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THE VIEW FROM MY CORNER OF THE WORLD:
A PERSONAL COMMENT ON THE PROCESS OF
BECOMING A LAWYER

by

LINDA B. KLEIN*

[T]o see how meaning is produced . . . , examine a poem and see the author’s struggle with words; h[er] attempt to render what [s]he wants to say with words, [and] then you come to realize that an attorney does that same thing in thinking about the legal problems [s]he’s confronted with.¹

There are two sides to every story.² Mine, here, is no different in that regard. As a seasoned law student, I am accustomed to dichotomizing issues, on one hand

²Critical Legal Studies proponents (Crits) assert that legal principles and precedents can be found to support any proposition that the lawyer puts forth before the court; hence, the judgment of the court ultimately reflects the value choices, the “politics,” of the judge. See, e.g., R. DWORKIN, TAKING RIGHTS SERIOUSLY 32 (1978); Tushnet, Critical Legal Studies: An Introduction to its Origins and Underpinnings, 36 J. LEGAL EDUC. 505 (1986). Contra, see Rubin, Does Law Matter? A Judge’s Response to the Critical Legal Studies Movement, 37 J. LEGAL EDUC. 307 (1987); Burton, Reaffirming Legal Reasoning: The Challenge from the Left, 36 J. LEGAL EDUC. 358 (1986).

Although I agree to some extent with the Crits’ argument, as yet I am not convinced that such “political” decisions are necessarily wrong or bad in terms of effectuating justice, provided, of course, that the judge has deliberated with earnestness and humility. A significant difference between lawyers and judges, then, is that lawyers are permitted, indeed expected, to wear their “politics” on their sleeves as they champion their clients’ various causes as their own. And in this regard, I believe that it is more ethical for the lawyer to decline a case where, according to her own conscience, she cannot zealously personify a particular client’s alter ego.

Further, “politics” inheres in every human relationship, whether or not formalized by traditional hierarchical structures or acknowledged by status labels, because all parties to a given relationship contribute to its interpersonal dynamics of power and influence. Democratic institutions “distribute” power through laws and the rendering of justice. Therefore, I do not believe that, judges are or should be any more value-neutral in their power-brokering than law professors are or should be in channeling classroom debate. “[T]rust in others and acceptance of oneself is a crucial predicate of meaningful moral discourse. . . . [T]he
as proficiently as on the other hand. With graduation fast approaching, I have engaged in a great deal of reflection on the past three years of my life—three years that have been as frustrating, exhausting, and stress-laden as they have been transforming and uplifting. I am not quite sure what I expected when I began this arduous process of becoming a lawyer. And as much as I doubt that I could do it all again if I had to, I am grateful for having experienced this set of tensions peculiar to law school that have dared me to evolve into who I am now.

"Who am I? What am I doing in the world? What do I want to do in the effort to be self-consciously critical about our [pedagogical] operating assumptions requires us to reveal our most deeply held beliefs." Cramton, Beyond the Ordinary Religion, 37 J. LEGAL EDUC. 509, 516 (1987). See discussion in text at note 18 infra.

3 See, e.g., Turow, Law School v. Reality, N.Y. Times, Sept. 18, 1988, § 6 (Magazine), at 52. I disagree with Turow, however, on his claim that a practicing lawyer cannot set the moral agenda. Because a practicing lawyer does not have the same constraints as the student lawyer, a practicing lawyer can more effectively control the dichotomy of "doing well" (i.e., being successful, in traditional terms) versus "doing good" (i.e., advancing the goals/ideals of society).

4 Professor James Boyd White talks about how first-year students find law school exciting and transforming because they perceive their studies as challenging and purposeful: "Pushed by their circumstances and by themselves as perhaps they have never been pushed before, they find resources they did not know they had and discover themselves under going a profound change: from bright young students to bright young lawyers." White, Doctrine In A Vacuum: Reflections On What A Law School Ought (And Ought Not) To Be, 35 J. LEGAL EDUC. 155, 155 (1986). First year classes are said to be full of life, of questioning and energy, a pleasure to teach for law professors who "help people move into our profession—in which they become like us....." [Emphasis added.]" Id.

In a reply to Crampton's article (note 2 supra), article, Professor Katharine T. Bartlett observes: "Each student comes to law school with certain value preferences, expectations, and predisposition. These represent the convergence of many influences—cultural, familial, religious, political, and so on. These influences interact with the explicit messages and innuendos we convey to our students, often in unpredictable and unintended ways that should make us quite humble about the prospects for shaping students in our own images of ourselves. [Emphasis added.]" Bartlett, Teaching Values: A Dilemma, 37 J. LEGAL EDUC. 519, 520 (1987).

Professional socialization is the process by which recruits "adopt correct attitudes, behaviors, and knowledge that permit entry into the profession's rank. [These] changes in attitudes and values appear to be...of a relatively enduring nature....." Weinstein, The Integration of Intellect and Feeling in the Study of Law, 32 J. LEGAL EDUC. 87, 87 (1982).

5 M. Scott Peck, M.D., writes of the "suffering" without which spiritual growth cannot obtain, in The Road Less Traveled (1978). I strongly recommend this book to all law students.

I do believe that a true part of the rites of passage from student to lawyer is the kind of suffering which results in personal growth; and any student who receives a diploma without gaining an appreciation of and for her own significance has become a lawyer in title only. See discussion in text infra at notes 88-89.

6 See, e.g., Weinstein, note 4 supra, at 88 ("In any profession, the learning process may result in significant amounts of stress on the student, sometimes with catastrophic results. In no profession is this more true than of law."). See also Law, The Messages of Legal Education, Looking At Law School 92 (Gillers, Ed.) (1984); Mudd, Beyond Rationalism: Performance-Referenced Legal Education, 35 J. LEGAL EDUC. 189, 189 192-93 (1986); Dickerson, Psychological Counseling for Law Students: One Law School's Experience, 37 J. LEGAL EDUC. 82 (1987); Benjamin, Kasznia, Sales, and Shanfield, The Role of Legal Education in Producing Psychological Distress Among Law Students And Lawyers, 187 AM. B. FOUND RES. J. 225 (1986)[hereinafter Benjamin].

7 Yes, I have been challenged. Whether my response has been one of fortitude, defiance, chutzpah, or an admixture thereof, you decide.

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world?" Ideally, these questions, reiterated continually, lie at the heart of a legal education. And yet, institutionalized legal education is primarily at odds with individuation, with maintaining an identity of "self" distinct from the inbred traditionalism of the profession (whose ranks annoint stereotypical graduates with talismanic acceptance).

This comment attempts an interlocutory answer to the questions asked, and in that context offers reasons why the student lawyer must search for her own truth and establish her own voice. My response is necessarily a personal statement. Moreover, acknowledging my commitment to my own legal education and respecting my professional calling, it is personally necessary.

This comment critiques several aspects of legal education that collectively devolve into what I perceive generally to be a self-perpetuating, institutional dysfunction: a traditional pedagogy, a stifling epistemology, and a myopic standardization. It is my contention that, overall, legal education as presently constituted tends greatly to impede, rather than encourage, students' spiritual and emotional growth as individuals. In both its form and content, this comment confronts directly the conventionalism of law school. Instead of writing one more Law Review article that lacks originality, is boring, humorless, and too long, and has

8Cramton, Beyond The Ordinary Religion, 37 J. LEGAL EDUC. 509, 510 (1987) (citing H. Lesnick, Remarks on Teaching Alternative Dispute Resolution, Harvard Law School, Oct. 9, 1982 (unpublished ms.), at 1-2.) Professor Roger C. Cramton, through Lesnick, describes meaningful education as a process of employing a subject matter (e.g., torts or contracts) as the conceptual framework for teaching people to be people, to be more human. Id. This epistemological characterization of "quality" education pervades the arguments raised by virtually all of the academicians cited in this comment.


