

2010

## If I Had a Hammer: Can Shepardizing, Synthesis, and Other Tools of Legal Writing Help Build Hope for Law Students?

Ted Becker

Follow this and additional works at: <https://dsc.duq.edu/dlr>



Part of the [Law Commons](#)

---

### Recommended Citation

Ted Becker, *If I Had a Hammer: Can Shepardizing, Synthesis, and Other Tools of Legal Writing Help Build Hope for Law Students?*, 48 Duq. L. Rev. 325 (2010).

Available at: <https://dsc.duq.edu/dlr/vol48/iss2/6>

This Article is brought to you for free and open access by Duquesne Scholarship Collection. It has been accepted for inclusion in Duquesne Law Review by an authorized editor of Duquesne Scholarship Collection.

# If I Had a Hammer: Can Shepardizing, Synthesis, and Other Tools of Legal Writing Help Build Hope for Law Students?

*Ted Becker\**

I.	INTRODUCTION .....	325
II.	TOOLS AS LEGAL METAPHOR AND MARKETING DEVICE	328
III.	SHEPARDIZING AND SYNTHESIS AS SOULCRAFT? .....	330
IV.	A SIMPLE EXAMPLE .....	332
V.	CROSSING (CLOSING?) THE DIVIDE .....	333
VI.	USE TOOLS TO SERVE THE CLIENT, NOT PERFECTION .	336
VII.	TOOLS DON'T ALWAYS WORK THE WAY YOU WANT THEM TO. FIGURE OUT WHY. ASK FOR HELP. ....	337
VIII.	LEARN HOW TO USE TOOLS BY ACTUALLY USING THEM.....	339
IX.	A FINAL EXAMPLE .....	339
X.	THE ELEPHANT IN THE ROOM .....	341
XI.	CONCLUSION.....	347

## I. INTRODUCTION

Are lawyers mechanics? In 1920, photographer Lewis Hines took a striking photo of a powerhouse mechanic sure-handedly wielding a large wrench to tighten bolts on a steam pump.<sup>1</sup> This picture may bring to mind many things, but I suspect that many legal writing professors in our (past or present) incarnations as practicing attorneys would not look at this image and think, “My job is a lot like that.” Similarly, I assume that many of our students do not think of a lawyer’s role in this way. Indeed, many of our students might have chosen to pursue a career in law pre-

---

\*. Clinical Assistant Professor, University of Michigan Law School. I drew inspiration for the conference presentation and this essay from my late grandfather, Edward V. M. Becker, school principal and woodworker, many of whose projects are displayed prominently in my home, and my wife’s uncle, Art Dicaire, who has taught me much about how to create woodworking projects of my own.

1. Lewis Hines, Photograph: Power House Mechanic Working on Steam Pump (1920). The photo is preserved in the records of the Work Projects Administration in the National Archives, and can be viewed at [http://www.archives.gov/exhibits/picturing\\_the\\_century/portfolios/port\\_hine.html#](http://www.archives.gov/exhibits/picturing_the_century/portfolios/port_hine.html#).

cisely as a way of escaping family traditions of this type of difficult physical labor. But the comparison between lawyer and mechanic is neither so far-fetched nor demeaning. Far from it. In fact, I propose that we legal writing professors can better serve our 1L students, and increase our chances of engendering and maintaining hope in our students, the ultimate goal of this conference, by more explicitly acknowledging the connections between the tools of legal writing and tools<sup>2</sup> as used in the more down-to-earth context of manual labor.

My guide throughout this discussion will be a decidedly non-legal source: Matthew Crawford's *Shop Class as Soulcraft*,<sup>3</sup> as well as other books of a similar vein.<sup>4</sup> By way of quick summary, Crawford's book promotes the value of the manual trades, delving into such subjects as the aestheticism of properly bent electrical conduit and the creativity inherent in motorcycle repair. What does this have to do with practicing law and teaching law students? As Crawford acknowledges, most of his examples are drawn from mechanical repair and the building trades because that's where his experience lies, but he believes that the arguments he offers "can illuminate other kinds of work as well."<sup>5</sup> I agree. In particular, I've identified several ways in which similarities between legal practice and Crawford's conception of manual labor dovetail nicely with some of the key recommendations of Professors Martin and Rand.<sup>6</sup>

Before I start outlining some of these similarities, I want to note two important caveats. First, in drawing "points of contact" be-

---

2. What do I mean by "tools"? Any number of definitions might be chosen, but the one I use is intentionally broad. Tools are physical devices that "embody solutions to past problems." MIKE ROSE, *THE MIND AT WORK: VALUING THE INTELLIGENCE OF THE AMERICAN WORKER* 97 (2004). I mean no more than that, and if pressed will fall back on Potter Stewart's "I know it when I see it" escape hatch. See *Jacobellis v. Ohio*, 378 U.S. 184, 197 (Stewart, J., concurring). The definition in any event does little analytical work for me, and nothing stands or falls on its precise formulation. The key is that by "tools," I do not mean only screwdrivers or hammers or wrenches or similar sorts of implements that might be associated with mechanics or craftsmen.

3. MATTHEW B. CRAWFORD, *SHOP CLASS AS SOULCRAFT: AN INQUIRY INTO THE VALUE OF WORK* (2009).

4. In particular, ROSE, *supra* note 2; RICHARD SENNETT, *THE CORROSION OF CHARACTER: THE PERSONAL CONSEQUENCES OF WORK IN THE NEW CAPITALISM* (1999). For more impressionistic discussions of the contours of work in modern society, including the solaces and discontents of manual labor, see ALAIN DE BOTTON, *THE PLEASURES AND SORROWS OF WORK* (2009); BEN HAMPER, *RIVETHEAD: TALES FROM THE ASSEMBLY LINE* (1991).

5. CRAWFORD, *supra* note 3, at 5.

6. Allison D. Martin & Kevin L. Rand, *The Future's So Bright, I Gotta Wear Shades: Law School Through the Lens of Hope*, 48 DUQ. L. REV. 203 (2010).

tween admittedly different kinds of laboring activity, I do not mean to suggest that lawyering is precisely parallel to woodworking or cooking or plumbing or any other type of manual labor that relies on using physical tools. “In addition to their typical risks and consequences, they are different on many levels: the knowledge base, the number and complexity of the variables involved, the amount of training required, both the material compensation and the symbolism that surround them. It would be simplistic and reductive to equate them.”<sup>7</sup> But as long as we keep those differences squarely in view when bringing the lessons of physical work “to bear on other work of different occupational status, we might catch instructive glimpses of similitude, resonances at the level of hand, eye, and brain.”<sup>8</sup>

Second, my suggestions are meant only to supplement, not substitute for, the many well-established teaching techniques that legal writing professors have individually and collectively developed to help teach legal skills more effectively and efficiently. Students rely on us to introduce them to the many details they’ll need to effectively use the numerous legal tools we teach them. To learn to synthesize legal rules, students should be shown examples of and then repeatedly practice . . . well, synthesizing legal rules. When learning to research, students need to learn the virtues of the available resources and then actually visit the library or jump on the computer, over and over, to try to find the law. When learning to write legal memos, they must immerse themselves in reviewing samples and then actually begin putting pen to paper or fingers to keyboard. Nothing I discuss here replaces any of that.

