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## THE TWO PROFESSIONALISMS OF LEGAL EDUCATION

RICHARD A. MATASAR\*

There is a “professionalism” crisis in the legal profession—so I’ve been told. At bar meetings, conclaves between law schools and the profession, bench and bar conferences, and even over drinks with lawyer friends, the “professionalism” drum keeps on beating.

- We are no longer civil to each other.
- Other lawyers can’t be trusted.
- The job is no longer satisfactory.
- There are too many lawyers (or at least too many incompetent or unethical lawyers).
- Everything must be in writing; handshakes have no value.
- It’s just a business, no longer a profession.
- We will be buried by the accountants or be forced into some sort of multi-disciplinary practice.
- Our advertising is tacky, tasteless, and debases the profession.
- Lawyers are ruining the economy.
- Younger lawyers are the problem.
- Older lawyers are the problem.
- Clients are the problem.

At law school meetings, a similar tune is being hummed about the impending crisis in legal education.

- We are driven by the rankings system, not by a search for quality.
- Students are lazy (or substitute stupid, unmotivated, demanding, spoiled, etc.).
- There are too many law schools.
- There are too many dead weight faculty members.
- Many law schools are becoming bottom-feeders—concerned only with having money, ignoring student quality and hiding from the consequences of high debt.
- Some schools have no connection to the profession; scholarship is irrelevant to real lawyers and judges.

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- We are neither comfortable as university-based researchers nor as legal practitioners and hence do poorly at both.
- The job market is weak for most graduates and salaries are not adequate to service the enormous debt being generated by the average student.

It is no wonder that we talk about a crisis. With self-induced neuroses of the left, right, center, top, bottom, and all locations in between, whatever crisis there is has been magnified to extraordinary proportions. Yet, each of these somewhat overdrawn fears has a basis in reality. There are several deep flaws within legal education. The profession can be brutal. Change is wreaking havoc with traditional notions of professional behavior.

Despite the significant challenges to us, however, there are some counterpoints. The demand for high quality legal services seems always to be expanding. Lawyers are making enormous salaries at the most prestigious law firms (and these salaries are having an impact throughout other sectors of legal employment). Graduates of law schools are finding jobs. Philanthropy to legal education is improving, with ever-larger gifts being made. Even demand for legal education seems to be improving.

So, what is to be made of our professionalism crisis? What are its dimensions? How should lawyers and law schools adjust their practices?

As a law school dean my reaction to the professionalism debate is somewhat dulled. I have no direct role to play in the management of law firms,<sup>1</sup> government agencies, or public inter-

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1. Over the last decade, I have tried to convince managing partners at several large law firms that their practices have had a deleterious effect on young lawyers. In recent years, law firms have had an expectation that their junior attorneys must be productive "immediately." This has created a premium on young lawyers doing work on their own, with little training, and without mentor relationships with more senior lawyers.

Much of this demand for productivity has been driven by high associate salaries, which in turn have been driven by the high debts accumulated by students who paid high tuition while in school. This dynamic repeats itself cycle after cycle and keeps driving salaries and work demands ever higher. Combined with pressure from the business world, which may hire away the best and brightest young lawyers, the profession becomes a relentless grind.

The consequence of this "tuition to debt to salary to meeting competition" structure is to charge clients high prices for very junior talent, drive juniors to high billable hours, and lessen loyalty as lawyers search for jobs with the most pay and benefits. I have argued to several law firms that this is no way to train lawyers or serve clients and that we must search for ways to lower costs and create better post-graduate training for lawyers. After less than stellar success in generating millions of dollars for new scholarships, I have tried a more direct approach, suggesting that law firms pay their young lawyers a significantly lower

est law groups. To ameliorate my distance from those who practice, I have been a member of the Florida Commission on Professionalism for the last five years. This has been a wonderful opportunity to work closely with lawyers from all sectors, members of the judiciary, and the lay public. My colleagues on the Commission are brilliant analysts of the legal profession; they make it abundantly clear that non-academics have great sophistication in thinking about professionalism issues. Furthermore, they have taught me that professionalism concerns vary widely between lawyers in different sectors of the economy and in different locations. This leads me to an underlying theory about professional values: "Professionalism is Personal." Every legal organization must define its ethos.<sup>2</sup> Every lawyer within the organization must learn the ethos, get with the program, or move

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salary. Most firms fear this suggestion, however, because they believe that they will lose their most talented young lawyers to other organizations that will pay more.

