL CONTINUUM (1992) 3, 330-34 (contending that there is less a "gap" between the academy and the profession than a continuum of development in legal skills and values that includes law school and practice; nevertheless, suggesting numerous reforms in legal education).

7. By "impractical" scholar, I mean one who "produces abstract scholarship that has little relevance to concrete issues, or addresses concrete issues in a wholly theoretical manner." Edwards, *supra* note 1, at 35.

8. Law Professor #1, letter dated Nov. 25, 1992, at 1. (For the sake of convenience, and to preserve the anonymity of persons who wrote to me, I have identified correspondents as either "Law Professor #—," "Dean #—," "Practitioner #—," "Judge #—," "Student #—," or "Recent Graduate #—." Copies of the letters from these correspondents are on file in my chambers.)

tion" to the article, stating that "[h]ardly a day has gone by during the past month when we have not seen new evidence of its force, from the *Wall Street Journal* article to calls and inquiries from academics and law firms."⁹

My own experience has been much the same. I have been overwhelmed with oral and written responses to the article from law school deans and faculty members, students, and members of the bench and the bar. In particular, I was amazed by the number of law professors who approached me to offer their views during the January 1993 meeting of the Association of American Law Schools. Almost all those from whom I have heard agree that the legal community faces a significant problem. Further, there already has been some recognition of the problem at the institutional level: I have been told that a number of law schools have held or are planning to hold special seminars, faculty retreats, and other programs to debate the issues that are the subject of the article. Discussion of the article has even made its way into the popular legal press¹⁰ and national media.¹¹

In this essay I offer a postscript to "The Growing Disjunction." It is not possible for me to "respond" directly to the other participants in this symposium, because I had no opportunity before publication to read what they have written. I will therefore limit myself to two tasks. First, I will briefly discuss several issues raised in the article. Second, and most important, I wish to share a representative sample of the responses I have received regarding the article. These responses, I think, provide good evidence of the magnitude of the problem that we face.

I. RESPONSES TO THE ARTICLE: SOME INITIAL OBSERVATIONS

Although much of the original article was based on my own perspective and experience as a practicing lawyer, law professor, and now judge, I also relied heavily upon a survey of my former clerks as a source of information about the current relationship between legal education and legal practice. That survey provided many additional insights and illuminating examples, but its primary effect was to reinforce my views about the disjunction between the academy and the

9. Letter from Gregory P. Magarian, Editor-in-Chief, *Michigan Law Review*, to Harry T. Edwards, Judge, U.S. Court of Appeals for the D.C. Circuit 1 (Jan. 13, 1993) (on file with author).

10. See Eva M. Rodriguez, *Critical of Legal Studies*, LEGAL TIMES, Nov. 30, 1992, at 6.

11. See Ted Gest, *Doing Good is Doing Well*, U.S. NEWS & WORLD REP., Mar. 22, 1993, at 60; Junda Woo, *Law Schools Accused of Ignoring Basics*, WALL ST. J., Dec. 29, 1992, at B4.

profession. The multitude of responses I have received regarding the article have, for the most part, further reinforced those views.

Of the many observations the responses offered concerning legal education, three issues emerged in particular. Perhaps the problem of greatest concern is the growing tension in a number of law school faculties over hiring decisions, a tension born of deep divisions within those faculties. A number of the communications I received observed, with much distress, that faculties often are badly split, with the more traditional, practical scholars on one side of the divide, and the "law and," "impractical" scholars (almost invariably a younger lot) on the other side. This division in the academy is, it seems, frequently permeated by rancor, contempt, and ill will. The practical scholars at times are befuddled, even disgusted, by what they perceive as scholarship of questionable quality, engulfed by obfuscatory nomenclature, with no apparent relevance outside of the small conversation that takes place among the group of legal academics who write and speak in that nomenclature, be it critical legal studies (CLS), critical race studies, law and economics, or another area. For their part, the "impractical" scholars often view their doctrine-oriented colleagues as engaged in "uninteresting" work, unworthy of pursuit by true intellectuals.

Moreover, as several responses observed, it is not uncommon for the "impractical" scholars to unite in a bloc that espouses a distinctive political agenda. As a consequence, the hiring process may be as much about stacking the deck in favor of a particular political position as it is about attracting promising, creative, productive legal minds.

A second concern, highlighted by the responses I have received, is the growing imbalance in law school pedagogy, with too much emphasis on theory at the expense of a basic doctrinal education. This imbalance, of course, is attributable in large part to the increasing number of "impractical" scholars on law faculties who are neither capable of, nor interested in, teaching doctrine-rich courses (and who, when required to teach basic first-year classes such as contracts or property, often abandon any attempt to instill doctrinal literacy in their students). This growing disinterest in providing students a solid, rigorous foundation in doctrine seems, in some cases, to have extended beyond individual courses to the way in which the first-year curriculum is organized. One law professor at a major eastern school expressed dismay over an "experimental [first-year] section run mainly by 'impracticals,'" which attempts to blend all of torts and contracts into a single, four credit-hour class.¹²

12. Law Professor #2, letter dated Dec. 21, 1992, at 2.

Third, the responses confirmed my original fear that a good number of law professors are altogether uninterested in producing scholarship useful to practicing lawyers, judges, administrators, and legislators.¹³ Concern about the breakdown in communication between academics and practitioners came from both sides of the divide. A professor at a major west coast law school lamented the view of one of his colleagues that "legal scholars should address their work *exclusively to each other*."¹⁴ A named partner of a major Washington, D.C., law firm expressed his dismay about being unable even to *understand* some of the scholarship produced today, "where words and concepts seem to be employed to obscure rather than inform and appear to be addressed to an audience of one (the author!) or perhaps a few esoteric colleagues."¹⁵ These comments are typical of many that I received.

The responses I received also expressed concerns about ethical problems in the legal profession. Senior and managing partners from several major law firms emphasized the importance of preserving the honorable status of the profession, particularly its sense of public obligation. And a number of attorneys voiced distress over the apparently cavalier attitude that many law schools take to teaching ethics today.

The pool of responses I received tended to confirm in significant measure the concerns raised in the article; however, some questions were raised about the article suggesting that aspects of my thesis might have been misconstrued by some. Several points are worth mentioning to dispel possible misconceptions. First, I am *not* against theory or theoretical work.¹⁶ In my view, the ideal law school includes "a healthy *balance*"¹⁷ of practical and theoretical teaching and scholarship. Indeed, even in courses geared toward doctrinal literacy, one

13. It seems that not all of those who appear actively to endorse the "impractical" component of legal education necessarily take this stance in their scholarship. In particular, I have in mind Professor George Priest, who has advocated a "graduate school" model of the law school that I have already indicated I reject. See George L. Priest, *The Increasing Division Between Legal Practice and Legal Education*, 37 *BUFF. L. REV.* 681 (1988-1989). Recently, Professor Priest sent me a letter discussing the Program in Civil Liability (PCL) at Yale Law School, a "research unit" engaged in "advanced research on civil liability topics"; the most recent conference held by the PCL, Professor Priest said, addressed "issues relating to the increasing complexity of modern civil litigation." Letter from George L. Priest to Harry T. Edwards, Judge, U.S. Court of Appeals for the D.C. Circuit 1 (Nov. 25, 1992) (on file with author).