Law lives; it has a pulse that is internalized by every lawyer whose compassion and commitment permeate her professionalism, whether as a student, a teacher, jurist, or practitioner. See the discussions in text infra on empathy and virtue, and note 26 infra (on professional "calling").

10By "standardization," I mean not only the pressures on the student to conform, to be "molded" into the image of "lawyer," as discussed in note 4 supra, but also the sameness of legal education at the institutional level. "[L]aw school curricula and pedagogy are highly standardized[.]" Dickerson, note 6 supra, at 83.

I agree with White, note 4 supra, at 161, that ideally the law school environment will provide a "liberal education, i.e., as the development of [students']... own individual capacities, [and] not as a training into some sort of sameness[.]. ... [T]he knowledge with which a true education is concerned is never repeatable data, but knowledge that entails a use or activity—a knowledge of practice that is a kind of action, including a kind of invention or creation." In the real world of attorneys and clients, legal doctrine "must be learned--and that means rethought, reconstructed—and over and over again, from many points of view." Id.

Similarly, according to Professor Thomas D. Eisele, the fundamental role of legal education is not to indoctrinate students, but rather to equip them to become virtuous critics of their own culture; and the teaching of virtue is only by active example. Eisele, note 9 supra, at 503.

Sol M. Linowitz laments the increase in technological expertise at the expense of the "human side" of law practice, and concludes that "a lawyer's need for a broad education is as great today as it was in
too many footnotes, I am seeking to demonstrate herein a creative expression that I believe can and should be fundamental to the law school experience. Some readers will dismiss me as merely chasing rainbows and/or fighting windmills. But if in fact I am, then I prefer to go down swinging.

Full Tilt

What a waste to mark time due to boredom,
Or to abnegate ‘self’ into whoredom;
The complacent are losers,
While Living’s for choosers
To become neither blind, deaf, nor more dumb.

There are rules that deserve to be broken,
On principle as well as in jokin’ —
So long as the daring
Arises from caring
And affection that’s not just a token.

Though the Earth’s gonna go to the meek,
And elitists define what is chic,
To elicit the flavor
Of all there’s to savor
Is to function at optimum pique.

Jefferson’s time, when leaders of the bar agreed that “a lawyer should know accounting but needed to know philosophy; that for understanding the idea of a contract, acquaintance with anthropology and psychology was apt to be more valuable than case law; that you could often learn more from great novels than from law books. [Emphasis in original].” Linowitz, Law Schools Must Help Make the Practice of Law the Learned and Human Profession It Once Was, The Chronicle Of Higher Education 52, 52 (September 14, 1988).

As admitted at the outset of this comment, by now I am fairly adept at dichotomizing, hence rationalizing, issues; like the Jeff Goldblum character in The Big Chill, I cannot remember the last time I went for a week without rationalizing. In order to obtain permission to write this paper (and satisfy the standards of the Law Review Editorial Board), I had to promise to provide authoritative footnotes. How does one go about finding other authority for one’s own, “original” thought? (By speaking my truth, based on my reality, in my own voice, am I not my own authority?) So here too, in comparison to the way most law students write a string-cite paper, my approach to the task was necessarily atypical. Basically I knew what I wanted to say and had already written some poems and bits of prose in a notebook that eventually became my journal. (Cite as “KLEIN L.J.”?) My proposal to the Editor was for this Comment to include some of these contemporaneous expressions of my thoughts and feelings. And then I began to write more, piecing together the “then” and the “now” — and finally filling in the holes with reference to some of the readings that had already become part of my gestalt, as well as to articles culled from entire volumes of periodicals perused to find “support” for my contentions and reflections. (That I encountered so many scholarly articles on issues that related to and “substantiated” my claims in a very telling point of itself.) I will have set no mark for efficiency, and will have spent more energy on this project than I could easily afford this semester (because of responsibilities to coursework as well as to life outside of law school), yet the result will be far more
Third floor, southeast corner—that is my post: a strategic vantage point in this law school's library, allowing me a panoramic view of goings-on and ready access to the copier machine, the restroom, and professors en route to and from the elevator. Over the past three years, I have become almost a fixture in that spot, my own seat merging with the chair underneath after long hours of study, until extricating myself sometimes is physically difficult. So much have I become identified with my station in the library that many passers-by wonder if I ever leave. I do—not much, not for long. It has been my home-away-from-home and the locus from which some of my most productive efforts have been inspired and generated. It is also that perch which has afforded me the most insight into what it means to become a lawyer.

_Expectations_

Writing yet another page  
Filling up the lines  
Across and down  
Words strung together  
With naivete of their face  
Who knows  
Meanings hidden between  
Like a short-sheeted bed on a cold night  
When blankets' security calls you in  
There is always something to chuckle  
About my life  
Of circles  
And rationalizations  
So many ironies  
Abound inside out-of-time frames  
Spellbound sometimes  
But I can't spell worth a darn  
And my socks have many holes  
It's a wonder that I function at all  
Plodding ahead  
This head and heart seek healing  
Tearing through many a parts

satisfying than had I completed the assigned paper on legislative responses to the stock market crash! The significance of this comment is that, except for the quotes from "authorities," it will be as much of "me"—of my reality and my truth, in my own voice—as I have been able to articulate. Ultimately, the compromise was worth the principle paid. Now, at last, I feel as though I am ready to become a lawyer!

"Each precedent and each case, said [realist legal philosopher Herman] Oliphant, 'rests at the center of a vast and empty stadium. The angle and distance from which that case is to be viewed involves the choice of a seat.'" Golding, Jurisprudence and Legal Philosophy in Twentieth-Century America—Major Themes and Developments, 36 J. Legal Educ. 441, 456 (1986).
In juggling priorities
My fate in the balance tested
Trying to find expressions that suit me
Well-dressed when I am required
To wear the proper hat
For the effective heel
And my feat is aching from the strain
Without giving-up or giving-in
Merely because I am expected
To finish this paper
As though the last word were ever to be
Graduation.

The study of law is especially difficult for a poet. In part, the difficulty is a result of the pedagogy typical of today's law schools. The remainder is a function of the nature of a student whose heart is full and whose mind invariably finds more questions than answers.

So much of the lessons daily presented seem to have little relevance to the real meaning of Law. Students learn general rules and exceptions thereto, memorizing particular applications of line-drawing. Yet the picture that emerges is more of a cartoon, indeed a caricature, than a Seurat canvas. Classroom discussions rarely permit delving into philosophy, ethics, or morality, because too many of the students do not care, and the few that do care learn early in the game not to "digress" too far from the syllabus. It is as though a pernicious conspiracy of silence

15 See White, note 4 supra, at 155-60. As White describes it: students and teachers alike perpetuate this caricature, a self-fulfilling prophecy, because their mutual expectations change after the first-year experience. At the root of this problem is the fact that continued use of the case method of study, once mastered by the students, "becomes repetitive, boring, and routine. A wonderfully exciting educational experience degenerates into a mechanical and empty ritual that robs it of almost all value, a transformation in which both sides are complicitous."