In other words, I intend my suggestions to be incorporated only when appropriate—only if and when they mesh with the subject under discussion and the professor’s personality. I’m not trying to draw facile analogies that in the great toolkit of the law, Shepardizing is just like a hammer for some unfathomable reason, synthesizing is comparable to a table saw, and IRAC can be likened to a drill press. Rather than these glib comparisons, the connections I’d like students to make between legal tools and physical tools are that the legal tools are not so conceptually distinct from other modes of life with which they presumably are more familiar. These connections, in turn, can provide the students with addi-

---

7. ROSE, *supra* note 2, at 148.

8. *Id.*

tional perspective on the inevitable difficulties that will come in trying to learn how to use this new set of tools.

## II. TOOLS AS LEGAL METAPHOR AND MARKETING DEVICE

“Tool,” “tools,” and related variants are a common motif in legal education. Legal writing texts and articles often refer to the various “tools” that attorneys must use to adequately represent their clients (and thus that students must learn to use in the academic setting of law school), or rely upon vivid tool-based analogies to drive a point home.<sup>9</sup> Nor is this usage limited to legal writing scholarship. The “toolkit” metaphor runs through many different types of academic legal articles.<sup>10</sup> It’s also common in non-legal

---

9. The following is a representative sample; many other examples could be found: LINDA M. EDWARDS, *LEGAL WRITING: PROCESS, ANALYSIS, AND ORGANIZATION* 50 (4th ed. 2006) (“Reasoning by analogy to a similar case is an important tool of legal reasoning . . . .”); *Id.* at 94 (directing students writing a single-issue analysis to “[u]se the tools for case law analysis to explain further the rule’s general functioning”); AMY E. SLOAN, *BASIC LEGAL RESEARCH: TOOLS AND STRATEGIES* (3d ed. 2006) (title itself suggesting the importance of the tools concept; usage recurs throughout); *Id.* at 11 (identifying a key step in any research process as “decid[ing] which research tool to use as the starting point”); Gregory G. Colomb & Joseph M. Williams, *The Right Deal in the Right Words: Effective Legal Drafting*, 14 *PERSP.* 98, 99 (2006) (“Good legal drafting is like cutting with a scalpel rather than with a chain saw . . . .”); Melissa Shafer et al., *Not Ready for PowerPoint? Rediscovering an Easier Tool*, 11 *PERSP.* 82, 83 (2003) (noting the difference between a “brand new Milwaukee Heavy Duty Sawzall” and a handsaw as an example of the importance of choosing the right tool for the job); Craig T. Smith, *Teaching Synthesis in High-Tech Classrooms: Using Sophisticated Visual Tools Alongside Socratic Dialogue to Help Guide Students Through the Labyrinth*, 9 *PERSP.* 110, 110 (2001) (“Carpenters and painters can experiment with tangible objects to produce tactile or colorful results: a well-joined cabinet, an appealing iridescence. Lawyers, by contrast, have only words: sounds and symbols.”).

10. A search for the terms “toolkit” and “toolbox” in the Journals and Law Reviews (JLR) database on Westlaw produced 3,316 hits on January 24, 2010. Many of these hits refer to actual physical tools, of course, such as descriptions of the tools owned or used by a party in the facts of a court opinion, or discussions of whether an individual debtor’s tools can be seized in bankruptcy. But many other references use the terms in the metaphorical sense I have in mind. A non-exhaustive and thoroughly random sample of some recent usages along these lines: Richard S. Whitt, *Adaptive Policymaking: Evolving and Applying Emergent Solutions for U.S. Communications Policy*, 61 *FED. COMM. L.J.* 483, 536-37 (2009) (identifying the “conceptual tools” in a policymaker’s “adaptive toolkit,” among which is the need to “be open to many options; after all, a toolbox containing only wrenches may be full, but it is not optimal”); Richard A. Primus, *When Should Original Meanings Matter?*, 107 *MICH. L. REV.* 165, 175-76 (2008) (providing an extended discussion of how “[a]ssessing the fit between decision making methods and constitutional values is in some respects like assessing the fit between tangible tools and the tasks for which the tools might be used”); Salil Mehra, *The Alchemy of Law and Development*, 104 *NW. U. L. REV. COLLOQUY* 166, 166-67 (2009), <http://www.law.northwestern.edu/lawreview/colloquy/2009/37/LRColl2009n37SympLaw&DevPartI.pdf> (criticizing the International Competition Network’s focus on “building a toolkit of best practices” to the extent that such an approach can ignore contextual differences: “A really great hammer (though it might work, despite some damage) is not so great when faced with a screw.”). To be sure, the aptness of using a tools metaphor to describe sub-

fields, such as software design (where it seems to come up often)<sup>11</sup> and business communications.<sup>12</sup>

Tools work as a metaphor in academic writing, and tools work as a way to market legal products. For a clear demonstration of the latter point, look no further than the pages of national and state bar journals. Thomson West is currently running a series of print advertisements that explicitly refer to the tools that attorneys need in their practice. These ads use visual images to suggest that KeyCite and other Westlaw features are the equivalent of a complete set of mechanic's tools,<sup>13</sup> or a power paint sprayer,<sup>14</sup> or an enormous construction backhoe,<sup>15</sup> as compared to the competition's solitary wrench or paintbrush or shovel.

The recurring reliance on the "tools" metaphor suggests its perceived utility, but I suspect it's being used unreflectively in many of these references. In this short presentation, I hope to dig a little deeper into the ways we think and talk about the legal tools we teach our 1L students how to use. I do so not by discussing the details of any given legal tool, but rather by focusing on tools writ large, on tools *qua* tools. Specifically, we might be able to get a better sense of how to help our students confront the psychological pressures of success or failure in law school, and law practice to follow, if we come at things obliquely, by considering the work experience of those who have customarily been set over against the professional life, the supposed life of the mind.

---

stantive legal doctrine comes in for criticism in some instances. See Robert Leckey, *Thick Instrumentalism and Comparative Constitutionalism: The Case of Gay Rights*, 40 COLUM. HUM. RTS. L. REV. 425, 432-33 (2009) (noting that "the lexicon of tools and resources reifies foreign constitutional judgments" and questioning the metaphor's applicability because it "conveys scant sense of the potential unruliness of foreign judgments" and because "[c]onstitutional judgments . . . likely speak to each other . . . considerably more than do the tools in a toolbox").

11. See John M. Lawler, *Metaphors We Compute By*, in FIGURES OF THOUGHT FOR COLLEGE WRITERS 411, 415-16 (Dona J. Hickey ed., 1999) (describing how a seminal book in software design consciously used the tools metaphor); DIRK RIEHLE & MARTIN SCHNYDER, DESIGN AND IMPLEMENTATION OF A SMALLTALK FRAMEWORK FOR THE TOOLS AND MATERIALS METAPHOR 9-10 (1995), [http://www.ubilab.org/publications/print\\_versions/pdf/ubilab-tr-95-7-1.pdf](http://www.ubilab.org/publications/print_versions/pdf/ubilab-tr-95-7-1.pdf) (describing how tools and materials metaphors can be used as guidelines in software development).

12. See Whitt, *supra* note 10, at 537 n.318.

13. Advertisement, Westlaw Has All the Legal Resources You Need to Get the Job Done, MICH. B.J., July 2009, at back cover.