14. Law Professor #3, letter dated Dec. 16, 1992, at 1 (emphasis added).

15. Practitioner #1, letter dated Nov. 25, 1992, at 1.

16. See Edwards, *supra* note 1, at 35 ("I should make clear at the outset that I do not doubt for a moment the importance of theory in legal scholarship."); *id.* at 39 ("I emphasize, again, that a great professional school never can be antitheoretical."); *id.* at 65 ("I repeat that, in advancing my claim for 'doctrinal education,' I do not propose that law schools eliminate theory from their curricula.").

17. *Id.* at 36.

cannot teach, or learn, without a theoretical construct.¹⁸

Second, I am *not* against interdisciplinary scholarship. I agree with the dean of an "elite" law school who stated to me his belief that "interdisciplinary work should enrich and not displace an emphasis on Law."¹⁹ Twenty years ago, I joined others in the decision to add psychiatrists, sociologists, and economists to the law faculty at the University of Michigan, and I spent a number of years team-teaching with psychiatrists. Then, as now, it should be clear that research and teaching in courses ranging from criminal law to negotiation are significantly enhanced by the insights of, for instance, psychology and sociology. Many other examples could be cited; but, as I have emphasized, that does *not* mean that "[t]he entire array of graduate schools [should] be duplicated, in microcosm, in the law school."²⁰

Third, I am *not* interested in "trashing" CLS. Nor do I oppose the work of scholars devoted to critical race theory or feminist legal studies. I continue to believe that "critical" scholars "have the potential to be valuable additions to the law school. [Such] scholars have provided a critical, anti-establishment view that, in the past, was largely absent from the law schools."²¹ What troubles me most about *some* adherents of CLS is that their attempts to expose fundamental flaws in our legal system are not accompanied by any comprehensible suggestions for reform. This is truly ironic, for it is distinctively the lawyer's domain (unlike, say, that of the political philosopher) to deal with concrete, institutional realities.²²

18. For example, I do not see how one could effectively teach a course in federal courts without considerable discussion about theories of federal jurisdiction, such as the one developed by Professor Hart. See Henry M. Hart, Jr., *The Power of Congress to Limit the Jurisdiction of Federal Courts: An Exercise in Dialectic*, 66 HARV. L. REV. 1362, 1365 (1953) (Congress' exceptions to the appellate jurisdiction of the Supreme Court may not "destroy the essential role" of the Court).

19. Dean #1, letter dated Dec. 4, 1992, at 1.

20. Edwards, *supra* note 1, at 56. For a discussion of practical interdisciplinary scholarship in the area of mental health law, see David B. Wexler, *Therapeutic Jurisprudence and Changing Conceptions of Legal Scholarship*, 11 BEHAVIORAL SCI. & L. 17 (1993). Professor Wexler analyzes a number of articles — directed to judges, legislators, and other public decisionmakers — that address concrete problems in mental health law. See *id.* at 21-28.

21. Edwards, *supra* note 1, at 49.

22. In suggesting that legal scholarship should seek to solve concrete problems, I do *not* mean that legal scholarship properly consists of political tract-writing:

Some of the propositions of critical . . . studies are removed not only from legal analysis, but from the idea of scholarship. When organized labor is tacitly criticized for its failure to form a political party, or when the call is made to restructure the "Western wage labor system" we are not being offered disciplinary propositions about law; and legal periodicals seem curious pulpits for these appeals.

Matthew W. Finkin, *Reflections on Labor Law Scholarship and Its Discontents: The Reveries of Monsieur Verog*, 46 U. MIAMI L. REV. 1101, 1145 (1992) (footnotes omitted). Professor Finkin's article highlights, with both force and humor, many of the problems of contemporary legal scholarship.

Finally, I do not believe that legal education should be structured to prepare students only for appearing before judges. Most lawyers rarely appear in court, and we should not design the entire law school curriculum as if the opposite were true. Nor do I believe that an emphasis on the practical in legal education should be limited to doctrine. The value of high quality clinical courses is self-evident. Likewise, courses focused on the legislative and executive branches enable students to consider important policy questions, understand problems related to drafting and enacting legislation, and develop the ability to deal with executive enforcement measures and administrative regulations. Further, it would be immensely useful if law schools offered courses designed to train students how to *manage* legal institutions, since the delivery of quality legal services often depends upon the quality of the organization in which a lawyer works. In short, I do not endorse the study of doctrine to the exclusion of all else.

II. A SAMPLE OF THE RESPONSES FROM THE LEGAL COMMUNITY

My principal thesis has been set forth and defended in detail in "The Growing Disjunction." Thus, there is no point in rehashing arguments that I already have made. Rather, I think it more useful to share selections from some of the numerous unsolicited responses I have received, from all quarters of the legal community, regarding the original article. Most of the respondents expressed concerns similar to mine; not all were in agreement with me, however, so I have included some dissenting voices as well.²³ I am well aware that this sample could be construed as "biased," for those who agreed with the article may have been more likely to communicate with me than those who did not. Therefore, I can say no more than that this collection of responses is illustrative, not authoritative.

I have organized the respondents' remarks into five categories: (1) law school deans, (2) law school faculty members, (3) students and recent graduates, (4) members of the bar, and (5) judges. Classifying the various sources of the responses by position not only highlights the distinct perspectives of each group but, more importantly, emphasizes the striking similarities in the concerns expressed across groups. To preserve the anonymity of the respondents, I have omitted the names of individuals and institutions.

23. I have heard from many more people than I am able to cite. The responses presented here are, I believe, a fair sample of those that I received.

A. Law School Deans

Because of their institutional responsibilities, the deans who wrote or spoke to me predictably discussed, first and foremost, their concerns about hiring new faculty members; a number also addressed the issue of "impractical" scholarship. A few were content simply to offer brief notes of praise ("spectacular" was the excessive accolade from the dean of a major east coast law school²⁴) or concurrence ("I . . . agree with much of what you say," as the dean of one "elite" law school put it²⁵).

The dean of another "elite" law school offered this perspective on the influx of interdisciplinary and theory-oriented scholars and the influence those scholars will have on the next generation of academics:

In my judgment, the problem began in the late '60's when an increasing number of individuals who aspired to become history professors or economics professors or philosophy professors or political science professors or literature professors discovered that there were few, if any, opportunities in those fields. After spending several years doing graduate work, they finally faced reality and attended law school.

Most of these individuals had no real interest in law or in becoming a lawyer, but many were excellent students. As a result, they were hired by law faculties, particularly in the elite schools, in increasing numbers. After obtaining tenure, many of them began moving back towards their real academic interests — philosophy, political science, economics, history, literature, etc. This led to an explosion of interdisciplinary work in law, as well as to an increasing rejection of the importance of doctrinal analysis even in mainstream courses.

Today, this generation of scholars is dominant in legal education, and their priorities hold sway. Moreover, the problem is compounded by the fact that these very same academics tend to encourage only those of their students who are themselves interested in interdisciplinary work to consider careers in academia. And those students who are not interested in interdisciplinary work, but are merely extraordinarily talented lawyers, shy away from a career in the academy because they know that the kind of work that they would be interested in doing is not valued. As a consequence, virtually all of the applicants law schools like ours receive for positions in teaching come from individuals with a strong interdisciplinary bent. Although I regard interdisciplinary work as valuable, it should always be an enhancement of, rather than a substitute for, more traditional legal scholarship. In any event, the problem becomes self-perpetuating.²⁶

Although the majority of law school professors' responses are cited in section II.B, I include two of those responses here because they

24. Dean #7, letter dated Nov. 30, 1992, at 1.

25. Dean #2, letter dated Dec. 22, 1992, at 1.

26. Dean #1, letter dated Dec. 4, 1992, at 2.

follow so naturally from the letter just quoted. The first of these letters is from a professor at a major eastern law school, who attempts to identify the political and ideological dimension of the shift in faculty interests and the attendant influence on the hiring process:

Many, although not all, of the legal theorists would like to bring about a radical transformation of society. In many cases, their work amounts to an attack on classical liberalism, which they would like to see replaced with a philosophical or political theory that will lead to a much more egalitarian society. These professors think they can accomplish their goal not only through their scholarship, but also by indoctrinating their students and by having the law school and the university take official positions on their side of controversial issues of public policy. . . . These latter methods will not work well unless like-minded professors dominate the faculty. Thus, it is critical that professors who tend to accept the status quo be excluded from the faculty or at least have their influence minimized.

