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# Why the Bar Needs Academics—and Vice Versa

FRED C. ZACHARIAS\*

Members of the judiciary and practicing bar commonly bemoan the theoretical approach of academics.<sup>1</sup> They suggest that law professors have no sense of reality and that academics write and teach in a way that bears little relationship to the actual practice and regulation of lawyers. They warn that unless academics reform, academics will render themselves irrelevant.

In this brief essay, I relate one personal experience to illustrate my suspicion that, in many cases, the bar has it precisely backwards. The incidents that I describe are, by their nature, anecdotal. Yet I believe that they are representative and highlight an important, and often overlooked, point about the significance of the legal academic enterprise.

The events in question took place at a recent symposium sponsored by the University of Arizona College of Law, entitled “The Future Structure and Regulation of Law Practice.”<sup>2</sup> The conference brought together

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1. See generally Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34, 34–35 (1992) (arguing that “schools are moving toward pure theory” and that many academics “have a low regard for the practice of law”); J. Canyon Gordon, *A Response from the Visitor from Another Planet*, 91 MICH. L. REV. 1953, 1960 (1993) (noting the view that scholars “consider law practice the province of the brain dead”); Randall T. Shepard, *What the Profession Expects of Law Schools*, 34 IND. L. REV. 7, 11 (2000) (“[T]he profession expects more from its scholars than it now receives. The concentration of American law journals and American law journal writing on matters so arcane that professionals find little use for them ought to be a matter of more candid discussion.” (footnote omitted)).

2. The conference was held from February 22–23, 2002 in Tucson, Arizona. See

representatives of the bar and academia. The credentials of both the academics and professional participants were of the highest order. Topics ranged from discussions of recent developments in legal ethics and hard law fields, to controversial proposals regarding changes in the regulation of lawyers, to interdisciplinary analyses of the legal profession.

What struck me during this two day event was how frequently the positions of the nonacademic participants relied on wistful idealizations about the legal profession that caused the *practitioners* to ignore the reality of practice. I would not presume to suggest that academics are universally more practical than practitioners. Law professors, even those who formerly practiced law, are separated from day-to-day lawyering. They cannot hope to keep abreast of information that they would learn from being present in the courtroom or law office. Nevertheless, academics have access to a great deal of information about their specialties. And unlike practitioners, academics have time to think about how well prevailing practice implements the theories underlying a particular field's legal doctrines. My experience at the Arizona conference, more than ever, left me with the surprising, counterintuitive sense that the bar often needs law professors to bring its approaches back to earth.

Let me set out just a few examples from the conference. One panel reviewed developments, inter alia, in securities regulation.<sup>3</sup> A noted securities regulation scholar<sup>4</sup> discussed the way judges had implemented new federal legislation that had changed the standards for selecting class plaintiffs.<sup>5</sup> The panelist suggested that judicial implementation of the law may have undermined the legislative goal of identifying lawyers and clients in class action litigation who would implement the adversary system's model of client-centered representation.

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*generally* University of Arizona, James E. Rogers College of Law, *Schedule of Events*, <http://w3.arizona.edu/%7Euaextend/law/schedule.html> (last visited Jan. 14, 2003) (providing information about the conference and its participants).

3. The panel was entitled "The Evolution of Specialized Regulatory Systems." *Id.*

4. The panelist was Professor Elliott Weiss, Charles E. Ares Professor of Law at the University of Arizona, James E. Rogers College of Law. *See* University of Arizona, James E. Rogers College of Law, *Faculty Profile*, at <http://www.law.arizona.edu/uallaw/academicprogram/profile.cfm?facultyid=24> (last visited Jan. 20, 2003).

5. 15 U.S.C. § 78u-4 (2000) (requiring courts in securities class actions to "appoint as lead plaintiff the member or members of the purported plaintiff class that the court determines to be most capable of adequately representing the interests of class members" and providing criteria bearing on that assessment); *see, e.g.*, *Gluck v. Cellstar Corp.*, 976 F. Supp. 542, 545-46 (N.D. Tex. 1997) (holding that lead plaintiffs "presumptively" should be those with the "largest financial interest in the relief sought by the class"); *Sakhrani v. Brightpoint, Inc.*, 78 F. Supp. 2d 845, 854 (S.D. Ind. 1999) (holding that the plaintiff who had suffered the greatest loss was entitled to be lead plaintiff).