14. Advertisement, Westlaw Helps You Get More Done in Less Time, A.B.A. J., May 2009, at back cover.

15. Advertisement, Westlaw Helps You Dig Deeper, Quicker, A.B.A. J., Sept. 2009, at 19.

## III. SHEPARDIZING AND SYNTHESIS AS SOULCRAFT?

*Shop Class as Soulcraft* was published in the summer of 2009 to commercial success<sup>16</sup> and largely positive reviews.<sup>17</sup> The book grew out of a magazine essay Crawford originally published in 2006.<sup>18</sup> One of the most powerful images in that original essay, one that stuck with me over the intervening years before the book was released, was his description of his aesthetic reaction as a young electrician:

I was sometimes quieted at the sight of a gang of conduit entering a large panel in a commercial setting, bent into nestled, flowing curves, with varying offsets, that somehow all terminated in the same plane. This was a skill so far beyond my abilities that I felt I was in the presence of some genius, and the man who bent that conduit surely imagined this moment of recognition as he worked. As a residential electrician, most of my work got covered up inside walls. Yet even so, there is pride in meeting the aesthetic demands of a workmanlike installation. Maybe another electrician will see it someday. Even if not, one feels responsible to one's better self. Or rather, to the thing itself—craftsmanship might be defined simply as the desire to do something well, for its own sake.<sup>19</sup>

Crawford's description rang true with me because it nicely encapsulates one of my favorite quotes: John Updike's homage to Ted

---

16. The book entered the *New York Times* non-fiction bestseller list on July 12, 2009. See *BEST SELLERS: NONFICTION: Sunday, July 12th 2009*, N.Y. TIMES, July 12, 2009, <http://query.nytimes.com/gst/fullpage.html?res=9905E1DE163EF931A25754C0A96F9C8B63>. It was still on the hardcover business bestseller list as of January 1, 2010. See *Hardcover Business Best Sellers*, N.Y. TIMES, Jan. 1 2010, <http://www.nytimes.com/2010/01/03/books/bestseller/besthardbusiness.html>.

17. See, e.g., Francis Fukuyama, *Making Things Work*, N.Y. TIMES SUN. BOOK REVIEW, June 5, 2009 (book review), <http://www.nytimes.com/2009/06/07/books/review/Fukuyama-t.html> ("Shop Class as Soulcraft' is a beautiful little book about human excellence and the way it is undervalued in contemporary America."). For a more critical reaction, see Dwight Garner, *Real Men Don't Eat Quiche, They Ride Hogs Over It*, N.Y. TIMES, May 28, 2009 (book review), <http://www.nytimes.com/2009/05/29/books/29book.html>.

18. Matthew B. Crawford, *Shop Class as Soulcraft*, THE NEW ATLANTIS, Summer 2006, at 7.

19. *Id.* at 9. He repeated this description, with slight variations, in CRAWFORD, *supra* note 3, at 14. This type of reaction appears to be common among electricians, for whom the visual appeal of the finished product—whether it “just looks good” or is “pretty”—can become a mark of professional identity. See ROSE, *supra* note 2, at 107-08. Aesthetics can play a role in many other seemingly nonglamorous activities, too, such as leaving a “visually pleasing” caulk line at the junction between a replacement toilet and the floor. *Id.* at 65.

Williams's craftsmanship on the baseball diamond as "the tissue-thin difference between a thing done well and a thing done ill."<sup>20</sup>

One of Crawford's goals in both the original essay and his later book was "to understand the greater sense of agency and competence I have always felt doing manual work, compared to other jobs that were officially recognized as 'knowledge work.'"<sup>21</sup> Manual work is more likely to be "meaningful," in his view, because it is more likely to be "genuinely useful."<sup>22</sup> That is, the psychic imbalance he identifies between manual and knowledge work comes from the greater "usefulness" of the former, the tangible sense of accomplishment that comes from working with one's hands on an actual physical object, and seeing the results of one's labor when, for example, a previously balky engine throbs with renewed power. But usefulness is only part of the equation. The disparity also is measured in terms of self-reliance: a mechanic works by himself, segregated (at least for a while) in the grime and fluorescent light of a garage from larger societal "channels that have been projected from afar by vast impersonal forces."<sup>23</sup> These ideals of meaningful work and self-reliance, in turn, are "tied to a struggle for individual agency," which he believes to be "at the very center of modern life."<sup>24</sup>

For purposes of this essay, I accept his position to be largely correct. Indeed, I endorse wholeheartedly Crawford's perception of the psychological attitudes that manual work can engender; I have felt them myself while in the midst of some repair project or after completing a job, even though my competence at manual labor is no doubt orders of magnitude less than his.

A question that then arises is whether this sense of agency and competence can be replicated in an attorney's work. Drawing on my own legal experience, of course it can. I have felt a sense of agency and competence as a lawyer. I suspect that all of us who attended the conference would answer similarly. I do not read Crawford to imply the contrary. He does not dismiss the possibility that knowledge work can inspire a sense of agency and competence. Rather, he simply believes the odds to be skewed against the knowledge worker as compared to the manual laborer.

---

20. John Updike, *Hub Fans Bid Kid Adieu*, THE NEW YORKER, Oct. 22, 1960, [http://www.newyorker.com/archive/1960/10/22/1960\\_10\\_22\\_109\\_TNY\\_CARDS\\_000266305](http://www.newyorker.com/archive/1960/10/22/1960_10_22_109_TNY_CARDS_000266305).

21. CRAWFORD, *supra* note 3, at 5.

22. *Id.* at 6.

23. *Id.* at 7.

24. *Id.*



Let's accept his odds making as correct. Assume that his (and my) individual experience can be generalized, not only in terms of the basic comparison between manual and knowledge work, but also recognizing that these feelings of agency and competence preferentially associated with manual work can be extended to the specific types of knowledge work that many lawyers do. I would even venture a guess that it is precisely this sense of agency and competence as lawyers that allows or perhaps even inspires those of us who attended the conference to become teachers. Absent this sense of ability, of knowing (or believing that we know) what we're doing when it comes to being a good attorney, would any of us have the gall to stand in front of our students and presume to teach them lawyering skills?

But that sense of agency and competence is internal to us as professors-cum-attorneys. The critical question raised by Martin and Rand is whether law professors can replicate that feeling in students who are in training to become lawyers. Their answer is simple: Yes.<sup>25</sup> My goal, then, is to use Crawford's lessons in an attempt to improve the odds, to try to help law students build their own personal sense of agency and competence by starting to rebuild the bridge between knowledge and manual work.

#### IV. A SIMPLE EXAMPLE

So, what are these overlaps between physical tools and the tools of legal practice? I want to begin with a quick example of what I have in mind for how legal writing professors can use "real" tools to help drive home lessons about legal tools. This example has the virtue, in my eyes, of allowing a professor's enthusiasm to model agentic thinking, one of Martin and Rand's recommendations.<sup>26</sup> But professorial enthusiasm by itself is thin gruel, so I then explain why I think these sorts of explicit connections between physical and legal tools can resonate with students on a substantive level.

---

25. Martin & Rand, *supra* note 6, at 218 ("[L]egal educators can play an important role in maintaining and creating hope in law students by enhancing the components of hope . . .").

26. Martin & Rand, *supra* note 6, at 230 ("[T]o model agentic thinking, legal educators need to display enthusiasm in teaching. . . . Displaying enthusiasm in teaching is a good way to maintain a hopeful learning environment.").

In the context of a discussion about legal research, display a picture of a collection of wrenches.<sup>27</sup> In the middle is a wrench with an unusual-looking V-shaped open end (as contrasted to the more familiar C-shaped open end or closed end “box” wrenches). Ask whether anyone knows what the wrench in the middle is called, and what it’s used for. Aptly enough, it’s an alligator wrench, used in pipefitting to hold different size tubes without needing to adjust the wrench’s jaws. (I assume most students won’t know the answer; I confess I didn’t know, either, when I first saw the picture.)