I believe that professors who are interested in engaging in practical scholarship generally tend to desire incremental change rather than radical change. These professors are likely to teach their students that our present legal system is not irredeemably flawed and corrupt; rather, it has many desirable features and often works quite well. In addition, these professors cannot be counted upon always to toe the line and support the theorists' proposed faculty resolutions on issues of public policy. Finally, "practical" scholars are often unsympathetic to the scholarship of the pure theorists, some of which they might regard as political tract-writing masquerading as legal scholarship. Thus, if the theorists vote to appoint a "practical" scholar to the faculty, they might find it more difficult to gain faculty support in the future for the appointment of another like-minded theorist. These reasons, I think, are a significant part of the explanation of why many legal theorists are hostile to practical scholarship and practical pedagogy.²⁷

The hiring environment described by the foregoing two letters has led a preeminent treatise writer and chaired professor of law at a major law school to believe that his chances would be dim were he seeking a teaching job today:

The developments you describe are certainly quite apparent here at my school, and I am sure that we are far from the worst. If I were leaving a clerkship and hoping to enter the teaching market today, with exactly the credentials I had 42 years ago, I am absolutely confident that I could not be hired on this faculty. Indeed . . . I feel reasonably confident that I would not even be invited here for interviews.

. . . .

I can well imagine the Appointments Committee sniffing over my

27. Law Professor #4, letter dated Dec. 22, 1992, at 1-2; see also Mark Tushnet, *Critical Legal Studies: A Political History*, 100 YALE L.J. 1515, 1516 (1991) (The author argues that "critical legal studies is a political location for a group of people on the Left who share the project of supporting and extending the domain of the Left in the legal academy.").

application. "Second in the class at [an elite institution]. There are lots of people with that kind of credential." "Officer of the [law review]. But we have editors-in-chief that we are not even bringing down." "Clerk for [a noted federal appellate judge]. He is a good enough circuit judge, but think of all the Supreme Court clerks we have interviewed." Then would come the final and fatal blow: "His only degree is an LL.B. I think we shoul[d] be looking for people who have a second degree in something other than law."²⁸

I think it self-evident that this series of letters describes a deeply troubling state of affairs in the hiring of young professors, and the responses of several deans indicate that I am not alone in this view. The dean of a small law school in the northwest offered an anecdote that illustrates the problems a would-be "traditional" legal scholar may face in seeking academic employment:

I agree with most of what you have to say, and it brings to mind a whimsical recounting of the faculty hiring process at another school, passed along by one of our recent [visiting scholars]. A superior candidate came through the process, but the candidate ran into substantial opposition from a powerful sub-set of the faculty who complained that the candidate was not committed to "law and *something*." The apt response from our [visiting scholar] was: "Oh yes. The candidate is committed to law and *law*."²⁹

Given the attitude among faculty that a young scholar must have "something" up his or her sleeve in addition to law, it is probably not remarkable that so many of those who seek teaching positions today style themselves as "law and" scholars or theoreticians. It may even be that some potential scholars who are interested in "law and law" are marketing themselves as something "more" in order to be hired, a view suggested by the dean of a large law school in the midwest:

In recent years, I have been struck by the number of young legal scholars who seem to be much more inclined towards what you characterize as impractical scholarship. . . . I participated on a panel at the AALS Faculty Recruitment Conference earlier this month and had an opportunity to meet another crop of potential faculty members. Based on some of my conversations with these and other young scholars, I am still not sure whether their commitment to CLS, critical race theory, [or] feminist legal theory is sincere or whether these young people have somehow been convinced or have convinced themselves that this is the only way to make a mark in legal education.³⁰

A discouraging assessment indeed.

Certain of the deans who responded to the article also had much to say about the closely related issue of "impractical" professors' distaste,

28. Law Professor #5, letter dated Dec. 23, 1992, at 1-2.

29. Dean #3, letter dated Dec. 8, 1992, at 1.

30. Dean #4, letter dated Nov. 25, 1992, at 1.

even contempt, for doctrinal scholarship, and their rejection of the existing legal system. This attitude deeply concerned the dean of a well-regarded law school on the east coast, formerly a chaired professor at an "elite" law school:

I agree wholeheartedly with most of what you say and embrace the overall substance of your thesis. . . .

What I find odd is that so many in the legal education profession are members of a tight-knit group that is just "out of it." Academic life simply takes these people away from reality. . . .

The notion that the analysis of cases, the discussion of doctrinal concepts, the support for the existing legal system while trying to make it work better, [are] somehow immoral and anti-intellectual drives me up the wall. The so-called "theory" that is so much in vogue today as the basis for what is written is often (though not inevitably) pure garbage. Sorry, I mean impure garbage!

Law schools should not be mere trade schools; they are places of higher learning. But they should deal with the realities of the procedural and substantive laws that are vital to the functioning of our world and the preservation of what is best about it. For those who only want to thrash about in the "nether regions," trashing everyone and everything who is productive, we need to develop a new school of legal thought and theory in our universities. Let those who are involved spend their time doing their idle musings, but don't pretend that their graduates are qualified to take the bar and enter the legal profession.³¹

Not every dean, however, believed that the problems discussed in the original article affected his or her law school. One dean from an "elite" law school was quite sanguine about the shared sense of purpose at his institution:

Although I do not agree with every point you make (in particular, I am skeptical about the ability of law schools to teach legal ethics effectively), the basic thrust of your argument is right on target. You may be surprised to learn, however, that I say this with a sense of some self-congratulation. Although too many lawyers and judges do not know it, [our law school] prides itself on coming closest to the vision you offer of a sound legal education. We have long held the view . . . that the first and foremost responsibility of a law school is to train its students to the profession of law and to contribute in a meaningful way to scholarly research about the profession. This is not to say, of course, that we do not value interdisciplinary approaches to law. . . . But it has consistently been our view that interdisciplinary work should enrich and not displace an emphasis on Law.³²

This dean was not entirely alone in his more upbeat assessment. The dean at a small east coast law school wrote me twice, and his first letter reflected a cautiously positive outlook:

31. Dean #5, letter dated Dec. 3, 1992, at 1-2.

32. Dean #1, letter dated Dec. 4, 1992, at 1.

[The ABA Task Force Report³³] concluded that there is not so much an absolute gap — and certainly not divergence as to objectives — as there is an unappreciated continuum of professional growth from law school through a lawyer's career. I suggest the disjunction you and your clerks perceive is neither as universal nor as intractable as you think. A perusal of our library shelves tells me there is no shortage of "practical" scholarship in the law reviews and elsewhere, and I know how profoundly our faculty struggles to assure that our curriculum balances doctrinal analysis, theoretical frameworks, skills training, and ethical sensitivity. I suspect a survey of deans, or even of professors, would find many more sharing your vision than not.³⁴

I wrote back to this dean, telling him that although I respected his opinion, very few of those from whom I had heard concurred with his view. A second letter from the dean arrived soon afterwards, stating that my message had "deflated" him. He added:

I revise my position somewhat. The enclosed article from [an elite law review] came to me recently. It is strong evidence for your position. I do not know [the author] and do not mean to denigrate his knowledge or skills. But, even after struggling to understand it, I do not immediately grasp how his [100]-page article in an elite journal is likely to be helpful to mainstream practitioners.³⁵

In sum, if the responses I received from deans are even moderately representative of the concerns of their counterparts at other institutions, then there is no dearth of support among law school leaders for the view that there is a serious disjunction between the academy and the profession.

