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# A CALL TO LEAD – EDUCATING ETHICAL, MORAL LEGAL PROFESSIONALS

*Jeffrey T. Cox\**

Twenty-five years after its resurrection, what is it that sets apart the University of Dayton School of Law (“UDSL”) and its students from other similarly situated law schools of like size and experience? LSAT scores? GPA of entering classes? Percentage of minorities and women students? Bar passage rate? Faculty achievement? Career placement of its graduates? Law school facility and access to technology? While all of these criteria may be considered, I believe it is, or should be, that UDSL offers a value-centered, ethical and moral program of legal education and training.

I appreciate the opportunity to share a few observations about what led me to Dayton for law school, my experiences at UDSL and thereafter, and to offer an opinion on the opportunity that I see stretching out before the UDSL community in the coming years.

UDSL has experienced tremendous growth and progress over the last twenty-five years, which has been well-documented and made manifest in the emergence of Keller Hall and the news of continuing accomplishments of UDSL’s faculty, students and ever-growing corps of alumni. This progress is a direct result of the hard work and directed leadership of the administration and faculty of the law school and of the University as a whole, as well as the commitment of the Dayton legal community.

Keller Hall, the Law School’s new home, unlike its predecessor facilities, Albert Emanuel Hall and the Roesch Library basement, is a tremendous state-of-the-art facility affording great opportunities for faculty and students as well as the greater Dayton legal community. In fact, I often retreat to a quiet corner of the expansive Zimmerman Law Library to polish appellate briefs away from the interruptions of the office. However, the reputation of UDSL and the caliber of its graduates and students are not measured in terms of bricks and mortar and computer cabling. Strength of faculty, programming, student selection and performance, and high-quality publications, such as the *Law Review*, are certainly indicators of growth and success. UDSL must nurture these attributes to assure their continued

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growth. Now is the time to build on our accomplishments and take the next step.

In concert with the 150th anniversary celebration, in November 1999, the University of Dayton kicked off a \$150 million fundraising campaign, a "Call to Lead." Ten percent of that fundraising drive is targeted for "five key objectives" designed to provide the Law School with a "foundation for growth and national leadership."<sup>1</sup> The UDSL priority list includes endowing scholarship funds, enhancing faculty and programming, endowing the Dean's Fund for Excellence (to support faculty and curriculum development and research), and to create a comprehensive program in law, religion and social justice. It is this last "priority" that is most important. Earmarked to "integrate timely ethical and moral issues into scholarship, teaching and public programs,"<sup>2</sup> a program which focuses student attention and scholarship on ethical and moral responsibilities is consistent with the vision of the University of Dayton as it looks in this sesquicentennial year to its roots and plans for its future.

For UDSL to continue to grow and come to life in its fullest maturity, the UDSL community must focus and energize its efforts to develop its students as ethical, moral, and value-centered leaders in the legal profession. This is UDSL's challenge going forward in the new Millennium. The building campaign and the Law School's new home are complete. What better time to refocus energies on the personal professional development of the individual students? This is certainly not a criticism of past or current efforts. UDSL has done well to develop and educate attorneys ready to enter the practice of law; these efforts have not simply been limited to teaching "black letter" law and practical skills, but also to challenging students to think and act in a professional manner.

More can be done. As a professional school of a leading Catholic, Marianist university, the focus of legal education at UDSL must not only be to acquaint students with legal theory, and to teach them the skills and artistry of practicing law (although these obligations are indeed critical components to training new lawyers). The educational imperative must be to educate future lawyers with a sense of community involvement, service, responsibility, and foremost, to imbue them with a commitment to professionalism.

"Professionalism" is a subject of great interest and concern now. The reputation of our profession, part deserved and part undeserved, is

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<sup>1</sup> *The Call to Lead Campaign Seeks \$10 Million for UDSL*, DAYTON LAWYER, Winter 1999-2000, at 16.

<sup>2</sup> *Id.*



generally not a good one. Concern about attorneys' professional conduct is such that in many states, including Ohio, the governing courts have mandated that attorneys complete, as part of their ongoing, continuing legal education requirements, time spent studying "professionalism."<sup>3</sup> Is it too little, too late? Based on firsthand experience, there are many attorneys who view their roles as advocates for their clients as a license to act uncivilly and to practice in a less than honorable manner. Just how do you teach someone how to be and to act as a professional? How do you redirect another attorney to engage the public, clients, colleagues, and adversaries in a more civil manner if that individual has acted to the contrary for years, all under the guise of "zealously representing one's client?"