16 According to Professor Patricia D. White, law students generally are philosophically very unsophisticated, and law school curricula do not provide well, if at all, any meaningful opportunities to delve into the nature and conceptual foundations of Law. P. White, Teaching Philosophy of Law in Law Schools: Some Cautionary Remarks, 36 J. LEGAL EDUC. 563, 564-66 (1986).

17 Professor Edwin H. Greenbaum sees the collusion in terms of preserving conventional status identities, the roles and relations of faculty vis-à-vis students. Faculty want to protect their elitism, and students would rather not test their own power for fear of failing to be accepted as "lawyer," as an equal. Greenbaum, How Professionals (Including Legal Educators) "Treat" Their Clients, 37 J. LEGAL EDUC. 554, 572 (1987).

18 The silence can be deafening to anyone who is actively listening.
develops among students and faculty: the students' apathy and passive resistance translocates as "teach us only what we must learn to pass this course and the bar examination," and the faculty (for whom retention, tenure, merit increases in salary, and promotions are often significantly affected by student evaluations of teaching performance, and who also are wedded to comfortably-worn lesson plans and "coverage" requirements) all-too-willingly acquiesce. Preparation for regular classes is a waste of time, according to most students, because their clerking jobs are much more important and, besides, only the final exams "count." Many courses are reduced to learning black-letter law, with each final exam representing an opportunity for students to regurgitate memorized rules of law on issues that jump

On the tacit rule about maintaining the silence, Professor Cramton describes a passive acceptance of the pervasive practice of ignoring fundamental moral issues and ethical conundrums. Cramton, note 8 supra, at 512-13. "[T]he approach of implicity answering fundamental questions by not asking them pervades legal education: it is in fact the not-so-hidden message of law school.... [I]f teachers and students do not address these questions and struggle to articulate the best answers they can discover and defend, [then] they answer the questions by ignoring them. There is (to borrow from Sartre), quite literally, 'no exit.' [Emphasis omitted.]" Id.

The silence may be due in part to the discomfort created whenever serious issues are discussed in a rather public forum; and yet I suspect that this "given" is exacerbated by the fact that faculty do not want to subject their most deeply-held convictions to students' scrutiny, or to abdicate any power, real or imagined, or expose themselves as "vulnerable" in any sense of that word. But what better forum is there for similarly-situated students than school, where mistakes should be allowed as a part of innovation and learning (See White, note 4 supra, at 157) to engage in such important reflection and introspection?

According to Professor Bartlett, "We have not succeeded in teaching our students about who they are and how they will relate to their profession unless we have truly helped them to find their own answers to the questions Cramton asks." [Emphasis in original.] Bartlett, Teaching Values: A Dilemma, 37 J. LEGAL EDUC. 519, 520 (1987).

In this vein, law professors should not be

reduced to moral silence. Complacency is an awful habit to induce in professionals. Our legal institutions are comprehensible only in light of our cultural and our societal beliefs. To say nothing of those beliefs, or of our students' reactions to them, is to leave the law incomprehensible except in its most desiccated and mechanistic form. A student incapable of discussing law in its cultural setting is largely incapacitated from becoming an excellent lawyer. Shane, Prophets and Provocateurs, 37 J. LEGAL EDUC. 529, 530 (1987).

9 See note 15 supra.

20 In most courses, there is no "credit" towards one's grade for class participation, and little or no penalty for lack of participation. Especially in the first year, when the race begins for class rankings and every student starts off from "square one," there is more of a determined effort on the part of each student to do well. Discouragement comes easily, however, even for a student whose competitive instincts are most fulfilled by doing the best that she can for herself rather than in comparison to her classmates. Nevertheless, all students appreciate positive feedback. (See discussion in text infra at notes 42, 52, and 93.) note 15 supra. Instead, Typically what students receive instead is on the order of "too little, too late." For one thing, "the standard law school examination tests a rather limited range of abilities." White, note 4 supra, at 157. For another, "[d]elayed reinforcements that are not plainly connected with discriminated behaviors, such as grades at the end of courses, are not effective as the immediate rewards of approval that follow specific events. [Emphasis added.] Greenbaum, How Professionals (Including Legal Educators) "Treat" Their Clients, 37 J. LEGAL EDUC. 554, 561 (1987).
Law school, the caricature, is but a challenge to endurance and a testing of acquired knowledge—not necessarily integrated knowledge, and certainly not wisdom. Students win no official points for their own search for Truth, but rather only for their mastery of skill in parroting each professor's mindset in blue-book form.

During the second week of this semester, an exasperated freshman heaved her books onto the library table near where I study; she looked at me seeking some sort of guidance when she all but cried, "I didn't come here for a lobotomy!" I knew exactly what she meant. A typical third- or fourth-year student probably would have responded with such words as assurance as, "Don't worry. It's all downhill after the first year." But I did not share that view; my truth might have discouraged her. Perhaps she too had first arrived at the doorframe of this new life full of exuberance and determination to educe lofty aspirations and noble convictions. How could I have told her that her struggle may well be just beginning; that the hardest lesson was in assuming responsibility over her own edification; and that the proper reference point is not in terms of how much she will come to know, but rather in terms of how much she will always have yet to learn? "The recognition of ignorance is the beginning of wisdom[.]

By more or less obfuscating the rules of law during class discussion, yet asking exam questions that presuppose mastery of those rules, we force students to devote their review time to trying to piece together the black-letter law that we profess to regard as relatively unimportant. It would be hard to create a worse environment in which to move beyond rote learning." Bryden, What Do Law Students Learn? A Pilot Study, 34 J. LEGAL EDUC. 479, 504 (1984).

According to Professor White, note 4 supra, at 158, law school exams commonly do not test everything that matters in the practice of law; and the purely competitive impulses stimulated by such exams are a very poor basis upon which to rest a professional life or one's professional satisfaction.

To venture beyond merely accumulating information through casebooks and lectures, the law student must envision herself as a maker of new information, of new law, of an ever-evolving reality.

Professor White, note 4 supra, at 162, confirms that the important lesson in law school is how to learn the law—not in terms of repeatable propositions, but "how to do it and how to make it." Because "[a] good law school is . . . a school of law-making . . ., the proper focus of attention is not on what the student is learning to repeat or to describe but what she is learning to see and to do; on the doctrine or language of the law not abstracted from experience, but embedded in it, as the object and medium of thought, expression, and intellectual action." And at 164-66, he discusses the utilization of the language of law to create new social realities, through an educational process in which each participant's contribution emerges from her own context, her own construct of reality.

Every belief must be tested by one's experience, evaluated for consistency with other beliefs that one has found useful and reliable, and compared with contrasting views. . . . [W]e [must] use our minds to discover what is required of us. Being fully human is being rational as well as intuitive and insightful. Openness to new experiences and insights, constant reformulation of beliefs based on new knowledge, a tolerance for other views that are basic elements of the method by which we can arrive at closer approximations of the truth.

Cramton, note 8 supra, at 515.

I began law school as an evening student (hence, part-time) but switched (because of my basic masochism?) to full-time studies just to be able to say that I'm now a third-and-a-half-year student.