B. *Law School Faculty Members*

It is perhaps not surprising that the majority of the responses I received came from law professors, given that a principal focus of "The Growing Disjunction" is law school faculties. Although some of the respondents did not take my position, an extraordinary number of them — from assistant professors at regional schools to preminent scholars at elite institutions — did agree that there is a tremendous problem to be addressed. A number of respondents were terse in their comments. For example, a former president of the Association of American Law Schools, who is now a chaired professor of law at a well-regarded east coast law school, expressed hope that the article would contribute to "help[ing] legal education get itself out of its intellectual cul-de-sac."³⁶ Another chaired professor of law at a major law

33. See *supra* note 6.

34. Dean #6, letter dated Nov. 24, 1992, at 1.

35. Dean #6, letter dated Jan. 19, 1993, at 1.

36. Law Professor #6, letter dated Dec. 23, 1992, at 1.

school on the east coast wrote: "I love your article. It reminds me of many of the reasons I left [an 'elite' law school] As someone with one foot in each camp (doctrine and big-think) I really appreciate your expressing these thoughts in print."³⁷

Many other letters offered more elaborate comment. I begin with a renowned treatise writer and chaired professor of law at a major law school who expressed, in emphatic terms, his belief that the recent decline in practical scholarship carries with it highly detrimental consequences:

I think that what you say is exactly right. Legal education is moving away from the needs of the legal profession, it is doing so at an increasing pace, and this is a great loss. If you believe, as I do with all my heart, that the rule of law is indispensable to a civilized society, then we need good lawyers to be handmaidens of the law and good lawyers must understand doctrine and the "practical" side of the law as well as understanding theory.³⁸

This treatise writer's concern was reflected in many respondents' attempts to explain and analyze the trend away from traditional, doctrinal scholarship and toward interdisciplinary and highly theoretical work. Perhaps the harshest view of the growing emphasis on "impractical" scholarship came from a professor of law at a major law school on the east coast:

[Y]ou may have been too easy on the "impractical scholars." You are quite right to point out that they want to turn law schools into what I like to call "Graduate Schools of Legal and Other Studies," but they want to be paid like law professors rather than university professors. The salaries at law schools are two or three times what universities pay their grad-school professors. Someone receiving an economics or philosophy or you-name-it Ph.D. can go to law school, obtain a J.D., and then go into "law &" teaching at a law school and earn two or three times what they would earn in grad school, while teaching (and researching) exact[ly] what they would teach or research in grad school.

So what we have here is an incredible scam. Our "impractical scholars" pursue what fascinates them, and the law schools that employ them charge students \$15,000 a year to learn stuff that will be of no use to them. These professors teach in order to train students who will become law professors (like them), which means perhaps three or four people out of a class of [several hundred]. The rest of the students are being bilked!

You are absolutely on the mark when you note that at the "elite" law schools the "impracticals" have taken over. This has occurred through an unholy alliance of crits and law-and-economics people, with miscellaneous other "law &s" chipping in. A faculty candidate who is not heavily into theory has little cha[n]ce of being hired. ("Practical scholars"

37. Law Professor #7, letter dated Dec. 11, 1992, at 1.

38. Law Professor #5, letter dated Dec. 23, 1992, at 1.

are dismissed as being, to use their favored expression, "uninteresting.")³⁹

The former dean of a large, well-regarded law school in the midwest, who is presently a chaired professor at a prominent southern law school, suggested that some young professors today may feel *compelled* to incorporate interdisciplinary work into their scholarship, whether they like it or not:

You conclude on a hopeful note (at 77) that the professoriat as a whole is still in control and, especially, that "junior professors can still . . . expect that fine doctrinal work will suffice for tenure . . ." You temper this by observing that their work "will probably need to have theory integrated with doctrine, and to take the form of law review articles rather than treatises." . . . My problem with your statement is that you *seem* (and I may do you an injustice here) to require (advise, counsel, accept as fact, albeit with resignation) that the young person bow to demands to incorporate "Law And . . ."-theoretical material, in order to . . . touch all bases in the faculty. Unhappily, and I know you neither meant to prescribe nor even to make a forecast, that may be a not too inaccurate statement . . . of what young people face or [at] least perceive (and the perception makes it real in their anxiety about promotion and tenure). It is in this area that I am far less sanguine than you. I really do fear that "fine doctrinal work" will not count for what it once did.⁴⁰

Another chaired professor of law, from a large midwestern law school, noted that the apparently increasing pressure to focus on theory or interdisciplinary work does not necessarily end with the granting of tenure:

In the article you asked why a tenured professor cannot simply choose to engage in practical scholarship. I know the answer. Tenure guarantees only a job. Tenure does not guarantee respect among colleagues, salary increases from deans, or support for research and writing by anyone. The cost of practical scholarship, literally, can be very large, but your speaking out on this important subject may well reduce this cost.⁴¹

As if to guarantee that the disjunction will become worse, it appears that some law professors now consider the practice of law no longer to be an important experience for the aspiring academic. A chaired professor of law at a well-regarded midwestern law school related the following:

About five years ago, several of my colleagues interviewed a young woman who had graduated from [an elite east coast law school] with stellar credentials. She asked about the view at [our law school] regarding the desirability of practice experience. [My colleagues] responded

39. Law Professor #2, letter dated Dec. 21, 1992, at 1.

40. Law Professor #8, letter dated Jan. 11, 1993, at 2.

41. Law Professor #9, letter dated Dec. 17, 1992, at 2.

that many faculty members thought that at least some exposure to practice was very important. "That's good to hear," she replied, because she was seriously thinking about entering practice — but she had been advised by "friends on [her alma mater's] faculty" that practice experience might be considered a blot on her record!⁴²

Unfortunately, this professor's anecdote was not the only comment on this subject. A U.S. Court of Appeals judge, who also teaches at an "elite" law school, advised me that:

Many of the students who apply for a clerkship with me . . . are now telling me that what used to be the obligatory two to four years of practical experience after graduation before a return to academia is not only no longer required, but also may put one in disfavor if the sojourn in the world of practicality has lasted too long.⁴³

Finally, a professor of law from a law school in the west pointed out that these issues are not matters of concern solely at the "elite" law schools:

I could not agree with you more [in believing that the academy is uninterested in the issues confronting the practicing lawyer]. . . . However, the problem you describe is not distinctive to [the "elite" law schools] since the law schools with lesser status like to imitate the more prestigious schools.

I was warned that my law degree would not qualify me to teach history at a liberal arts college as I hoped at the time I left law school. It never occurred to me that I might convert this law school to a liberal arts college instead. How nai[ve] of me.⁴⁴

In contrast to the respondents I have just quoted, a chaired professor of law at an "elite" law school offered a less jaded vision of the shift in scholarship:

My view as an insider and as a "law and" type (but one who has valued the doctrinal and the practical) is that the situation is not as bleak as you describe it, and that to the extent the shifts you point to exist (I would certainly not deny considerable movement in the directions you specify) there are reasons which are not very different from those that motivated professors in the days when doctrine was more dominant. . . .