There is no simple response. Nonetheless, many years of working with young graduates suggests that these fears are overdrawn. First, young lawyers would welcome relief from the pressure of unrealistic productivity expectations. Second, they desire greater levels of training from their firms, better role models, and the time to learn how to generate business. Thus, they would not squander their time, but would use it to do *pro bono* work or other community volunteering activity that can turn into the networking necessary to generate business. Finally, they are not driven entirely by salary, but also by debt service needs. Therefore, the law firm that paid less, but rewarded younger lawyers by purchasing their debt could succeed in attracting talented lawyers that might go elsewhere. Moreover, the firm could benefit greatly from this plan by making a one time expenditure, lowering their yearly overhead, charging clients a lower fee for lower-priced talent, and creating more training opportunities. To maintain loyalty of those whose debt is absorbed, the firm could forgive the debt, contingent on young lawyers' decisions to stay with the firm (or call the debt if they leave).

2. With this philosophy in mind, the Commission authorized a project to encourage legal employers to develop professionalism plans for their own offices by:

- Soliciting participation by the Attorney General (and local and federal prosecution offices); local, state, and federal defender offices, and by the state's largest law firms in a "professionalism in the workplace" program.
- Asking each participating office to create a Professionalism Plan, which would include: (1) the professionalism "ethos" of the office; (2) the mentoring system used by the office to train younger lawyers in their professional responsibilities; (3) any internal training programs to build the skills and values of attorneys working in the office; (4) how the office will monitor the professionalism of its attorneys; and (5) how the office will work to publicize its internal professionalism heroes.
- Having each office designate a Professionalism Coordinator—a person of high status in the organization, who is respected and willing to work to improve professionalism—who would represent the office in dealing

elsewhere to another organization more congenial to his or her personal sense of lawyering.<sup>3</sup> To a law school dean the theory has a profound implication. We must take personal responsibility: first, to assure that our schools provide their own special brand of training for every student; second, to give students a sense of what professionalism entails; and third, to give students a way of assessing the practices they will encounter as young lawyers.

Within every law school there are two critical professionalism issues that correspond to our two main business functions.

(1) *As Sellers of Education—Educational Professionalism.* We are educators first. Students must make the choice of our school among the nearly 200 other accredited law schools. We must offer applicants a choice that exudes our *educational professionalism*. We must model appropriate professional behavior in our teaching, conduct, and treatment of each other.

(2) *As Producers of Lawyers—Legal Professionalism.* The law school not only sells education, it also produces new lawyers. Therefore, even schools exhibiting first-rate educational professionalism and offering faculty who are wonderful role models as educators cannot fulfill their roles unless they also produce individuals who are solid lawyers, who exhibit *legal professionalism*. We

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with the Professionalism Commission and would be available to consult with other lawyers in the office.

To date, although approved by the Commission, this plan has not been implemented, although a pilot project will begin during the 2000-01 year.

3. Perhaps I find the notion of personal moral code persuasive because it so closely parallels my own sense of lawyering. As I wrote several years ago:

We lawyers must accept one simple truth: no pain, no gain. For the law to matter, to grow, to make important moral choices, its practitioners must be the ones to work out its message. Lawyers are the vehicles of substantive and procedural change. They must also be the driving force behind ethical and moral change. It is not enough to bump along, oblivious of the questionable tactics the profession engages in under the name of advocacy, zealous representation, or lawyerly posturing. Doing so diminishes us as individuals and collectively gives the profession a bad name. No, our strategies must be different. We must be disobedient when it matters most; we must be reformers, constantly seeking a more moral profession; and we must be willing to withdraw [from the profession]. But we cannot lose sight of the fact that not every lawyer shares the same ethical and moral vision and that we are a pluralist profession, with varied and subtle shades. While we agitate, we also must be humble in our moral judgments, give the profession its due, and be ready to find that sometimes, as much as we want to escape it, we lawyers must do things that cause us pain.

Richard A. Matasar, *The Pain of Moral Lawyering*, 75 IOWA L. REV. 975, 986 (1990).

therefore must teach the skills and values that will lead our graduates to become effective and "good" legal practitioners.

In this essay, I discuss the two professionalisms of legal education—educational and legal. I begin by discussing the dual nature of the law school business. We both sell education to students and "sell" our graduates to employers as a particular brand of lawyer. I pause to reflect on the peculiarities of each professionalism role and address the responsibility of each school to define the knowledge and values it believes critical to education and lawyering. Finally, I turn to the values that animate me as an educator and lawyer and that have become an important part of my philosophy as a law school dean.

### I. THE BUSINESS OF LAW SCHOOLS

Traditionally, those who run academic institutions cling to a hierarchy that places education over business. We are not generally concerned with such mundane matters as paying the bills, becoming attractive to donors, or advertising our product in an effort to generate business, promote our faculty, or become more famous. We certainly would not pander to consumers, whether students or others. And, we would not worry about fulfilling job (or educational) specifications set by those who might hire our students.