At this point, a questioner from the floor raised an academic question: In light of the difficulty of identifying class plaintiffs with enough stake in the matter to care about the litigation, and in light of the history of class counsel acting in their own interests rather than those of clients, how did the panel view recent academic proposals to rethink the nature of class litigation? Among the more modest proposals are efforts by courts in the Second, Third, and Ninth Circuits to auction the position of lead counsel to the highest bidder.<sup>6</sup> More radically, what about proposals to take a realistic approach to the nature of class counsel—one that would recognize that class counsel have the actual stake in the matter?<sup>7</sup> The most prominent proposal in this regard is that of John Macey and Geoffrey Miller, which suggests that class counsel be allowed to purchase the interests of the class (with the proceeds of that transaction being distributed to class members) and then to litigate the matter on their own behalf.<sup>8</sup>

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6. *E.g.*, *In re Auction Houses Antitrust Litig.*, 197 F.R.D. 71, 78 (S.D.N.Y. 2000); *In re Cendant Corp. Litig.*, 182 F.R.D. 144, 150–51 (D.N.J. 1998); *In re Oracle Sec. Litig.*, 131 F.R.D. 688, 690–91 (N.D. Cal. 1990); *see also* Jill E. Fisch, *Lawyers on the Auction Block: Evaluating the Selection of Class Counsel by Auction*, 102 COLUM. L. REV. 650, 652 (2002) (evaluating the selection of class counsel by auction). The purpose of the auction procedure is to reduce fees that traditionally have been charged to the class and approved by supervising courts. To the extent that potential class counsel must compete for the right to represent a class, in theory, the ultimate fee recovery should decrease. *But see id.* at 667–69 (questioning whether the auction process effectively reduces fees).

7. *See, e.g.*, Jean Wegman Burns, *Decorative Figureheads: Eliminating Class Representatives in Class Actions*, 42 HASTINGS L.J. 165, 188 (1990) (suggesting the elimination of class representatives and increasing the decisionmaking responsibility of class counsel, subject to the supervision of class “monitors”); Jill E. Fisch, *Aggregation, Auctions, and Other Developments in the Selection of Lead Counsel Under the PSLRA*, LAW & CONTEMP. PROBS., Spring/Summer 2001, at 53, 64 (discussing nontraditional options for selecting and paying for class counsel); Jill E. Fisch, *Class Action Reform, Qui Tam, and the Role of Plaintiff*, LAW & CONTEMP. PROBS., Autumn 1997, at 167, 169 (discussing methods of addressing the real incentives of participants in class actions); Paula Batt Wilson, *Attorney Investment in Class Action Litigation: The Agent Orange Example*, 45 CASE W. RES. L. REV. 291, 294 (1994) (discussing the option of allowing speculative investments in class actions by attorneys).

8. *See* Jonathan R. Macey & Geoffrey P. Miller, *A Market Approach to Tort Reform Via Rule 23*, 80 CORNELL L. REV. 909, 914 (1995) (suggesting making class counsel the effective clients by auctioning the class claims to them); Jonathan R. Macey & Geoffrey P. Miller, *The Plaintiffs’ Attorney’s Role in Class Action and Derivative Litigation: Economic Analysis and Recommendations for Reform*, 58 U. CHI. L. REV. 1, 4 (1991) (discussing alternative approaches to the attorney’s role in class actions). The Macey-Miller proposal is appealing in the sense that it takes a pragmatic view of the role of class counsel in many class actions. However, it is radical because allowing lawyers to compete for the purchase of the interests of the class members assumes that multiple lawyers will be able to fund such an enterprise. Inevitably, this will open the door to

The response of the academic on the panel was reasoned and pragmatic. He suggested that the radical Macey-Miller proposal is not necessary in most securities class litigation because, typically, there are some potential class plaintiffs with enough stake in the matter that they will be willing and able to serve in the common role of the client.<sup>9</sup> Even with respect to class litigation in which the class members' stake is small, the academic was dubious of the Macey-Miller approach because of practical impediments to its implementation.<sup>10</sup> Still, the academic allowed, the approach has some appeal. It permits regulation of the lawyer to proceed on the basis of genuine interests, rather than on the basis of fictional assumptions that class counsel act solely in their clients' interests, that class plaintiffs actually make the litigation decisions, and that class plaintiffs exercise control over counsel in the interests of other class members.

The moderator of the panel, a respected practitioner,<sup>11</sup> was horrified. Her facetious comment before cutting off debate was that "this would solve all of the problems being addressed at this conference. Just eliminate the client and then there won't be any issues anymore."