. . . .

One might, of course, ask why have law professors directed more of their attention to the kind of work designed to influence legislatures or courts through ways other than the analysis of doctrine. I think this change in focus reflects a feature that has not changed over the years, coupled with something that has been perceived to change dramatically. What I think has not changed is that most law professors see themselves as critics of law who are criticizing not for its own sake (or to show off their intelligence) but because they want to make a difference. And at

42. Law Professor #10, letter dated Nov. 25, 1992, at 1.

43. Judge #1, letter dated Feb. 5, 1993, at 1.

44. Law Professor #11, letter dated Dec. 17, 1992, at 1.

the elite law schools the difference professors want to make has always been at the highest levels, which is to say the federal courts and especially the Supreme Court. At one point (when you and I were in law school) it was felt that if one could show a federal court (the Supreme Court in particular) how the constraints of doctrine necessitated particular outcomes in apparently hard cases, the court's later decisions would be influenced by the professor's analysis. Today it is felt that these hard decisions are made by courts, even courts below the Supreme Court, on political more than doctrinal grounds and that these grounds reflect the world views that judges bring to their roles. Thus if the goal is to influence the law, doctrinal analysis appears less likely to have an important effect than political arguments and empirical and theoretical research (like law and economics) which can affect the world views of judges. Are those who seek to influence the law in this way wrong? You are in a better position to judge than I. . . .

. . . Finally, and I think in the recent period most importantly, is the sense that our nation and the world face[] a host of serious problems that intersect the law but which cannot be resolved on the basis of received legal doctrine. This has led many of our brightest young lawyers to seek training in other disciplines and to do work that reflects that training as much or more than it reflects their specifically legal training. These young scholars do this not because they are uninterested in the practical, but from the opposite motive. They think they can have the greatest practical effect by looking at the empirical and theoretical underpinnings of doctrine and by seeking not to influence courts but rather to influence other private and governmental actors.⁴⁵

To the extent that the foregoing position relies on the proposition that judging is merely a "political" or "ideological" enterprise, I reject it.⁴⁶ Otherwise, the respondent's views reflect a scholarly ideal — wanting to exert a positive influence on decisionmakers at the highest levels — with which I probably agree. Unfortunately, based on my own experiences and the vast majority of responses that I have received, this ideal is far from a reality today.

A professor of law from a major law school on the west coast echoed the view that scholarship that is not heavily doctrinal may nevertheless be "practical," partly by focusing on "governmental actors" outside of the judiciary:

I don't think our views are particularly far apart. As you note in your article, I believe legal scholarship consists, and should consist, of recommendations to public decisionmakers. [I have published an] article [that] makes this argument, in response to [another scholar], who argues that legal scholars should address their work exclusively to each other (and you thought [some academics were] extreme). In this sense, we agree that legal scholarship ought to be "practical," to use your term. But

45. Law Professor #12, letter dated Nov. 23, 1992, at 1-3.

46. See generally Harry T. Edwards, *The Judicial Function and the Elusive Goal of Principled Decisionmaking*, 1991 WIS. L. REV. 837.

your article tends to treat such practical scholarship as equivalent to doctrinal scholarship; that will be true, however, only if the decisionmaker who is being addressed is a judge. In our statutory, regulatory state, legislators and administrators have assumed a dominant role, and I think legal scholars limit the relevance and impact of their work if they fail to address these decisionmakers. (Moreover, since much of the judicial role involves supervising agencies, analysis of agency decisions should be relevant to them as well.) But practical scholarship addressed to legislators and administrators cannot be primarily doctrinal, because these decisionmakers think in policy, not doctrinal terms.⁴⁷

Not everyone would agree with the view that legislators and administrators “think in policy, not doctrinal terms.” Indeed, in one letter I received, a partner in a major law firm, who has written extensively, argued before the Supreme Court, and participated in numerous lobbying efforts in Congress, directly rebuts the contention that doctrinal scholarship is not useful to legislators:

[Y]ou get uncomfortably close to conceding that theoretical scholarship has greater utility to the legislative than the judicial branch. I disagree strongly, based on my experience on the Hill. In my experience, legislators are more interested than judges in practical solutions to legislative problems, and far less interested in abstract legal theory. To the extent that doctrinal analysis presents Congress with reasoned approaches to concrete practical problems, it definitely is useful in the legislative process. For example, when Congress considers revising an existing law (e.g., the Civil Rights Act of 1991), or acts in a field where some legislation already exists (e.g., the Americans with Disabilities Act [ADA]), judicial construction of existing legislation is highly relevant. I would suggest that this is the usual case, given the breadth of federal legislation. The one exception where doctrine has little to say lies in sketching out the broadest theoretical outlines for a new and novel legislative program; for example, deciding whether to handle pollution through incentives as opposed to continued government regulation. In such situations, doctrinal scholarship does not seem of great relevance.

In this situation, however, I don't think theoretical scholarship has much to say either. . . . Careful consideration of practical implementation issues enables a legislature to decide which of several competing approaches has the greatest likelihood of success, and the greatest political merit. . . .

In my experience, the real world uncomfortably intrudes in virtually every legislative discussion. If you think Congress was listening to law professors discuss theory when it came to creating the ADA or revamping Title VII, think again. They were concerned about what works in the real world, and not . . . whether their proposals satisfied the theoretical predilections of non-practicing law professors.⁴⁸

The point here, I think, is *not* that legal scholars committed to inform-

47. Law Professor #3, letter dated Dec. 16, 1992, at 1.

48. Practitioner #3, letter dated Nov. 30, 1992, at 1-2 (footnote integrated into text).

ing and advising legislatures should *only* produce doctrine-oriented scholarship, but that such scholarship is plainly of use to the legislative branch.

One chaired professor at a well-regarded midwestern law school, seeking to extend the debate on the meaning of "practical" scholarship, suggested that neither traditional doctrinal work nor existing interdisciplinary research could meet the requirements of a "new" practical scholarship:

I . . . see a need for some change in practical scholarship and teaching. Mainly, the practical approach needs a stronger connection to underlying substance, which is increasingly diverse and complex and demands ever finer balances among competing interests. I do not argue for Professor George Priest's model in which applied science or something else displaces legal doctrine. Rather, I argue for tying practical scholarship and practical law teaching more closely to the concrete, substantive areas that the law regulates so that the latter more fully and better informs the former. . . . My approach is fundamentally conceptually different from Priest's because I aim to enrich and bolster traditional pragmatism which Priest would abandon.

I would also argue for integrating law with the overarching, supplemental sciences of management information and decision making. We train lawyers to argue positions. We do not train lawyers to judge their arguments. We teach lawyers to spot issues but not how to resolve them. . . .

. . . .

In the end I hope for practical generalists who will enable the law instead of impractical specialists who would destroy it.⁴⁹

Finally, an assistant professor of law at a small midwestern law school recalled, from his own time in practice (as a law clerk, an attorney with the U.S. Department of Justice, and a private practitioner), how unprepared for practice the graduates of a number of law schools were:

I've heard judges on [a federal court of appeals], representing a wide spectrum of philosophical and judicial views, uniformly express great concern with the lack of preparation exhibited by law clerks hired from the elite schools. . . . I remember judicial clerks from [various elite institutions] who candidly admitted how astonished they were to learn that federal judges actually cared about things like statutes and precedent and did not simply decide cases according [to] their subjective views of the best political outcome. This was not what they had been told by their critical legal studies professors. The naivete shown by these law clerks would have been amusing, had it not also been rather discouraging and frightening.⁵⁰

49. Law Professor #9, letter dated Dec. 17, 1992, at 1-2.

50. Law Professor #13, letter dated Dec. 31, 1992, at 1-2.

The professor blamed this situation on the growing disjunction between legal education and the legal profession.