Over the last several years I have concluded that this hierarchy is mistaken, not because education comes behind business, but because the two are inextricably linked. Simply put: my job is running a business. Such a self-conception would be an anathema to most in higher education, especially those of us reared as faculty members, whose prime preoccupation is to teach, write, and serve. Yet, it is with great pride that I ask my colleagues at New York Law School, as I asked my colleagues at Chicago-Kent and Florida, to let me exercise poetic license and use business metaphors to describe the educational necessity of melding our schools' educational and business practices. Whether to assure that we properly account for all costs—fiscal and political—of adopting curricular flavors of the day,<sup>4</sup> or to promote conduct by faculty and administrators that will generate the resources necessary to expand our programs,<sup>5</sup> or to illuminate the complex relationship between public and private education and their likely convergence on measures of accountability and participation in

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4. See Richard A. Matasar, *The MacCrate Report from the Dean's Perspective*, 1 CLINICAL L. REV. 457 (1994).

5. See Richard A. Matasar, *A Commercialist Manifesto: Entrepreneurs, Academics, and Purity of the Heart and Soul*, 48 FLA. L. REV. 781 (1996).

the education market,<sup>6</sup> or even to acknowledge that faculty members must act in a coordinated fashion,<sup>7</sup> I believe that the rhetoric and practice of educating lawyers must be sensitive to the business of running schools.

## II. THE TWO PROFESSIONALISMS IN THE BUSINESS OF LAW

For several years, I have seen increasing numbers of students who are dissatisfied with legal education—both its services and its content. The source of this dissatisfaction is less clear, other than an amorphous sense that something is not quite right. Moreover, its cause is even less certain. Some blame administrators; others blame staff; others blame faculty; others blame the students themselves.

Whatever the ultimate root of this distress, it creates significant problems for legal education. First, such dissatisfaction lowers morale among faculty, students, staff, and administration. Second, it creates a long-term financial threat to law schools by reducing support for their development and alumni relations programs. Unhappy students make unhappy graduates. Third, it undermines each law school's ability to recruit new students and faculty, who will be hesitant to become members of an alienated community, and thereby weakens student and faculty quality. Finally, weaker students and faculty make for weaker graduates, who will not perform as well as stronger students from schools with better faculty members. Weaker graduates then reduce a school's reputation, which in turn starts the downward cycle over again.

The fundamental uneasiness about service in law schools is the unarticulated understanding that legal education has higher priorities than students. Faculty are sometimes distant, occasionally hostile, frequently unavailable, often disdainful, and generally uninterested, especially in student events. Administrators often are unresponsive to students, making them the last to receive purchases of new computers or other equipment and funding their projects only after investment in other priorities. Worse yet, in many schools the channels of communication to the dean and other officials are clogged. The final insult to students is that many student affairs officials are overworked, underpaid, often unavailable, and frequently not service-oriented.

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6. See Richard A. Matasar, *Private Publics, Public Privates: An Essay on Convergence in Higher Education*, 10 J. LAW & PUB. POLICY 5 (1998).

7. See Richard A. Matasar, *The Ten Commandments of Faculty Development*, 31 U. Tol. L. Rev. 665 (2000).

### III. A WORD ABOUT FACULTY OBLIGATIONS

The faculty are the students' most important resource. Students revere their teachers, and have done so for generations. But students also sometimes resent faculty members for their patronizing demeanor, fear their apparently unbridled power, rebel against their inconsistent application of rules, and disdain the few who teach through humiliation or racist, sexist, or abusive comments. In short, faculty are the focus of student relations, good or bad. Therefore, every law school's faculty owe students a professional education environment, one in which each faculty member is honest, frank, and task-oriented, and demands the same of his or her students. Less concrete, but no less important to building a professional ethos, faculty members should be interested in their students as colleagues, help them in the quest for knowledge, and assist them in finding a satisfying path in the law. As educational professionals, the faculty must be available to students and attend the social and intellectual events that they find most important. Participation in student life takes little else but time.

### IV. A WORD ABOUT ADMINISTRATIVE OBLIGATIONS

Administrators' burdens to serve are even greater. They, too, must be available to students, at nearly all times. They have the added obligation of ensuring that the law school opens as many viable channels of communication as possible,<sup>8</sup> including

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8. Negativism is almost certain to result when a law school fails to address issues promptly, with respect for all positions, and in a way that is responsive to all relevant constituencies. Festering law school community issues can be resolved only when the institution creates an effective means for students (and others with grievances) to vent their frustrations, inform the faculty and staff of their concerns, and receive the law school's response.

