WHAT THE PROFESSION EXPECTS OF LAW SCHOOLS

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Most of us choose our own titles when we are invited to speak or write about law. At most, the inviter tells us what the general occasion is, and we respond by suggesting a particular piece of the day's larger topic, usually a slice of it that has already been on our minds, and a deal is struck. Occasionally, someone assigns us a topic, but we find it sufficiently large a vessel that we can pour into it pretty much what we like.

The able organizers of this symposium printed my title in the program, and that is how I learned about it. I am glad they did so. Thinking through the title, "What the Legal Profession Expects of Law Schools," has been an interesting experience.

For one thing, the demands of law practice are such that most members of the profession do not actually expect anything at all from their law schools once they have graduated. Lawyers receive most of what they expect from their school during the three years they spend as students. By and large, they take their diploma and seldom give the matter another thought.

On the other hand, the organs and institutions of the profession, such as the bar associations and the courts, and those individual lawyers who pay close attention to legal education and admissions to the bar, actually do form and articulate discrete expectations with respect to the schools. These expectations, of course, are shifting and often conflicting.

In thinking about both the modest expectations of the great bulk of lawyers and the specific expectations of the organization, I have come to rest on five enumerated demands. I list them here, in no particular order, and specifically disclaim any authority or presumption to speak for the profession.

I. HONOR MY DEGREE

I begin with an expectation that I think actually does hold relatively wide sway in the world of working lawyers. It might be the lawyer's twist on a rule prevailing among our physician cousins: "Do no harm to my credential."

In many ways, the career of a law graduate and the career of the graduate's school are intertwined. This intertwining bears some resemblance to the relationship between the careers of judges and their law clerks, described by one appellate judge like this:

> Judge and law clerk are in fact tethered together by an invisible cord for the rest of their mutual careers. The judge will forever appear on the clerk's resume as his first permanent professional employer; she will receive many inquiries about the clerk's performance and character. The law clerk is the judge's emissary to the world; although sworn to secrecy about the court's substantive work, clerks often comment, expressly or by knit of the brow, about the character, work habits, fairness and

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> generosity of the judges they clerked for. Mutual trust and respect are not merely desirable, they are essential.[1]

For purposes of this first expectation, then, one might observe that the school shows itself to the world in the person of its graduates, and certainly the reputation of schools is affected by the performance of its alumni as practitioners. One need look no further than the alumni publications of American law schools to see that most schools believe that the more illustrious their alumni are, the more illustrious will be the reputation of the school.

What is not so obvious is that there is a connection between school and graduate that flows in the opposite direction. A law school graduate often associates his or her own standing in the legal community with the status of the graduate's alma mater. Those graduates whose institutions are rising stars stand a little taller when they go to the bar meetings. This is among the reasons why law practitioners take interest in and are more tolerant of the *U.S. News and World Report* law school rankings than practicing academics.[2] Another reason is that they do not feel the pain inflicted by the rankings in the same way academics do.

Anyway, this chance to move modestly upwards in life along with one's school plays some role in leading graduates to contribute to the success of the alma mater. The new building campaign, the new professorship, or the new lecture series, to name a few building blocks of thriving schools, are all things that likely enhance the value of the ticket which the graduate has received from the school.

This saga in which America's lawyers find greater fulfillment through the world of higher education has run for more than a century. Lawyers and bar associations spent several decades attempting to transfer the training of lawyers from the Nineteenth Century system of reading the law to the present system of university education, believing in part that a trade that required a post-graduate degree in a seat of higher learning would always be thought a more noble or important one.[3] This burnishing of the trade and its schools began ever so

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1. Alex Kozinski, *Confessions of a Bad Apple*, 100 YALE L.J. 1707, 1709 (1991).

2. When *U.S. News & World Report* first published its annual ranking of law schools in 1987, a "shock wave" echoed through the legal community. Frank T. Read, *Legal Education's Holy War Over Regulation of Consumer Information: The Federal Trump Card*, 30 WAKE FOREST L. REV. 307, 307 (1995). One hundred fifty law school deans signed a letter criticizing the survey, while numerous deans and law professors wrote in opposition to the rankings. *See* M.A. Stapleton, *Push Is on for Unranked Guides to Schools*, CHI. DAILY L. BULL., Jan. 10, 1997, at 3; Nancy B. Rapoport, *Ratings, Not Rankings: Why* U.S. News & World Report *Shouldn't Want to Be Compared to* Time *and* Newsweek*—or the* New Yorker, 60 OHIO ST. L.J. 1097 (1999). An article in the ABA Journal referred to the legal education community's opposition to the survey as having "taken on the force of a jihad." Terry Carter, *Rankled by the Rankings*, A.B.A. J., Mar. 1998, at 46. *See also* Jane E. Bahls, *Pinning Down the Best: Ranking Law Schools Is a Free For All*, STUDENT LAW, Mar. 1991, at 14 (discussing educators' general opposition to law school rankings).