Why did the moderator respond in this way? The Macey-Miller proposal did propose something radical, but for good reason; namely, that class counsel often are the real parties in interest in class litigation. Yet the notion that counsel sometimes should assume control and that clients should surrender it is anathema to the conventional model of client-centered advocacy. The moderator, seeped in customary practice, could not even accept the possibility of a new paradigm. She could not bring herself to analyze, as the academic on the panel did, whether the Macey-Miller approach made practical sense, might protect clients better than the conventional model, or might enable courts and legislatures to regulate class action litigation more effectively. In short, the practitioner was blinded by the tradition in which she had been raised and in which

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allowing lawyers to finance their bids, either through traditional financing options or by selling shares in the litigation. *See id.* at 112–13. Moreover, once a lawyer does succeed in the bidding, the theory then allows the lawyer to become the decisionmaker in the case, as if he were acting *pro se* in the litigation. In contrast, the real clients in interest have only two choices: participate in accepting a discounted and risk-adjusted value of the recovery in advance or opt out.

9. For example, major shareholders such as mutual or pension funds often have suffered sufficient losses in securities fraud that, had they acted as class representatives, would have given them big enough financial stakes to supervise the class attorneys.

10. Professor Weiss referred to such practical impediments as (1) insuring enough bidders for the claims and (2) the questionable ability of judges to supervise the advance valuations upon which payments to the class would be predicated.

11. To avoid embarrassing panelists, I avoid naming some of them. For purposes of this article, it is enough to note that the moderator in question is a well-respected lawyer for a Phoenix, Arizona law firm and has been heavily involved in state bar activities.

she had prospered. She had closed her mind to potentially useful new ideas.

A slightly different phenomenon occurred with respect to the presentation of Larry Fox, a well-respected Philadelphia practitioner who has been heavily involved in law reform activities and whom I consider a friend. Mr. Fox made a luncheon speech<sup>12</sup> that emphasized positions he had previously taken on the proposals of the ABA Commission on Multidisciplinary Practice (MDP).<sup>13</sup> Fox opposed those proposals, as have I on related but significantly different grounds.<sup>14</sup>

Fox relied on the notion of “core values” of the legal profession, arguing that allowing lawyers to join with other service providers to offer “one-stop shopping” for clients would undermine confidentiality, loyalty, professional independence, and other key aspects of lawyer-client relationships.<sup>15</sup> At the Arizona conference, Fox offered a vigorous, eloquent analysis of Enron-related events to illustrate why, in his mind, any change in the historical approach to lawyering (and the core values to which lawyers must adhere) could only prove disastrous.<sup>16</sup>

As Ted Schneyer<sup>17</sup> and other academics<sup>18</sup> have pointed out, however,

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12. Lawrence J. Fox, *MDPs Done Gone: The Silver Lining in the Very Black Enron Cloud*, 44 ARIZ. L. REV. 547 (2002).

13. E.g., Lawrence J. Fox, *Accountants, the Hawks of the Professional World: They Foul Our Nest and Theirs Too, Plus Other Ruminations on the Issue of MDPs*, 84 MINN. L. REV. 1097 (2000); Lawrence J. Fox, *Free Enterprise Heaven; Ethics Hell*, 27 WM. MITCHELL L. REV. 1217 (2000); Lawrence J. Fox, *MDP or Not? MDPs and Legal Ethics: Big 5 Lays Siege upon Rule 5.4*, 60 OR. ST. B. BULL., July 2000, at 15; Lawrence J. Fox, *Old Wine in Old Bottles: Preserving Professional Independence*, 72 TEMP. L. REV. 971 (1999); Lawrence J. Fox, *The Argument Against Change*, 48 R.I. B.J., Apr. 2002, at 17.

14. My position on multidisciplinary practice regulation is that it makes little sense to regulate all lawyers and all types of potential multidisciplinary practice identically, as both the ABA Commission on Multidisciplinary Practice and Lawrence Fox have insisted. Fred C. Zacharias, *The Future Structure and Regulation of Law Practice: Confronting Lies, Fictions, and False Paradigms in Legal Ethics Regulation*, 44 ARIZ. L. REV. 829, 843 (2002).

15. Fox, *supra* note 12, at 549–55.

16. *Id.* at 555.

