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Barry Sullivan

Ellen S. Podgor

RESPECT, RESPONSIBILITY, AND THE VIRTUE OF INTROSPECTION: AN ESSAY ON PROFESSIONALISM IN THE LAW SCHOOL ENVIRONMENT

BARRY SULLIVAN*
& ELLEN S. PODGOR**

It is not enough to know the law. Translating the law to clients; respecting both the autonomy of clients and the law's demands while advising clients and acting effectively on their behalf; distinguishing between self-interest and the interests of others in the actions one takes and the advice one gives; maintaining a posture of empathy, as well as objectivity; interacting appropriately with colleagues, adversaries, tribunals, and the public; fulfilling the responsibility of lawyers to provide needed professional services to those who cannot afford them and to work for law reform; and promoting the law as a productive and enriching aspect of social life are also essential aspects of lawyering.

Knowing the law is an essential and necessary component of professionalism, but knowing the law is not enough. Profession-

* Professor of Law, Washington and Lee University; Fulbright Professor, University of Warsaw, Fall 2000; Visiting Fellow, Queen Mary and Westfield College, University of London, Spring 2001. A.B., 1970, Middlebury College; J.D., 1974, University of Chicago.

** Professor of Law, Georgia State University College of Law; Visiting Professor of Law, University of Georgia School of Law, Fall 2000; Visiting Scholar, Yale Law School, Fall 1998. B.S., 1973, Syracuse University; J.D., 1976, Indiana University School of Law at Indianapolis; M.B.A., 1987, University of Chicago; LL.M., 1989, Temple University School of Law.

The opinions expressed in this essay represent the authors' personal views and do not necessarily reflect the opinions of any institution or entity. Nor should any stated opinion be construed as criticism of any institution with which the authors have been associated. In the interest of full disclosure, however, the authors wish to acknowledge that Professor Sullivan previously has served as Chair of the Section on Education of Lawyers of the Virginia State Bar and as Chair of the Professionalism Committee of the ABA Section on Legal Education and Admissions to the Bar, and that both authors currently are members of the latter committee. *See* William D. Douglas, *Law Reviews and Full Disclosure*, 40 WASH. L. REV. 227, 232 (1965). The authors are grateful to Marina Angel, Elaine Chisek, Andrew W. McThenia, Brian C. Murchison, Joan M. Shaughnessy, Winnifred Fallers Sullivan, Meri Triades, and W. Bradley Wendel for helpful comments on earlier drafts, and to Georgia State University and the Frances Lewis Law Center of Washington and Lee University for financial support.

alism, as has long been acknowledged, also entails excellence in other aspects of lawyering. As the foregoing, admittedly incomplete list suggests, some of these other aspects of lawyering relate to the area of "skills;"[1] all of them, in some way, also involve "values," that is, certain attitudes and habits of heart and mind that are thought critical to the practice and culture of the profession. The nurturing of professionalism requires that these aspects of lawyering be valued and fostered, just as the "scientific" and "technical" aspects of lawyering are valued and fostered. Until fairly recently, however, it was thought that law schools should leave the teaching of these professionalism values mainly to the practicing bar and the bench—one aspect of the apprenticeship system that survived the professionalization of legal education during the late nineteenth and early twentieth centuries.

Support for that view has been overtaken by events. The increased size and diversity of the legal profession, as well as the increased specialization and diversity of law practice, have pointed to the need for more formal and systematic efforts to encourage the development of professionalism values.[2] Public dissatisfaction with the state of legal professionalism, more general and widespread changes in social mores and values, and pressures created both by the economics of private law practice and by fiscal constraints placed on public law offices also have pointed in that direction. In these circumstances, law schools necessarily have a centrally important role to play. Yet, in the law school setting, giving effect to these additional aspects of professionalism too often appears to be second-seated to the teaching of theory, doctrinal principles, and analytical skills.[3]

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1. *See generally* A.B.A. SEC. OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT: AN EDUCATIONAL CONTINUUM (1992) [hereinafter MACCRATE REPORT].

2. In 1951, there were approximately 222,000 people licensed to practice law in the United States, or about one lawyer for every 695 people. According to estimates contained in a 1994 American Bar Foundation study, the number of lawyers licensed to practice in the United States currently stands at about 1,000,000, or about one lawyer for every 267 people. *See* BARBARA A. CURRAN & CLARA N. CARSON, THE LAWYER STATISTICAL REPORT: THE U.S. LEGAL PROFESSION IN THE 1990S 1 tbl.1 (1994). The number of court filings also has risen. Annual civil case filings in the federal district courts stood at 51,600 in 1951, but had risen to 265,200 in 1997. *See* U.S. Dept. of Comm., Bureau of the Census, Historical Statistics of the United States: Bicentennial Edition: Part I Colonial Times to 1970 at 418 tbl.ser. H 1097-1111 (1975); U.S. Dept. of Comm., Bureau of Census, Statistical Abstract of the United States: 1999, 227 tbl.372.

3. The subject of this essay is the teaching and learning of professionalism. Needless to say, the emphasis we place on the need to teach values of professionalism should not be thought exclusive. For purposes of this essay, we assume the existence of a law school environment that is also properly commit-

The seeming reluctance of law schools to take up this challenge is the product of a constellation of complex factors, some of which are internal to the law schools, while others involve external factors, such as the law schools' relationships with the universities to which they belong. First, there is some ambivalence within the legal academy about what law schools and law professors *can* do to impart to students the skills and attitudes necessary to give effect to these aspects of professionalism.[4] Second, there is ambivalence about what the law schools *should* attempt to do in this regard, given the time and resources that such efforts require, and the apparent lack of consensus about what can be accomplished. This essay does not attempt to unravel the strands of all of these larger issues. Certainly, this essay does not seek to demonstrate how greater financial support can be found for teaching professionalism values in the law school environment, much less to identify and enumerate all of the many different faculty and administrative activities and initiatives that might enhance the teaching of professionalism.

The point of this essay is a more modest one, which can be summed up in the following set of propositions: that the cultivation of these aspects of professionalism is essential to the education of lawyers; that the cultivation of professionalism necessarily entails the nurturing of a sense of professional self-consciousness and constructive introspection, and an attitude of respect and responsibility towards others—what some would call "caring;"[5] that law schools can go a long way towards encouraging their students in the cultivation of these virtues by creating within the law school community an atmosphere that encourages its faculty to interact with students in ways that take seriously the need to teach professionalism, whether by intellectual engagement with

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ted to the other activities and values that are essential to the success of any law school in today's world, that is, to the broad-based and effective teaching of diverse substantive and procedural subjects, to the study and understanding of law in an interdisciplinary and international context, to skills training, to law reform, and to the advancement of human knowledge through free and independent inquiry. We recognize the difficulty of creating a law school environment in which all of these goals and activities are appropriately valued and pursued, but that is the subject for another essay.

4. *See, e.g.*, PLATO, *The Meno, in* PLATO, PROTAGORAS AND MENO 115 (W. K. C. Guthrie ed., 1956) ("MENO. Can you tell me Socrates—is virtue something that can be taught? Or does it come by practice? Or is it neither teaching nor practice that gives it to a man but natural aptitude or something else?"). *See also* LESZEK KOLAKOWSKI, FREEDOM, FAME, LYING AND BETRAYAL: ESSAYS ON EVERYDAY LIFE 49 (1999) ("Virtues, then, are learnt not from textbooks but from living among people who practice them.").

5. *See generally* CAROL GILLIGAN, IN A DIFFERENT VOICE (1982).

these issues, by example, or otherwise; that such interactions necessarily require faculty time, energy, and availability; and that the competing demands placed on law faculty will prevent that attention from being paid to students unless the faculty and administrative leadership within universities and law schools gives appropriate value and recognition to excellence in this aspect of legal education.[6]

I. PROFESSIONALISM

One would be hard-pressed today to find a practicing lawyer who professes a lack of concern with professionalism. The word "professionalism" is ubiquitous in the conversations and writings of those who are concerned with a number of related issues: the present level of public confidence in the legal profession; the present ability of the profession to discharge the essential role that it has to play both in our democratic society and in the greater world that seems to shrink and become more complex at the same time; the morale and current professional expectations of the profession and its members; or the overall health and fortunes of the legal profession.[7] At the most general and abstract level, virtually all agree that professionalism in the law is an important good to be valued and nurtured. Many, but not all, express the view that professionalism is declining.[8] At the same

6. There are many other activities that can also encourage the development of professionalism values in law schools. For example, professionalism values may be fostered when law school faculty and administration place a high priority on *pro bono* activities by students and faculty. *See generally* AM. ASS'N OF L. SCH., LEARNING TO SERVE: THE FINDINGS AND PROPOSALS OF THE AALS COMMISSION ON PRO BONO AND PUBLIC SERVICE OPPORTUNITIES (1999) (emphasizing the need for *pro bono* activities in law schools); Deborah L. Rhode, *Cultures of Commitment:* Pro Bono *for Lawyers and Law Students*, 67 FORDHAM L. REV. 2415 (1999) (emphasizing the need for *pro bono* activities in law schools).

7. An empirical study of the Chicago bar conducted by John Heinz, Kathleen Hull, and Ava Harter provides an interesting counterpoint to the many reports of job dissatisfaction among lawyers. *See generally* John P. Heinz et al., *Lawyers and their Discontents: Findings from a Survey of the Chicago Bar*, 74 IND. L. J. 735 (1999).