If our profession is to be recognized for its full potential, then we must correct this problem; it belongs to all of us. The solution, likewise, resides with all of us. "If we adhere to the basic tenets of our professionalism, we lawyers will remain, in Alexis de Tocqueville's words, 'the most powerful existing security against the excesses of democracy.'"<sup>4</sup> "If we do not we could degenerate into a conglomeration of 'skunks, snakes, and sharks.'"<sup>5</sup>

Lawyers best serve their clients, and society in general, when they apply their analytical skills to the creative solution of problems. Isn't that what the early scholars, teachers, and practitioners of law were all about? Helping to craft solutions to disputes between two or more persons that they were unable to achieve themselves? While a solution will not come easily in reorienting some lawyers, there is, I believe, an answer for those new to the profession and those training to enter the profession. It is, in fact, a responsibility of today's law schools, and perhaps an imperative of Catholic legal educational institutions to teach a course of study and to

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<sup>3</sup> On February 3, 1997, the Supreme Court of Ohio issued its Statement on Professionalism, *A Lawyer's Creed, and A Lawyer's Aspirational Ideals*. Explaining its action, the Court stated that it:

created the Supreme Court Commission on Professionalism in order to address its concerns that trends were developing among lawyers in Ohio and elsewhere which emphasize commercialism in the practice of law and de-emphasize our historical heritage that the practice is a learned profession to be conducted with dignity, integrity and honor as a high calling dedicated to the service of clients and the public good. These trends have been evidenced by an emphasis on financial rewards, a diminishing of courtesy and civility among lawyers in their dealings with each other, a reduction in respect for the judiciary and our system of justice and a lessening of regard for others and commitment to the public good.

The complete text of the Statement on Professionalism, *A Lawyer's Creed, and A Lawyer's Aspirational Ideals* can be found at [http://www.sconet.state.oh.us/ftp/ruleamendments/1997/011597\\_r.doc](http://www.sconet.state.oh.us/ftp/ruleamendments/1997/011597_r.doc).

<sup>4</sup> H. Thomas Wells, Jr., *A Lawyer's Letter to His Daughter*, LITIG., Winter 2000, at 1.

<sup>5</sup> *Id.* (quoting Alva Hugh Maddox, *Lawyers: The Aristocracy of Democracy or "Skunks, Snakes, and Sharks"?* 29 CUMB. L. REV. 323 (1999)).

create an environment that will lead future practitioners of our ancient profession to engage in this practice in a noble, trustworthy, honest, and ethical manner.<sup>6</sup> This responsibility does not present a politically charged challenge. It is, simply, to borrow from the University of Dayton's development campaign, a "Call to Lead."

I came to the law with a respect for lawyers rooted in my childhood experience growing up in a small town in Indiana. The lawyers there, many who had been trained at the Ivy League schools, were community leaders, active in government, church, philanthropy and community service. These individuals practiced their profession honestly, admirably and were examples to others. They knew, I believe, that to do otherwise was disrespectful of their colleagues, their clients, the courts, and their profession. To act or practice in a less than professional manner would compromise any attorney's ability and reputation in such a way as to limit the ongoing vitality of their practice. This sense of respect and responsibility for the community in which they lived and practiced served to govern their conduct.

Today, no matter where you call home, the practice of law is played out on a large, global scale. "The delivery of legal services in the United States faces unprecedented challenges. Revolutionary advances in technology and information sharing, the globalization of the capital and financial services markets, and more expansive government regulation of commercial and private activities have reshaped client demands for legal advice and advocacy."<sup>7</sup>

Conduct on the other side of the globe can have an instantaneous effect anywhere. Information is transmitted in so many different forms at ever increasing speed: via the internet, fax, electronic mail, voicemail, telephone, video conference, to name a few. The demand for quick response often suffers from the lack of thorough, well-thought consideration. The speed of business, the ability to communicate at a moment's notice, often on subjects of great complexity, presents yet another tremendous challenge to attorneys practicing today.

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<sup>6</sup> Tom Wells, Chair of the Litigation Section of the American Bar Association offered sage advice to his daughter, a member of the Class of 2001 at the University of Alabama School of Law: "Be always faithful to your integrity as a person and your ethics as a professional. Do not view the ethical rules as a hindrance or a limitation; view them as a commitment that you have chosen to make." *Id.* at 2.

<sup>7</sup> *Background Paper on Multidisciplinary Practice: Issues and Developments*, American Bar Association Commission on Multidisciplinary Practice, Jan. 1999, p. 2. While professionalism is one of the challenges resulting from the rapid emergence of technology and the globalization of the economy, the ethical issues surrounding the propriety of multidisciplinary practice, are likewise compelling; that subject, however, will not be addressed further in this essay.