This is a communication problem. Community members cannot find access to the dean (or other administrators) blocked. Thus, I have always had a policy of meeting with students, staff, alums, faculty, and members of the public at any time I am free. When I am tied up, I immediately set up an appointment to meet at the next available time. I expect other administrators, staff, and faculty to have a similar system. I also expect us to return phone calls, e-mail, and letters as soon as possible, but certainly within 24 hours. When an administrator is asked a question to which she or he knows the answer, the answer should be conveyed immediately to the customer. If the answer is unknown, the customer should be informed and given a date by which an answer will be provided. The administrator should then locate someone who knows the answer and have them inform the customer. Fundamentally, schools need two-way dialogue—duets, not solo singing.

Communication systems must be regularized. For example, I always set up at least two regularly scheduled town meetings, during which anything goes. I also utilize a dean's advisory system with student leaders that meets regularly, in



written, e-mail, in-person, phone, chance encounter, and even regularly scheduled events. Administrators must give students firm and clear advice. They must create a system of administrative decision-making that is reliable and consistent. This means that the faculty and administration must agree to a division of labor without much room for ad hoc behavior that reduces student confidence.

To give students confidence that they are a high priority, they must have open access to the dean's suite. Deans need an open-door policy and should be available to deal with student problems. Deans also should attend student events, be present at their meetings, run open meetings, have informal get-togethers, and work with student leaders. "Dear Dean" e-mail accounts or suggestion boxes must be available to give students immediate, menu-driven access to deans. Moreover, deans must be honest with students about school policies and priorities. Students will continue to disagree with some choices that are made, but rarely will they question the motives of the decision-makers when the process is open and communication is extensive.

#### V. A WORD ABOUT STUDENT OBLIGATIONS

Student unrest is not merely a faculty, administration, and staff issue. The current generation of students is not a happy lot. Their educational costs are rising rapidly. They anticipate difficulty in the job market, especially if they are worried about passing the bar (or earning enough to service their debt). They have high expectations that others will serve them well (but sometimes low desire to work hard to fulfill others' expectations of them). Law schools owe the students an educational environment that will help them overcome some of their own weaknesses. Therefore, faculty, administrators, and staff must work hard, so that students learn that hard work is expected in the professional world. Law school employees must treat each other with respect and kindness, so that students can learn that in the professional world, every person in an organization is important and worthy of being treated well. Law schools cannot undo years of bad parenting or poor behavior, but we can create environments that promote the best behavior in students by giving them excellent role models engaged in appropriate behavior.<sup>9</sup>

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open meetings, and in special sessions as often as necessary. Finally, I have also always had a "Dear Dean" e-mail system, leading directly to me, for fast triage of student and staff issues.

9. Just a word on Generation X (or have they reached Z yet?). Never have so many whined about so much with so little justification. This generation

## VI. BUILDING A PROFESSIONAL COMMUNITY

The treatment of students should not be the product of random decisions by individual faculty members, administrators, staff, or even other students. Rather, every school must create customized student services appropriate to their community needs. Will a school make “no” its primary institutional response to student requests? Or will its response be to say “yes” to reasonable requests?

I believe law schools should adopt a “yes we can” attitude. Reasonable student requests should be facilitated. Staff officers dealing with student requests should first think of how to satisfy students’ needs, not how to make students go away. Students who wish to see faculty members, deans, librarians, other administrators, and staff, should be able to see them as soon as possible. Phone calls should be returned promptly. E-mail should be answered immediately. Written requests should receive a written response. Law schools should be managed like any other service business in which the customer is usually right.

Unlike any other business, however, a law school’s relationship to its customers is much more complex. The customer is also the law school’s product. Therefore, in some instances schools must deny students’ requests, even some reasonable ones, where the requests conflict with educational missions and priorities. Schools cannot pander to the lowest educational common denominator, for they owe students an education that will make them better professionals. In matters of critical substance, especially those that may cause student unhappiness, schools must learn to say no, with respect, and be prepared to justify their decisions.

Because law students are both customers and a product, schools constantly must mediate between conflicting service goals. Consequently, it is unlikely that any school could ever eliminate student unhappiness; nor is it certain that elimination of unhappiness would even be desirable. The goal should be dif-

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of law students has its share of people who expect high rewards for low effort, who complain, but do little to fix problems, and who see the world as a hostile and cruel place that they must manipulate in order to succeed. They doubt that hard work has its own reward. They distrust those in authority. In short, they look a lot like we did. Nonetheless, there is a widespread sense among those who work with students that the current generation faces issues that many of us did not face, including an unstable job market, very high debt to income expectations, and a general mistrust of most social institutions. If this generation faces these hurdles, we cannot ignore their sense of pessimism. Rather, we must work with them to deal with the world they will face and provide them with some coping tools.

ferent. Schools must create a culture of student contentment based on mutual respect, consistency of treatment, and truthful and open communication. I expand on this culture below.