8. *See generally* SOL M. LINOWITZ & MARTIN MAYER, THE BETRAYED PROFESSION: LAWYERING AT THE END OF THE TWENTIETH CENTURY (1994); MARY ANN GLENDON, A NATION UNDER LAWYERS: HOW THE CRISIS IN THE LEGAL PROFESSION IS TRANSFORMING AMERICAN SOCIETY (1994); ANTHONY T. KRONMAN, THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION (1993); Philip C. Kissam, *The Decline of Law School Professionalism*, 134 U. PA. L. REV. 251 (1986) (discussing changes in law school professionalism). *See also* A.B.A. SEC. OF LEGAL EDUC. AND ADMISSIONS TO THE BAR, TEACHING AND LEARNING PROFESSIONALISM: REPORT OF THE PROFESSIONALISM COMMITTEE, (1996) [hereinafter TEACHING AND LEARNING PROFESSIONALISM]; Barry Sullivan, *Professions of Law*, 9 GEO. J. LEGAL ETHICS 1235 (1996).

time, few have attempted to define professionalism or to describe in precise terms what we mean when we use the term.[9] Indeed, it seems clear that the word professionalism means different things to different people, and it is often used in different ways by the same people, sometimes at the same time and in the same context.[10] It would be impossible within the scope of this paper to provide a satisfactory conceptual elucidation of the term "professionalism," but it is essential to the current discussion that we make clear at least the core of what we mean to say when we use the word and promote the idea.

One can easily overstate the relevance and significance of differences of opinion about the precise nature and requirements of professionalism. For present purposes, the areas of agreement are more significant than the areas of disagreement, and the central meaning or challenge of professionalism is clear. At the most basic level, the concept of professionalism necessarily relates to an area of human activity that we call a "profession," and to the ways in which the profession is governed; its standards are set, and its work is accomplished, evaluated, and valued.[11]

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9. Some take the position that the meaning of professionalism is obvious, and that the term requires little or no definition. For example, Chief Justice Harold G. Clarke of the Georgia Supreme Court has observed that professionalism "is the kind of thing that you may look at, like the Cheshire cat's grin—you see it now, then you don't see it, but when you finally get through it and see it you have an awfully good feeling about it." Interview with Chief Justice Harold G. Clarke, Supreme Court of Georgia, *History, Mandate, Structure, in* CHIEF JUSTICE'S COMM'N ON PROFESSIONALISM (1990).

10. *See generally* Barry Sullivan, *The Problem and Possibilities of Professionalism*, 21 DUBLIN U. L.J. 108 (1999) (forthcoming) (discussing accounts and definitions of professionalism); Ellen S. Podgor, *Lawyer Professionalism in a Gendered Society*, 47 S.C. L. REV. 323, 330-37 (1996) (discussing accounts and definitions of professionalism); Rob Atkinson, *A Dissenter's Commentary on the Professionalism Crusade*, 74 TEX. L. REV. 259 (1995) (discussing accounts and definitions of professionalism).

11. In 1977, Thomas D. Morgan noted the absence of any consensus in the literature "as to even the definition of a profession" and suggested the existence of "several important characteristics," namely:

(1) Professional skills are intellectual and result from an extended period of training.
(2) Professional services are beyond assessment by a typical, differently educated client.
(3) Professional concerns transcend problems of particular individuals.

Thomas D. Morgan, *The Evolving Concept of Professional Responsibility*, 90 HARV. L. REV. 702, 704-05 (1977). Dean Morgan has also suggested that professional standards can be better understood in connection with the interests that they may affect. In the case of the legal profession, Dean Morgan has identified four such interests: the public interest in seeing justice done, the interest in the expeditious resolution of disputes at the lowest practical costs, the interests of

We do not usually refer to all occupations as professions, but reserve the term to describe certain occupations that we distinguish by virtue of the skill they require and the importance they have in society.

In *The Protestant Ethic and the Spirit of Capitalism*, Max Weber linked the idea of the profession to "the idea of duty in one's calling" and suggested that "the fulfillment of the calling [must] directly be related to the highest spiritual and cultural values."[12] We take care in what we acknowledge as constituting a profession because of the consequences that may flow from according that status to an occupation or activity. If an activity is necessarily concerned with "the highest spiritual and cultural values," it is a force to be reckoned with; claims to special treatment or consideration may be made on its behalf. In this sense, the word "professional" carries a strong normative or moral quality. It is not indifferent to moral claims, but claims to occupy its own moral ground. As Emile Durkheim has suggested, the idea of a profession necessarily encompasses a claim of entitlement to establish its own morality:

> No [one] exists who is not a citizen of a State. But there are rules of one kind where the diversity is far more marked; they are those which taken together constitute professional ethics. As professors, we have duties which are not those of merchants. Those of the industrialist are quite different from those of the soldier, those of the soldier from those of the priest, and so on . . . . We might say in this connection that there are as many forms of morals as there are different callings, and since, in theory, each individual carries on only one calling, the result is that these different forms of morals apply to entirely different groups of individuals. These differences may even go so far as to present a clear contrast. Of these morals, not only is one kind distinct from the other, but between some kinds there is real opposition. The scientist has the duty of developing his critical sense; of submitting his judgment to no authority other than reason; he must school himself to have an open mind. The priest or the soldier, in some respects, has a wholly different duty. Passive obedience, within prescribed limits, may for them be obligatory. It is

clients, and the interests of lawyers themselves, individually and collectively. *Id.* at 705-06. *See also* ELLIOTT A. KRAUSE, DEATH OF THE GUILDS: PROFESSIONS, STATES AND THE ADVANCE OF CAPITALISM: 1930 TO THE PRESENT (1996).

12. MAX WEBER, THE PROTESTANT ETHIC AND THE SPIRIT OF CAPITALISM 182 (Anthony Giddens ed. & Talcott Parsons trans., Charles Scribner's Sons 1976) (1920-21).

> the doctor's duty on occasion to lie, or not to tell the truth he knows. A man of the other professions has a contrary duty. Here, then, we find within every society a plurality of morals that operate on parallel lines.[13]

There are many ways in which the legal profession appears to articulate and enforce its own notions of morality, often in conflict with the claims of ordinary morality that govern society generally, as well as with the mores and understandings of other professions. An obvious example is the attorney-client privilege, which sometimes requires a lawyer to withhold information that she would otherwise be required to disclose. In addition to being generally subject to compelled disclosure, the information that is sought might well be material and relevant to an important specific purpose or inquiry, which might not be capable of

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13. EMILE DURKHEIM, PROFESSIONAL ETHICS AND CIVIC MORALS 4-5 (C. Brookfield trans., 1958).

Of course, no thoughtful member of a profession simply "takes on" the morality of her professional group, but struggles with the demands made on her by competing moral claims. That point is illustrated by Seamus Heaney's *The Cure at Troy*, in which two soldiers, Odysseus and Neoptolemus, the son of Achilles, have been dispatched to secure the return to Troy of Philoctetes and the bow of Hercules, but disagree about the justice of accomplishing their mission through deception and force. Philoctetes, who has been betrayed and does not wish to fight again, complains to Odysseus that he is corrupting the younger man: "Everything that made me my own self, you have stripped away. And now you're going to take my second self. This boy. He's your accomplice, but he was my friend. With you he does what he is told, with me he did what his nature told him. I made him free, you only fouled him up." SEAMUS HEANEY, THE CURE AT TROY, A VERSION OF SOPHOCLES' PHILOCTETES 56 (1991). Later, Neoptolemus wishes to return the bow to Philoctetes, because taking it was wrong, but Odysseus proclaims that he, as the representative of "[t]he will of the Greek people," will stop him. The dialogue thus continues:

> NEOPTOLEMUS: What kind of talk is that? You're capable, Odysseus, and resourceful. But you have no values.
> ODYSSEUS: And where's the value in your carry-on?
> NEOPTOLEMUS: Candor before canniness. Doing the right thing. And not just saying it.
> ODYSSEUS: What's so wrong about Reneging on your Greek Commission? You're under my command. Don't forget it.
> NEOPTOLEMUS: The commands that I am hearing overrule You and all you stand for.
> ODYSSEUS: And what about The Greeks? Have they no jurisdiction left?
> NEOPTOLEMUS: The jurisdiction I am under here Is justice herself. She isn't only Greek.

Id. at 66-67. In the end, it is because of Neoptolemus's friendship, persuasion, and "[c]andor before canniness," rather than Odysseus's strategy for force and deceit, that Philoctetes agrees to return to Troy.

being accomplished absent compelled disclosure. As a practical matter, however, the privilege is virtually absolute, and it is allowed to trump more general considerations of moral obligation and legal duty in particular circumstances, based on the understanding that recognition of the privilege is generally beneficial to society. Needless to say, arguments in favor of the privilege tend to make more sense to lawyers than to lay people.

The attorney-client privilege is an important aspect of professional autonomy in the law; but, in a deeper sense, it is simply an epiphenomenon that is helpful in pointing towards the phenomenon itself. A more central aspect of the profession's articulation and enforcement of its own morality is the standard definition of the lawyer's role, which is contained in the preamble to the American Bar Association's Model Rules of Professional Conduct ("Model Rules") and provides that the lawyer is "a representative of clients, an officer of the legal system and a public citizen having a special responsibility for the quality of justice."[14] This definition is found in slightly different formulations in various normative documents concerning the legal profession, but many versions of the definition recognize that the lawyer's role consists of three separate and distinct parts, only one of which relates explicitly to the duties that she owes to her client.

One need not be particularly imaginative or insightful to appreciate the moral complexity that necessarily flows from defining a professional role as consisting of three parts. To be sure, it would overstate the case to suggest that the three parts of the lawyer's role identified by the Model Rules are always and inevitably in conflict. It would be equally unrealistic, however, not to acknowledge that the separate and respective responsibilities that arise from the three parts of the lawyer's role are constantly in tension and that the possibility of that tension collapsing into a position of conflict is also constant. A central aspect of legal professionalism is the constant struggle to determine the respective weights to be accorded the responsibilities that flow from these various parts of the lawyer's role in particular circumstances, and to endeavor to see that those responsibilities are properly adjusted to maintain the degree of tension deemed appropriate according to some means or standard that we can justify.

14. MODEL RULES OF PROFESSIONAL CONDUCT (1983), *reprinted in* THOMAS D. MORGAN & RONALD R. ROTUNDA, MODEL CODE OF PROFESSIONAL RESPONSIBILITY, MODEL RULES OF PROFESSIONAL CONDUCT, AND OTHER SELECTED STANDARDS INCLUDING CALIFORNIA, NEW YORK AND WASHINGTON, D.C. RULES ON PROFESSIONAL RESPONSIBILITY at 3 (2000).