17. Ted Schneyer, *Multidisciplinary Practice, Professional Regulation, and the Anti-Interference Principle in Legal Ethics*, 84 MINN. L. REV. 1469, 1470–71 (2000) (analyzing and challenging the argument that multidisciplinary practice undermines core values).

18. E.g., Nathan M. Crystal, *Core Values: False and True*, 70 FORDHAM L. REV. 747, 753 (2001) (criticizing the emphasis that Fox and others place on the concept of core values); John S. Dzienkowski & Robert J. Peroni, *Multidisciplinary Practice and the American Legal Profession: A Market Approach to Regulating the Delivery of Legal Services in the Twenty-First Century*, 69 FORDHAM L. REV. 83, 137–39 (2000) (challenging the core values argument); cf. Charles W. Wolfram, *The ABA and MDPs: Context, History, and Process*, 84 MINN. L. REV. 1625, 1626–27 (2000) (questioning the premises of the proponents of the core values position); Bradley G. Johnson, Note,

Fox's position appeals to custom in perhaps a too broad and unrealistic way. The same core values Fox relies upon in the multidisciplinary practice context also justify scorched earth litigation and other aspects of lawyering that are the profession's crosses to bear.<sup>19</sup> Moreover, when pressed to consider the ways MDP organizations can help some clients,<sup>20</sup> Fox declines to acknowledge the benefits because he sees them as potential breaches in the dam that ultimately would undermine his core values.<sup>21</sup>

This overemphasis on the orthodox approach to lawyer regulation is interesting because Fox uses it to oppose multidisciplinary practice. Yet it is the same fierce reliance on tradition that may have led Sherwin Simmons, the Chair of the MDP Commission and another leading practitioner, to produce a proposal that failed to garner support in the ABA House of Delegates.<sup>22</sup> Early in the commission's study of the matter, Mr. Simmons was asked whether the commission might consider treating different lawyers and contexts of lawyering differently for purposes of multidisciplinary practice.<sup>23</sup> He responded that the only

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*Ready or Not, Here They Come: Why the ABA Should Amend the Model Rules to Accommodate Multidisciplinary Practices*, 57 WASH. & LEE L. REV. 951, 1000 (2000) (arguing for changes in the MDP proposals to accommodate core values).

19. In other words, while values like confidentiality and loyalty to the client are important, they also can be overemphasized to produce overly aggressive lawyering tactics that many commentators, and certainly the public, consider to be wrongful.

20. See, e.g., Wolfram, *supra* note 18, at 1652 (“[A]n increase in MDP opportunities would provide more widespread and innovative legal services, as well as more client choice in shopping for legal services.”).

21. Thus, for example, Fox's Arizona presentation derides one-stop shopping as an evil that, in and of itself, produced the Enron disaster. See Fox, *supra* note 12, at 555 (“Does anyone doubt that this loss of self-regulation would have been avoided if the Big Five had stuck to its collective knitting and avoided the grand world of one-stop shopping?”). Yet Fox's conclusions may be overkill. Despite Enron, it is clear that one-stop shopping—the ability to obtain legal and other services from a single-service provider—can produce efficiencies for clients. The better focus would be on whether it is possible to facilitate these efficiencies without promoting the twofold danger that standard client protections in legal representation will be undermined and that services that lawyers provide to society when representing clients will be eliminated by lawyers who associate with nonlawyers.

22. Comm'n on Multidisciplinary Practice, Am. Bar Ass'n, *Recommendation*, <http://www.abanet.org/cpr/mdprecom10f.html> (2000); Comm'n on Multidisciplinary Practice, Am. Bar Ass'n, *Report to the House of Delegates*, <http://www.abanet.org/cpr/mdpfinalrep2000.html> (2000); Comm'n on Multidisciplinary Practice, Am. Bar Ass'n, *Report to the House of Delegates*, <http://www.abanet.org/cpr/mdpreport.html> (Aug. 1999).

23. This interaction occurred at a joint meeting of the Association of Professional Responsibility Lawyers, the National Organization of Bar Counsel, and the American Bar Association Committee on Professional Responsibility in Los Angeles, California on February 5, 1999. Association of Professional Responsibility Lawyers, ABA Midyear Meeting (Feb. 4–6, 1999); cf. Laurel S. Terry, *A Primer on MDPs: Should the “No” Rule Become a New Rule?*, 72 TEMP. L. REV. 869, 893 (1999) (noting that a key threshold issue for the MDP Commission was “whether to adopt the same rules for a Big Five-affiliated MDP as for a very small MDP. In other words, should there be the same rules for Main Street lawyers as for Wall Street lawyers?”).

nonnegotiable premise the commission would rely upon in its deliberations—the only precondition—was the customary view that all lawyers should be regulated identically.