In addition to voicing general concerns about scholarship and teaching, several respondents focused on the question of ethics. A few made clear that they shared my general view that the pressure to act unethically has become greater in recent years, and that law schools have not adequately responded to this problem by making a greater commitment to teaching ethics.⁵¹ One of the more in-depth considerations of possible reforms in ethics teaching came from a chaired professor at an "elite" law school:

I despair of the law school's ability to correct the problems you mention through ethics education or of the profession's ability to do anything about ethics through testing or other certification requirements. . . .

The one hope I hold out for teaching ethics in law school is that if we can have students rehearse specific ethical problems before they confront them in a pressured practice context, and if we can encourage them to strongly commit themselves to ethical courses of action while not under pressure, perhaps they will be able to hold out better when asked to do the unethical. This perspective suggests a very different way of teaching ethics than that we now engage in. Rather than teach ethical rules, I think we should focus on ways of acting ethically. Thus I would pay less attention to what the line is between ethical and unethical discovery practice and more to having students role play ways in which they might resist partners' demands that they seek discovery simply to wear down an opponent.⁵²

I do not dispute either that teaching ethics may be an uphill battle, or that developing and implementing the necessary reforms will take considerable effort and commitment. I am not, however, prepared to "despair" over the law schools' inability to bring about positive change. I still remember the great teachers that I had in law school, who taught ethics as a part of their substantive course offerings. They had a powerful impact on me, so I know it can be done.

I am reluctant to attempt any summary of the views of the law professors from whom I have heard. Indeed, anyone familiar with the academy knows that it would be oxymoronic even to suggest a "faculty consensus" on *any* subject. Nonetheless, in a number of the letters that I received, I did note a buoyant tone — almost a sense of relief to have the issue out in the open. Typical of this tone is a letter from a chaired professor at an "elite" law school, who expressed "appreciation" for the article and then lightheartedly observed:

[A.]s a treatise-writer, I approach the subject with some degree of bias,

51. See Edwards, *supra* note 1, at 73 (concluding, based on survey of my former law clerks, that "a 'strong foundation in ethics' is not being built in legal education").

52. Law Professor #12, letter dated Nov. 23, 1992, at 4.

but I thought your perspective made especially compelling some of the concerns that I have reflected in my grumblings at the coffee-table. I didn't know that I had so many good arguments, but now I do. Right-on!⁵³

Other practical scholars were equally grateful that the growing disjunction in law has been brought to the fore, but they also expressed a deep bitterness—testament to apparent feelings of isolation and insignificance. A poignant example of this is found in the response from a professor of law at a well-regarded, midwestern law school:

Your [article has] restored dignity, self-esteem, and courage to those of us who have dedicated our lives to the daunting and lonely task of publishing authoritative treatises.

. . . Few in academia have cared . . . whether my work is any good (a perfectly legitimate issue, of course); instead, the work has consistently been belittled as unworthy of a real scholar. What began in joy has been transformed into a process of increasingly isolated despair. . . .

Your writing has retaught me what I should never have forgotten: I may be an inferior scholar, but not because of my choice of publications. This means more to me than you can imagine.⁵⁴

C. *Students and Recent Graduates*

Several students and recent graduates wrote to me, expressing their concerns about the problems identified by the article, particularly the trend toward more and more interdisciplinary and theory-oriented courses in law school curricula. (I have also heard many such comments from the law clerks with whom I have worked and from the students I have taught over the past decade.) No doubt those who wrote and spoke to me do not speak for all law students. But the responses I include here do indicate a significant element in student sentiment. A recent graduate of one of the "elite" law schools stated:

I'm sad to report that many of the systemic and institutional criticisms you level against the "elite" law schools apply to [my alma mater, including] . . . [t]he proliferation of boutique legal specialties within the law school; the appearance of young faculty members with no practical experience, clerkships or other significant credentials except for maybe a graduate degree in social science; and the patronizing view of some faculty toward students who pursue a more traditional legal education.

. . . I believe some of the classes I took were from the brightest and most rigorous minds in the legal academy. But I worry for the future, and I hope the Dean and the [hiring committee at my alma mater] take your article very seriously.⁵⁵

53. Law Professor #15, letter dated Nov. 24, 1992, at 1; *see also supra* text accompanying note 37.

54. Law Professor #16, letter dated Apr. 13, 1993, at 1.

55. Recent Graduate #1, letter dated Jan. 22, 199[3], at 1.

The idea that we should “worry for the future” because of current hiring policies was presented even more forcefully in a letter from a third-year student at an “elite” law school. This student also offered several trenchant observations on the general drift toward “impractical” courses:

First, I wholeheartedly agree with your complaint that Law Schools are becoming too much like graduate schools. Before attending Law School I went to graduate school for four years, but after getting my degree I decided to change careers. A primary motivation underlying my decision was that what I learned in graduate school, while interesting and stimulating, simply wasn't practical enough. I wanted a more “hands-on” sort of career where I could work with real people and real problems. Before enrolling, I knew virtually nothing about the current of change running through the legal academy and was quickly discouraged at how much time is devoted to abstract problems of little practical significance.

In my first year, I had a roughly equal number of “practical” and “interdisciplinary” professors. After reading your article I was struck by how significant the differences in pedagogic approach really were. “Practical” professors gave me the tools to tackle more advanced subjects and without even realizing it I have gravitated towards courses taught by professors with similar styles. Consequently, there are gaps in my education because I have avoided courses on potentially useful and interesting topics because I knew the professors had little to offer that I could someday apply.

Second, if anything, I think you underestimate the strength of the changing tide you have identified. This year I am fortunate enough to serve as one of the student representatives to the faculty hiring committee. I have been profoundly discouraged at the types of people the faculty has chosen to invite for campus interviews. So far this semester we have heard from only “impractical” scholars. Their credentials were fine and their talks were interesting but what they are interested in seems completely beside[] the point. Throughout my time at [this law school] the students have been asking for more [practical courses and professors to teach them]. With one exception . . . these complaints have gone unheeded.