Moreover, the standard definition contained in the Model Rules and elsewhere does not fully describe the moral (or psychological) complexity of the lawyer's role. The Rules do not mention a fourth component of the lawyer's role, namely, the constellation of moral duties which the lawyer owes to herself and to the moral values she personally affirms, as well as the duties she owes to those who depend on her, such as her family, colleagues, and employees. From the lawyer's perspective, this fourth component is central. If the lawyer is required by the first three components of her role to be a person of masks and apparent sincerity, an isolated keeper of secrets, and a straddler of moral fences, how will she reconcile the obligations of those roles with the need to live a human life? Thomas Morawetz has recently spoken to this issue in an unusually perceptive and compelling essay:

> In *The Fall* [by Albert Camus], as in other contemporary fiction, legal stories ask us to weigh the peculiar accommodations implicit in a life in law. It depicts the special conjunctions of passivity and accomplishment. It examines the predicaments of tying oneself to the ends of others while one objectifies and distances oneself from them, of working within a set of practices toward which one often harbors a robust cynicism and skepticism, and finally of defending one's altruism within a role that gives one the power to be consummately selfish. While critics from Plato to today's stand-up comics ridicule and disparage lawyers from the outside, some of the best fiction presents the characteristic demands of the profession from the inside, as tragedy and possible deformation of the human spirit.[15]

Although positing the existence of a professional role that encompasses three separate parts may seem to create substantial moral and psychological complexity, even that articulation simplifies and understates the reality.[16] The fourth component

15. Thomas Morawetz, *Lawyers and Introspection*, *in* 2 LAW AND LITERATURE: CURRENT LEGAL ISSUES 1999, 355, 371-72 (Michael Freeman & Andrew D. E. Lewis eds., 1999). Professor Morawetz observes that "[e]ven when the [litigation] system is working well, the strains and tensions of client representation are psychologically unsettling. For the lawyer, litigation is by design a zero-sum game; her success depends on the adversary's defeat." *Id.* at 366-67. "Not only must the lawyer usually commit her skills and resources to victory without compromise, but she must do so regardless of her views of the client's ends and moral posture." *Id.* at 367.

16. In his review of the 1975 Code, the philosopher Charles Frankel quoted Harlan Fiske Stone's 1934 assertion that the ethical demands of lawyering require that we "pass beyond the petty details of form and manners . . . to more fundamental considerations of the way in which our professional activities

increases that complexity by geometric proportions and gives rise, as Professor Morawetz suggests, to the need for rigorous, but constructive and sympathetic, introspection.

The recognition that the lawyer's role is an amalgam of not entirely consistent or reinforcing roles, and that it therefore requires a complex morality, is not a new notion. Nor is the notion that the articulation of the substance and limits of those roles and the balancing and adjustment of the responsibilities that arise from them is a critical concern of professionalism.

Lawyers in the United States have never considered themselves to be the mere agents of their clients and that understanding has itself required an acknowledgment of the moral complexity of the lawyer's role.[17] It may be that the implications of that complexity have been mined more systematically in recent times, but lawyers of the late nineteenth century frequently traced a multicentric outline of the lawyer's professional responsibilities for law students and newly-admitted lawyers. For example, George Sharswood, a nineteenth century legal scholar and treatise-writer, Dean of the Law School of the University of Pennsylvania, and judge of the Pennsylvania Supreme Court, divided professional ethics into two parts in the well-known lectures he presented to the students of the University of Pennsylvania: "those duties which the lawyer owes to the public or commonwealth," and those duties which the lawyer owes to "the court, his professional brethren, and his client."[18] Noting the

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affect the welfare of society as a whole." Charles Frankel, *Book Review*, 43 U. CHI. L. REV. 874, 882-83 (1976). Professor Frankel further observed:

> The welfare of society as a whole" is a sweeping term. Can a profession composed of people who hold radically different political and moral outlooks come to an agreement about its meaning? Probably not, if what is sought is an official doctrine to which all must swear fealty. But the function of a professional code . . . is not to provide practitioners with textbook maxims. It is to sensitize them to the scope, depth and complexity of the commitments they have undertaken in entering the profession.

Id. at 883.

17. For example, John Adams justified his decision to provide counsel to Captain Preston in the Boston Massacre trial by noting that "Council ought to be the very last thing that an accused Person should want in a free Country . . . ," but that his client should "expect from [him] no Art or Address, No Sophistry or Prevarication in such a Cause; nor anything more than Fact, Evidence and Law would justify . . . ." *See* 3 DIARY AND AUTOBIOGRAPHY OF JOHN ADAMS 292-93 (L.H. Butterfield et al. eds., 1961).

18. GEORGE SHARSWOOD, PROFESSIONAL ETHICS 9 (1896). Russell Pearce has described at some length Judge Sharswood's central role in the history and theory of legal ethics in the United States, which stems from the great reliance placed on his work by the drafters of the 1908 Code, and from the continuation to the present day of the central ideas and values of the 1908 Code in current

central importance of "[f]idelity to the court, fidelity to the client, and fidelity to the claims of truth and honor," Judge Sharswood observed that "[t]here is certainly, without exception, no profession in which so many temptations beset the path to swerve from the line of strict integrity; in which so many delicate and difficult questions of duty are continually arising."[19]

William Allen Butler, another nineteenth century legal scholar, emphasized to the students of the Law School of the City of New York that "[t]he lawyer is, in every instance, thus pledged to fidelity to his client, and the oath which he takes, at the outset of his career, binds him, not only to the support of the organic law of the State, but also to the faithful discharge of the duties of his office of attorney and counsellor."[20] In his celebrated 1906 lecture, *The Causes of Popular Dissatisfaction with the Administration of Justice,* Roscoe Pound condemned the "sporting theory of justice" on similar grounds, noting that it leads "counsel to forget they are officers of the court and to deal with the rules of law and procedure exactly as the professional football coach with the rules of the sport."[21] The Canons of Professional Responsibility, adopted by the American Bar Association in 1908, incorporated many of the principles articulated in the Sharswood and Butler lectures.[22]

Professional groups recently have sought to delineate with greater precision the respective spheres of ethics and profession-

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ethical rules. *See* Russell G. Pearce, *Rediscovering the Republican Origins of the Legal Ethics Codes,* 6 GEO. J. LEGAL ETHICS 241 (1992). Professor Pearce also discusses the republican political theory underlying Judge Sharswood's view of the lawyer's role and the difficulty that theory poses for those who would believe with Lord Brougham that "'[a]n advocate, in the discharge of duty, knows but one person in all the world, and that person is his client.'" *Id.* at 248.

19. SHARSWOOD, *supra* note 18 at 55. Judge Sharswood further stated that "it is a difficult task, . . . as it always is in practice, to determine the precise extent of a principle, so as to know when it is encountered and overcome by another—to weigh the respective force of duties which appear to come in conflict." *Id.* at 56. In Judge Sharswood's view, the legal and moral responsibilities of the lawyer "arise from his relations to the court, to his professional brethren, and to his client," and are comprehensively summarized by the oath of admission prescribed for Pennsylvania lawyers, which requires that the lawyer will "behave himself in the office of attorney according to the best of his learning and ability, and with all good fidelity, as well to the court as to the client; [and] that he will use no falsehood, nor delay any man's cause for lucre or malice . . . ." *Id.* at 56-57 (citation omitted).

20. WILLIAM ALLEN BUTLER, LAWYER AND CLIENT: THEIR RELATION, RIGHTS, AND DUTIES 17-18 (1871).

21. Roscoe Pound, *The Causes of Popular Dissatisfaction with the Administration of Justice,* 40 AM. L. REV. 729, 738-39 (1906).

22. The American Bar Association Canons were also based on the Code of Ethics of the Alabama State Bar. *See* Pearce, *supra* note 18, at 241-46.

alism. For example, the 1986 report of the American Bar Association's Commission on Professionalism properly considers professionalism as related to, but not coterminous with, legal ethics.[23] Principles of legal ethics or professional responsibility provide the basis for principles of professionalism, but they do not exhaust the range of responsibilities placed on lawyers. Acknowledging that Roscoe Pound's "rhetoric may be dated," the report nonetheless takes seriously both Dean Pound's definition of a profession as "a group . . . pursuing a learned art as a common calling in the spirit of public service—no less a public service because it may incidentally be a means of livelihood," and his assertion that "[p]ursuit of the learned art in the spirit of a public service is the primary purpose."[24] The report incorporates recommendations intended to "inspire [in lawyers] a rebirth of respect and confidence in themselves, in the services they provide and in the legal system itself."[25] Some of the recommendations are addressed specifically to the academy, the bar, or the bench, while others are aimed at all three branches of the profession.[26] Among other things, the report exhorts law schools to "expose students to promising new methods of dealing with legal problems," including "alternative methods of dispute resolution and processes of negotiation."[27] All segments of the profession are encouraged to "[p]reserve and develop within the profession integrity, competence, fairness, independence, courage and a devotion to the public interest," to increase participation in *pro bono* activities, and to "encourage innovative methods which simplify and make less expensive the rendering of legal services."[28]

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23. *See* A.B.A. COMM'N ON PROF., . . . *In the Spirit of Public Service: A Blueprint for the Rekindling of Lawyer Professionalism* (1986), *reprinted in* 112 F.R.D. 243 (1986).

24. *Id.* at 261. One may be forgiven some degree of skepticism about the accuracy of Dean Pound's assertion that the earning of a livelihood is a merely "incidental" attribute of the profession. That assertion is both factually incorrect and theoretically misleading in that it fails to give realistic weight to one of the sources of moral complexity with which lawyers are required to deal. *See* Sullivan, *supra* note 8, at 1284.

25. A.B.A. COMM'N ON PROF., *supra* note 23, at 262.

26. *See id.* at 263-65.

27. *Id.* at 268.