## VII. SUPPORTERS FROM CRADLE TO GRAVE

Let us never forget: every applicant is a potential future student and therefore a potential future donor; every current student who is turned off to the law school is a future reclamation project; every happy student is a potential source of a donation to the law school, a referral of a new student, or a placement of a current student. Each student is a resource to be tapped by the law school. Therefore, given these strong incentives to create "happy campers," every law school should develop a student services strategy. I begin with a basic tenet: schools need to create "Supporters from Cradle to Grave."

Most law schools have reasonably effective placement services, networks of successful graduates, solid educational programs, and excellent faculty and staff; nonetheless, many fail to produce satisfied graduates. Furthermore, even with outstanding assets, deep alumni pockets, terrific faculty, and good hearts, many law schools fail to create loyalty, excitement, and satisfaction. I believe that until a school's students, administration, and faculty join in a common quest to create an internal professional culture and a program that produces legal professionalism, a school will not reach its potential. To produce "Supporters from Cradle to Grave," every school must provide its students an academic environment that gives them a professional identity—both within the school and later in the profession.

Students need reasons to invest in their schools. Schools provide those reasons by creating a shared sense of purpose and behavior. Students, therefore, need links to the faculty that are real. Those who are interested in international and comparative law, civil rights and liberties, media law, environmental law, or any other clearly identifiable curricular niche need collegial relationships with faculty members who have the same interests and with graduates who are dedicated to those fields. The same reasoning applies across the curriculum and across extra-curricular activities. Creating substantive niches or affinity groups gives students a home within their institutions. Each of these homes in turn must be linked to others to tell the law school's legend. It is this grander story that creates the school's educational mission.

Therefore, assuring that students have a special place within a school's academic program gives students an ownership stake in their schools. Inviting students into the school's intellectual

life gives them the desire to buy into the academic community's commitment to scholarship. Working to improve the performance of student organizations instills in students the desire to participate in enhancing other parts of the organization. When schools share their mission with students, faculty, staff, administration, and graduates, they enhance educational professionalism.

Creating a professional culture begins with recruitment of students. A school's literature must tell a particular story that is tied to its mission. Each school publication must be justified; nothing should be sent to a prospective student unless it fits into a broader plan. No recruitment visit should be made by anyone other than a missionary (or at least a choir member who knows the school's theme song and can at least hum it). Every prospective student should be given a compelling reason to attend the school. This reason should be reinforced constantly by current students, faculty and staff, and the school's graduates. When a student commits to attending law school, he or she should be welcomed, not just by the dean or admissions committee, but by students, faculty, and law school graduates with whom those students share an interest. Orientations should be welcoming, enjoyable, and community-building. The entire faculty and staff should greet students. There should be multiple and varied social occasions for new and old students, faculty, and alums. Students in their first year should be linked to older students and to wise (read: faculty) advisors. Upper-level students should receive career advice from the administration, faculty, graduates, and even older students. The law school should be in touch with students during their summer clerkships, just to see how they are doing. By the third year, senior students—whether as recruiters, big brothers or sisters, or tutors—could participate in indoctrinating the next generation in their school's ethos. Before the students graduate, every school must ask graduating students for their feedback in focus groups and in questionnaires, and ask them to give back through a class gift. Anything less is unprofessional.

Loyalty to and support of a law school cannot happen by accident. Schools need a full-bore institutional commitment to serve their own students well. Faculty, staff, and administration must be enthusiastic about the school and share their enthusiasm with the students. Institutional rules must be supported and applied sensibly; exercise of discretion is not an evil, but a necessity to demonstrate that the institution cares.

## VIII. CUSTOMERS, NOT CONSUMERS

One of the deepest insults hurled at a faculty member or a dean is to accuse them of “pandering to the consumer.” Among the evils of such pandering are performing (not teaching) merely to receive good student evaluations, giving high grades to gain student approval, demanding little and thereby becoming friends with students, going out socially with students, approving outrageous demands for exceptions. However, without pandering to student consumerism, one can still see them as customers. The trick is to serve them as customers without caving in to consumer pressure.