I really fear for [this law school]. Within the next few years, many of the most distinguished professors here . . . will be approaching retirement. I would place all of these people squarely in the “practical” camp and they remain among the most loved members of the faculty. But, they are being replaced by people of a very different stripe. I won't name names, but I think it is true, and the students recognize it, that the younger professors have a very different agenda.⁵⁶

A recent graduate of a large, highly regarded law school in the midwest added that the student-run law review boards should share some of the blame for the existing quality of scholarship today:

56. Student #1, letter dated Nov. 27, 1992, at 1-2.

I think it is time for the students at the law reviews to start demanding better articles. I served on [my law school's law review]. I recently picked up the last issue — curious to see what it contained. Quite honestly, I could not *understand* two of the articles. As you note, the audience for these articles are not the people who have anything to do with actually shaping the law.⁵⁷

The ideals of ethical practice and a commitment to public service were also a source of concern. The third-year student quoted above reinforced the point that massive law school debts may greatly influence the career choices of students who might otherwise seek more public-oriented jobs when they first graduate:

[Y]our observations about students' creeping materialism and lack of interest in public service are accurate, but, I think you have ignored one significant aspect of the problem, the cost of legal education. When I graduate, I will owe approximately \$75,000 and be facing loan payments of roughly \$1000 per month. This is a real dilemma for me and many of my friends. I don't want to let finances dictate my career choices but at the same time they are hard to ignore. At this point, I can't honestly say which path I will take. It is not a decision I relish.⁵⁸

This student also related a truly troubling description of his law school's apparent expectation that its graduates should go on to big law firms and bring in hefty salaries:

I think one unexpected side-effect of the tremendous rise in starting salaries at the "elite" law firms has been to change the way Law Schools project revenues and balance budgets. I remember a talk given by the Placement Director my first year in school. [The Director] explained why tuition was so high and financial aid so scarce. [The Director then] said the school could afford to be tight-fisted because they expected us to go out and make a lot of money, both in the summer and after we graduate. I know times are tough for all colleges and universities . . . but this attitude seems short-sighted. Not only are young lawyers expected to become fungible billing units for their firms, they are expected to become cash cow alumni for their alma mater.⁵⁹

The specters of law school debts and limited career choices are concerns that I have heard over and over again from law students in recent years.

D. *Members of the Bar*

A number of practicing attorneys responded to the article, including the managing partners of several major law firms, as well as former presidents of both the American Bar Association and the New York State Bar Association. These attorneys shared my concerns about the

57. Recent Graduate #2, letter dated Jan. 23, 1993, at 2.

58. Student #1, letter dated Nov. 27, 1992, at 2.

59. *Id.*

importance of reemphasizing practical scholarship and pedagogy and the necessity of preserving (through teaching and through vigilant efforts by practicing lawyers) a set of norms that serve as the foundation for ethical practice.

The thoughts of the managing partner of a large law firm in Atlanta, Georgia are representative of the considerable alienation from the academy that a number of practitioners expressed:

For several years now, I have been experiencing a growing sense of alarm at what you call the disjunction between legal education and the legal profession. To me, it is far more serious than the neutral term "disjunction" implies. At its worst, it is a rejection of the fundamental principles of the American legal system. Movements such as critical legal studies, critical race studies, feminist legal studies, alternative jurisprudence and "story telling" are all too often highly politicized, ideological movements that do little for the tradition of principled decision making which is at the heart of American notions of fairness. Worse than that, three years of observing the intemperate clashes among professors adhering to conflicting schools of thought does little to advance a student's understanding of ethical practice and the importance of dealing with adversaries candidly and courteously.⁶⁰

Several lawyers conveyed a sense of alienation from the academy in briefer, but no less biting, remarks. For example, an eminent appellate practitioner opined that "[t]here is a substantial amount of 'emperor's new clothes' being peddled in the law schools these days."⁶¹ And a distinguished partner in a major law firm called the disjunction between teaching and practice "the elephant sitting in the corner of this profession for too many years now."⁶² Plainly dubious of the practical skills of the newest generation of legal scholars, he added:

I dearly would love to see some of the younger "theoretical" members of any major law faculty argue a real case in front of the Supreme Court (sans doctrine, of course), or even argue a tough motion before a smart [United States] District [Court] judge. . . . Alternatively, I'd like to see them sit down privately with members of the House or Senate, and answer their questions about how to craft a fair and workable piece of legislation, based solely on theory. If they actually tried this, maybe the dichotomy you identified wouldn't exist any more. On the other hand, many of them would be so bad at it that things might get worse, not better.⁶³

A former president of the American Bar Association and nationally known lawyer suggests that law schools could make considerable

60. Practitioner #2, letter dated Feb. 1, 1993, at 1.

61. Practitioner #4, letter dated Dec. 8, 1992, at 1.

62. Practitioner #3, letter dated Nov. 30, 1992, at 1.

63. *Id.* at 3.

progress in curricular reform by increasing the teaching role of practitioners and judges:

Developments in law school curricula in recent years (frequently in the schools not numbered as the "elite") strongly suggest that by better relating legal education to lawyer performance in the world of lawyering it is indeed possible effectively to teach prospective lawyers . . . and with great benefit both to the student and to the legal profession.

I would suggest that a quality program of sequential instruction in lawyering skills and values, rich in both conceptual and practical elements, augmented by the participation of judges and experienced lawyers in the academic program, can insure that prospective lawyers learn their lawyering skills in a manner that will permit them to build upon a sound doctrinal framework and confidently to undertake things they have never done before and to accomplish appropriate results in the client-centered world of lawyering.⁶⁴

Several practitioners were also plainly troubled by the tension between ethical practice and the persistent drive for increased profits. The managing partner of a prominent firm in Chicago, with offices in many other cities, remarked:

As to the state of the profession, I think the problem is quite serious, particularly among the very well paid lawyers (in large firms and small), many of whom like to think that they set a good tone for the perpetuation of professional values. When the goal of lawyers is to maximize their own interest against the interests of their clients and, indeed, society, and when the goal of partners is to maximize their earnings against the earnings of other partners, we really cease to deserve the special treatment we seek as a profession and not as a business. I feel very strongly about this. . . . That means that we never lead the Hit Parade in the financial performance tables that are published by our friends at [a popular legal periodical] — so be it.⁶⁵

A named partner at one of the major law firms in Washington, D.C., suggested that principles of ethical practice do, in fact, influence the behavior of many firms and individual lawyers:

I must also agree with much of your criticism of the profession for the growing emphasis on commercialism and the bottom line. However, at the same time there are many lawyers and law firms who resist these pressures and remain devoted to the principle that the practice of the law is affected by the public interest.

After all, it was the organized bar, speaking primarily through the ABA, that saved the Legal Services Corporation, and it was the leaders of the bar who responded to President Kennedy's call and established the Lawyers' Committee for Civil Rights Under Law. Happily, that tradition, that sense of public obligation, is still alive despite other

64. Practitioner #5, letter dated Dec. 8, 1992, at 1-2.

65. Practitioner #6, letter dated Jan. 6, 1993, at 1-2.

pressures.⁶⁶

This same partner opined that effectively teaching ethics depended in significant part on having faculty members who have been practicing lawyers and have experienced, firsthand, the ethical problems faced by practitioners:

Indeed, I have always thought that it is a good idea for law teachers to have some experience in practice before they go into teaching — to have some exposure to what goes on in the real world and how there can be difficult and even excruciating problems of conflicts, ethics, candor, and even civility which are beyond the contemplation of one who has not experienced them in practice.⁶⁷

The responses from these and other practitioners are significant not only because they tend to support the thesis that there is a disjunction between the academy and legal practice, but because they support that thesis in many of the same ways as the responses received from members of the academy.