28. *Id.* at 265. Professor Frankel observed in 1976:

> An overhanging problem for lawyers is whether their methods of dealing with human problems are invariably the appropriate ones . . . . [S]urely it is a professional conceit, if not a kind of magical thinking, to suppose that all, or most, social problems can be compressed into the forms of an adversary system in which there are only two sides, one of which has to be right . . . . Further, what materials and questions ought to be introduced into law schools to sensitize future lawyers to

The A.B.A. Professionalism Commission has offered a "blueprint" for enhancing the status of lawyer professionalism[29] and has provided the impetus for the creation of many state programs on professionalism.[30]

The Professionalism Committee of the American Bar Association's Section on Legal Education has built on the work of the

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> the limits as well as the strengths of the law as a system of social control? So long as such issues are not conspicuous in the legal profession's examination of itself, its ethical preoccupations are likely to seem distorted and somewhat provincial.

Frankel, *supra* note 16, at 885-86.

29. *See* A.B.A. COMM'N ON PROF., *supra* note 23, at 254, 263-64, 271-90.

30. *See* ALA. R. CONTINUING LEGAL EDUC. 9.A. (requiring lawyers to complete a six-hour course in professionalism within twelve months of being licensed to practice law); ARIZ. REV. STAT. SUP. CT. R. 45(a)(3) (requiring a three-hour state bar course every year on professionalism); COLO. R. CIV. P. 260.2(4) (requiring lawyers to satisfy four of the seven unit continuing legal education ethics requirement every three years by completing a required course on professionalism); DEL. R. CONTINUING LEGAL EDUC. 4(A)(2) (requiring four hours credit every two years in programs which are designated as instruction in legal ethics or professionalism); FLA. ST. ANN. BAR. R. 6-10.3(b) (requiring five credit hours every three years in legal ethics or professionalism); GA. SUP. CT. R. 8-104(B)(3) (requiring a one-hour course per year on professionalism); KAN. SUP. CT. R. 802(a) (requiring two hours per year in the area of professional responsibility, which includes legal ethics, professionalism, and malpractice prevention); KY. SUP. CT. R. 3.661(6) (requiring two credit hours per year in legal ethics, professional responsibility, or professionalism); LA. SUP. CT. R. 30(c) (requiring one credit hour in professionalism every year); MINN. STAT. ANN. SUP. CT. R. CONTINUING LEGAL EDUC. 3, Definitions pt. h (requiring three credit hours every three years in "courses in ethics and professional responsibility," defined to include courses specifically addressing professionalism, although not limited to such courses); MO. SUP. CT. R. 15.05(f) (requiring three credit hours every three years in professionalism, legal or judicial ethics, or malpractice prevention); N.H. SUP. CT. R. 53(A) (requiring two credit hours per year in legal ethics, professionalism, or the prevention of malpractice, substance abuse, or attorney-client disputes); N.Y. CT. R. §§ 1500.12(a), 1500.22(a) (requiring newly admitted attorneys to complete a total of six credit hours in ethics and professionalism within the first two years of admission to the Bar, and requiring experienced attorneys to complete four credit hours every two years in ethics and professionalism); N.C. ST. B.R. 1(D), § .1500 (requiring two credit hours per year in the area of professional responsibility or professionalism); OHIO REV. CODE ANN. GOV. BAR. R. 10(3)(A)(1) (requiring one hour in professionalism every two years); PA. R. CONTINUING LEGAL EDUC. 105(a) (requiring twelve hours per year of continuing legal education in general; subjects include substantive law, lawyer ethics, professionalism, and substance abuse); TENN. SUP. CT. R. 21(3.01) (requiring three credit hours every three years in ethics and professionalism); VA. SUP. CT. R., pt. 6, § 4, ¶ 17(C)(1) (requiring a course for recent admittees and two credit hours per year in legal ethics or professionalism); WASH. CT. ADM. PRAC. R. 45(a), (c) (requiring six credit hours every three years in legal ethics, professionalism, and professional responsibility).

Professionalism Commission. In its 1996 report, *Teaching and Learning Professionalism,* the Professionalism Committee observes that "[a] professional lawyer is an expert in law pursuing a learned art in service to clients and in the spirit of public service; and engaging in these pursuits as part of a common calling to promote justice and the public good."[31] The report provides a list of six essential characteristics of the professional lawyer—learned knowledge, skill in applying the applicable law to the factual context, thoroughness of preparation, practical and prudential wisdom, ethical conduct and integrity, and dedication to justice and the public good.[32] In addition, the report includes a list of twelve so-called "supportive elements," among them "[s]ubordination of personal interests and viewpoints to the interests of clients and the public good, [c]apacity for self-scrutiny and for moral dialogue with clients and other individuals involved in the justice system," and "[a] client-centered approach to the lawyer-client relationship which stresses trust, compassion, respect, and empowerment of the client."[33]

The Professionalism Committee's report also draws on the work of Roger Cramton, from which the committee quotes approvingly:

> The profession's view of itself must be reshaped in a more responsible, realistic, and truthful manner. The idealistic tradition of the profession, and especially the aspiration to balance service to client and self with regard for the interests of others, is one of the foundations on which a reshaped ethic can be built. The challenge is one of creating a new vision, courageous and truthful, of what it means to be a lawyer in today's world.
>
> I believe the major elements of a renewed vision will be:

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31. TEACHING AND LEARNING PROFESSIONALISM, *supra* note 8, at 6.

32. *Id.* at 6-7.

33. *See id.* at 7. The Committee's full list of supportive elements includes: (1) Formal training and licensing; (2) Maintenance of competence; (3) Zealous and diligent representation of clients' interests within the bounds of law; (4) Appropriate deportment and civility; (5) Economic temperance; (6) Subordination of personal interests and viewpoints to the interests of clients and the public good; (7) Autonomy; (8) Self-regulation; (9) Membership in one or more professional organizations; (10) Cost-effective legal services; (11) Capacity for self-scrutiny and for moral dialogue with clients and other individuals involved in the justice system; (12) A client-centered approach to the lawyer-client relationship which stresses trust, compassion, respect, and empowerment of the clients.

Id. at 7.

- A lawyer who cares about clients, who is accountable to them, who engages in moral dialogue with them, and who wants the legal profession to see that client interests are protected.
- A lawyer who cares about equal access to justice and who strives for efficiency in the provision of legal services.
- A lawyer who brings his or her moral conscience to bear on everything done as a lawyer."[34]

In Dean Cramton's view, as in the view of the Professionalism Committee, the lawyer necessarily is involved in a morally complex undertaking. More specifically, these views take seriously all of the obligations identified in the preamble, as well as the lawyer's additional obligation to her own sense of moral integrity and responsibility. The textured quality of the relationship between client and lawyer is described, and the obligations that flow from being an officer of the court and a public citizen with a special responsibility for the administration of justice also are taken seriously. These obligations are not just public relations verbiage or markers showing the ultimate limits of permissible action, but values that genuinely are in play in the lives that lawyers live and in the decisions and actions that lawyers take.[35] The relationship between lawyer and client must be one characterized by respect and responsibility—by a sense of caring on the part of the lawyer, and of trust on the part of the client. At the same time, the lawyer must be capable of appreciating and giving appropriate effect to interests other than those of the client, to contrary considerations that also command respect and attention. Her role is that of a conciliator and peacemaker, but equally that of an advocate, and she must cultivate the skills and dispositions appropriate to each. She must be able to give appropriate weight to her own interests and values, and to those of

34. *Id.* at 8, *quoting* Roger C. Cramton, *Delivery of Legal Services to Ordinary Americans*, 44 CASE W. RES. L. REV. 531, 611 (1994).

35. This view is contrary to another, which Professor Pearce has described:

> Modern commentators do not entirely ignore the republican aspects of the legal ethics codes. They acknowledge, for example, the lawyer's duty as a public officer of candor to the court. Their general view of these duties, though, is that "when lawyers start talking this way about their public duties, being officers of the court and so on, most of us understand that we have left ordinary life far behind for the hazy aspirational world of the Law Day sermon and Bar Association after dinner speech—inspirational, boozily solemn, anything but real.

Pearce, *supra* note 18, at 277, *quoting* Robert W. Gordon, *The Independence of Lawyers*, 68 B.U. L. REV. 1, 13 (1988) (footnotes omitted).

people who justifiably depend on her, while giving to the client the undivided loyalty to which he is entitled. The lawyer must be committed to law reform, to the improvement of the legal system and the profession, to the achievement of justice, fairness, and equity within the profession itself,[36] and to the public good. This view of lawyering places a heavy responsibility on the lawyer. The lawyer is enjoined to take seriously conflicting claims, to engage those claims, and to act responsibly with respect to them, with no easy answers to fall back on. This is the essence of lawyering, and it is with this essence that professionalism must be concerned.

The development of attitudes and dispositions appropriate to this understanding of the lawyer's role is a lifelong project. The success of that project depends in part on the lawyer's training and experience prior to law school, and it depends mightily on her professional experience following law school. One learns the lessons of professionalism as much from experience as from instruction, and each of the various branches of the legal profession has an important role to play in transmitting values of professionalism. The task is not one that can be left entirely to law schools, but law schools necessarily have a central role to play in transmitting values of professionalism and in encouraging the development of attitudes and dispositions appropriate to professionalism.[37] It is unthinkable today that law schools should be unable or unwilling to accept that responsibility. The question is how best they can fulfill it.

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36. An expansive conception of professionalism is necessary if there is to be any further success in combating discrimination and invidious discrimination, both as to the professional relationships of members of the legal profession *inter se* and in the delivery of legal services to persons in need of those services. *See* Podgor, *supra* note 10, at 341-44. After many battles, the legal profession is more diverse today than ever before. *See, e.g.*, Bradwell v. Illinois, 83 U.S. 130 (1872) (affirming Illinois decision refusing admission to Myra Bradwell to practice law); Sweatt v. Painter, 339 U.S. 629 (1950) (requiring Herman Marion Sweatt's admission to the University of Texas Law School based on inadequacy of opportunity provided by racially-segregated law schools). It would be a mistake, however, to ignore either the history or present extent of discrimination in the legal profession. For example, the entry of women into the "club" did not eradicate the bias that continues in the law and in the legal environment. *See* Christine A. Littleton, *Reconstructing Sexual Equality*, 75 CAL. L. REV. 1279, 1318 (1987). Addressing bias in the profession and legal system is a natural, and necessary, element of efforts to improve professionalism.