Follow this up with a quick picture of a collection of research materials, such as a library table covered with treatises, digests, loose-leaf binders, and so on, and the connection becomes obvious. The collection of wrenches confronting a mechanic reaching in his toolbox is analogous to the various types of research sources—research tools—that students must choose from when pursuing a research assignment. All of these tools are basically similar in form and shape, but subtle (and sometimes not so subtle) differences can have significant consequences for the way the tool is used, and what it’s used for. The trick for the mechanic, and the student researcher, is to learn how each tool can best be used, and then to choose the right tool for the job.<sup>28</sup>

## V. CROSSING (CLOSING?) THE DIVIDE

Now why might this work as a pedagogical aid, and not just be a professor indulging himself as a would-be showman at the students’ expense? I love baseball and *The Simpsons* and rock music of dubious quality, but I typically don’t try to draw connections between those items and the subjects I cover when teaching legal writing.<sup>29</sup> Many students would not “get” references to those

---

27. The picture I have in mind can be found at [http://www.thisoldhouse.com/toh/photos/0,,20304618\\_20671131,00.html](http://www.thisoldhouse.com/toh/photos/0,,20304618_20671131,00.html) (last visited Mar. 25, 2010). Any picture of a group of similar-looking implements (knives, screwdrivers, spatulas, and so on) will work well, as long as the similarities and differences are readily apparent at first glance.

28. The trick is the same for the legal writing professor. When it comes to selecting examples for in-class use, the right tool for me might not be the right tool for any other professor. Any such examples should be personalized to an individual professor’s individual interests, which will likely increase the professor’s engagement and enthusiasm, and thus better serve as a model for agentic thinking for the students. See Martin & Rand, *supra* note 6, at 230-31.

29. With the notable exception of Lionel Hutz’s incisive direct examination of his client’s wife in the leading case about inaccurate all-you-can-eat-buffet offers, which serves as a perfect example of targeting an argument to a specific audience. See *The Simpsons: The*

items, at least not without a potentially lengthy explanation, thus limiting any such comparison's effectiveness, and perhaps even alienating some students who might feel excluded from the discussion. Why is using wrenches, or hammers, or any other sort of tool, any different?

The difference, in Crawford's view, hinges on the possibility that the "use of tools answer[s] to some permanent requirement of our nature."<sup>30</sup> Put another way, is "the use of tools . . . really fundamental to the way human beings inhabit the world?"<sup>31</sup> Perhaps looking at this issue through the eyes of a child might shed some light. Mike Rose's youthful perceptions of his mother, a waitress, and his uncle, a railroad welder, are certainly consistent with the belief that humans are born with a desire to emulate their elders' proficiency with their hands, however that proficiency might manifest itself. In particular, he explains how his boyhood view of their work "connected in my mind with agency and competence . . . [that] was intimately tied to physical work[.]" and which derived in part from his mother's and uncle's "knowledge of tools and devices."<sup>32</sup> This evidence is anecdotal, of course, and it's unclear if the question of whether tool use is fundamental to our nature can ever be conclusively answered. Indeed, Crawford never quite reveals where he comes down; he invokes ancient and modern philosophers in support of the proposition but hedges his bets on whether they are correct.<sup>33</sup> Still, it seems clear which way he leans.

If tools do in fact resonate harmoniously with our permanent nature, then my thesis about the efficacious pedagogical connection between intangible legal tools and actual physical tools becomes more plausible. As I see it, students don't need to have direct familiarity with the particular "real" tool the professor uses as the basis of a comparison for the comparison to be effective. The specific tool itself doesn't matter; the creative problem-solving process inherent in *using any* tool does. In other words, thinking of the lawyer's trade in terms of "real" tools might help students visualize the process by which a lawyer accomplishes a goal. By

---

*New Kid on the Block* (Fox television broadcast Nov. 12, 1992) (Hutz: "Do these seem like the actions of a man who had 'all he could eat'?" Pudgy juror (one of many): "That could've been me!").

30. CRAWFORD, *supra* note 3, at 4.

31. *Id.* at 68.

32. ROSE, *supra* note 2, at xviii. His list of "tools and devices" includes "wrenches and hacksaws and measures, but the cash register, too, and the whirring blender." *Id.*

33. CRAWFORD, *supra* note 3, at 68-69 (relying on Anaxagoras and Heidegger).

encouraging them to draw analogies from their creative experiences (of whatever nature) with physical tools (of whatever sort), they can recall the process of learning a skill over time, of the satisfaction of completing a project, with all the bumps in the road that might have entailed, the mistakes and do-overs and curse words and so on.

In the end, the goal is for the student to recall the sense of accomplishment and achievement from having produced something tangible. In doing so, perhaps they can escape the false dichotomy that many of them have probably internalized: the distinction between knowledge work and manual work. Students intuitively understand that when working with their hands, success will come only with hard work, with (figurative or literal) grime under the fingernails and skinned knuckles. Such work will be difficult. Students don't need to be convinced of this; most of them—all of them, I'd venture—have experienced this in some way or another.

Why should this hard-earned experience be hidden away when the students cross the divide and engage in knowledge work—that is, in intellectual labor? It needn't. It shouldn't. As Crawford and other authors have warned, the divide is a false one,<sup>34</sup> but it's one that students are trained to be wary of and reinforced by myriad societal cues.<sup>35</sup> Many students have made it to law school having succeeded in their academic ventures. The work of the mind has been one of almost constant achievement. Now, for many, they are faced with something they haven't been forced to deal with before: academic challenges, obstructions to their intellectual abilities. No wonder many of them retreat into a shell when they receive the first C+ they've ever seen on one of their exams or pa-

---

34. See *id.* at 20-21 (“[The] dichotomy [between knowledge and manual work] rests on some fundamental misconceptions.”).

35. See ROSE, *supra* note 2, at xix (noting the “implication . . . that so-called older types of work, like manufacturing or service work, are, by and large, mindless [when contrasted to knowledge work], ‘neck down’ rather than ‘neck up’”); *id.* at xxi (observing that judgments about intelligence in modern culture are often made based on “the work we do”); *id.* at xxvi (“In the rhetoric of the ‘new economy,’ . . . communication skills or general problem-solving skills or the ability to work in teams are privileged, while more specific mechanical skills . . . tend to be perceived as less valuable.”); CRAWFORD, *supra* note 3, at 19 (“Today, in our schools, the manual trades are given little honor.”). Alain de Botton describes the seemingly odd hobby of ship-spotters in England, who gather quayside to watch freighters bringing cargo to port. DE BOTTON, *supra* note 4, at 24-30. To most consumers, cargo ships and port facilities go unnoticed, despite being “endowed . . . with both practical importance and emotional resonance.” *Id.* at 24. Other than to these few lonely observers, what renders these ports and ships invisible? To de Botton, the answer lies in the “unwarranted prejudice which deems it peculiar to express overly powerful feelings of admiration towards a gas tanker or a paper mill—or indeed towards almost any aspect of the labouring world.” *Id.*

pers. If we can bridge the gap, and make them see the connection between their current difficulties with the academic rigors of law school and comparable difficulties in their prior experiences with the physical world, perhaps they will be more likely to draw from that comparison the conclusion we'd like them to reach: all is not lost, and the possibility of success still lies within their grasp.<sup>36</sup>

## VI. USE TOOLS TO SERVE THE CLIENT, NOT PERFECTION

I want to continue by identifying some simple lessons from Crawford. None of these will be new to experienced legal writing professors. But perhaps thinking about how these lessons are expressed in different types of work might give us some ideas about how to help our students take them to heart.