E. *Members of the Judiciary*

My colleagues on the bench also expressed significant agreement with the view that there is a disjunction between legal education and legal practice. A large measure of the responses I received from judges were simple concurrences, such as one Supreme Court Justice's note that the article "coincides with many of my concerns about the legal profession today."⁶⁸ Others were more animated in their observations. One U.S. Court of Appeals judge quipped, "Your criticism of legal education is right on target. The more I hear about what is going on in law schools, the more it seems like never-never land."⁶⁹ Another U.S. Court of Appeals judge simply declared, "Amen!"⁷⁰

I also received lengthier reflections on the topics treated in the article. One U.S. Court of Appeals judge sharply criticized what he perceived as the pernicious effects of the trend toward more "impractical" work, a trend he traced to student demands for changes in the law school curriculum:

The only place I part company with you in your article is that I think you have made too many concessions to political correctness. Although I believe the law schools have an obligation to listen to the various student constituencies who have some very valid points to make, I do not believe that the response of the law schools in tinkering with the curricu-

66. Practitioner #1, letter dated Nov. 25, 1992, at 2.

67. *Id.*

68. Justice #2, letter dated Nov. 24, 1992, at 1.

69. Judge #3, undated letter, at 1.

70. Judge #4, letter dated Nov. 20, 1992, at 1.

lum in the manner they have done is the appropriate one. At most of the elite law schools today, there are no required courses after the first year. In the second and third years of law school, students no longer study law but, rather, graze their way through a smorgasb[or]d of boutique offerings more closely aligned to the social sciences than the law. Although LSAT scores may be higher than ever, I am shocked at the number of poorly trained young men and women who[m] I see emerging from the nation's finest law schools.

My concerns in this area are exacerbated by the direction in which most of the nation's elite law schools are heading. [The "elite" law school at which I teach a course] is a classic example. The law faculty for all practical purposes selects the dean, or at least has veto power over anyone suggested, and together with the dean, they become a tightly knit screening committee, making sure only those of similar ilk are admitted. . . .

It is . . . hard to mount much of a hue and cry from the alumni. When I attend . . . meetings [at the law school], for example, most of the people who return are caught up in their justifiable love for [their alma mater] and the nostalgia they feel as a result of being back [here] That, coupled with the dog and pony show invariably put on by the law school, is not likely to generate any great outcry against what is going on today.⁷¹

One U.S. Court of Appeals judge was not as negative in his appraisal of the current state of legal education. This judge suggested that the primary problem in legal education was merely the obsolescence of the case method:

I am not in disagreement with the overemphasis on "Law-and" courses. I do think that the Law Schools can do clinical work *and* do the basic core courses well. . . . But I do disagree with what I think is your conclusion that the Law Schools are failing in their mission of turning ou[t] good lawyers, or that the bar is really more critical of the product than it was 25 years ago. I think that the problem has much more to do with the fact that the great reform of Langdell has outlived its usefulness, and that the case method of teaching is unworkable. This has more to do with the fact that judges (read Justices) write too long, too multifariously, and too independently. It isn't only that there are no Oliver Wendell Holmes type justices; it's that his model is not deemed worthy of emulation by any judges. Judges always think it's more important that they voice their unique *ratio decidendi* for every case that comes before them. As a result, every important case sheds more confusion than light, and as teaching tools they are awful.⁷²

I agree that the case method has its drawbacks, and that it can actually be a liability in advanced courses. But I do not believe that the pedagogical problems in law schools today can be reduced to the observation that Langdell's approach may be obsolete. In addition,

71. Judge #1, letter dated Feb. 5, 1993, at 2.

72. Judge #5, letter dated Dec. 13, 1992, at 1.

even if the profession is no more critical today than it was twenty-five years ago of the quality of either the graduates or the scholarly research produced by law schools (a point I am not prepared to concede), that fact alone is hardly a justification for complacency on the part of law schools.⁷³

III. CONCLUSION

As I have already acknowledged, it is surely unwise to generalize with too much certainty about a set of responses such as those I received in reaction to my article. I do believe, however, that the responses collected here indicate that I am by no means alone in my concern for the current state of legal education and the legal profession. To me, then, the question is no longer whether there is a problem, or even what the basic nature of the problem is. Rather, in my view, our mission now should be to search for solutions.

The American Bar Association's report on *Legal Education and Professional Development — An Educational Continuum*,⁷⁴ written by a distinguished panel of legal practitioners and scholars, is a step in the right direction. Fortunately, there have been noteworthy follow-ups to the ABA Task Force Report: in February 1993, Emory University School of Law sponsored a major conference on excellence in the legal profession, focusing on a number of the issues covered by "The Growing Disjunction"; in April 1993, New York University Law School convened a gathering of practitioners and law faculty members to discuss the implications of the Task Force Report; in June 1993, Case Western Reserve University Law School, along with the Center for Professional Responsibility of the ABA and the American Bar Foundation, hosted a conference of leaders in the legal profession from around the country to consider an agenda for the profession for the next century; and, of course, there is this symposium edition of the *Michigan Law Review*, devoted principally to the issues raised in "The Growing Disjunction." Open dialogue on these issues is bound to help.

There are skeptics, however. One law professor at a major eastern law school posed the following question:

Upon reading the article, I was struck b[y] how reasonable and even

73. Furthermore, given the problems now being faced by the practicing bar, some cynics might wonder whether practitioners' assessments rest on a flawed set of values. For some recent commentary on the plight of law firms, see generally Barbara Buchholz, *The Melting Pots*, A.B.A. J., Mar. 1993, at 62; Don J. DeBenedictis, *Growing Pains*, A.B.A. J., Mar. 1993, at 52; Patrick Capuano, *All This and Fired, Too*, A.B.A. J., Mar. 1993, at 58.

74. See *supra* note 6.

modest your proposal is. You do not argue that legal academics should stop engaging in pure theory, but merely that they should realize that there is an important role for practical scholarship as well. This, to my mind, leads to an interesting question: If your proposal is so sensible, why doesn't it immediately meet with universal acceptance? (I am predicting that it won't.)⁷⁵

He is of the view that, because the "political" divisions in law faculties are too great and those in power have too much to lose, meaningful change is unlikely. A nationally recognized, preeminent chaired professor from a major east coast law school viewed the problem in somewhat similar terms, but was a bit more optimistic:

Hopefully, the [ABA] Task Force Report will also help to nudge some law schools back onto the road of law, if only by giving deans who want to move in that direction some ABA-backed language to quote to potential funding sources. (As you indicate, nudging is probably the best tool for the task at this point. Cudgeling mules with sticks is seldom the formula for progress, but the particular breed of mule now dominating legal education seems too dumb to appreciate the nourishment value of carrots.)⁷⁶

I hope that these skeptics are wrong, but I too harbor some doubts about the capacity of the profession to right itself. As a start, I think that those of us who lobbied to open up the law schools to the perspectives of other disciplines and ways of thinking may bear a special responsibility to ensure that law schools retain their basic sense of purpose. But the entire legal academic community must work collectively to find a middle ground where a greater number of practical scholars flourish alongside their theory-oriented counterparts in an environment of mutual respect; both should contribute to an education for students that better prepares them for practice, and both should share the fundamental belief that scholarship that seeks to inform and guide practitioners, legislators, other policymakers, and judges is a valuable, indeed necessary, component of any law school's mission. Nor should the academy be the only focus of attention. The members of the practicing bar must — if they wish to remain in a *profession* — put forth a significantly greater effort toward achieving the ideal of ethical practice, an ideal from which too many firms and individual attorneys appear to have strayed.

I applaud the *Michigan Law Review* for sponsoring this symposium, for it helps to further an important public debate. However, we are all familiar with the epigram that "when all is said and done, a lot more is said than done." Symposia are generally focused on saying,

75. Law Professor #4, letter dated Dec. 22, 1992, at 1.

76. Law Professor #14, letter dated Dec. 4, 1992, at 1.

not doing, and I fear that without a great effort by the legal community as a whole, our well-meaning discussions will not lead to concrete, effective, and lasting reforms in the academy and in the profession. This failure would be a tragedy, for we have already focused our thinking enough to identify and analyze the problems we face. It is now time to pursue solutions to the growing disjunction between legal education and the legal profession.