Yet, in this fast-paced world, this global economy, lawyers' commitment to professional, ethical conduct cannot be ignored for expediency. One must work to develop relationships with clients, colleagues, and opposing counsel built on confidence and trust and professional ethics that reflect those same attributes of the small town lawyers I described earlier, only on a grander scale. How? I believe the answer is in understanding the dynamic nature of the law. This includes understanding that the practice is both an ongoing learning experience about the law and understanding the responsibility of being a teacher. This includes teaching clients about the law and helping them to understand the complexity of the problems and disputes, as well as fashioning appropriate and timely proactive or reactive conduct.

It is our obligation as students of the law to help resolve our clients' disputes in creative, professional ways and to allow, where possible, for relationships (business, professional or personal) that have fractured, to be mended or ended responsibly. Ours is a profession in which we are simultaneously and constantly learning and teaching. Clients look to us for advice and counsel, advocacy and guidance. The most important service lawyers provide to their clients is their good judgment. Good judgment, in turn, is a function of understanding the problem, digesting it, analyzing it and constructing fair and creative solutions.

The opportunity to help people to resolve their disputes is what led me to the study of law. While those small-town general practitioners were important to my initial views of the practice of law, my interest in the law was further defined while working in Washington after graduation from college. I was surprised by the vast number of attorneys working in Washington but not "practicing law" – at least not in the traditional sense. There are many lawyer-lobbyists, congressional aides, government counsel and staff attorneys concentrated in the nation's capitol who never set foot in a courtroom, a judge's chambers, or the like.

The lawyers I met "inside the beltway" were generally astute political thinkers who understand how the system works and how to work the system. Many of them play important roles, often early in their careers, helping to shape and influence policy, draft legislation, explain complex and challenging issues to others and helping to craft governmental and administrative rules. These lawyers play pivotal roles in the governance of our country. I knew that not all attorneys practiced law as I had observed back home in my youth, and these Washington lawyers provided yet another model. While ethical considerations must garner great attention when government officials and elected representatives interact with outside parties ("special interests"), our legislative and executive branches are well-served by interacting with counsel who have developed a thorough

understanding of their issues and can then convey that information on to policymakers. Absent attorneys actively involved as elected representatives, the need for lawyer input to the legislative process nevertheless remains an imperative.<sup>8</sup>

I learned more about the study of law from my wife's experience as a law student at George Washington University's National Law Center in Washington. Upon her graduation, and after seven years in our nation's capital, we returned to the Midwest. We searched for cities that would afford us proximity to family, employment for my wife, and a law school interested in having me as a student. Dayton offered all three. My first year at UDSL was Fran Conte's first year as Dean. It was also the first year for the Legal Profession Program and a required first-year course in Legislation (now both staples of the curriculum). I found law school challenging both academically and in terms of time management. Despite having worked in the private sector for almost seven years after graduation from college and having observed my wife's own law school experience, initially I underestimated the amount of my time and energy required to be a success in law school. I was a new father, and often found myself torn between the amount of time I spent with my family and that which I felt compelled to spend to achieve my law school goals. Somehow, the balancing worked. Law Review and a successful run in the Walter Rice Moot Court Competition occupied my time as a 2L. I appreciated the chance to work in Dayton law firms after both my first and second years.<sup>9</sup>

I was fortunate to be tapped by the outgoing Editorial Board as the Editor in Chief of the University of Dayton Law Review for my third year. My favorite law professor, Jeff Morris, was then serving as the Law Review advisor and as if submitting to his Socratic skewerings in

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<sup>8</sup> Despite a public perception to the contrary, the United States Congress is not chock full of attorneys. Yet, the House of Representatives and United States Senate are in the business of evaluating, and creating laws, rules and procedures to govern our society. This strange dichotomy is not limited to the Congress. Many states, including Ohio, find themselves with few attorneys holding elected office. With so many legislators lacking formal legal training, the public discourse and the business of effective government suffers from the lack of critical, analytical thinking that lawyers learn in the study of the law. Greater reliance is thus made on staff and outside legal talent and support to understand the interrelationship of legislative acts with existing laws.

The lack of attorneys in the Ohio General Assembly is so pronounced that the Ohio State Bar Association is actively soliciting its members to consider seeking public office. William K. Weisenberg, *Statehouse Connection: Wanted – Lawyer-Legislators*, 13 OHIO LAWYER, July-August 1999. As of the summer of 1999, the Ohio General Assembly included nine lawyers among thirty-three State Senators, and seventeen lawyers among ninety-nine State Representatives, with term limits expected to reduce those numbers even further. *Id.*

<sup>9</sup> I clerked after my first year for Freund, Freeze & Arnold; and after my second year, for Faruki Gilliam & Ireland, a place I now consider my professional home.