37. *See generally* TEACHING AND LEARNING PROFESSIONALISM, *supra* note 8.

II. INCORPORATING PROFESSIONALISM INTO THE WORK OF LAW SCHOOLS

Judge Learned Hand, speaking of the judge's role in cases of constitutional interpretation, once wrote that "in such matters everything turns upon the spirit in which [the judge] approaches the questions before him."[38] The same is true of teaching and, ultimately, of the character and success of educational institutions. In *The Art of Teaching*, the classicist Gilbert Highet identified a number of characteristics that he deemed essential to being a good teacher.[39] Not surprisingly, Professor Highet believed that it is critical, on the one hand, for the teacher to know and like his subject and, on the other hand, for the teacher to be someone who knows and likes students.[40] The good teacher will also have the quality of "kindness":

> It is very difficult to teach anything without kindness. It can be done, of course, by the exercise of strong compulsion—as lion tamers teach their beastly pupils—but there are not many types of pupil on which such compulsion can be exercised . . . . [I]n nearly all other kinds of learning the pupils should feel that the teacher wants to help them, wants them to improve, is interested in their growth, is sorry for their mistakes and pleased by their successes and sympathetic with their inadequacies. Learning anything worth while is difficult. Some people find it painful. Everyone finds it tiring. Few things will diminish the difficulty, the pain, and the fatigue like the kindness of a good teacher.
>
> This kindness must be genuine. Pupils of all ages, from careless children up to hardworking graduates, easily and quickly detect the teacher who dislikes them, as easily as a dog detects someone who is afraid of him. It is useless to feign a liking for them if you do not really feel it.[41]

Professor Highet also suggested that the teacher "should know much else" in addition to her subject and students; the teacher should be "a man or woman of exceptionally wide and lively intellectual interests."[42] This last characteristic is no mere

38. Learned Hand, *Sources of Tolerance*, 79 U. PA. L. REV. 1, 12 (1930).

39. *See* GILBERT HIGHET, THE ART OF TEACHING 8-73 (1950).

40. *Id.* at 12-54.

41. *Id.* at 71-72.

42. *Id.* at 54. Professor Highet further explained that "they must know more about the world, have wider interests, keep a more active enthusiasm for the problems of the mind and the inexhaustible pleasures of art, have a keener taste even for some of the superficial enjoyments of life—yes, and spend the whole of their career widening the horizons of their spirit." *Id.*

conceit, but is grounded in the reality of what Professor Highet took to be two central aspects of the teacher's role, namely, "to make a bridge between school or college and the world" and to "make a bridge between youth and maturity."[43] If that is true with respect to teachers in schools and colleges, as *The Art of Teaching* suggests, it is all the more true with respect to teachers in professional schools. Professional school teachers are not simply preparing their students for "the world" in a general sense; their students are being prepared for "the world" in a very immediate and particular sense, that is, for participation in a profession that aims to make a difference in the world.[44] The obligation of professional school teachers to know the world is even greater, therefore, than that of other teachers. In addition to knowing and liking their subject and their students, professional school teachers must "know the world" in the sense of knowing and respecting, albeit from an appropriately critical perspective, the profession and professional work for which their students are being prepared.[45] This is the spirit in which teaching and learning law with a view towards cultivating a sense of professionalism must take place.

The Report of the Professionalism Committee on *Teaching and Learning Professionalism* contains seven suggestions that offer a detailed outline for fostering an atmosphere of professionalism in law schools.[46] The recommendations contained in this report

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43. *Id.* at 54-59. In the case of professional school students, many of whom are not "young" in a chronological sense, one might suggest that the "bridge" is between professional youth and maturity. Professor Highet also suggested that the good teacher will also have a sense of humor, a good memory, determination, and kindness. *Id.* at 59-73.

44. *Cf.* William Cronon, *"Only Connect . . .": The Goals of Liberal Education*, AM. SCHOLAR, Autumn 1998, at 73, 79 ("In the end, it turns out that liberty is not about thinking or saying or doing whatever we want. It is about exercising our freedom in such a way as to make a difference in the world and make a difference for more than just ourselves.").

45. Professor Highet observed that "[a] teacher must believe in the value and interest of his subject as a doctor believes in health." HIGHET, *supra* note 39, at 15. For law teachers, it is not enough that they believe in the value of the substantive subspecialty that they study and teach; they must also believe in the value of lawyering.

46. The seven suggestions are:

> (1) Faculty must become more acutely aware of their significance as role models for law students' perception of lawyering . . . (2) Greater emphasis needs to be given to the concept of law professors as role models of lawyering in hiring and evaluating faculty . . . (3) Adoption of the pervasive method of teaching legal ethics and professionalism should be seriously considered by every law school . . . (4) Every law school should develop an effective system for encouraging and monitoring its ethics and professionalism programs . . . (5) The use of

are sufficiently specific and concrete to overcome any suggestion that the term professionalism is too ambiguous to allow the construction and implementation of a plan to increase its presence in the law school environment. Adding rigorous professionalism studies to the law school curriculum, emphasizing professionalism across the curriculum, using smaller classes and more diverse teaching methods to foster professionalism, and adding some faculty with varied and substantial practice experience are all constructive steps that will aid in the continued development of an atmosphere which emphasizes the cultivation of habits and attitudes of professionalism in the law school environment.[47]

One of the recommendations contained in the Professionalism Committee's report deserves special attention: the recommendation that "[f]aculty must become more acutely aware of their significance as role models for law students' perception of lawyering."[48] The Professionalism Committee's explanation for this suggestion includes the observation that "[c]ivility and

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> diverse teaching methods such as role playing, problems and case studies, small groups and seminars, story-telling and interactive videos to teach ethics and professionalism, should be encouraged . . . (6) Law book publishers should consider adopting a policy requiring that all new casebooks and instructional materials incorporate ethical and professionalism issues. Law book publishers should also publish more course-specific materials on legal ethics and professionalism issues as part of new casebooks, new editions of old casebooks, supplements to casebooks, compilations of supplemental readings, and compendiums . . . (7) Law schools need to develop more fully co-curricular activities, policies, and infrastructures that reflect a genuine concern with professionalism.

TEACHING AND LEARNING PROFESSIONALISM, *supra* note 8, at 16-25.

47. *Id.* at 17-24. *See also* Deborah L. Rhode, *Ethics By the Pervasive Method*, 42 J. LEGAL EDUC. 31 (1992) (discussing the rationale and method for incorporating ethics pervasively into the law school curriculum).

48. TEACHING AND LEARNING PROFESSIONALISM, *supra* note 8, at 16. *See also* Thomas D. Morgan, *Law Faculty as Role Models*, TEACHING AND LEARNING PROF.: SYMP. PROC. . 37 (1997).

On the general subject of teaching, A. Bartlett Giamatti, the late president of Yale and Commissioner of Baseball, once wrote:

> [Teaching] involves the making and setting of right and wrong choices in the interests of a larger, shaping process and that the deep thrill a teacher can experience comes from the combination of these activities, so that you feel what you think, do what you talk about, judge as you talk about judgment, proceed logically as you reveal logical structure, clarify as you talk about clarity, reveal as you show what nature reveals—all in the service of encouraging the student in imitation and then repetition of the process you have been summoning, all so that the student may turn himself not into you but into himself.

A. BARTLETT GIAMATTI, *To Make Oneself Eternal*, *in* A FREE AND ORDERED SPACE: THE REAL WORLD OF THE UNIVERSITY 193, 194-95 (1988).

human kindness toward students inside and outside the classroom, are as important, if not more important, than a series of lectures on the precepts of litigation civility."[49] The report also notes that "[p]rofessors whose consulting or research activities make them unavailable for classes, regular office hours for consultations with students, or *pro bono* service send an unmistakable message to law students about these professors' and their law school's value system."[50]

Two points may be made about this suggestion. First, the essential assumption underlying the first suggestion of the Professionalism Committee is the proposition that practicing professionalism is a more effective pedagogy than mere preaching. Second, the Professionalism Committee's suggestion is also premised on the assumption that the teacher's role and the lawyer's role are sufficiently similar to permit law teachers to contribute to the cultivation of a sense of legal professionalism in their students by demonstrating their own professionalism as law teachers in the ways that they interact with their students.

With respect to the first assumption, it seems clear that much can be taught about professionalism through example. Indeed, that is one of the principal ways that values of professionalism traditionally were transmitted from one generation of lawyers to the next. It is also the case, however, that teaching by example cannot be the sole means by which these values are transmitted. Many who have held positions of supervisory responsibility in a hierarchical organization will have had the experience of treating a direct subordinate in an appropriately professional manner, only to learn later that the subordinate has treated those who report to him in a most unprofessional way. Similarly, many will have had the experience of listening

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President Giamatti also spoke eloquently in that essay to the need for believing in the value of what we do:

> But I can trace the growth of a crisis of confidence in the academy, and particularly at the heart of it. I can note the gathering conviction that the act and activity of teaching, which for me finally includes research and investigation and civic effort, is not viewed by those who do it or who would do it with the degree of faith in it as a noble calling, important to the country, as they must if it is to be done as well as it must be on behalf of the country. It is one thing to know that others question your worth and the worth of the subject matter you profess; it is much more serious when because of them and other recent events you question your worth and the worth of what you do as a teacher in an area of intellectual inquiry, and begin to lose all faith.

Id. at 201-02.

49. TEACHING AND LEARNING PROFESSIONALISM, *supra* note 8, at 17.

50. *Id.*

patiently to one person's complaint about the treatment she has received from her supervisor, and then watching that person exercise her authority with respect to her own subordinate, with no sense of irony or guilt, in precisely the same way.[51] We do not always grasp the point we should from observing excellence in others, nor does conversation with them necessarily lead us to see the ways in which we can change our hearts and minds and actions in response to that experience of excellence. We see things more easily from our own point of view, and from the standpoint of ensuring that our own entitlements are protected. Perhaps our slowness in this regard is simply a reflection of human nature, and one should not be thought to be discounting the power of teaching by example simply by pointing to its limits, but those limits demonstrate why the additional measures recommended by the Professionalism Committee are also necessary.