First, Martin and Rand's emphasis on learning rather than performance goals<sup>37</sup> is consistent with one of Crawford's running themes. He is not a craft mechanic, but rather a working one, with bills to total up and clients to satisfy. In such a trade, obsessiveness is not always a virtue, and a perfectionist's need to be "responsible only to the motorcycle" ignores duties to "another person, with a limited budget."<sup>38</sup> Forgetting this means focusing solely on the end result, the final product—the perfectly restored motorcycle, at whatever cost, or the A in legal writing—and not the process of getting there.

If I had good legal examples to provide my students on this point, I would. But I don't, because during law school I was like so many students, focused on the grade. I hadn't internalized how this quest for perfection might not translate so well to day-to-day legal practice. Moreover, decisions about exactly how much effort to devote to a particular client matter often did not fall to me as a young attorney. So I turn to another source: my home, and more specifically, my study. I show a picture of a large bookcase I built with the help of my wife's uncle. I'm proud of it. It serves its purpose. But it's certainly not perfect, and it could have been made a

---

36. Of course, a possibility of success is not the same as a certainty of success, and I do not intend to gloss over the chances that a student might ultimately fail or suggest that either professors or students should be anything but strictly honest when considering the need for alternative careers. See Martin & Rand, *supra* note 6, at 229.

37. *Id.* at 216-217 (stating that one notable difference between high-hope and low-hope students is that the latter tend to adopt performance rather than learning goals); *id.* at 219 (identifying ways in which legal writing professors can encourage and help law students to select learning goals).

38. CRAWFORD, *supra* note 3, at 117.

lot more expensively. The details don't really matter.<sup>39</sup> The point is that it's a perfectly good, perfectly functional bookcase that is at least somewhat attractive, all without breaking the bank, either in terms of money or time.

Don't get me wrong. Perfection is a noble goal and students should not be dissuaded from pursuing it as an ideal. But there's danger in this, because having overly high standards can lead to paralysis. We dither and tweak, massaging a word here and running down an obscure point of law there, just to ensure that all the bases are covered and nothing is amiss. All the while, the clock ticks, the bill adds up, the computer screen is still blank, and the client waits. One of my favorite legal web sites, *What About Clients*, calls perfectionism the "Great Destroyer of Great Young Associates" because it leads attorneys to be "so stiff and scared [they] can't ever turn anything in because [they] want it 'perfect' and [they] keep asking other lawyers and courts for extensions."<sup>40</sup> How many of our students turn in their papers late for the same reason, or delay even starting a project because they don't think they'll be able to achieve the level of quality they think is demanded of them? We do our students a valuable service if we occasionally remind them that they can represent their clients well, and take justifiable pride in their work, without being perfect.

#### VII. TOOLS DON'T ALWAYS WORK THE WAY YOU WANT THEM TO. FIGURE OUT WHY. ASK FOR HELP.

Downplaying the quest for perfection, in turn, feeds nicely into another of Martin and Rand's key recommendations. Mistakes are inevitable, and, sometimes, not just mistakes but out and out failure. But, as Martin and Rand note, encouraging students to learn from any such mistakes helps reinforce the agentic and pathways thinking that is characteristic of high-hope students.<sup>41</sup> According to Crawford, mechanics try to fix problems they did not

---

39. I point out, for example, that the decorative pieces on the bookcase's facing are all prefab, the kind sold at Home Depot for only a few dollars, but I don't bore the students with all of the design decisions that went into the project.

40. Rule 10: Be Accurate, Thorough and Timely—But Not Perfect, [http://www.whataboutclients.com/archives/2006/03/rule\\_10\\_be\\_accu.html](http://www.whataboutclients.com/archives/2006/03/rule_10_be_accu.html) (Mar. 3, 2006, 01:28 EST).

41. Martin & Rand, *supra* note 6, at 225 ("Students need to learn that if one pathway [for reaching a goal] does not work, they have alternate strategies to try. . . . [I]t is crucial . . . that the student learns not to attribute a blockage to his or her lack of talent. Instead, a blockage should be considered merely information that a particular strategy does not work." (footnote and internal quotation omitted)).

make, and deal with failure every day.<sup>42</sup> Here, Crawford brings philosophy into the mix via Aristotle and the stochastic arts, such as medicine, which by their nature cannot be fully effective. Inevitably, patients die, despite a doctor's best efforts.<sup>43</sup> But this need not be a reflection on the ability of the doctor, or mechanic, or scientist,<sup>44</sup> or artist. "Mastery of a stochastic art is compatible with failure to achieve its end."<sup>45</sup>

That's a wonderful thing to convey to law students, because much the same can be said of studying for and practicing law. Students flub exams, lawyers lose cases, and sometimes there's not much that could have been done to prevent it. Clients walk through the office door with problems that realistically cannot be fixed, only alleviated to the extent that circumstances allow.

In particular, Martin and Rand's emphasis on telling stories of hope<sup>46</sup> tracks my experience in the classroom. As Crawford mentions, a young mechanic who benefits from an elder's superior insight and knowledge is inevitably learning from the mistakes that elder made along the way to acquiring that knowledge.<sup>47</sup> I've always found it much more valuable to tell students about my mistakes in practicing law rather than my successes; students always seem engaged in such discussions, perhaps because they can hear triumphant (and usually padded) legal war stories anywhere but

---

42. CRAWFORD, *supra* note 3, at 81.

43. For a dramatic example of this, see Sherwin Nuland's description of his short-lived encounter as a young medical student with his first patient, a construction executive who suddenly dies of cardiac arrest moments after Nuland enters his hospital room. SHERWIN B. NULAND, *HOW WE DIE: REFLECTIONS ON LIFE'S FINAL CHAPTER* 3-8 (1994). Weeping from frustration and sorrow at his inability to resuscitate the patient, Nuland was consoled by a more senior intern:

He sat me down in that death-strewn place and began patiently, tenderly, to tell me all the clinical and biological events that made [the patient's] death inevitably beyond my control. But all I can remember of what he said, with that gentle softness in his voice, was: "Shep, now you know what it's like to be a doctor."

*Id.* at 8.

44. Bruce Alberts, *On Becoming a Scientist*, 326 *SCI.* 916, 916 (2009) ("[B]y making my own mistakes [as a young scientist], I learned how to identify important problems, how to think critically, and how to design effective research strategies."). Alberts, now Editor-in-Chief of *Science*, describes how one particularly painful setback as a young Ph.D. candidate—having his Ph.D. thesis rejected at a late stage in the process, delaying his degree by six months while he developed a new experimental approach—"proved to be a critical step in shaping me as a scientist, because it forced me to recognize the central importance of the strategy that underlies any major scientific quest." Bruce Alberts, *A Wake-up Call: How Failing a PhD Led to a Strategy for a Successful Scientific Career*, 431 *NATURE* 1041, 1041 (2004).