3. Students who attended law school "during the first century of legal education in the

modestly, for when AALS established its first membership requirements in 1901, it elected to admit only schools that limited admission to high school graduates.

Our trade has come a long way since then, and lawyers expect we can go further yet. Thus, one of their expectations is that their schools will manage their own affairs so that people will say, "Ah!", when we tell them where we went to law school.

II. TRAIN GOOD LAWYERS

Probably more important on the list of expectations is producing regular crops of able new attorneys. This affects the day-to-day work of practitioners both as professionals and as business owners. This expectation is central to the debate of the last few decades about professional skills education, or lack thereof, in the schools.[4] Back when practitioners carried the entire burden of training new associates, they had no one to complain about if the mission failed. Having turned training over to full-time academics, however, the practitioners now regularly dun the schools to do a better job of it.[5]

Practitioners who are critics on this topic have the sense that overemphasis by the schools on matters arcane to the daily life of lawyering has made it more difficult to integrate new lawyers into that work-a-day world. Accordingly, they

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United States received a very broad education," including the study of government generally. The prevailing view at the time was that legal education should serve both future practitioners and those who did not intend to be lawyers. Robert A. Stein, *The Future of Legal Education*, 75 MINN. L. REV. 945, 947 (1991). By the latter half of the Nineteenth Century, changes had occurred which shifted legal education to reflect a more narrow "professional model." *Id.* at 948.

4. The debate between the practitioner and the academy on this point was highlighted by the "MacCrate Report," a section report of the American Bar Association's Task Force on Law Schools and the Profession, chaired by former ABA President Robert MacCrate. *See* SEC. ON LEGAL EDUC. AND ADMISSIONS TO THE B., A.B.A., LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM (Report of the Task Force on Law Schools and the Profession: Narrowing the Gap, 1992) [hereinafter MACCRATE REPORT]. Many academics criticized the MacCrate Report, asserting that its authors failed to consider current law school practices. *See, e.g.*, John J. Costonis, *The MacCrate Report: Of Loaves, Fishes, and the Future of American Legal Education*, 43 J. LEGAL EDUC. 157 (1993); Richard A. Matasar, *The MacCrate Report from the Dean's Perspective*, 1 CLINICAL L. REV. 457 (1994); Carrie Menkel-Meadow, *Narrowing the Gap by Narrowing the Field: What's Missing from the MacCrate Report—Of Skills, Legal Science and Being a Human Being*, 69 WASH. L. REV. 593 (1994); Laura F. Rothstein, *The Affirmative Action Debate in Legal Education and the Legal Profession: Lessons from Disability Discrimination Law*, 2 J. GENDER, RACE & JUST. 1, 9 (1998) ("The MacCrate Report . . . only begins to address what the mission of legal education should be.").

5. *See, e.g.*, Kathy Biehl, *Things They Didn't Teach in Law School*, A.B.A. J., Jan. 1989, at 52, 52-55; Harry T. Edwards, *The Role of Legal Education in Shaping the Profession*, 38 J. LEGAL EDUC. 285 (1988); Stephanie Benson Goldberg et al., *Bridging the Gap: Can Educators and Practitioners Agree on the Role of Law Schools in Shaping Professionals? Yes and No*, A.B.A. J., Sept. 1990, at 44, 44-50; Donald H.J. Hermann, *Who Teaches Billing 101*, NAT'L L.J., Nov. 12, 1990, at 13.

have taken a high level of interest in the skills movement that has been a matter of such debate in the academy.

Essentially, practitioners seek law graduates who have a basic jurisprudential foundation and as much of a start as possible in acquiring and refining skills in writing and oral communication that are so central to the lawyer's work. I do not plan to spend much time here at the chore of sorting out claim and counterclaim on the subject. Suffice it to say that I take two complementary responses by the schools as respectable replies: that there has been a dramatic increase in commitment to skills education and that practitioners themselves have committed fewer resources to training as time wears on.

