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Excerpt from The Next Century: The Challenge -- A Panel Discussion

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stream of smart, energetic, and public-spirited lawyers who mesh the gears of our society and nudge it a bit toward greater realization of its ideals—liberty, equality, and justice. The Cornell Law School, despite its manifest faults, has contributed in large measure to these endeavors. Our students are so able that nothing we can do to them in the ninety weeks they are here can prevent them from achieving professional success, money, power, and, in most cases, a redeeming social grace.

With humility, compassion for others, and a good laugh now and then at the absurdities of the human situation, the law school will continue to provide a vision of the potential of a legal career as a good and meaningful life of service and connection to our fellow humans.

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If my appearance doesn't give you doubts, I'm sure the shortness of my introduction compared to the longer introductions of the first three "sages" may make you doubt that indeed I am a sage at all; in fact I will not even try to address the very broad question of the challenge of legal education in the next century. More technology? Psychology? More clinical education? Less? I know that I currently lack the experience to make those kinds of broad pronouncements and I suspect that I will always lack the wisdom to make such pronouncements. What I *can* talk about is the challenge of being a legal educator.

That challenge is a very individual one and different, I think, for each faculty member. My challenge is probably not typical. I teach public law courses: criminal procedure, criminal law, constitutional law, and children's rights. Before I started teaching, I worked in a public defenders' office. Few of my students—in fact, practically none of my students—will practice in the areas that I teach, or have practices that are remotely like the practice that I experienced. I cannot, therefore, think of my job as primarily task-specific training. I don't think task-specific training is unimportant, but given what our lawyers will do, it is not the focus of my mission. I also don't think that the challenge of my job lies in broadly teaching doctrine to generally educate good lawyers. I spend enormous amounts of time doing that and I think that it is a central task, but I wouldn't call it the *challenge*. We have very bright students and most of the time, although I'd never admit it to them directly, they manage to learn enough doctrine, or at least most of them do. The challenge, I

think, is in the task that I feel that I often fail at, but nevertheless feel compelled to keep attempting. That task is altering the attitudes that hinder lawyers in becoming advocates for a more just legal system, a duty, I think, incumbent on all lawyers regardless of the nature of their practice or their politics.

Let me tell you about three of the students whom I failed, and how they exemplify the attitude that I feel challenged to eliminate. The first student was very quiet. She sat through most of my constitutional law course and only talked when questioned. She responded adequately, but certainly not enthusiastically, and never volunteered. She sat through most of the class and through four weeks of equal protection doctrine without offering an opinion. Then, very late in the course, she walked up to me after class and said, "I'm not sure I should ask this, but don't you really think that it's easier to be black in this society than it is to be white?" She continued, "I don't mean it always was, you know, I don't mean ten years ago, or even five years ago. I mean discrimination has been outlawed and there are all these affirmative action programs. Don't you really think it's easier?" Now this student was extreme, but in milder forms I think that hers is a common attitude: *It's all been done*. Actually it's a very young attitude, a sort of, oh-I-wish-I-lived-when-there-were-dragons-but-there-just-aren't-any-dragons-any more attitude. Of course this attitude is naive, and doesn't recognize that complex social problems rarely are really solved or totally disappear, but if undisputed, "it's all been done" is the best excuse for doing nothing. You don't have to work for a more just legal system if the legal system is already perfectly just.

The second student came to my office. "Before I came to law school," he said, "I wanted to be a public defender." Now, this really excited me. "At last," I thought, "a student I really can train," someone who will follow in my footsteps." But that was before he finished the sentence, ". . . but now that I have taken criminal procedure from you, I see how hopeless it all is. All of the decisions are going the wrong way, it just doesn't matter what a lawyer would argue. Now what do I do?" Well this, of course, made me feel even worse. Not only had I failed to combat a destructive attitude, I had helped to create it. In generic form I'd call this attitude: *It can't be done*. It's not quite as powerful an excuse as "it's been done," but this second excuse can be used when "it's been done" just couldn't be maintained. It's older and wiser and it sometimes even draws on the complexities that I try to point out to the student who thinks that it all has been done.

The third student is probably the worst failure though. It was a student that I never met, or at least I never knew that I had met.

This student took criminal law from me. Criminal law is a required first year course and on the class evaluation form he or she wrote: "I hated this course; it shouldn't be required. It was a waste of time since I will *NEVER* practice criminal law." That is, maybe it hasn't been done, maybe it could be done, but: *it's not my job to do it.* Now, it is certainly legitimate to decide not to practice criminal law, constitutional law, or any kind of public interest law, but I think that choosing not to practice in the public sector does not excuse apathy toward public issues. All citizens, of course, have a duty to be concerned about the justice of the legal system, at least as voters. And lawyers have a much greater duty owing to their greater knowledge and also to the greater likelihood that they will influence policy makers.

I failed those three students, and I've thought a great deal about how I can do better with the hundreds and maybe thousands more that I will teach. (Just saying thousands makes me a little nervous.) The easiest step, I think, is enriching what I teach with materials from other disciplines. I don't disagree with Roger Cramton that law is important in and of itself, but I think that if we're thinking about sending lawyers forth as morally-based people who want to do good, then we have to rely on more than just doctrine. Maybe the new psychological data on unconscious racism is what I should have given the first student. Maybe historical perspective on the ideological shifts on the Supreme Court was what the second student needed. For the third, perhaps I should have offered something on the sociology of the legal profession, how lawyers do become legislators and congressmen, or even something about personal ethics. This "enrichment" is not an easy task in one sense—you have to keep up with other disciplines, and that is a fair amount of work. Nevertheless it is a very manageable task.

The second step is more difficult for people who are drawn to law teaching. I think that second step is *nuturing* the visions of justice in our students. We don't think of ourselves as nuturers. I think that, despite what Roger says, most of us still like to think of ourselves as tough and brilliant and in the classroom very, very hard to deal with. I don't think that being demanding is unimportant—I think it's very important. I think pushing students to the limit is probably the unique thing about legal education. But at the same time we do that, we have to see that a lot of students walk out of first year thinking, "I cannot defend anything I believe in," often followed by "And I'm not so sure that I believe in anything." We have to somehow be willing to say to students, "Even if you can't absolutely, totally defend it, it's important to believe it. It's important to

believe if you believe what I believe, and it's also important to believe if you disagree with me."

The third thing that I know would help, but that I don't do very well, is to provide an example. I think I have to try to teach students by my own work—by how I teach, by my research and writing—that I believe in change, that I believe it's necessary, that I believe it's possible, and that I know it to be my obligation. If I expect my students to stake out a position, then maybe sometimes, just sometimes, I should be willing to do so too. I should be willing to take a position in front of them, admitting that it's imperfect, and that I cannot defend it to the wall—and that I'm not absolutely, totally certain about it. An example, of course, is never going to be perfect, but mine could certainly be much better. I think, incidentally, that such an example is almost as important to students that disagree with the professor as to students that agree. I think the importance is not in the substance of the position, but in the willingness to take a position.

Ultimately, I think, the challenge to me as a legal educator is a moral challenge, a challenge, I think, that perhaps faces educators of all sorts. That challenge is to teach the student—and frequently to relearn myself—that knowledge matters. That knowledge is needed desparately even when it is tentative. That knowledge confers power, though not unlimited power, and that knowledge carries with it enormous responsibility.