Eisele, supra note 9, at 497.
In order to truly appreciate responsibility of an individual *qua* lawyer, a student must first recognize and accept her responsibility to “self.” The essence of being a lawyer is the ability to identify, articulate, and champion the interests of each client. We work within a legal system, a set of parameters, to effectuate those immediate objectives. We revere Law, and yet sometimes we must attempt to change a particular law, on behalf of a client, in pursuit of justice. And, ultimately, if we, one-by-one, succeed, then the framework itself changes. And that is how it *should* be! The needs of society are not stagnant. Technology, demographics, economics, politics, natural phenomena—all these (and more) factors impact on our lives, thereby creating new dilemmas, new choices, new situations in which right and wrong are not so clearly delineated. And we must preserve respect for Law as it evolves by ensuring that our advocacy is both moral and ethical. Therefore we must evolve, too. Unless we constantly, critically examine “who” and “what” we are as *individuals*, however, we, and society with us, drift along aimlessly, amorally, without a sense of mission or appreciation of our calling.\(^\text{26}\)

\(^{26}\) “Without a moral compass to guide us — a framework that gives significance to alternatives and their rationale — we are adrift.” Cramton, note 8 *supra*, at 513.

Law schools ought to manifest more of a distinction between law as a professional calling versus a station in life achieved through a business or trade, according to Professor Cramton, by balancing pure technique with compassion. *Id.* at 510-11. “To the extent that law students and lawyers become single-mindedly absorbed in status and gain, law ceases to be a profession and the law school becomes merely another training school. As law . . . become[s] commercialized . . . , a business mentality comes to dominate,
Incumbent upon legal educators, individually and collectively, is to engage in the same type of critical examination. From the institutional perspective, the salient questions are: (1) Will graduates of this school be professionally competent (in the broad sense advocated herein)?; and (2) Has this school given its best efforts toward that end, in terms not only of the students who obtain their diplomas, but also of those students who drop out rather than flunk out?

Many of the "best and brightest" students in my freshman class are no longer in school; and of those that "toughed it out," a significant number took leaves of absence. Sensitive law students internalize the prevailing diametricals and therefore succumb more readily to stress and systemic fatigue. These students have great difficulty overcoming law school's impersonalization and standardization. Is this aspect of the natural selection process, in Darwinian terms, desirable? If those students who survive are the "fittest," then I submit that in this instance the term is euphemistically misleading. Should mere "survival" be the countenanced goal, and is adaptability (here, conformity re the caricature) the singular operative condition? I say no. I say that the student should feel inspired to thrive, rather than simply endure. Law school is where the aspiring lawyer should be learning that there must be more to lawyering than shrewd gamesmanship. Instead, law school has become the proving grounds for manipulators of the "system," where shortcuts and

with efficiency and reward as the only goals. . . . A sense of calling is essential for law teachers and students." Id. at 511. Searching for truth as well as for "good" ought to be the central commitment of legal scholarship because "law schools have an educational responsibility to deal with the larger normative issues that infuse the application and use of legal technique." Id.

27 Professor Harvey M. Weinstein, observes that the highest drop-out rate during the first year is among those students who were concerned with people, who valued human contacts, and were friendly, sympathetic, and loyal. Weinstein, The Integration of Intellect and Feeling in the Study of Law, 32 J. LEGAL EDUC. 87, 93 (1982). Studies have shown that although the number of fact-oriented, "thinking" students comprise a far greater percentage of enrollment over "feeling" students, the drop-out rate among the latter is twice as high as for the former. Barkai, Empathy Training For Lawyers and Students, 13 Sw. U.L. REV. 505, 506 n.6 (1983). Further, it "appears that the law school educational process itself affects individuals rather than that certain types of individuals choosing to enter law school overreact to the process because of their unique and rare vulnerabilities." Benjamin, note 6 supra, at 247.

28 For sensitive students, specific stress effects include "a heightened antagonism toward teachers, decline in commitment and involvement, occasional withdrawal, and development of cynicism. Some [of these] students become more cynical and less humanitarian." Weinstein, note 27 supra, at 93.

29 Does the law school structure "applaud" or "advance" the students whose emphasis is on "doing good"? It is necessary or proper to crank-out "thinking" types at the expense, effectively, of the "feeling" types? What would be the result if law school made a commitment to all students as individuals so as to facilitate the students' evolution as "whole" persons, lawyers, who are capable of thinking and feeling?! Moreover, if efficiency and effectiveness are valuable attributes to be honed in this process of "learning to think like a lawyer" — or, more fully, in becoming a lawyer — then ought not we examine the by-products and end-products with greater scrutiny to ensure that the "waste" being excised is not in fact a treasure trove. At the heart of the matter is that the heart matters!

"[L]aw school tends to engender fear of failure in students. That only a few can be near the top of the class is a 'result [which] can be emotionally disastrous for the majority of students, since part of their ego-ideal . . . is a notion that failure is anything less than competitive success.' [Emphasis added.]" Bergman, Sherr, and Burridge, Learning From Experience: Nonlegally - Specific Role Plays, 37 J. LEGAL EDUC. 535, 541 (1987) (quoting Stone, Legal Education on the Couch, 85 HARV. L. REV. 392, 423-24 (1971.).) [hereinafter Bergman].
loopholes are pursued as ends in themselves. And oh, what a cold and calculating web we weave when we become so practiced in deceiving ourselves!\textsuperscript{30}

The integrity of the legal community rests, ultimately, on the integrity of its members. How does a relatively naive (i.e., inexperienced, emotionally and epistemologically immature) person develop a comprehensive sense of "self"? How does anyone learn to appreciate her own reality and effect her own truth,\textsuperscript{31} so as to establish and grow confidently in her own voice,\textsuperscript{32} when her learning environment offers little or no positive reinforcement of her individuality?\textsuperscript{33} Within the not-so-hallowed halls of institutionalized legal education, the driving forces of either competition for a lucrative job or simply getting-by and getting out, promote taking the path of least resistance (i.e., conformity re the caricature), without much pause for genuine reflection or introspection. Because the aggregation of grades on final exams\textsuperscript{34} is so often the sole qualifier, institutionalized legal education favors "automotons" by making available the brass ring to anyone whose timing is good and whose reach is adequate;\textsuperscript{35} for those students, there is no conflict between "doing good" and "doing well."\textsuperscript{36}

\textit{The Cowards' Way}

\begin{quote}
A maizing  
Not even brief puzzlement as  
Pop colonels hie from any heat of challenge to  
Their game of getting in and backing out.  
No danger courses through the gut  
When hooking onto studied guides  
And ever rushing past
\end{quote}

\textsuperscript{30}Professor James E. Elkins also couches his observations in terms of deception. See note 45 \textit{infra} and accompanying text.

\textsuperscript{31}See generally note 11 \textit{supra}.

\textsuperscript{32}See generally \textit{id.} and C. Gilligan, \textit{In A Different Voice} (1982).

\textsuperscript{33}See note 12 \textit{supra} and note 37 \textit{supra}.