On a more elevating level, the profession expects that schools will provide the legal community and society as a whole with fine new leaders. This expectation is perhaps one of the most important emerging issues in legal education and the profession.

The dramatic decline in law school applicants throughout the 1990s has caused dislocations in the schools, temporarily abating the explosion of law school enrollments.[6] All of us have mused on the reasons for this decline. Was it the shrinking number of twenty-two-year-olds? Surely that was one of the causes. But more importantly, why has the percentage of twenty-two-year-olds interested in law declined? Surely, it was not just the cancellation of L.A. Law.[7]

The recent news about dramatic increases in lawyer compensation in Silicon Valley, a phenomenon which is fast reverberating through the rest of the country, has suggested to me yet another possible cause for the decline in applications during the last ten years.[8] In any society, there are only so many people who have both the talent and the opportunity to achieve high professional status.

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6. Between 1990 and 1997, law school applications dropped twenty-seven percent from 99,300 to 72,300. *See* Katherine S. Mangan, *Students' Odds of Getting Into Law School Improve, but Their Qualifications Drop*, CHRON. HIGHER EDUC., Jan. 23, 1998, at A41; *see also* Amy Stevens, *Law Schools See Sharp Decline in Applicants*, WALL ST. J., Feb. 17, 1995, at B1.

7. Perhaps we have met the enemy and they are us. Surely there has been some impact resulting from the spate of popular books lamenting the state of the legal profession, particularly those books aimed at young people and beginning attorneys. *See, e.g.*, WILLIAM R. KEATES, PROCEED WITH CAUTION: A DIARY OF THE FIRST YEAR AT ONE OF AMERICA'S LARGEST, MOST PRESTIGIOUS LAW FIRMS (1997); THANE JOSEF MESSINGER, THE YOUNG LAWYER'S JUNGLE BOOK: A SURVIVAL GUIDE (1996); MY FIRST YEAR AS A LAWYER: REAL-WORLD STORIES FROM AMERICA'S LAWYERS (Mark Simenhoff ed., 1994); CAMERON STRACHER, DOUBLE BILLING: A YOUNG LAWYER'S TALE OF GREED, SEX, LIES, AND THE PURSUIT OF A SWIVEL CHAIR (1998).

8. In the early part of this year, Silicon Valley law firms led the nation in announcing dramatic associate salary increases, putting the base pay for first-year associates at $125,000. *See* Renee Deger, *Firms Fatten Associate Wallets*, RECORDER, Jan. 20, 2000, at 1. Those Silicon Valley firms with Washington D.C. outposts also matched the increases, "putting heat on the local firms to ante up as well." Vanessa Blum, *Would You Believe $145,000?*, LEGAL TIMES, Jan. 31, 2000, at 3. The competition among firms, particularly in the Washington D.C. area, has caused the average starting salary for first-year associates to rise by as much as sixty percent. *See* Antonio J. Calabrese et al., *The Squeeze is On*, LEGAL TIMES, April 10, 2000, at 33.

During many periods of our nation's life, large numbers of these potential stars found law to be attractive, and they filled up the law schools and later the profession.

In the last ten years, however, it has become increasingly apparent that the most profound changes being wrought in society are being effectuated by people in technology. This sea change in the role of technology has altered the relative attractiveness of the legal profession as compared to the world of technology and business. It has caused a larger share of the limited high-talent pool to flow to this part of the American economy, leaving the more traditional field of law with a smaller share of the brightest talent.

As the entry point for the profession, law schools have felt the sting of this trend earlier than the rest of us. We legal employers will as soon reap the same rewards as we find ourselves paying starting technicians nearly as much as we pay starting lawyers.

The schools are also central actors in this war of recruitment. Whether our profession can still be a magnet for the most able in our society is among the most crucial questions confronting us, and the role of the schools in helping make it so is more important today than it has ever been.

III. PROVIDE USEFUL SCHOLARSHIP

Quite aside from turning out good lawyers, schools have enormous potential to contribute to the daily practice of law through scholarship. In addition to their role as trainers of lawyers, law professors as scholars are very well situated to provide new intellectual seed corn for the legal endeavor.