In what ways are students customers? First, students have resources to spend on vacations, books, clothes, whatever. Yet, among competing choices, they have decided to “buy” an expensive education in the law. Second, they must decide which legal education to buy. They may have had several choices, but have made the judgment to buy education at a particular school. Third, once they enroll at that school, they choose which courses to take, when to study, with whom to study, and how much effort to give to their education. Fourth, students “buy” grade evaluations from their school, a service that has value to them both as a validation of what they have learned and as a credential in their job searches. Finally, students obtain all manner of goods and services from their institution. Schools provide students a store from which to buy books and clothes. They also offer financial advice, administer career services, and even rent to commercial enterprises the spaces where students will review for the bar. In short, there are countless ways that law schools look like vendors selling products to students.

In each of these areas a school can create good- or ill-will. Convincing students that the particular legal education they have chosen is worthwhile requires a school to believe the conclusion itself. Each school’s employees must adopt appropriately positive language to describe their brand of legal education; these descriptions can build community pride. By the same token, disparagement of the legal profession or the law school—even by a few law faculty, staff, or administrators—has the impact of telling students that they made a mistake. Criticism of the profession or the particular school ought to be directed at rebuilding them more positively. This discourse tells law community members that they have made a good choice that will only be enhanced by what they will learn at *their* law school.

Every course a school offers should be justified in its usefulness to students. Merely offering a course ought to be a warranty

that the course is worthwhile—whether in a utilitarian sense or as an intellectual challenge. But it is the duty of the teacher to enforce this warranty, to prove that the course is valuable. Moreover, whatever course is being taught also must come with other implied warranties—that the teacher is serious about his or her business, will come to class on time, will be fully engaged in the subject matter, will be willing to share knowledge with students, will be available to students, will help them to learn, will follow institutional rules, will support institutional decisions (even those with which they disagree), and will treat students with respect.

Law teachers know that grading is an art, not a science. When pressed, we often speak of it being the most difficult (or distasteful) part of the job. But as seriously as faculty members take grading obligations, grading is an even more important service to students. Unfortunately, for students the grade received is often more important than what they have learned.<sup>10</sup> Without agreeing with students' priorities, schools still need to take seriously their concerns about grading. Faculty members must submit grades on time or face a sanction for not doing so. Exams should be given when scheduled, test material covered in class, and test in the format promised to students in registration materials. Exams should be graded by standards consistent with law school policy—whether on anonymity, grading curves, or even the size of paper. If class participation may be taken into account in grading, schools should regularize procedures for doing so and standardize how much variance in the grade participation will produce. If there is a mandatory curve, it should be followed; if a curve is suggested, there ought to be reasons to vary from it. In short, schools must treat exams seriously from both their own *and* their students' perspectives.

When the law school offers goods and services, it should do so well. When one buys from a commercial vendor, service is provided with a smile, with a simple return policy, and at a competitive price. So, too, when students buy from us! When a law school provides financial advice, it must be accurate and timely.

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10. We decry this attitude, as we should. The intrinsic value of learning and even the utilitarian value of the material studied should be much more important than grades. Nonetheless, whatever story the law school tells, students understand market reality. Their colleagues with the highest grades obtain the most institutional goodies—law review, moot court, teaching positions, research jobs, etc. They also are most valued in the employment market by high-paying firms that only will interview the “top” students. Thus, whether we like it or not, grades are an important commodity to students and any imperfections in our system of grading or feedback about grading will not be perceived well by students.

Teachers should listen to students and read their evaluations. If a faculty member uses examples or tells stories and jokes that make some class members uncomfortable, he or she should have a justification for the chosen pedagogy. Outdated materials should be updated. Students should not be used for our own gain, whether personal or political. Even when faculty members befriend students, they should keep professional distance. In short, schools should value students as much as any other vendor would value a customer buying his or her services for over twenty-five thousand dollars per year.

Law teachers (and other administrators and staff) have no academic freedom to act like jerks. Whether underpaid, overworked, angry at the cat, or unenthused by their jobs, "attitude" should be left at home. At work, all of us should bring conviction and energy to serving our customers.

#### IX. WE MANUFACTURE LEGAL PROFESSIONALS

Just because students are a school's customers does not give them a license for irresponsible behavior. When a school promises to treat students well, provide them with high quality service, and give them respect, the school has the right to expect a great deal in return. These students chose a *legal education*. Unlike many other consumption decisions in which the seller is relatively indifferent as to who buys its services or how the service is utilized, law schools depend on their customers to become solid professionals whose prowess will influence decisions by future customers to buy the law school's product. There will be no future customers for a law school whose graduates are unethical, lazy, incompetent, or unprofessional. Therefore, schools cannot blindly serve students; they must help students to develop into first-rate legal professionals.