Notice what this reliance on the customary view, and Fox's reliance on core values, means. The catalyst for change in multidisciplinary practice regulation came from large law firms that wished to compete with global accounting firms for the business of multinational corporate clients.<sup>24</sup> These clients, represented by in-house counsel in their dealings with outside lawyers, can protect their own interests in their retainer agreements. They are capable of making sophisticated judgments about when and whether to waive the full force of core value regulation. Thus, to the extent these clients wish to waive some conflict of interest, confidentiality, or other core value protections because they receive compensating benefits from multidisciplinary representation, their decisions probably should be honored. In contrast, when less sophisticated individual clients are offered one-stop shopping by associations of lawyers and other service providers,<sup>25</sup> they may need the safeguards that the so-called core values provide.

The reliance of both the Chair of the commission and Larry Fox on the entrenched traditions of lawyer regulation interfered with the pursuit of pragmatic, nuanced distinctions in regulation. By foreclosing the possibility of different rules for different settings, the commission gave added force to Fox's arguments on the ABA floor because individual clients often do need the protections that Fox advocates. By treating those values as talismans, however, Fox avoided the reality that multidisciplinary

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24. Dzienkowski & Peroni, *supra* note 18, at 88 (discussing the fear that failure to allow multidisciplinary practice will lead to a transfer of legal work abroad); James C. Moore, *Lawyers and Accountants: Is the Delivery of Legal Services Through the Multidisciplinary Practice in the Best Interests of the Clients and the Public?*, 20 PACE L. REV. 33, 36 (1999) (arguing that multidisciplinary practice provides greater efficiency, lowers client expenses, and enhances the quality of service); Gary A. Munneke, *A Nightmare on Main Street (Part MXL): Freddie Joins an Accounting Firm*, 20 PACE L. REV. 1, 6 (1999) (discussing the legal profession's "nightmare" when confronted by competition from international accounting firms); Robert L. Ostertag, *Our Profession Is Not for Sale*, 18 GP SOLO, Jan.–Feb. 2001, at 22, 27 (criticizing the ABA for failing to defend the bar against competition from the accounting profession); *see also* Terry, *supra* note 23, at 877 (recounting the history of the multidisciplinary practice debate).

25. Consider, for example, situations in which realtors merge with real estate lawyers, insurers merge with insurance defense lawyers, and personal agents merge with contracts lawyers. In these situations, there is a real risk that the lawyers will subordinate the interests of their clients to the entrepreneurial interests of the lawyers' partners. The individual clients, particularly if they are unsophisticated, may not fully understand the risks inherent in the representation or be able to protect themselves through special advance contractual arrangements with the lawyers.



practice might benefit some clients and lawyers. He also underestimated the possibility that honoring the core values too much may give rise to negative consequences in other settings.<sup>26</sup>

In other words, even practitioners who are heavily involved in regulatory reform, like Simmons and Fox, can become too seeped in the profession to which they have become accustomed. Simmons and Fox are committed traditionalists. While I would never say that they act unthinkingly, their respect for the time-honored approaches to legal regulation in this instance prevented them from even contemplating potentially appropriate change.

In my experience, that has not been an unusual phenomenon, especially among practitioners who have found economic success under a particular regime. When modern developments suggest that traditional regulation falls short in dealing with complexities of modern practice, leading practitioners often resist alternatives. In contrast, academics—who typically have opted out of practice and have less stake in the traditions—view proposing fresh approaches to be part of their mission. Because academics subject their ideas to a process of criticism and analysis as a routine, they tend to be less rigid in their approaches. Re-evaluating unsuccessful regulation simply is one of the roles that academics play.

Perhaps the best example of the interplay between academics and the bar arose with respect to my own presentation at the Arizona conference. I intentionally embraced a provocative subject, which I entitled “Confronting Lies, Fictions, and False Paradigms in Legal Ethics Regulation.”<sup>27</sup> I surveyed a series of overgeneralizations and false assumptions that underlie the professional codes and the institutional systems of professional regulation. My goal was not to argue that reliance on overgeneralizations and bright line standards always is wrong, but rather to call attention to counterfactual premises of regulation that regulators now seem to take for granted. The exercise was not particularly theoretical, in the pejorative sense that practitioners employ that characterization, but instead was an effort to encourage a hardheaded, genuine assessment of legal practice and its regulation.