On this score, the profession expects more from its scholars than it now receives.[9] The concentration of American law journals and American law journal writing on matters so arcane that professionals find little use for them ought to be a matter of more candid discussion.

One might expect that the hot journals of our profession would be those in which great debates rage—the journals from places like Berkeley, Chicago, Yale,

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9. Judge Harry T. Edwards has been quite vocal in critiquing legal education on this point. Beginning with the premise that the purpose of law school is to educate future lawyers, Judge Edwards writes:

> For some time now, I have been deeply concerned about the growing disjunction between legal education and the legal profession. I fear that our law schools and law firms are moving in opposite directions. The schools should be training ethical practitioners and producing scholarship that judges, legislators, and practitioners can use. . . . But many law schools—especially the so-called "elite" ones—have abandoned their proper place, by emphasizing abstract theory at the expense of practical scholarship and pedagogy.

Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34, 34 (1992). *See also* Harry T. Edwards, *Another "Postscript" to "The Growing Disjunction Between Legal Education and the Legal Profession,"* 69 WASH. L. REV. 561 (1994); Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession: A Postscript*, 91 MICH. L. REV. 2191 (1993).

and Harvard. Whether practitioners regard these publications as hot items may be measured by considering their circulation. By this standard, the leading law journal in America is not the *Harvard Law Review* but rather *The Business Lawyer*. It has three or four times the readership of the four journals mentioned earlier put together. The most common situation is the journal of five or six hundred subscribers, of whom half are law school libraries and law teachers.[10] It ought to be rather chastening to contemplate that no more than five or six percent of the country's practitioners believe they receive value sufficient to warrant the very modest subscription prices charged by the journals at most schools.[11]

Of course, the propagation of scholarship is hardly the sole purpose of American journals. Plainly, law journals represent an opportunity for students to hone their writing and research skills in a way that is serious and well-organized and connected to seasoned scholars. Surely, this is the main reason why schools have been willing to finance the dramatic expansion of law journals over the last thirty years.[12]

One can accept this internal benefit of journals and still believe that they do not provide all that the profession expects. Whether this can be altered is open to doubt. The internal reward system of the academy is inextricably bound up with this penchant for the arcane. It makes the school's scholarship less useful to the profession than it would otherwise be and therefore squanders a resource that might be more helpful to us all.[13]

IV. CONTRIBUTE TOWARD ETHICAL CONDUCT

It is surely a part of the practitioners' duty to create working environments, in the office and in the courts, in which new lawyers learn and adopt high standards with respect to ethics and professionalism. The bench and bar expect

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10. *See* John E. Nowak, *Woe Unto You, Law Reviews!*, 27 ARIZ. L. REV. 317, 321 (1985) ("We do not need to worry about the consumers of law reviews because they really do not exist. A few professors who author texts must read some of the articles, but most volumes are purchased to decorate law school library shelves.").

11. The MacCrate Report observes:

> Practitioners tend to view much academic scholarship as increasingly irrelevant to their day-to-day concerns, particularly when compared with the great treatises of an earlier era. It is not surprising that many practicing lawyers believe law professors are more interested in pursuing their own intellectual interests than in helping the legal profession address matters of important current concern.

MACCRATE REPORT, *supra* note 4, at 5.

12. The 1970-1973 edition of the Index of Legal Periodicals indexed 387 legal periodicals, while the 1998-99 edition indexed 871. *See* 16 INDEX TO LEGAL PERIODICALS, at ix-xii (Grace W. Meyer ed., 1974); 38 INDEX TO LEGAL PERIODICALS, at ix-xv (Richard A. Dorfman ed., 1999).

13. Hearing these observations, Provost Roger Dennis of Rutgers University suggested that this phenomenon varies according to a school's ranking in the academic hierarchy. It may well be that law journals at the most elite schools are the least connected to the practice of law. If so, the capability-to-contribution ratio in those places is very unfavorable.

that this should also be a central mission for law schools. After all, first year students arrive at the schools knowing relatively little about the law or lawyering, and they acquire from the schools their initial understanding of the basic contours of how their new line of work functions.

It goes nearly without saying that there is considerable debate within the academy about how law schools can most effectively convey the best messages, but the profession as a whole is far from satisfied that the schools have this problem solved.[14] A lack of confidence in the professionalism performance by the schools has lead licensing bodies to impose discrete ethics education requirements on applicants for the bar.[15] The so-called pervasive method used in many schools seems all too often to mean that nobody in the school is actually in charge of assuring that law students learn the fundamentals of professional conduct.