45. CRAWFORD, *supra* note 3, at 81.

46. Martin & Rand, *supra* note 6, at 229-30.

47. See CRAWFORD, *supra* note 3, at 13. For another discussion on the value of mentoring, see ROSE, *supra* note 2, at 60.

an honest discussion of error is uncommon. By making our mistakes transparent to our students, we demonstrate by example that adversity can be overcome.<sup>48</sup>

I tell my students stories of my legal mistakes (and, sadly, I have a number to choose from). But I can't easily show them. For that, I turn to other items, like my workshop. I show a picture of yet another bookcase with a tiny smudge on the top. The problem arose when I stained the bookcase, and got me so riled up that I wanted to strip off all the stain, sand down the problem, and re-do everything. "Not so fast," suggested my wife's uncle. A much simpler solution presented itself: Just keep the smudge covered with something, like a vase, lamp, or some other such camouflage. Wood has imperfections, he told me, it's only a small glitch, and it's not worth spending the time to fix. Here's how you messed up. And, next time, don't do it again.

#### VIII. LEARN HOW TO USE TOOLS BY ACTUALLY USING THEM

One last bit of overlap derives from Crawford's general criticism of many academic environments as artificial, contrived, and hindrances to true learning.<sup>49</sup> Per Heidegger, the way we know a hammer is not by staring at it, but by grabbing and using it.<sup>50</sup> Intellectually, knowing Ohm's Law ( $V=I \cdot R$ ) in the abstract is fine, but knowing how electrical resistance typically tends to manifest itself in real-world circuits is much more useful to actual electricians.<sup>51</sup> This requires hands-on experience, not simply theory. This comes as little shock to legal writing professors, who know that the best assignments are those that are the most realistic, and that students can develop their legal skills only with practice, and lots of it. Nor is this news to practicing lawyers, who know that attorneys can't rely solely on legal rules to resolve a case or convince a court, but must couple those rules with an actual set of facts.

#### IX. A FINAL EXAMPLE

The alligator wrench demonstration described above<sup>52</sup> served in part as a lesson in using the right tool for the job and in part as a

---

48. See Martin & Rand, *supra* note 6, at 229.

49. CRAWFORD, *supra* note 3, at 9-10.

50. *Id.* at 163-64.

51. *Id.* at 166.

52. See *supra* text accompanying notes 27-28.



model to the students of agentic thinking via enthusiasm. Here's a more complicated example that conveys a different specific lesson but in a similar enthusiastic fashion. This demonstration, again in the research context, helps demonstrate pathways thinking, that lawyers often have different ways to reach a goal and can pursue different strategies to get there.<sup>53</sup> Bring two handheld drills to class, one cordless, and the other an old-fashioned manual with a crank handle. Be as much of a showman about this as you like.<sup>54</sup> Start with the power drill. Take your time unsnapping the drill case and fitting the drill bit into the chuck. And then, without a word, drill a hole in something.<sup>55</sup> Students will pay attention. Then, pull out the manual drill, and ask if anyone knows what it is. Somebody probably will. Switch the bit to the manual drill, and drill another hole (or ask a knowledgeable or eager student to come to the front of the class and demonstrate). Undoubtedly, this will take longer than the cordless drill, and might require some additional steps.<sup>56</sup> But it will work. Needless to say, practicing this demonstration before trying it for the first time is always a good idea.

The lessons of this exercise are straight-forward. As with any tool-based demonstration, emphasize that if students aren't familiar with woodworking tools, they should extrapolate the lesson to something they're more familiar with.<sup>57</sup> The power tool is easier and quicker. But it's not the only way to get the job done. Remove the battery pack from the cordless drill, and ask whether the drill

---

53. See Martin & Rand, *supra* note 6, at 225 (“[H]elping students understand that there are preferred and alternate strategies for attaining any educational goal encourages hopeful thinking.”).

54. To make it more of a surprise, bring the two drills in a box and pull them out one by one.

55. At Michigan, many of the classrooms I use contain beaten-up portable wooden podiums that appear to date back to the school's founding in 1859, so there's no real harm in drilling a small hole in some unnoticeable spot. The shiny new podiums at Duquesne Law School obviously precluded any such demonstration during the conference.

56. For example, if the wood is hard, the bit is dull, or you're drilling horizontally, it might be difficult to get the bit to start, and you might need to start a hole with a punch.

57. Similarly, on the subject of familiarity, this demonstration can and should be tweaked for a professor's personal interests. I'm no cook, for example, but I'm sure kitchen tools lend themselves to a similar demonstration. For example, Internet video sites are a ready source of inspiration for what might happen when a mixer or blender is misused with stuffed animals or chocolate bunnies or iPhones. Perhaps Sheila Simon's justly renowned “lasagna in a blender” demonstration for teaching IRAC can be modified to serve a different purpose. See Sheila Simon, *Brutal Choices in Curricular Design: Top 10 Ways to Use Humor in Teaching Legal Writing*, 11 PERSP. 125, 125 (2003). For a series of “Will It Blend?” videos, see YouTube, Will It Blend?, <http://www.youtube.com/user/Blendtec> (last visited Mar. 23, 2010).

serves any purpose now other than a paperweight. Without a spare battery or other means of power, the cordless drill is useless. The manual drill, however, suffers from no such limitations. It might not be the first choice, but it's good to know how to fall back on it if circumstances warrant.

The larger purpose of this demonstration, obviously, is to make a point about researching using book and computer resources. One suspects that this won't be the first time the students hear about the need to become familiar with both types of sources, and that it won't be the last. But I also hope that a demonstration of this nature is memorable, and circumvents students' near-universal tendency to zone out when hearing abstract soapbox pronouncements about "know how to use both books and computer-assisted legal research." Ultimately, via this demonstration or others like it, substantive lessons about legal tools can be tied to students' experience with physical tools, one hopes in somewhat imaginative and interesting ways, with more likelihood that the lessons are taken to heart.

#### X. THE ELEPHANT IN THE ROOM

While I was preparing for the conference presentation in the late fall of 2009, it seemed as though nearly every day brought a story about continuing changes in the legal employment market, a drumbeat of generally dismal news that had begun over a year earlier across all sectors of the national economy. Martin and Rand have identified numerous ways in which legal writing professors can help inculcate a sense of hope in their students. But I wonder if, at least in the present economic downturn, we aren't whistling past the graveyard just a little. Martin and Rand use the term "hope" in a specific sense, as a collection of discrete psychological attributes.<sup>58</sup> What about a more colloquial sense of the term? The stress of law school fosters anxiety in even the best of circumstances.<sup>59</sup> How can we engender hope, however we might define that term, if students believe the employment tournament they are about to enter is stacked against them even more than usual?<sup>60</sup>

---

58. Martin & Rand, *supra* note 6, at 207-08.

59. See Ruth Ann McKinney, *Depression and Anxiety in Law Students: Are We Part of the Problem and Can We Be Part of the Solution?*, 8 J. LEGAL WRITING INST. 229, 229-30 (2002).

60. Students who expect to pass the bar examination report more life satisfaction than students who feel less confident. Nisha C. Gottfredson et al., *Identifying Predictors of Law*

Law students know the job market they are likely to face. Horror stories abound on *Above the Law* and *LawShucks* and other web sites law students love to surf during class when they really should be listening and taking notes: laid-off attorneys here,<sup>61</sup> cancelled summer associate programs there,<sup>62</sup> and deferred offers everywhere.<sup>63</sup> Larry Ribstein has proclaimed the death of BigLaw.<sup>64</sup> The nation's newspaper of record has taken note.<sup>65</sup> The American Bar Association has formed a Commission on the Impact of the Economic Crisis on the Profession and Legal Needs.<sup>66</sup> Conferences at prestigious law schools have been convened to assess the problem.<sup>67</sup> Well-intentioned commentary from law professors suggests that prospective law students look closely at the decision to enter law school.<sup>68</sup> But despite this advice, the Law

*Student Life Satisfaction*, 58 J. LEGAL EDUC. 520, 527 (2008). It seems plausible that a similar result would apply to students who feel respectively more or less confident about securing employment.