Contracts, Secured Transactions and Bankruptcy was not enough, Professor Morris challenged me to see that the Law Review would produce a high-quality set of publications and to publish one volume more than was typically anticipated. The challenge given to us that year was one we were able to meet, but not easily. I look back on my time as Editor in Chief as a tremendous personal growth experience,<sup>10</sup> enhancing my writing and editing skills, and above all, allowing me to learn how to effectively manage people.

As hard as that third year of law school was, I look back on it fondly. Our second child was born only a couple months before graduation, and in precipitous fashion. Despite living less than five minutes from the hospital, we had not prepared for a half-hour labor and never made it beyond the front seat of our car, parked in the driveway beside our house. Having just enough time to call 9-1-1, and with the sound of sirens approaching our house, I helped my wife deliver our second child, "Amazing" Grace. It was a morning I will never forget. While all of my law school classmates told me I had gone to the wrong professional school, my experience that morning reinforced my belief that I would be a much better *juris* doctor than medical doctor (a point of view shared by my wife's obstetrician).

I also recall fondly helping to arrange graduation ceremonies for the Class of 1991, inviting good friends and family members Jim and Sarah Brady to be our commencement speakers. Many in the audience expected a political speech from the Bradys advocating handgun control legislation; their visit attracted gun control opponents who protested outside the University of Dayton Arena. Instead, Jim and Sarah spoke from their own life experience about the importance of living each day to its fullest, of giving your best effort at everything you seek to accomplish, and to making a difference in the world. It is a speech I think back on often because it resonates in my own life and is consistent with the points made earlier in this essay: as legal professionals and students of the law, we have an obligation to those we live with, to those we work with, and to those less fortunate in our communities, to give our best effort. To me, that includes conducting oneself at all times in an ethical, moral and professional manner.

Since graduating in 1991, I have practiced complex business litigation at Faruki Gilliam & Ireland P.L.L., a Dayton, Ohio law firm with a national

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<sup>10</sup> I do not, however, miss the office/closet in the Roesch Library basement, situated as it was adjacent to the boiler room of the building, always very noisy and a temperate ninety-five degrees!



litigation practice.<sup>11</sup> Our practice focuses on creative problem solving and dispute resolution for business clients and individuals. I am a member of the Bar of the United States Supreme Court and am admitted to practice in Ohio and various other state and federal courts. As the Partner in charge of recruiting for our firm, I am fortunate to visit law schools and to meet dozens of prospective lawyers annually and am encouraged for our profession by these attorneys-to-be.

I am an active member of the Dayton, Ohio, Federal and American Bar Associations and I am Program Chair for the Carl D. Kessler Inn of Court and I volunteer time as a Montgomery County Common Pleas Court arbitrator. I was taught from an early age that taking an active role in community life and setting a positive example for others to follow is expected and rewarding. With my parents and those attorneys I knew as a young person as examples, I have found it rewarding to be active in my community, serving on Oakwood City Council, coaching youth sports, taking leadership roles at Holy Angels Church, and graduating from the Leadership Dayton program.

I appreciate that the University of Dayton School of Law gave me an opportunity to realize my professional potential, and I am heartened by the vision that has been expressed by the University of Dayton in this, its 150th year. The self-examination conducted at the university-level included two chief inquiries: (1) How does the University of Dayton distinguish itself from other universities?; and (2) What does it mean to be a Catholic and a Marianist school? The Rev. Gene Contadino, Rector of the University of Dayton, summarized the University's vision by linking learning to service and leadership, "that's a standard by which you will know us."<sup>12</sup> "We take students and make them the best they can be."<sup>13</sup>

This sesquicentennial promise, this "Call to Lead," is one to be embraced by UDSL in celebration of its 25th year. From its now solid foundation, UDSL must use this anniversary celebration as a catalyst to further embrace the Catholic, Marianist tradition in the context of the teaching and study of law. A commitment to producing community and

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<sup>11</sup> Founded in 1989 after a team of nine business litigators left a large law firm, Faruki Gilliam & Ireland has grown to be one of Dayton's leading law firms, with over thirty lawyers by the summer of 2000. Faruki Gilliam & Ireland is an ongoing supporter of UDSL, sharing both its human and financial capital. Faruki Gilliam & Ireland's name graces the UDSL Admissions Suite and the firm endows a scholarship at UDSL. Faruki Gilliam & Ireland attorneys have served as adjunct professors at UDSL teaching Negotiations and Complex Litigation courses, are active as judges of the appellate advocacy program and moot court competitions, and participate in career development and student recruitment efforts.

<sup>12</sup> *UD to Close Friday for Special Celebration*, DAYTON DAILY NEWS, March 22, 2000, at 3B.

<sup>13</sup> *Id.*

professional leaders, to educating and empowering ethical and moral lawyers, is a legacy that will stand the test of time and will greatly enrich UDSL graduates, as well as their families, and the communities in which they live and work.