It also seems clear that the second assumption is correct, that is, that the similarities between the teacher's role and the lawyer's role are sufficiently strong to permit law teachers to use the ways in which they interact with students as a way of teaching values of professionalism by example. Like lawyers, law teachers necessarily have multiple roles, each of which has requirements and moral demands that must be given effect and harmonized in some way. In addition to being teachers, law teachers are lawyers, with many of the obligations that lawyers have; they are also scholars and members of various academic and professional communities. They are also individual human beings who must deal authentically with their own values and relationships and the people who depend upon them. Their effectiveness, both as teachers of law and as teachers of professionalism by example, necessarily depends on their ability to recognize the moral challenge of accommodating these competing claims, on the attitude with which they approach that task, on the degree of success they have in doing so, and, indeed, on the perception of others that they have actually worked out the conflicting claims in a true and responsible way. Law teachers cannot be effective law teachers or

51. The problem is not one of recent creation, as the parable of the unjust servant describes the same phenomenon: A servant was brought before his king, to whom he owed 10,000 talents. The servant being unable to pay the debt, he fell on his knees, implored the king to have patience with him, and promised to pay the debt in the future. Out of pity, the king released the servant and forgave the debt. "But that same servant, as he went out, came upon one of his fellow servants who owed him a hundred denarii, and seizing him by the throat he said, 'Pay what you owe.' So his fellow servant fell down and besought him, 'Have patience with me, and I will pay you.' He refused and went and put him in prison till he should pay the debt." Matthew 18: 23-35.

teachers of professionalism by example if they categorically place the demands of scholarship or their personal lives over the responsibilities they owe their students, or otherwise demonstrate that they are unable to live lives that take seriously, and give effect to, each of the parts of the morally complex role that they have undertaken to perform. They cannot possibly teach professionalism by example if they are unavailable to students, fail to return their phone calls and emails, and/or fail to keep the office hours they set and the appointments they make.[52]

As Edward Levi said, the world of the professions is the place where the world of ideas and the world of problems to be solved come together.[53] The advancement of human knowledge and the improvement of the administration of justice are central concerns of academic lawyers, and we are not true to our calling if we do not work for those ends. As teachers of law and as teachers of professionalism by example, however, there is additional work for us to do. Service as judges in the early rounds of mock trial and moot court competitions, talking with students about law review notes and other possible research projects, participating in mock interview programs and advising students about employment decisions, being willing to participate in student-sponsored roundtable discussions about various topics, giving advice to student organizations, accepting invitations to student events, and being available in one's office are also responsibilities implicit in professional service in an academic community.

Being responsive to student concerns and receptive to sharing time with students is essential to promoting an atmosphere of professional responsibility. With respect to our primary set of relationships as teachers, that is, our relationships with our students, there is a striking similarity between the responsibilities of teachers and lawyers. Teachers must care about their students, just as lawyers must care about their clients, and the way in which we use the word "care" is quite similar in both cases. We do not manifest our care for clients by flattery, still less by suspending our critical faculties to believe whatever our clients wish us to believe. We care for clients by treating their problems as seriously as our own, by engaging in serious dialogue with them about their ends and the means by which they hope to achieve

52. This point was made graphically, if a bit unfairly, in the case of one of the many law professors who became a media personality during the investigation preceding the impeachment of President Clinton. *See, e.g.*, David Segal, *He's Here, He's There, He's Everywhere on Air; But While He Expounds on Clinton-Lewinsky, There's Still a Call Waiting for Prof. Turley*, WASH. POST, Oct. 5, 1998, at F09.

53. *See* EDWARD H. LEVI, POINT OF VIEW: TALKS ON EDUCATION 66 (1969).

those ends, and by sharing with them the most thoughtful and truthful advice we are capable of giving to them. We care for them by treating them as we would wish to be treated. We do not always give clients what they think they want because they may think that they want something other than our professional, independent, and loyal judgment about their affairs, and honest recommendations as to possible actions based on that judgment, and that is all that we have agreed to give them. It is all that we can give them.

The care we show for students is similar. We do not show care for them through flattery or the suspension of our critical faculties.[54] We do not show care by expecting less of them than they are capable of achieving. We do not show care by pretending that the profession they are about to join does not require mental and moral toughness, as well as empathy and understanding. We show care by encouraging students to accomplish all that they possibly can, by showing that we want them to succeed, and by holding them to the standards we think will be helpful to

54. David Wilkins has made a similar point, noting that law schools give students very little information or background to help prepare them to succeed in the work environments in which they are most likely to earn a living following law school. *See* David B. Wilkins, *The Professional Responsibility of Professional Schools to Study and Teach About the Profession*, 49 J. LEGAL EDUC. 76 (1999). Indeed, to the extent that law schools send any message at all, the message may be a misleading one:

> Students are hungry for information about their future careers. The regular curriculum offers them almost nothing to satisfy their hunger. As a result, students typically learn about potential careers from three sources: legal recruiters, the legal press, and each other. It should go without saying that each of these sources is seriously flawed.
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> . . From the dean's opening speech to the first-year class to countless messages from faculty and administrators, Harvard Law School sends the reassuring message that those few who are lucky enough to be admitted are destined to succeed simply by virtue of having gone to school there. . . . Success, in other words, is the reward for the hard work and good fortune that it takes to be admitted to Harvard. Moreover, by giving [them] . . . little or no information about their future careers, Harvard subtly but nevertheless powerfully encouraged these aspiring lawyers to think about their working lives as an extension of the only world most of them had ever known—education. According to the standard account, educational institutions are meritocracies in which one succeeds by working hard and playing by the rules. By the time they graduate from Harvard Law School, most students are inclined to believe this standard explanation for their own academic success. Not surprisingly, they also believe that this proven strategy will pay similar dividends in the professional world they are about to enter.

Id. at 80-81. Professor Wilkins uses the tragic story of Lawrence Mungin, an African-American Harvard graduate, to illustrate his point. *See id.*

them in reaching their potential. We show care by helping them to understand that the profession for which they are preparing is both a profession of service to others and a profession that is more than that, and therefore rife with moral challenge. We show care by treating them as professionals who will have responsibility in the near future for acting for others in matters of the utmost gravity and importance, perhaps even involving issues of life and death. We teach students the virtue of respect by showing respect to them, and by expecting them to treat us and others with respect. We teach them the virtue of responsibility by acting responsibly towards them, and by expecting them to act responsibly as well. We teach them to be constructively introspective about the moral complexity they will face in practice by encouraging them to think about those issues, and by demonstrating to them that we take seriously those issues, both in the abstract and in the way in which we deal with the competing demands and claims we face as lawyers, teachers, scholars, citizens, and human beings.

III. Obstacles to Achieving an Atmosphere of Respect, Responsibility, and Constructive Introspection

William Butler Yeats wrote that "the innocent and the beautiful have no enemy but time."[55] Here, perhaps the principal villain might better be characterized as "inertia." After all, we know the importance, both to our students and to society, of preparing law students for the professional aspects of a life in the law. We know the importance of creating a law school environment in which the highest standards of intellectual excellence and technical expertise are pursued in an atmosphere of respect, responsibility, and constructive introspection, and with a view towards helping to cultivate an appreciation of those virtues in our students. We know the importance of providing incentives to ensure that such an atmosphere, and such an appreciation of those values in our students, will be cultivated. We also know that we are not doing as well as we should be doing in these aspects of our undertaking, and we can identify a number of things that might well improve our performance in this area. At the same time, we seem to make scant progress. A brief exploration of some of the causes of this inertia may be in order.

The seeming reluctance of law schools to deal with these aspects of professionalism can be explained by reference to two main clusters of reasons. One cluster of reasons is external,

55. William Butler Yeats, *In Memory of Eva Gore-Booth and Con Markiewicz*, *in* The Winding Stair and Other Poems 2 (1933).

involving the relationship of the law school to the university; the other is internal to the law school. The first cluster of reasons encompasses a number of factors, including the nature and extent of the university's need for resources, the nature and extent of the law school's traditional role in satisfying that need, the relative strength of the law school's claim to scarce resources available to the university, the wisdom of central university administrators and the notions they have as to what legal education requires and entails, and the views held by central university administrators and governing board members about the value of the work that lawyers do, and, ultimately, of legal education.

From the perspective of central university administrators, paying attention to professionalism concerns in the law school environment may seem inopportune because it requires the expenditure of additional resources at a time when resources are scarce. That perception is correct to some extent, although the amount of needed resources is probably relatively modest, all things considered. More important, perhaps, is the possible effect on settled expectations with respect to the financial structures of some universities.

Law schools, with large classes, high student-faculty ratios, solid tuition bases, relatively inexpensive facilities and equipment needs, and relatively prosperous alumni, traditionally have been viewed by many universities as net producers of revenue, capable of providing needed subsidies for less profitable, more cost-intensive university programs. To the extent that legal educators traditionally have conceived of legal education as something that principally takes place in a large classroom setting, their pedagogical views have been compatible with the economic needs felt by central university administrators. In other words, it has been thought possible to maintain a program of high quality legal education while shifting substantial amounts of law school tuition revenue to support other important programs. The need of central university administrators to find sources of financial support for such programs has become more acute in the past two decades, which have seen a substantial decline in financial support for public higher education, a disproportionate increase in costs experienced by institutions of higher education relative to other segments of the economy, and other specific and significant adverse economic conditions, such as the massive losses experienced by many university hospitals.[56] In these circum-

56. *See, e.g.*, Valerie Strauss, *Georgetown Moves to Replace Law Dean*, WASH. POST, Apr. 9, 1998, at D01; Valerie Strauss, *Law Dean's Backers Blast GU; Alumni Contributions Disrupted by Plan to Replace Areen*, WASH. POST, Apr. 10, 1998, at C05;

stances, central university administrators have legitimate concerns about resource allocations and opportunity costs, both within the law school and as between the law school and other components of the university.[57] In the race for university resources, competition is intense.