61. Approximately 4600 attorneys (not to mention 7500 staff employees) were laid off at major law firms in 2009, according to one site that tracks such matters. LawShucks, *The Year in Law Firm Layoffs—2009* (Jan. 3, 2010), <http://lawshucks.com/2010/01/the-year-in-law-firm-layoffs-2009/>. The loss of jobs seems greatest for firms in the Top Ten markets; comparatively, “middle-market firms appear to be thriving.” Bill Henderson, *New Data on BigLaw Contraction: Patterns of Winners & Losers* (Nov. 13, 2009), [http://www.elsblog.org/the\\_empirical\\_legal\\_studi/2009/11/new-data-on-biglaw-contraction-patterns-of-winners-losers.html](http://www.elsblog.org/the_empirical_legal_studi/2009/11/new-data-on-biglaw-contraction-patterns-of-winners-losers.html).

62. *E.g.*, Liz McKenzie, *More Summer Associate Programs Up In the Air* (Aug. 14, 2009), <http://www.law360.com/articles/116675>.

63. *E.g.*, Jessica Dickler, *Getting Paid Not to Work*, CNN MONEY, May 1, 2009, [http://money.cnn.com/2009/04/30/news/economy/legal\\_deferrals/index.htm](http://money.cnn.com/2009/04/30/news/economy/legal_deferrals/index.htm).

64. See Larry E. Ribstein, *The Death of Big Law* (Univ. Ill. Law & Econ. Research Paper No. LE09-025, 2009), available at <http://ssrn.com/abstract=1467730>.

65. See Alex Williams, *No Longer Their Golden Ticket*, N.Y. TIMES, Jan. 17, 2010, at ST1 (“As the profession lurches through its worst slump in decades, with jobs and bonuses cut and internal pressures to perform rising, associates do not just feel as if they are diving into the deep end, but rather, drowning.”).

66. Press Release, Am. Bar Ass'n, ABA President Carolyn B. Lamm Creates Commission on Impact of the Economic Crisis on the Profession and on Public's Legal Needs (Aug. 4, 2009), [http://www.abanet.org/abanet/media/release/news\\_release.cfm?releaseid=729](http://www.abanet.org/abanet/media/release/news_release.cfm?releaseid=729).

67. See, *e.g.*, Georgetown Law Center, *Law Firm Evolution: Brave New World or Business as Usual?*, March 21-23, 2010, <http://www.law.georgetown.edu/legalprofession/>. The conference proposed to address the following issues: “Are the dramatic steps that firms have taken temporary adjustments to market conditions, which will have limited long-term effect after economic recovery? Or do they reflect fundamental changes in the business model of law firms that are likely to transform the market for legal services and the legal profession in general?” *Id.*

68. See, *e.g.*, Posting of Sarah Waldeck to *Concurring Opinions*, <http://www.concurringopinions.com/archives/2010/01/who-should-and-shouldnt-go-to-law-school.html> (Jan. 18, 2010, 22:02). One professor, after walking through a series of financial calculations, concludes that for many students, attending law school is a losing investment. See Herwig J. Schlunk, *Mamas Don't Let Your Babies Grow Up To Be . . . Lawyers* 12 (Vanderbilt Law & Econ. Working Paper No. 09-29, 2009), available at <http://ssrn.com/abstract=1497044>. When applying what Schlunk considers to be “arguably

School Admissions Council reports that the number of law school applicants rose five percent in 2009.<sup>69</sup> And as of this writing, maybe, just maybe, there might be some dim light at the end of the tunnel.<sup>70</sup>

Moreover, students know that even if fortune shines and they do get a job after graduation, life might not be rosy. Television shows portray the glamorous life of new associates in ritzy offices; students know the reality for many of them upon entering the profession will be quite different. It doesn't take much digging for students to uncover anecdotes about how legal practice, at least for many attorneys, isn't what it was held out to be. Law students have heard all of the stories about monotonous document review, assembly-line fill-in-the-blank litigation, and so on. Even for those fortunate enough to be admitted to the halls of BigLaw, students might be concerned whether the day-to-day work experience will be simply another (albeit highly-paid) example of employment where an individual's sense of control and meaningfulness is illusory.<sup>71</sup>

As Crawford describes it: "Working in an office, you often find it difficult to see any tangible result from your efforts. What exactly have you accomplished at the end of any given day? Where the chain of cause and effect is opaque and responsibility diffuse, the experience of individual agency can be elusive."<sup>72</sup> Other commentators have made similar points. For example, Richard Sennett describes the travails of a young family man, once a Silicon Valley technology adviser, now the proprietor of a small consulting firm.<sup>73</sup> This man, Rico, moves in a world far removed from that of his

---

more realistic" discount rates for assessing the incremental earnings generated by a law degree, law school turns out to be a bad investment regardless of whether a hypothetical student was an "also ran," "solid performer," or "hot prospect" coming out of undergrad. *Id.* As Schlunk cautions, however, this calculation for hypothetical students relies on assumptions that might not hold for any particular individual student. *Id.* at 14 ("[E]ach potential student's calculus will be based on a host of factors unique to him or her.").

69. Law School Admissions Council, LSAC Volume Summary, <http://lsacnet.lsc.org/data/lscac-volume-summary.htm> (last visited Mar. 25, 2010). Cornell Law School reports a 52% increase in applications. Debra Cassens Weiss, *Cornell Law School Expected More Applications, But Not A 52% Spike*, A.B.A. J., Jan. 26, 2010, [http://www.abajournal.com/news/article/cornell\\_law\\_school\\_officials\\_expected\\_more\\_applications\\_but\\_not\\_a\\_52\\_spike](http://www.abajournal.com/news/article/cornell_law_school_officials_expected_more_applications_but_not_a_52_spike) (Jan. 26, 2010, 06:41 CST).

70. See Petra Pasternak, *Famous Last Words: Is the Job Market Picking Up?* (January 27, 2010), [http://legalpad.typepad.com/my\\_weblog/2010/01/famous-last-words-is-the-job-market-picking-up.html](http://legalpad.typepad.com/my_weblog/2010/01/famous-last-words-is-the-job-market-picking-up.html) (Jan. 17, 2010, 09:00).

71. See CRAWFORD, *supra* note 3, at 7-8.

72. Matthew B. Crawford, *The Case for Working With Your Hands*, N.Y. TIMES, May 24, 2009, at MM36.

73. SENNETT, *supra* note 4, at 18-19.

blue-collar janitor father.<sup>74</sup> He and his wife have done right by their children, at least in material terms. But all is not well. Rico is plagued by fear that his time is not his own, and that as a result he stands on the edge of losing control over his life. In a description that surely rings true with many lawyers, Sennett notes that Rico "has fallen subservient to the schedules of people who are in no way obliged to respond to him" and must "tack one way and another in response to the changing whims and thoughts of those who pay."<sup>75</sup> As a result, "Rico has no fixed role that allows him to say to others, 'This is what I do, this is what I am responsible for.'"<sup>76</sup> He is buffeted on the "rising sea of clerkdom."<sup>77</sup>

What purpose does all of this drudgery serve? Crawford emphasizes the durability of work in the material world, the relative permanence of whatever material item we might put our hands to.<sup>78</sup> Even in the midst of mind-numbing repetition on a manufacturing assembly line, the "loathsome dungheaps of idiot labor,"<sup>79</sup> something about the tangibility of the work at least has the potential to be appealing, even if inexplicably so.<sup>80</sup> Can lawyers say the same?