\textsuperscript{34}According to White, \textit{supra} note 4, at 156-58: There is a cost factor associated with the overall practice of grading and ranking students based on exam performance. This practice fuels the already competitive instincts of law students. Those students whose exam performance might otherwise improve, can quickly become demoralized because they are led to believe that low grades denote inadequate minds. \textit{Id.} at 157-58. When results do not approximate students' initial expectations, their self-esteem may be irreparably damaged; thus, they are likely to resign themselves into accepting "a lower rank in the world." \textit{Id.} On the other hand, grades, as predictors of "success," may provide a false sense of security for students at the top of their class. \textit{Id.} at 158. These students "are invited to have a rather exaggerated sense of what their capacity to perform on these tests actually means: about their minds, about their need for a more general and thoroughgoing education, and about their likely success in the world." \textit{Id.}

\textsuperscript{35}See also Benjlin, note 6 \textit{supra}, at 243, 247-52.

\textsuperscript{36}See notes 20, 21, and 29 \textit{supra}. Where law students can reduce a course to the black-letter law and professors' exams inherently reinforce that practice, a legal education on such terms "trivializes law and education alike." White, note 4 \textit{supra}, at 158. The whole experience for the student comes "to feel like a charade, a complex way of doing something that is at heart rather simple and unimportant....Legal education seems no longer to be learning to think like a lawyer but learning to think like a bar exam." \textit{Id.}
The fraternity of humankind is a no wake zone.
Tunneled visions of knowing
Toward a light at such end and odds
Blind
The last turn for accountability
Before the scales of poetic justice.

"[R]igorous examination of our beliefs in the light of experience, data, and competing views — a dialectic process involving earnest and serious conversation with oneself and others — can produce a set of beliefs that are more consistent with one another and with what one knows, beliefs that are likely to be a closer approximation to the truth."37 What is the merit in and result of someone being "true" to herself, however, when that "truth" is adopted perfunctorily or obtained vicariously?38 At what point, if any, does traditional pedagogy allow students to develop and trust their own power and autonomy?39 If we are not responsible enough to judge ourselves, to be our own severest critics, then how — on what basis, on whose terms, against whose values, with what notion of the meaning of justice — will we assess our clients' cases, or any important issue?40 A legal education which fails to stimulate intellectual41 curiosity and latitudinal thinking, or to support oppor-
tunities for its participants’ emotional and spiritual growth, is itself of questionable integrity. As an impersonal interposition of rules in reference to monolithic events and fungible personae, Law is reduced to the lowest possible common denominator—the same for students as for clients. The practical result of a systematic “processing” of law students, then, is a plethora of “reasonably competent” techniques and specialists, but a dearth of bona fide counselors-at-law, and ultimately a host of “image” problems for the profession as a whole.

Lawyers claim a special role in society, by their own demand as well as by the demand of their constituency. The image of the legal profession, therefore, is one that the profession has taken upon itself and is accorded, for good as well as for bad. Depending upon the extent to which the legal profession answers its own calling by meeting society’s needs and expectations—not only on a lawyer-by-lawyer or client-by-client basis, but also in general terms of advancing moral and ethical considerations per se—the legal profession’s reputation is deserved. “Ethics cannot, if we are to avoid the entangling net of personal and social deception of the traditional profession ethos [of ‘doing good’], exist without a critical perspective…. Tradition, doing what others do, may no longer be enough to avoid moral failure.”

Even a cursory exposure to legal philosophy reveals some of the moral and intellectual education one can obtain or imagine. [Emphasis in original.]

White, note 4 supra, at 161.

42 Even in term of conventional notions of competence, how effectively are law schools doing their job? Professor Greenbaum, note 17 supra, at 559-60, discusses the importance of clinical training in relation to cognitive learning. He observes that jurisprudential concepts, the substance and processes of the law, are subtle, complex, and uncertain; hence their reality will be resisted by “clients” (persons receiving any professional service, i.e., including law students) who seek well-defined and certain solutions. Id. Where clients feel accepted and able to participate such that they envoke a willingness to expose confusions and to express possibly erroneous conceptions, or where the ethic is to make one’s own discoveries rather than merely accepting descriptions and exercising logic—these are the contexts that facilitate cognitive learning. Id. Although the Socratic “ideal” satisfies this facilitating environment, the ideal is rarely encountered in typical law school classes. Id. at 560, n. 15.

43 Professor Greenbaum, id. at 572, observes that the interpersonal dynamics between “professional” and “client” (including law students) are such that at times the professional assumes the role of the client as “learner;” the professional elicits a client’s help in defining the client’s needs so that the professional can make a proper assessment of the matter at hand. Professionals who prefer can make a proper assessment of the matter at hand. Professionals who prefer to solve problems by the technical application of rules, however, have great difficulty accepting the reality that not all dilemmas can be resolved thereby. Hence, rule technicians are loathe to seek help, including the client’s, as if it were an indication of lack of expertise. Id. Essentially, their notion of “competence” is self-falsifying, and the relationship tends to disintegrate due to a lack of trust by the client. Id.


45 Elkins, The Reconstruction of Legal Ethics as Ethics, 35 J. LEGAL EDUC. 274, 282 (1986) (Essay Review of T. SHAFFER, AMERICAN LEGAL ETHICS (1985)). “And so we struggle with those stories which give us identity and root us in communities that both make and undermine the possibility of a moral professional life.” Id.

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ethical dimensions and conundrums in American jurisprudence. If we as a civilized society are bound by the Rule of Law47 and believe that its ultimate purpose is to effectuate justice,48 then what is the proper role of lawyers and judges toward that end? If members of the legal profession fail in their special responsibility to the "community of interests," then who else could or should be our spokespersons, our standard-bearers? Who is best qualified to define issues, articulate values, or promote Law as a normative paradigm and as a prophylactic against tyranny? What, after all, is liberty, and what is its importance to our Constitutional scheme of self-government? At the core of all these questions is whether Law can evolve — as it must in order to remain "legitimate"49 — without continual infusions of creativity. I submit that it is the "cutting edge" of the law that best tests skill and judgment, and thereby defines the true measure of professional competence.50 At this situs there is no black-letter law. Incumbent upon our schools of law, then, is the charge to encourage rather than to truncate students' independent thought — to engender a particularized sensitivity to human drama rather than to sterilize or program minds into passivity.

The Price Of A Law School Education

Teacher
Acknowledge me
I am in this class
By myself
Searching for answers
Yet still
Going nowhere
Fast
Becoming indistinguishable
Systematically processed
Cheese-smiling
Panned
In a flash
Snapped
Through
Wasting lives
My turns
Aweighing

46 See, e.g., Golding, Jurisprudence and Legal Philosophy in Twentieth-Century America—Major Themes and Developments, 36 J. LEGAL EDUC. 441 (1986).
50 Contra, Turow, note 3 supra, at 71.
A primary function of law school is in the teaching of problem-solving skills. Although an individual student may be adept in analyzing and applying context-specific information, she must be taught how to "transfer" and adapt those performance skills to contextual variations. 51 Accepting this empiricism, who is to teach the law student that she can and should project and adapt her "private context" coping skills to external situations? Moreover, the student must first develop enough confidence in her own private context-specific problem-solving skills; yet how is she to accomplish this intermediate goal unless she is not only willing and able to test herself but also accorded the "freedom" to make mistakes and learn from them via appropriate feedback? 52 In other words, how does a law student become, and believe herself to be, a competent lawyer in the real world of practice? The psycho-social dynamics of classroom interaction can do much to assist or impede a student’s evolution, the personal and professional dimensions of which I see as inextricably intertwined. Professor Thomas D. Eisele’s discussion of virtue and excellence, alternate transliterations of the Greek word arete, is pertinent here:

[H]ow we [professors] treat the[ ] [students’] questions is a part of how we treat them. Hence, we also are teaching them about respect for persons, or disrespect.[ ] . . . [The manner in which we prepare and present our lectures teaches our students] that these are matters about which a competent adult can honorably and profitably spend a lifetime thinking and caring, or that they are matters that do not require (or deserve) thought or care. Also, we are teaching them what it is to care about something deeply, and to make it an important part of one’s intellectual and emotional life. . . . [How we deal with our own mistakes (honestly? consistently vis-à-vis others’ mistakes?) teaches] our students what a mistake is,

51 Mudd, note 44 supra, at 201. Professor John D. Mudd adds that only where information is translated into the learner’s way of attempting to solve a problem can that information be used effectively; and not unless the information presented in context-referenced will the student understand its relevance. Id.