I do not propose to engage you in detailed prescriptions, especially in light of the powerful talents who will tackle this topic later. Suffice it to say that this is a field that the bench and bar see as ranking with contracts and torts. The profession hopes that law schools will stand strong for a professional orientation that will serve graduates well for the long term.

V. HONOR THE PRACTITIONERS

Declarations by law faculty about the work of practitioners come in many shapes. Certainly, alumni magazines (mostly not written by faculty, of course) feature high praise for those who succeed in the mainstream practice of law. On the other hand, one does not have to look very far to find articles or statements that belittle the legal craft as practiced by America's 900,000 lawyers.[16]

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14. One author notes:

> At first-year orientation, representatives of most American law schools tell incoming students that the development of ethical lawyers is central to their mission. At graduation, these same representatives tell the newest members of the profession how diligently the schools have worked to mold ethical lawyers. But the events that unfold in the thirty-three months or so between these announcements reveal a gap between words and deeds, a gap rooted in confusion, uncertainty, and a lack of consensus about what teaching ethics is all about.

Peter K. Rofes, *Ethics and the Law School: The Confusion Persists*, 8 GEO. J. LEGAL ETHICS 981, 981-82 (1995).

15. *See* Ind. Admission and Discipline Rule 13(4) ("Each applicant for admission to the bar of this Court . . . shall be required to establish . . . that the applicant is: . . . A person who has completed in an approved school of law two cumulative semester hours of legal ethics or professional responsibility.").

16. Patrick Schiltz, for one, has been critical of the legal profession—particularly large firm practice—and of law schools' failure to prepare young lawyers for ethical dilemmas. *See* Patrick J. Schiltz, *Legal Ethics in Decline: The Elite Law Firm, the Elite Law School, and the Moral Formation of the Novice Attorney*, 82 MINN. L. REV. 705 (1998); Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52

While the bench and bar expect that scholars/teachers will apply their powers of analysis to the way in which the legal system and the court system perform their duties, they also believe that this critique is best performed under a regime of tough love. They expect that those who are training new lawyers or who achieve positions of public prominence and are therefore called upon to comment about the profession will do so in a way that honors what is good about the trade.

The practitioners also expect that their views will be respected in discussions about the training and continuing education of lawyers. Those who toil outside the academy are entitled to have their observations addressed on the merits. This occurs sometimes, and sometimes it does not.

VI. ON JAMES P. WHITE

Finally, we must pause to recognize the monumental contribution of Jim White to the way in which we American lawyers learn about law. While he would be quick to acknowledge that American legal education is a vast enterprise influenced by a host of leaders and institutions, we can say with some confidence that he ranks with the likes of Langdell and Pound as a maker and re-maker of legal education. Lawyers by the hundreds of thousands (me included) have had their careers burnished by Jim White, usually without even knowing that it has been so. The breadth and staying power of his vision leads me quickly to remarks by Holmes in an 1886 lecture to Harvard undergraduates:

> No man has earned the right to intellectual ambition until he has learned to lay his course by a star which he has never seen—to dig by the divining rod for springs which he may never reach. In saying this, I point to that which will make your study heroic. For I say to you in all sadness of conviction, that to think great thoughts you must be heroes as well as idealists. Only when you have worked alone—when you have felt around you a black gulf of solitude more isolating than that which surrounds the dying man, and in hope and in despair have trusted to your own unshaken will—then only will you have achieved. Thus only can you gain the secret isolated joy of the thinker, who knows that, a hundred years after he is dead and forgotten, men who never heard of him will be moving to the measure of his thought—the subtile rapture of a postponed power, which the world knows not because it has no external trappings, but which to his prophetic vision is more real than that which commands an army. And if this joy should not be yours, still it is only thus that you can know that you have done what it lay in you to do—can say that you have lived, and be ready for the end.[17]

How happy we are, in celebrating Jim White's career, to know that the end is yet far ahead.

VAND. L. REV. 871 (1999).

17. G. Edward White, *Holmes's "Life Plan": Confronting Ambition, Passion, and Powerlessness*, 65 N.Y.U. L. REV. 1409, 1430-31 (1990) (quoting THE OCCASIONAL SPEECHES OF JUSTICE HOLMES 28-31 (M. Howe ed., 1962)).