The ability of law schools and other university programs to secure resources may also depend on the particular purposes for which the resources are sought. For example, it is easier to secure resources for purposes that already resonate with central university administrators; sound familiar in terms of the aims and means of the disciplines from which these administrators have emerged; and can be most easily justified, in the increasingly competitive and entrepreneurial world of university education, by reference to the bottom line of consumer satisfaction and increased institutional prestige—something which is often measured by reference to factors that have little, if anything, to do with educational quality. Thus, the wisdom of expending additional resources for purposes such as providing greater support for high-profile faculty scholarship, enhancing the attractiveness of the law school's physical environment, or providing for more effective placement and career counseling services may seem self-evident to many central university administrators.

On the other hand, central university administrators may be skeptical about the need for pursuing new directions in legal education, particularly those that may require additional resources to support unfamiliar models of legal education with priorities and scales more similar to those traditionally associated with medical or graduate education. For example, university administrators may wonder why smaller law school classes are needed, when legal education traditionally has been based on a

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Valerie Strauss, *A Rebellion at Georgetown Law; Students, Faculty and Alumni Work to Fight Dean's Ouster*, WASH. POST, Apr. 16, 1998, at A01; Valerie Strauss, *Georgetown Decides to Retain Law Dean; Facing Revolt, President Changes Mind*, WASH. POST, Apr. 18, 1998, at A01 (detailing controversy over Georgetown president's short-lived opposition to reappointment of law school dean, who allegedly opposed increasing the extent of the law school's subsidy of other units, including the medical center).

57. The decline in support for public higher education has been dramatic over the past several decades. *See, e.g.*, HAROLD A. HOVEY, NAT'L CENTER FOR PUB. POL'Y AND HIGHER EDUC., STATE SPENDING FOR HIGHER EDUCATION IN THE NEXT DECADE: THE BATTLE TO SUSTAIN CURRENT SUPPORT, at 19-21 (1999). *See also* PETER SCHRAG, PARADISE LOST: CALIFORNIA'S EXPERIENCE, AMERICA'S FUTURE (1998) (detailing the decline of public funding for higher education in California). At the same time, higher education has experienced an increase in costs which greatly exceeds general indicators and has led to high tuition increases. *See* Tristan Mabry, *College Tuition Outpaces Inflation*, WALL ST. J., Mar. 12, 1999, at A2.

large lecture hall model, and university financial modeling has proceeded on that basis. Central university administrators trained in other disciplines may be especially skeptical about the educational necessity of expending scarce resources to nurture the professionalism of professional school students,[58] and their skepticism is likely to be even greater with respect to claims that such expenditures can be justified by reference to the bottom line of enhanced consumer satisfaction or institutional prestige.[59]

Finally, many university boards of trustees and central administrators, like the public at large, currently hold the legal profession in less than the highest regard, and the education of lawyers often is not perceived to be among the contemporary university's most noble or worthwhile projects. If central university administrators and governing boards do not respect the work that lawyers do, it is not likely that they will respect the work that law schools do in preparing lawyers for practice, and they will place a higher value on other uses to which law school tuition revenues and other university funds might be put.

The second cluster of reasons is internal to the law school and possibly even more important. Any meaningful incorporation of these aspects of professionalism into the educational mission and program of a law school presupposes that the law school setting is both receptive to these values and capable of acting in ways that promote them. There are good reasons to question the accuracy of this presupposition, even assuming the availability of sufficient resources. First, there is some ambivalence within the legal academy about what law schools and law professors *can* do to impart to students the skills and attitudes necessary to give effect to these aspects of professionalism. Second, there is ambivalence about what law schools *should* attempt to do in this regard, given the time and resources that such efforts require, and the lack of consensus about what can be accomplished.

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58. Administrators trained in other professional disciplines may be no more sympathetic than administrators trained in academic fields, given that the teaching of professionalism may occur more naturally in fields in which a greater part of the educational experience consists of workshop or clinical experiences. They may not see what the problem is.

59. There may be some marketing advantage, of course, to being perceived as a law school committed to professionalism. It may also be the case, however, that such a marketing advantage could be achieved without any serious financial commitment. At all events, successful law school deans will not be tone-deaf to the priorities and concerns of university administrators; they may well choose to seek funds for projects that are easiest to justify in these terms, lest they risk failing to capture scarce resources for the law school.

The need to promote excellence in scholarship and teaching with respect to theory, doctrine, and analysis, broadly understood, will speak directly to most law school faculty members, but the task of imparting professionalism values will seem less pressing to many. The importance of professionalism values may seem tangential to some faculty members, whose awareness of current problems in the profession may be somewhat limited. The practice experience of many law professors at many prominent law schools will have been brief, and the life and concerns of practice soon seem far removed from current intellectual interests, even in the case of those who practiced for substantial periods. Some law faculty also have few ongoing professional contacts with practicing lawyers and members of the judiciary, and the nature of the contacts they have is often narrow in scope, concerned with questions of substantive law within the faculty member's special area of expertise or with recommending particular students for employment.[60] In addition, and for good reasons, many academic lawyers are more likely to consider academics in other fields as their relevant professional peer group, and are more likely to be influenced by them and their concerns than by the concerns of lawyers and judges. In some quarters, the ambivalence runs deeper, reflecting the reservations of some academic lawyers about the very nature of the lawyer's role and the worth of the work that lawyers do.

There are other disincentives to be concerned about professionalism. Giving attention to professionalism values in the classroom necessarily consumes instructional time that might be used for other purposes, and pursuing professionalism outside the classroom is also time-consuming. Studying the need for changes in the law school environment with respect to the cultivation of professionalism, recommending changes, and planning for the implementation of suggested changes are also time-consuming activities. Most important, for law faculty members to interact with students in the ways we have suggested, taking seriously the role faculty members can play in helping to satisfy the students' need for professional development, obviously is time-consuming and has calculable opportunity costs.

Where the development and maintenance of professional reputations, both of individuals and of institutions, depend as

60. A number of states have held conclaves to bring together lawyers, judges, and law teachers to discuss matters of common concern, and some states have attempted to continue and institutionalize that opportunity for dialogue through standing committees or sections of the state bar. *See* William R. Rakes, *Conclaves on Legal Education: Catalyst for Improvement of the Profession*, 72 NOTRE DAME L. REV. 1119 (1997).

heavily as they do on scholarly publication, there are strong incentives to maximize the amount of time spent in scholarship.[61] Both in the case of individuals and in the case of institutions, the opportunity for upward mobility depends greatly on scholarship. That is as it should be. After all, one of our central goals as individual scholars and as institutions of higher learning is the advancement of human knowledge, and our contributions to that endeavor, individually and institutionally, must be seriously supported and greatly valued. Indeed, they must be at the center of what we do. On the other hand, law schools have other purposes as well, including the preparation of students for the pursuit of a profession, and the incentives for law teachers to devote their time and energy to the pursuit of excellence in this area are neither so strong nor so obvious as the incentive to pursue scholarship. In scholarship, the university's—and society's—interest in the production of new knowledge generally is reinforced both by the faculty member's own sense of professional identity and by her interest in succeeding in the profession she has chosen. Most law teachers undoubtedly enter law teaching because of a strong sense of intellectual curiosity about legal matters and a dedication to the spirit of inquiry. In addition, the profession rightly honors the creation of new knowledge, and most law teachers would like to be held in high esteem by their peers.[62] As a group, law teachers have little appetite for

61. Of course, law school reputation is "measured" in different ways by different groups, but law school professors probably tend to look more closely at faculty scholarship than at other factors in determining their own opinions of other law schools. On the other hand, the professionalism of the law school environment and the availability of faculty members to students are not normally considered by most evaluators. In recent years, the greatest attention has been given, at least on the part of potential students, to the rankings compiled by *U.S. News and World Report.* The precise formula used by *U.S. News* changes from time to time, but the rankings are propelled by a combination of factors: the LSAT and undergraduate GPA profile of the entering class, student/faculty ratio, resources expended per student, employment rates at graduation and after the announcement of bar results, selected bar passage rates, and reputation among academics, lawyers, and judges. *See generally* Terry Carter, *Rankled by the Rankings,* 84 A.B.A. J. 46 (1998) (discussing the responses to law school rankings). Although the rankings are ultimately presented in a way that suggests mathematical precision, some of the factors on which they are based arguably have little to do with the excellence of a law school, and combining the factors does not make them more relevant. To the extent they influence prospective students, however, their reality is substantial, particularly in the eyes of university administrators.

62. It may be that some law teachers will have entered the profession for other reasons and have no serious interest in scholarship; others may have lost their commitment to scholarship, for a variety of reasons, along the way. Others may be interested only in their own scholarship and will shirk all of the

anonymity or the appearance of irrelevance. These factors provide incentives that reinforce the university's goal of promoting the advancement of knowledge. That is not the case with respect to the demands made on us concerning the development of an atmosphere of professionalism within the law school.

As we have noted, a particular law teacher may have spent little time in practice, and she may have little intellectual interest in professionalism issues. Even if she does have such experience and interest, it is unlikely that she will view the dedication of time and energy to the undertaking of special efforts to encourage the professionalism of her students as something that is naturally consistent with the advancement of her own self-interest or long-range career prospects. To be sure, spending time in the ways we have suggested will provide substantial personal satisfaction to many. Faculty who spend time advising students often acknowledge the personal satisfaction that comes from spending one's time in this way. Working with mock trial and moot court teams, with law review writers, and with students pursuing independent research projects also offers clear rewards as one is able to observe the progress that students make in honing their skills, and students often are more likely to express their appreciation for that kind of assistance in ways that they would not pursue in other circumstances. On the other hand, one does not become well-known in the larger world through such efforts, nor does

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other responsibilities that accompany membership in an academic community. Such law teachers present special problems for deans and colleagues, but we think they are relatively few in number, and their existence does not detract in any way from the general validity of our point.