52 "Allowing students to utilize and adapt their own experience to new situations is strong reinforcement of their own abilities. It encourages them to use new skills with confidence and eagerness as opposed to self-doubt. . . . Identifying analogues requires perspective and analytical skills[.]” Bergman, note 29 supra, at 553.
about the pain that correcting a mistake entails, and the worth
of enduring such pain for the value of the result — namely,
something closer to the truth. Or we may be teaching them
what hypocrisy is, and that we love something else more than
the truth — our pride, for example. . . . [W]e teach virtue in
the most immediate, most personal way possible: We teach
it through ourselves as models, exemplifying virtue (or vice)
in our own personal and professional lives.53

Law cannot be learned nor can competency be tested in a vacuum because Law
is not practiced in a vacuum. Law is not a mere abstraction. Law is an officially-
sanctioned54 synopsis of human drama, of moral dilemma, of ethical resolution of
conflicts that need not always find their way into a courtroom.55

Yet when you, the reader, contemplate your own classroom experiences, what
image comes into your mind's eye? Cases, endless cases — in almost every course
we all have gone through the same monotony of reciting facts, issues, holdings, and
sometimes a discussion about rationale. In this way, by reinforcement through
constant repetition, we are taught to be case-oriented, i.e., to focus on the adversarial
aspects of the law — rather than on conciliation, on building bridges and creating
harmonies out of discordance. By limiting our epistemology to abbreviated facts and
points of law, we lose sight of the inherent reality that the case names denote personal
tragedies of one kind or another.56 And if, say, in criminal procedure, family law, or
probate law, we stay the awareness level of the discussion to that one substantive
body of law, then our problem-solving skills will tend to remain compartmentalized
as context-specific.57

53 Eisele, note 8 supra, at 507.
54 On the role of sanctions in law and morality, see, e.g., Johnson, Moral Positivism and the Internal Legality
55 "Why teach only in a combative way," one Harvard student asked, "when the actual work of lawyering
involves collaboration, negotiation, settlement, and management?" Wald, Women in the Law, TRIAL 75, 75
(November 1988).
56 "Somehow, in the preoccupation with legal logic, the humanity of the participants in the legal process is
lost. . . . Why this extraordinary lack of interest in the people who are the subjects of the leading cases? It
is as if a deliberate effort were being made to dehumanize the law, to transform the law into an abstraction
that has no relationship to an individual." Diamond, Psychological Problems of Law Students, LOOKING AT
57 The inclusion of legal ethic courses in contemporary curricula is probably better than no formal
acknowledgment by the profession of the need for elevating the acceptable standard of lawyers' conduct.
Taught as a separate course, however, ethics too becomes "compartmentalized."

As Turow, note 3 supra, at 73, observes:

[What gets called legal ethics is . . . really a series of definitions of what a lawyer is and is
not [according to the] profession's own vision of itself. . . .] What is seldom admitted in law
school [is] that these rules are no different from many others, sometimes ill-advised, usually
subtle and indefinite at the margins, and occasionally in conflict with one another. Without
some reference to a lawyer's real-world function, the difficulty to them is not likely to be
appreciated.
Moreover, those problem-solving skills will become predisposed toward litigation—path which, trodden down by case after case after case, offers the most familiarity. The case method effectively conditions us into a "court-battle" mindset. Given the delay, cost, and anguish that can often be mitigated, if not avoided, most clients would probably prefer negotiated settlements. If we listen well, I believe we would then hear a client's truth as she needs and ought to be heard.

A lawyer must be able to listen as well as to speak, in order to engage the client in meaningful dialogue. These exchanges of thought and feeling, i.e., communication, must pass between the lawyer and her client given the same care and skill as between the lawyer and the institutions of the legal system. Therefore, the lawyer must have fluency in "street language," in Standard American English, and in the lexicon of the profession, so-called "terms of art." The real world lawyer, as the legal system's authorized representative of clients' interests, serves as a translator, a facilitator, and a conciliator. A client seeks legal counsel out of her own (or in response to someone else's) injuries to person and/or dignity. A client's actual pain, outrage, or confusion will not always be addressed by or fit into neat little compartments of black-letter law. Moreover, a client's story cannot always be effectively communicated in the insipid, simple-sentence style of legal memoranda that law students are trained to produce perfunctorily.

According to Robert Condlin, law schools in general and clinical programs in particular fail morally because they train students "in adversarial skills—skills having to do with the domination of other people—while treating these 'as a set of disembodied means, not as part of a larger moral system that includes constraints on the use of such means.' . . . [A]dversarial skills . . . become moral liabilities only when they are cultivated outside of a larger moral and political vision—only when . . . they harden into an 'instrumental morality.' Others have worried about this problem in the traditional Socratic classroom. [Citations omitted.]" Luban, *Epistemology and Moral Education*, 33 J. LEGAL EDUC. 636, 636 (1983).

"[T]he lawyer's job in practice is to be on one hand the impassioned representative of his client to the world, and on the other the wise representative to his client of the legal system and the society, explaining and upholding the demands and restrictions that system places on them both. Every lawyer who enjoys the practice learns to recognize and embrace these conflicting imperatives, even while laboring daily to resolve them." Turow, note 3 supra, at 71.

In more global terms, an interesting analogy can be drawn between these roles of the individual lawyer (in whatever capacity—practitioner, professor, etc.) and the role of the Supreme Court. Professor Robert A. Burt advances the notion that the Court's opinions are explanations and justifications proffered in the manner of the Parables and are to be read with as much attention to what they do not say as to what they do say, the point being that the audience, especially the litigants, is thereby forced to ask questions and find a common language. Burt, *Constitutional Law and the Teaching of the Parables*, 93 YALE L.J. 455, 486-87 (1984).
Professor James Boyd White, a pioneer in the “literature and law” movement, observes that a legitimate educational process cannot focus on clichés because each mind must be responsible and free to exercise its individuality. “The moment of speech, when knowledge is made active, is a moment that calls for art (rather than science or technology) because the circumstances to which one speaks are never those to which one has spoken before.” In this actualization of knowledge, this moment of true speech, one individual voice is speaking “to others as they actually are about the facts of the world — [and] at such a moment, whether in a poem or a legal argument or a classroom, the world is reborn.”

How many thousands of words will it take for the lawyer to paint the picture that does justice to the client?