Two judges on the panel clearly were offended by my analysis. To my surprise, however, their annoyance was not with my normative prescriptions, but with my factual contentions that modern regulation relies on fictions such as “all lawyers are [roughly] the same” and

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26. It may, for example, prevent sophisticated corporate clients from obtaining the one-stop shopping that could cut down on fees and avoid duplication of services by different categories of service providers.

27. Zacharias, *supra* note 14, at 829 (article presented).

“lawyers are more upstanding than other citizens and less prone to human weaknesses.” The judges’ heated responses were that lawyers *are* unique as a group because they are “professionals” and “officers of the court.” Based on these old saws, the two panelists saw no need to reconsider anything.

Later in the discussion, however, these same judges addressed a different topic with the laments that the profession “is going to hell,” that lawyers routinely fail to act as officers of the court when doing so is inconvenient, and that modern lawyers increasingly serve parochial self-interests. The judges hardly noted the inconsistencies in their reactions when they were called on them. They could not see that the root of their laments may be the practice of regulating the bar as if wistful idealizations of lawyers as professionals and officers of the court are self-executing. My so-called academic analysis of existing regulation and my call for reconsideration stemmed precisely from a desire to address the failings of modern regulation realistically. The panelists’ approach was to ignore the reality based on well-worn, but counterfactual, assumptions about the profession.

In all three of the above examples, the problem was that the practitioners and judges were blinded by their own traditions. They had lost sight of real problems of actual practice that might need new theoretical approaches if they are to be corrected. In each instance, it was the academics who were looking for workable solutions and the practitioners who refused to consider them because they were tied to old approaches.

The reader should not misunderstand my position. There often is little practical benefit in the work of academics who make it a point of honor to separate their analyses from what happens in the real world. Some members of the guild actually take this approach. Yet in my experience, that kind of academia is not the norm. There certainly is a danger in referring to academia as a monolithic organization of pure scholars who hide themselves in an ivory tower.

Nor should one overgeneralize when referring to practitioners. Among practitioners, there are those who think in theoretical terms and those who simply do their jobs. Moreover, the group of thinking professionals consists partly of practitioners who, in a sense, are semiacademics—persons (like some of those whom I have criticized here) who actually engage in law reform activities and enjoy attending academic conferences like the one in Arizona. Within either group may be elite practitioners whose success stems from the old way of doing things and others who may be more receptive to novel approaches.

In reality, though, it is more common for practitioners to question the contributions of all academics than it is for academics to divorce themselves from insights that can be gleaned from everyday practice. Most law professors understand that they have much to learn from practitioners. Some even use their sabbaticals to refresh their experiences.

Indeed, at the Arizona conference, I profited a great deal from the positions that the practitioners took. One panelist, a bankruptcy practitioner,<sup>28</sup> carefully outlined a whole series of ethics issues arising in the bankruptcy context that I never would have considered without her insights. Simon Lorne, a practitioner and former SEC general counsel, educated me about changes in approaches to securities regulation of which only a practitioner would have been aware.<sup>29</sup> Even the impassioned pleas of Larry Fox contained important elements that have helped form my thoughts on the specific topic he addresses.<sup>30</sup>

Academics would never deny that we have at least as much to learn from practitioners as they have to learn from us. But the process is not one-sided. Contrary to the pejorative claims regarding modern legal scholarship, academics have something important to contribute. The term “theoretical” is not equivalent to the terms “unrealistic,” “quixotic,” or “unworkable.” It is time practitioners and academics alike set aside the rhetoric, once and for all, and join each other at the table with open minds.

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28. The attorney practitioner was Susan Freeman, who offered a presentation entitled “Specialized Ethics Rules for Bankruptcy Lawyers.” See University of Arizona, James E. Rogers College of Law, *supra* note 2 (providing information about the conference and its participants).

29. Simon Lorne’s lecture was entitled “Regulatory Agency Reliance on Professionals in a Changing Professional Environment.” See *id.*

30. As I have noted, my position is that emphasizing Fox’s core values is more important when trying to safeguard the interests of unsophisticated individual clients than when sophisticated clients are in question. The unsophisticated clients are not as capable of understanding or preserving their own interests in loyalty and confidentiality, nor are they as capable of assessing when waiving the full force of such protections is economically sensible. See discussion *supra* note 25.