Let me paint an admittedly dismal portrait. This broad-brush depiction, drawn in part from aspects of my own legal experience, is woefully incomplete, but still accurate so far as it goes. The question is not whether this description is universally correct, but whether it is "correct enough," such that students have legitimate grounds to believe it, and perhaps fear that it awaits them. In practice, we file motions that are then settled without argument, write briefs we suspect many judges only cursorily read. We draft witness lists for cases that are never tried, and prep experts who

---

74. *Id.* at 15.

75. *Id.* at 19.

76. *Id.*

77. See CRAWFORD, *supra* note 3, at 47.

78. *Id.* at 15-16.

79. The phrase comes from HAMPER, *supra* note 4, at 94.

80. Ben Hamper makes this point in describing his willingness, even eagerness, to work on the "Rivet Line" manufacturing cars and trucks for General Motors in the 1970s and 1980s, a task that many of his fellow line workers did their best to avoid:

[A supervisor] probably thought I was completely mad. Perhaps I was. All I knew was that there was something about those rivets that had gotten into my blood. I loved the way they looked jammed into those old rusty bins. I loved the way they felt rollin' around my palm like dice. I loved to see their little round heads squashed beneath the incredible force of the rivet guns. I loved everything about those gray metal mushrooms. I was quite possibly a very sick man.

*Id.* at 109.

will never testify to a jury. We negotiate and draft and re-draft contract provisions to cover contingencies that will never arise. The substance of what we do vanishes, leaving us with, perhaps, more “experience” in whatever task we had been engaged, but with nothing tangible to show for it other than stacks of paper or hours on a billing sheet.

If law students know, or suspect, or fear that this awaits them in some form, then a legal writing professor’s best classroom practices, however beneficial at the time in terms of inculcating hope, might turn out to have only a temporary effect. So the inquiry must necessarily turn to whether professors can do anything that might have a lasting effect on students after the first year, when they have progressed either to upper-level classes or to the actual practice of law.

One response might be that this is out of our hands. We can and should focus on what we can control during our time with the students, striving to contribute to “the sense of agency that the acquisition of technical knowledge and skill provides.”<sup>81</sup> To focus on the constraints that might affect students down the road after the first year “is to miss what it means to someone to gain through tangible, demonstrable skill the ability to exercise some control, to give some direction to things, to feel security within reach . . . . This sense of agency, this imagining of a future not turbulent, spawns longer views, elaborates purpose.”<sup>82</sup> This, in other words, is the “relation of skill to hope.”<sup>83</sup> Be happy with what we can do because that alone is a powerful thing; there is no shame in not being able to resolve matters that exceed our control.

But we need not take such a constricted view of our impact. Among all of the other lessons we try to convey to our students, perhaps there is room to convey the sense that whatever they end up doing in the practice of law, they should enter into it with the expectation that they do this as a way to bring meaning to their life, over and above providing material necessities, vital though those might be. I speak here of law as a vocation, not merely “just a job” or even a “profession.”<sup>84</sup> That is, I refer to practicing law as

---

81. ROSE, *supra* note 2, at 127.

82. *Id.* at 128.

83. *Id.*

84. Vocation is often addressed from a religious perspective, but not exclusively. A helpful list of sources discussing the concept as applied to lawyering can be found in Jerry Organ, *From Those to Whom Much Has Been Given, Much is Expected: Vocation, Catholic Social Teaching, and the Culture of a Catholic Law School*, 1 J. CATH. SOC. THOUGHT 361, 363-64 n.3 (2004). For some concerns about the potentially totalizing nature of viewing law

itself a source of satisfaction, not merely of material wants, but spiritual as well.<sup>85</sup> Does law offer a tight connection between “life and livelihood”?<sup>86</sup> Crawford doesn’t say, but the examples he gives of vocations that might make this connection possible due to the very nature of the work leave hope that law too might find a place: “A doctor deals with bodies, a fireman with fires, a teacher with children.”<sup>87</sup>

So, too, does a lawyer deal with clients. Taking Crawford’s lead, clients are “real enough, and the practices that serve them demand the kind of focused attention around which a life might take shape.”<sup>88</sup> In his eyes, teachers, to be true teachers, love their children, and most mechanics work on cars because in some way they love cars.<sup>89</sup> Can we say the same of lawyers and clients?<sup>90</sup> We need not get hung up on whether lawyers should love their clients. Instead, simply consider whether lawyers should think of their clients as something more than just the person (speaking loosely) for whom the lawyer provides services. They are not just the means to the lawyer’s provision of services. They are ends in themselves, and worthy of respect and recognition.

Again, perhaps returning to the students’ prior experience with real tools, whatever that experience might be, might make this abstraction a little more concrete. It might be hard for students to wrap their heads around the airy fictional clients in writing assignments or classroom discussions of the Model Rules of Professional Conduct, but perhaps thinking of clients as analogous to

---

as a vocation, see Amelia J. Uelmen, *The Evils of “Elasticity”: Reflections on the Rhetoric of Professionalism and the Part-Time Paradox in Large Firm Practice*, 33 *FORDHAM URB. L.J.* 81, 107-112 (2005).

85. In the manual trades, Mike Rose observes that so-called vocational education has “not done a very good job” in addressing many issues bound up with the idea of vocation, such as “the purpose of work, which gives rise to a cluster of further issues: meaning and identity, tradition and ethics, values, human connection.” ROSE, *supra* note 2, at 186.

86. See CRAWFORD, *supra* note 3, at 182.

87. *Id.*

88. *Id.*

89. *Id.*

90. The Religious Lawyering movement might say so, or at least that this should be a goal, even if often difficult to achieve. See, e.g., Deborah Cantrell, *Love of Neighbor as a Lawyerly Practice: Insights from Christian, Jewish and Buddhist Traditions* 27-36 (Univ. Colo. Law Sch. Legal Studies Research Paper No. 08-21, 2008), available at <http://ssrn.com/abstract=1265810> (outlining several scenarios where a lawyer might put various religious conceptions of “love of neighbor” into play when dealing with clients). Cf. THOMAS L. SHAFFER & ROBERT F. COCHRAN, JR., *LAWYERS, CLIENTS, AND MORAL RESPONSIBILITY* 44-47 (1994) (describing a “lawyer as friend” model of attorney/client relations).

something the student does care deeply about will make the connection more meaningful.

## XI. CONCLUSION

I don't want to extend Crawford's thesis further than it can bear. He emphasizes the tangible world, the "experience of making things and fixing things."<sup>91</sup> Court briefs and contracts can be printed on paper that can be touched and held and crumpled up and cast away, but I'd hesitate to stretch the analogy too far between preparing a memo and tearing down and rebuilding a carburetor. Still, as Crawford notes, meaningful work and self-reliance are both tied to a "struggle for individual agency,"<sup>92</sup> and that applies across the board, whether in a garage, law office, or classroom. Speaking very broadly, if we want to engender hope in both Martin and Rand's specialized sense and a more colloquial meaning, we must ensure that students know (or at least suspect) that what they're learning will be useful to them. Phrasing some of our classroom instruction in ways that might resonate with students who share a "hands-on" mentality drawn from their prior experience with physical tools can help achieve that goal.

---

91. CRAWFORD, *supra* note 3, at 3 (emphasis omitted).

92. *Id.* at 7 (emphasis omitted).