Words are the hue and cry of a poet. Creating images that communicate is an artform. In that sense, a lawyer must be an artist too; for regardless of how much substantive knowledge a student lawyer absorbs and despite technical training as to proper form and procedure, by the time she becomes a practicing lawyer she must be an artful communicator. The importance of the liberal approach to legal education, then, is underscored by the reality that

[in practice no case ever comes to [the attorney] . . . as a clean-cut paradigmatic case, but always has uncertainties, ambiguities, rough edges, and paradoxes built into it . . . because the case comes from life, not from the exposition of a theory, and these are the qualities of actual human experience. To deal with the fact that circumstance and culture constantly change, the mind must have not a grid of established moves but the capacity to invent new moves. [Emphasis added.]

Consistent with Professor Eisele’s model of professional arete (virtue and excellence), Professor White posits an “ideal” pedagogy for upper level courses

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62 Great literature is the chosen means by which students become sensitized to the complex aspects of human drama resounding through and culminating in Law. See generally Goode, note 1 supra.

63 White, note 4 supra, at 160-64.

64 Id. at 162.

65 Id.

66 "Do not believe that he who seeks to comfort you lives untroubled among the simple and quiet words that sometimes do you good. His life has much difficulty and sadness and remains far behind yours. Were it otherwise he would never have been able to find those words." R. RILKE, LETTERS TO A YOUNG POET 72 (M. Horton, Trans.) (1962).

67 White, note 4 supra, at 162.

68 See text supra at note 53. professor Eisele describes virtue itself as a type of skill based upon performative (rather than propositional) knowledge, a capacity for judgment and action which must be taught performatively (i.e., by example, rather than didactically). Eisele, note 9 supra, at 499-500. The teaching of virtue, then, becomes the teaching of a skill within a practice or form of life, the training of a capacity, not the memorization or indoctrination of rules or guidelines. Id.
whereby “active” education tests the limits of one’s mind, language, and imagination through seemingly unlimited questioning. Rather than a passive acquisition of knowledge, this process treats each student as a capable, responsible, and autonomous “active mind.” Presented with difficulties to which there is no “answer,” the student becomes a “maker of new compositions” who must rely on her own internal gyroscope, her “self,” for guidance in crafting the disparate materials of legal discourse, in order to create meaning for herself as well as for others. Through this engaging of her mind at that point where intellect and power meet to face the perpetual question of what justice should mean, the student appreciates the importance of learning law. So too the student integrates the ethical significance of being intelligent, scrupulous, and creative in the service at once of one’s client and of the larger community, by learning to be responsible in a new way for what she thinks and says. The result of this pedagogy is that the student arrives at her own definition of a trustworthy and competent lawyer, and her own conclusion of self-worth and self-confidence.

This training in the responsibilities of the “self” is also a moral education, according to White: The student lawyer develops an appreciation for her role in the constant redefinition of the “community” of actors whose realities interact to comprise, ultimately, the essence of authority. Instead of learning how to manipulate doctrine, however, such an expansive and rhetorical activity provides doctrine with a context internal to each participant in the educational process. With a

69 White, supra note, at 157. The remainder of this paragraph paraphrases White at 157, 160-62. [Emphasis added.]
70 To Professor White, legal composition is a way of making sense and order of the material of the world, at the level of analyzing legal texts as well as of organizing facts, as the constitution of reality in negotiations, trials, and conversations. Id. at 160 n.3.

White declares that the notion of students as “composers” is inherently egalitarian because it serves to empower them to relate to one another’s commonality (regarding commonality in the context of conciliation, see note 61 supra), acknowledging yet transcending autonomy and individuality: “Composition is of necessity an independent act done by individual minds. The student who learns to compose in legal language learns something of his own responsibility for what he does, of his own strengths and weaknesses, of his own place in the world.” White, note 4 supra, at 163.

For the self whose identity is constituted in the light of ends already before it, agency consists less in summoning the will than in seeking self-understanding. The relevant question is not what ends to choose . . ., but rather who I am, how I am to discern in this clutter of possible ends what is me from what is mine. Here, the bounds of the self are not fixtures but possibilities, their contours no longer self-evident but at least partly unformed. Rendering them clear, and defining the bounds of my identity are one and the same. The self-command that is measured in the . . . case [where the subject is regarded prior to its ends] in terms of the scope and the reach of my will is determined [here] by the depth and clarity of my self-awareness. M. Sandel, Liberalism And The Limits Of Justice 59 (1986).

72 White, note 4 supra, at 163. “[T]he true significance of [this type of] legal education — what makes it worth doing for the student and the teacher alike — is that it is inherently antibureaucratic and antiauthoritarian: it insists upon the reality both of the individual person and of the community at large.” Id.
heightened sense of “self” and a developed mastery of the language of the law, the participant is better able, better equipped, to survey the “possibilities and the limits of speech and understanding” and to recognize and relate to other persons.74

The Real Test

Face-to-face
We judged each other
Interview:
Between the vision
Of what she is and
I am trying
To be
Or not to be a lawyer
Unceasingly I think
Therefore I am
One
For whom too little makes much sense
Whose form is best when free
Versed well in simple pleasures
Of suns rising
And raising sons
In light of tomorrows’ horizons
Courting ideas still unsettled
Law rules
And justice prevails
Even if I don’t
Think
Therefore I’m not
Becoming
As I should be to compete
Just another spoken wheel
Geared-up for the grinding
Or per chance
Her honor will take judicial notice of my
Lots to contribute.

No client, plaintiff or defendant, enters the legal process without anxiety. A good lawyer explains to the client what is happening, and that explanation is phrased in language the client can understand.75 A satisfied client is one whose inner turmoil is ameliorated by the lawyer and whose reasonable expectations, as conditioned by the lawyer’s explanations, are substantially met. To accomplish this objective, the

74 Id.
lawyer must be able to respond manifestly sincerely and empathetically\textsuperscript{76} to the client as a \textit{person} whose \textit{needs} are important.\textsuperscript{77} Indeed, a lawyer's competence as a \textit{professional} subsumes having the insight and sensitivity necessary to such a response\textsuperscript{78} that is, being able to listen, and to formulate and pose — that is, appropriately the many questions that will elicit fully a client's own story.\textsuperscript{79} Basic to this quality of interfacing, as an incidence of professional pride, is a lawyer's own developed sense of "self," the source of all meaningful commitment.

Hence, to the extent that law schools foster students' adoption of a detached, impersonal, bottom-line orientation, the legal profession effectively ratifies a deservedly-pejorative image.\textsuperscript{80} What is the underlying reason for so many complaints, so many challenges to the fees charged, so many malpractice suits? Essentially, too many lawyers fail to demonstrate that the client and her case really \textit{matter} personally, whether because the lawyer lacks the communication skills\textsuperscript{81} to convey that message, or because the lawyer really cares only about self-aggrandizement and pecuniary gain.

\textsuperscript{76} Without empathy, Law becomes de-humanized, de-moralized, alienating, and repressive. This result transcends all formal and informal institutions of the legal system, including law school. See note 97 infra.

In terms of advocacy, the effectiveness of a legal argument is often a function not only of the lawyer's empathy with her client, but also the lawyer's ability to describe her client's case in particularized images with which the court can empathize. The importance of empathy in the context of litigation is well illustrated by Professor Lynne N. Henderson, in \textit{Legality and Empathy}, 85 Mich. L. Rev. 1574 (1987). I came upon Henderson's article quite by chance, and as a result of this serendipity I began a course of personal investigation into the aspects of legal practice, philosophy, and education which comprise this comment. I am deeply indebted to Professor Henderson for her insightful and inspiring article.