No staff or faculty member should be subjected to abuse by a student. No student should be permitted to cheat, lie, or manipulate the system to avoid professional responsibility. Schools must set high, but flexible, standards and then enforce them in sensible ways. However, such high standards for students require employees of the institution to follow them as well. Teaching that it is unprofessional to publicly criticize colleagues should prevent us from doing so ourselves. Asserting that it is unprofessional to scream at an employee requires us to avoid berating our own staff. Believing that students should dress appropriately suggests we need to clean up our acts as well. Arguing that we should avoid demeaning others voids our license to demean community members, especially students. Having high standards

for students subjects us to criticism if we fail to meet those standards. (I think it is something about people, glass houses, and doing as I do, not merely as I say.) To become successful in demanding professional behavior from our students, a school must make professionalism part of its mission.<sup>11</sup>

#### X. THINKING SUBSTANTIVELY ABOUT PROFESSIONALISM TRAINING

Law schools have not ignored professionalism training, but have treated such matters quite conventionally, often embedding them within the curriculum generally provided to students in the course of their education. Schools include professionalism or ethics discussions during new student orientation sessions. They bring in outside speakers, such as the Board of Bar Examiners or members of the Young Lawyers Division of the Bar Association to stress professional issues. All law schools require professional responsibility classes. The career services offices of most schools have numerous professionalism programs. By their third year of law school, most students are exposed to professional issues through law school clinics or in the classroom component of externship programs. Many professional issues are surfaced in substantive courses across the curriculum.

Reinforcing these curricular initiatives, most schools have faculty members who engage in professionalism activities with the bar or at conclaves with judges. Law faculty members may serve on state commissions, work with the organized bar, serve on Inns of Court, or work on CLE programs. Extensive though they may be, however, these programs are somewhat unfocused. To optimize professionalism training law schools must do more.

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11. Creating a professional environment is not merely a substantive matter, it is also a procedural matter. Good student service, like all other work, is a process. Any process can be perfected (or at least improved) when the process is understood. By creating an open communication system, a school can gain the data it needs to improve the quality of its services. Data provides the information needed to create quality.

Feedback, moreover, is merely the first step in continuous improvement of student services. Schools also must measure their performance. If teaching is important, they must measure teaching effectiveness, not just by student evaluation and visits, but by seeing the outcome. Schools must ask employers about the performance of their graduates. What do they know or not know? How well do they perform? What skills do they have or do they lack? Do they exhibit professional behavior?

By measuring this data, a school can get the kind of information it needs to improve its graduates and its educational product. Schools, therefore, must create student services that are responsive to both the students' and the profession's needs. They then can fix problems, not explain them away.



They need to think of coordinating three years of study and having a purpose to their training.

First, schools should adopt an overall theme for their programs, setting forth expectations about what students should learn. At a minimum, a well-designed program should have at least the three following overarching goals: (1) teaching the essentials of what it means to be professional (as defined by law school faculty); (2) promoting the values of professional service (using faculty role models, lawyers from the community, stories of legal heroism) with a focus on the needs of clients; and (3) inspiring public service (through continued support of law school *pro bono* activities, A.B.A. or other sponsored work projects, and student organizations' philanthropic activities).

Second, each school should define goals for every year of a student's education. Faculties should meet, debate, and adopt professionalism goals, indicate the impact these goals will have on the curriculum, and outline how they should be implemented.<sup>12</sup> Explicitly adopting programs for all three years would help any school to fulfill its legal professionalism obligations.

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12. This is not a simple matter. It took two years for the University of Florida Levin College of Law Ad Hoc Committee on Professionalism to design the following professionalism curriculum:

THE FIRST YEAR

*Goal*—Orientation to the Profession

*Curricular Outcomes*

- Aggressive Professionalism During Orientation
- Introduce Students to the Practice of Law as a Regulated Industry
- Give Students Historical Background of Law as an Institution
- Examine Lawyers' Role in Shaping American Society
- Inspire Students with Stories of Lawyer Heroes

*Implementation Plan*

- Retain Current Orientation (Dean's Introduction, Outside Visits, etc.)
- Add Professionalism Template at Orientation
- Create Lectures and Videos to Fulfill Above Methodology
- Divide Students into Small Sections for Professionalism Meetings
- Evening or Off-Class Day Discussions (4-8 per semester)
- All First-Year Teachers—Transubstantive Topic Discussions
- How Lawyers Face Multi-Faceted Practice Problems in Practice
- Professional Responsibility—Teachers Develop Problems
- Involve Faculty as Whole in Discussion Groups
- Involve Upper-Level Certificate Students as Discussion Mentors

THE SECOND YEAR

*Goal*—Learning Professional Responsibility

*Curricular Outcomes*

- Educate Students in the Law that Regulates Lawyers
- Teach Students that Ethical Issues Permeate the Practice of Law
- Expose Students to Lawyers and Clients
- Participate in Professional Settings with Lawyers and Clients

*Implementation Plan*

Setting forth specific curricular goals is a minimal step that every law school could take in fulfilling its responsibility to educate professionals. But curriculum alone does not help the student define his or her professional attitudes. That chore is much more difficult and it is questionable whether we are in the best position to dictate for students the professional identities that they should embrace.