On the other hand, it is important that the entire law school faculty share the vision and the work of fostering an atmosphere of professionalism. It would be quite divisive within a faculty for some law teachers to take the view that they need not attend to professionalism concerns because their contribution to the law school community should be measured only in terms of the quality or quantity of their scholarship. It would be equally unsatisfactory for others to take the view that their contribution should be measured only in terms of their availability to students. Of course, gifts and interests will never be equally distributed within a faculty or any other group, and it may be that some members of the community will have more to contribute in some areas than in others. For this reason, the community may expect more from certain members in some areas, and less in others. On the other hand, all members of the faculty must be expected to meet some minimum common standard, based on the announced values of the community. Finally, it is critically important that law schools develop mechanisms for determining the effectiveness and value of the contributions made by faculty members in this area, as it has with respect to others. That may seem difficult at first blush, but it is not impossible. Law schools routinely evaluate other kinds of service, as do law firms and other organizations, where the value of contributions to management activities, employee training, and *pro bono* work must be determined.

one advance one's long-term prospects in this way. Encouraging values of professionalism within the law school environment enriches the law school environment, and, ultimately, the profession and society, but it must be a matter of interest to the law school because, in the current circumstances, it is only the individual law school that can provide incentives adequate to cause faculty to devote time and energy to this end. If a faculty member's own institution does not value the time that faculty members spend in this way, the time will not be spent, and an atmosphere of respect, responsibility, and constructive introspection will not be fostered in the law school.[63]

Unless the law school consciously acts to balance the effects of the natural forces that cut the other way, it is unlikely that the law school environment will reflect values of professionalism. Indeed, the opposite is true. Not only do faculty members have a strong incentive to place their energies elsewhere, but other aspects of the curriculum may reinforce the impression that we take values of professionalism less seriously than we should—that, when we talk about professionalism, "we have left ordinary life behind for the hazy aspirational world of the Law Day sermon and the Bar Association after-dinner speech—inspirational, boozily solemn, anything but real."[64]

The interactions that often take place in large classes may reinforce the sense that law and legal education are about something other than people, the fortunes of civil society, and problems to be solved. Similarly, our teaching of law is necessarily framed by the "rights" focus of our substantive law[65] and by the adversarial nature of our procedural system,[66] but these features of our legal system are consistent with only a narrow range of the professionalism values we seek to promote. We must prepare students for effective participation in the profession as it exists, but we must also prepare them both for the roles they must play in improving the system, and for the roles they will play in the future in a system that works differently from the system

63. *See* Deborah L. Rhode, *The Professional Responsibilities of Professional Schools: Pervasive Ethics in Perspective*, TEACHING AND LEARNING PROF.: SYMP. PROC. 25, 25-26 (1997) (noting how most pervasive ethics programs "rely on voluntary participation of faculty and students").

64. *See* Pearce, *supra* note 18, at 277 (quoting Robert W. Gordon, *The Independence of Lawyers*, 68 B.U. L. REV. 1, 13 (1988) (footnotes omitted)).

65. *See generally* Sandra Janoff, *The Influence of Legal Education on Moral Reasoning*, 76 MINN. L. REV. 193 (1991).

66. *See generally* Paul J. Zweir & Ann B. Hamric, *The Ethics of Care and Reimagining the Lawyer/Client Relationship*, 22 J. CONTEMP. L. 383 (1996).

we now have.[67] Our continued failure to give prominence to the study of alternative dispute resolution techniques (which is almost incomprehensible in view of the current state of the civil justice system) also reinforces a narrow view of lawyering and professionalism. Similarly, most of us continue to evaluate students based on a single examination administered at the conclusion of a semester course. Whether that practice can be justified on pedagogical and professional grounds, and not simply as a matter of administrative convenience and necessity, is certainly open to question.[68] It is clear, however, that our almost exclusive focus on final examinations not only prevents us from taking advantage of other pedagogically useful means of evaluation, but also prevents us from affording students opportunities to engage effectively in collaborative work, which is so critical to the practice of law.

Part of what we take to mean by professionalism is the obligation of the bar to provide needed legal services to traditionally underserved groups, and to promote principles of anti-discrimination, both with respect to the membership of the profession and with respect to clients. At the same time, studies reflect that women and minorities often feel alienated by the existing law school environment.[69] Socratic teaching undoubtedly can be useful in teaching students how to read cases, and in preparing students for some types of legal practice, but Socratic teaching requires great skill and sensitivity, and it can also contribute to the undermining of professionalism values. Ineffective Socratic teaching often takes the form of excessive professorial cynicism

67. Paul Brest and others have written eloquently about the need for new agendas for legal education, but relatively little has been accomplished in this area. *See, e.g.*, Paul Brest & Linda Krieger, *On Teaching Professional Judgment*, 69 WASH. L. REV. 527 (1994).

68. We appreciate the irony, of course, of having to sum up the task of reading hundreds of bluebooks in terms of "administrative convenience."

69. *See, e.g.*, Morrison Torrey et al., *What Every First-Year Female Law Student Should Know*, 7 COLUM. J. GENDER & L. 267 (1998); Marsha Garrison et al., *Succeeding in Law School: A Comparison of Women's Experiences at Brooklyn Law School and the University of Pennsylvania*, 3 MICH. J. GENDER & L. 515 (1996); Janet Taber et al., *Gender, Legal Education, and the Legal Profession: An Empirical Study of Stanford Law Students and Graduates*, 40 STAN. L. REV. 1209 (1988).

and the bullying of students,[70] which are not conducive to the promotion of professionalism values.[71]

There are steps that law school administrators can take to help foster an atmosphere of professionalism. For example, administrators can seek additional resources, both within the university and from potential donors, to support smaller classes, where law teachers can demonstrate professionalism in the context of small-scale interactions in which substantive issues of ethics and professionalism can be pursued thoroughly.[72] Law school administrators can also serve as advocates with the central administration, trustees, and prospective donors, carrying the message that law schools are not simply graduate schools, but professional schools which have an obligation to strive for excellence, both with respect to the "scientific" part of the law and with respect to the conversation about moral values that defines the profession and its relationships with other aspects of human life. Not only must the law school administration succeed in communicating to others a sense of the public importance of this

70. *See, e.g.*, Jennifer L. Rosato, *The Socratic Method and Women Law Students: Humanize, Don't Feminize*, 7 S. CAL. REV. L. & WOMEN'S STUD. 37 (1997); Judith D. Fischer, *Portia Unbound: The Effects of a Supportive Law School Environment on Women and Minority Students*, 7 UCLA WOMEN'S L.J. 81 (1996).

71. *See* Roger I. Abrams, *Law School as a Professional Community*, TEACHING AND LEARNING PROF.: SYMP. PROC. 53, 56-57 (1997) (discussing how law schools teach an adversarial model of lawyering).

72. It is perhaps too obvious to warrant mention, but academic administrators can have a profound impact on the quality and vision of educational programs through leadership, direction, and advocacy in fund-raising. Development officers often resist efforts to quantify success in fund-raising, in part because of the admittedly long-term nature of much development work and the time which necessarily is spent in long-term "cultivation," without any expectation of significant immediate return. Too often, however, development officers also operate without effective leadership from academic personnel. In such circumstances, they may be tempted to measure success solely in terms of the amount of money raised, and without regard to the educational importance of the purposes for which the money is given. In this way, they may increase the bottom line by encouraging the making of gifts for purposes for which donors are already predisposed to give, thereby precluding support from the same donors for programs and activities that may be more important, from an educational perspective, but which may also be unfamiliar to alumni and other prospective donors and would therefore require greater explanation and advocacy. Deans and other academic administrators must exercise strong leadership to ensure that funds are raised for purposes that academic leaders believe to be important. Otherwise, academic leaders may lose control over significant aspects of academic decision-making and risk-translating to higher education the phenomenon common in business and large-scale professional practices of elevating the importance of the "sales department" far above that of the "engineering department." *See, e.g.*, Sullivan, *supra* note 8. Given the current neediness of many institutions of higher learning, that risk is substantial.

dual mission, but it must also be able to explain the ramifications that this construction of the law school's mission has in terms of educational values and resource allocations. Law school administrators can also encourage the development of new courses that are congenial in different ways to raising these issues. They can also encourage alumni, lawyers, and judges to participate in the life of the law school in ways that assist students in learning about the aspirations and values of the legal profession. Finally, and most importantly, they can set a tone of professionalism through the ways in which they interact with students and faculty. They can set a high standard of intellectual rigor, thoughtfulness, honesty, civility, and candor in the ways in which they deal with the sometimes vexing and volatile issues that are always present in the life of any academic community.

As in most aspects of law school life, however, it is the faculty, and their collective attitudes and commitments, that ultimately will make a difference in cultivating an atmosphere of professionalism in the law school. Whether professionalism will flourish in a law school will depend on whether the values of professionalism are recognized and supported by the faculty, not just as individuals and in their individual activities, but as a group. Whether faculty members individually provide encouragement and support to each other in their efforts to nurture values of professionalism will undoubtedly influence the atmosphere of the law school in this regard. Even more important, however, will be the attitudes of the faculty as a body in taking into account the need to teach professionalism when making decisions about appointments and tenure, both in individual cases and in terms of setting standards and criteria. A dedication to teaching professionalism obviously should not be used to compensate for shortcomings with respect to teaching, scholarship, or outside service in a tenure file. On the other hand, a probationary faculty member will have little doubt about the perceived value of professionalism activities if that type of service is not even recognized in the criteria that will be used to determine her suitability for tenure. In short, the faculty have a critical role to play, both as individuals and as a collegial and deliberative body.

CONCLUSION

The lack of public confidence in the value of the legal profession and in the work that lawyers do, together with the apparent lack of self-confidence within the profession, are festering problems today. Without doubt, these problems have many

causes, and various steps will be required before the health of the profession will have improved.

Our contribution to this project is simply to suggest that the teaching of professionalism is critical to the health of the legal profession and the society it serves. In our view, the cultivation of professionalism requires the nurturing of a sense of professional self-consciousness and constructive introspection, and an attitude of respect and responsibility towards others—what some would call "caring." That is something that requires both a commitment to intellectual engagement with these issues and a commitment to teaching these values by example in the interactions we have with our students. In either case, little can be accomplished without the commitment of time, energy, and availability by individual faculty members, none of which will be forthcoming unless encouragement comes from university and law school administrators and the body of the faculty, signifying their understanding that these matters truly are important. If these commitments and encouragements are forthcoming, a great deal can be accomplished towards improving the profession and the contributions it is prepared to make to the society it serves.