Nonetheless, legal educators have a substantial obligation to give students some guidance about values. We can invite the best lawyers from our areas, let them serve as role models, and encourage them to share their visions with students. We can give students inspirational material to read—lawyers acting in the public interest, great legal causes and their leaders, illustrious court cases. We can give students counter examples—legal horror stories, disbarment cases, disciplinary matters. We should invite clients to talk about their experiences with the legal system and lawyers, both the good and the bad. Finally, we should use our own voices<sup>13</sup> and share with our students the vision of the

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- Increase Professional Responsibility Course from Two to Three Hours
  - Devote One Hour in Other Courses to Professionalism Issues
  - Expose Students to Ethical Issues Arising in Specific Areas of Law
  - Use Lawyers, Judges, and Clients as Speakers
  - Conduct Moot Court Focused on Professional Responsibility Issues
  - Conduct Major Annual Required CLE Conference at Law School
  - Partner with Bar Association to do Joint Program

#### THE THIRD YEAR

*Goal*—Bridge the Gap between Law School and Law Practice

*Curricular Outcomes*

- Acquaint Students with the Practicalities of Law Practice
- Practice Settings, Law Office Economics, Law Firm Organization
- Define Career Satisfaction: Type of Practice, etc.
- Assist Students to Find Appropriate Employment Opportunities

*Implementation Plan*

- Capstone Small Groups; Utilize Certificate Programs for Problems
- Develop "Practice Symposia" in Clinics
- Require Students to Attend Ethics/Professionalism Symposia
- Mandatory Third Year Student Panel Discussions
- Develop Special Professionalism Certificate
- Develop Essay Contests in Professionalism Area
- Third-Year Experts to Lead Discussions for Second-Year Program
- Continue Advanced Seminar Program in Professionalism Issues

Memorandum of Ad Hoc Committee on Professionalism (on file with author).

13. Over the last several years I have shared with students my own professionalism mantra—the three C's of professionalism. First, we must be *competent*. I define competency at a very high level—100% correct, 100% of the time. Obviously this standard is not reachable, but it describes an attitude we can take as lawyers that we should aspire to providing perfect service for our clients, a kind of total quality improvement methodology for lawyers. Second, we must

profession that we embrace, the things that inspire us as educators to continue to churn out new lawyers every year.

When the editors of the *Notre Dame Journal of Law, Ethics & Public Policy* first asked me to think about ethics in legal education, I paused. What could I contribute? Do ethics and law schools work together (in any way other than the obvious obligation to teach ethics courses)? Through the course of this essay, I have found my answer. It is the personal responsibility of those of us who educate others to think explicitly of ethics in a deep sense. First, we must address the manner in which our schools conduct themselves. We must model educational professionalism. Second, we must be attentive to our students' emerging professional identities. When they graduate, they will be lawyers. The question is whether they will be professionals. It is our duty to guide them in their quest for their professional identity. Until we embrace the dual professionalisms—educational and legal—we will have failed in our duties as educators. For me, this essay is a matter of necessity and personal responsibility. We must accept the duty of the two professionalisms of legal education.

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give back to our *communities*. To me this is more than a plea for *pro bono* service, which I believe falls within the service obligations of every competent lawyer. The community activity I advocate is deeper—involvement in civic groups, schools, religious, and other philanthropic institutions. Our training as lawyers gives us great skills at organization, dispute resolution, and analysis that can benefit these entities and build our communities. Finally, I argue that we must be *committed*. I suggest a particular kind of commitment—to balance. Competence and community involvement will make us poor professionals unless we also maintain the commitment to those closest to us, whether parents, children, spouses, partners, other family members, or those who depend on our presence and support. Thus, the three C's are very demanding. One must be the consummate skilled practitioner, the vibrant community activist, and the devoted family person.

While I suggest this mantra as my best shot at a professional identity, I ask each student to define for herself a personal vision of professionalism, tailored to individual personalities and priorities. In this way, I am advocating more for a process of finding professional values than for any particular set of actions. The process is the point: the professional is cognizant of the need to define values, whatever they might be. Those who merely practice without introspection will more likely engage in unprofessional conduct.