Professor Robin West, another advocate of the "law and literature" movement, recognizes that the moral and ethical tensions which student and practicing lawyers must deal are elucidated in the writings of great authors: "There has perhaps been too much emphasis on the subjective ability to put yourself in another's shoes to understand why they [sic] did what they [sic] did, and that is what can be gained from reading these books. We want more humane attorneys, not merely ones capable of writing well." Goode, note 1 supra at 58.\textsuperscript{77} See generally Barkai, note 74 supra.


\begin{quote}
\textit{cared} about medicine in the sense that they had a strong intellectual interest in it; they \textit{cared} about their own wellbeing of their patients; and they \textit{cared} about their own image as professionals. In short, they had a sense of craftsmanship — a self-esteem that led them to internalize standards of behavior, that reinforced pride in their work, that pushed them to produce a high quality of service routinely. [Emphasis in original.]
\end{quote}

Id. \textsuperscript{79} See Barkai, note 5 supra at 513. Especially where the nature of the case may prove embarrassing or incriminating to the client, this sensitivity is critical in order for the lawyer to win the client's trust and confidence. The client must come to believe that the lawyer has the client's interests \textit{at heart}.

\textsuperscript{80} That the profession is openly self-conscious about its image problems is demonstrated by the November 1, 1988, issue of A.B.A. J.

\textsuperscript{81} Role-playing and clinical programs can be useful for developing a wide range of communication skills. See, e.g., Turow, note 3 supra, at 72; Bergman, note 29 supra. But see note 58 supra.
"Self-love, when cloaked in the dress of self-interest of economic man, is here aplenty; but we are embarrassed to state that we aspire . . . to 'love our neighbor as we love ourselves', and to explore with each other what that means." Teaching people to be people, to become more fully human, through critical introspection and goal-setting, however, encourages positive self-pride, inner strength, and virtue such that inspiration translates by active example into aspirations. Only through definition of "self," can each individual begin to relate to "other" in terms of the Golden Rule.

Like Professor Roger C. Cramton, we are all struggling pilgrims searching for our own truth, and any such search must begin with a search into "self." What is Law anyway but an institutionalized search for objective Truth? Lawyers, individually, must appreciate this nexus between "self" and "other" because lawyers, collectively, are the protagonists in the process by which constituent communities redefine and reshape ideals and values, and thereby effectuate justice. Love and justice are but two faces of the same ultimate reality, because "justice must always be informed by love if it is to be just; and love must always meet the demands of justice if it is to be loving."

What It's All About

Oh how smug we are
Whose noblesse oblige
To lesser creatures
Exempts involvement.
Casting crumbs
To the nameless,
Scarred
By birth or circumstance,
We station ourselves at the El
Without local expression requiring
More comfortable barriers
Against contamination.
There but for the grace of G-d
We go on with our banalities
Paying pittance and pity
As protection.

82 Cramton, note 8 supra, at 517.
83 See supra note 8.
84 Teaching virtue is teaching that is both moral and intellectual, practical and imaginative; learning virtue is like learning language because it requires instruction as well as demonstrations of significance — it is learning how to make meaning, and understand what has value and why. Eisele, note 9 supra, at 504.
85 Cramton, note 8 supra, at 517.
86 Id., at 517-18.
Who is more culpable:
One who wants not to know, or
One who wants not to care?
We say he is laudable
Who feeds the stray cat
Or consoles the wimpering puppy,
When in fact there is no sacrifice.
We price ourselves so dearly
That it is anathema to give
Of a character that approaches empathy
For someone else’s crying-out.
Who is to be forgiven
When turning the other cheek
Avoids looking in the eyes
And lifting up the spirit of
One who has dared to assert
The reality of aloneness?
What becomes the benchmark
Of our humanity
If existence is mere pretense,
As a shill is to the gambler?
When an invitation is at hand,
Arms outstretched
Embodying warmth,
And complete on its face
Of contented smiles,
Who is the more proud:
One who accepts love, or
One who excepts love?
Who may rightly pass judgment
Where conscience and consciousness converge
With a touching tenderness
To open one’s heart to another?
There are many kinds of love and
Of loving;
All based on Truth are
Inherently good and beautiful,
As fodder for the soul.
Let me, for one,
For once,
Be strong and free
So that caring and sharing
Have content
In the context
Of what Life is supposed to be
All about.
Humanist psychologist Nathaniel Brandon defines self-esteem and Platonic love as correlatives, to wit: one's own noumenal ego-ideal as being reflected by and through persons admired and respected. Axiomatically, a person with a healthy sense of "self" will seek-out relationships which reinforce her ego-ideal. In other words, we gravitate towards people who affirm of our best sense of "self," as the identity that we are most proud to present to the world. A mutual cathexis of this type is commonly known as friendship.

Friendships in law school can be very gratifying. Students share a bond based on the experience itself, not only with classmates but also with members of the legal community who have taken their respective, and hopefully respected, positions in the field. In this regard, we are undergoing a sort of rite of passage. But more than that, we students can look toward one another as immediate opportunities for learning more about the world through different sets of eyes. Where each law student consciously, deliberately, interactively, celebrates her own individuality, the diversity of backgrounds and perceptions can serve to synergistically enrich and humanize the learning experience for all participants. The paradox is real that only by understanding our uniqueness can we formulate a sense of commonality — as singular beings, noumenally self-defined, we can grow to appreciate at various levels the ever-enlarging, sometimes overlapping communities of which we are a part, and at which centers are our individual hearts. Thus, our circles of friends in the context of law school potentially serve as both specific and diffuse means of establishing our sense of connectedness, our identity and purpose. It is this

88 In his definitive critique of the work of legal philosopher John Rawls, Professor Michael J. Sandel discusses friendship as one of the constitutive attachments which help define a person's character and moral depth:

The possibility of character in the constitutive sense is also indispensable to a certain kind of friendship, a friendship marked by mutual insight as well as sentiment. By any account, friendship is bound up with certain feelings. . . . We hope . . . that their plans meet with success, and we commit ourselves in various ways to advancing their ends. . . .

For persons encumbered in part by a history they share with others. . . . knowing oneself is a more complicated thing. It is also a less strictly private thing. Where seeking my good is bound up with exploring my identity and interpreting my life history, the knowledge I seek is less transparent to me and less opaque to others. Friendship becomes a way of knowing as well as liking. . . . To deliberate with friends is to admit that possibility [that a friend knows me better than I know myself], which presupposes in turn a more richly-constituted self than deontology allows. While there will of course remain times when friendship requires deference to the self-image of a friend, however flawed, this too requires insight; here the need to defer implies the ability to know.

89 Professor Robin West surveys the views of "communitarian" (including feminist) legal scholars, who hold that "it is the sense of community and connection, not liberty and freedom, that affectively feels good and normatively is good." West, Law, Rights, And Other Totemic Illusions: Legal Liberalism and Freud's
metaphysical transformation that I call the "right" of passage, without which the student cannot truly appreciate her role and responsibilities as lawyer.

I still remember vividly the night after our last exam of that first semester in law school. Many students in my class adjourned to a local watering hole for some much-needed release and relaxation. It was then that I realized the bond that military veterans feel as a result of having gone through a war together, for even though I did not really know many of the students who sat at the same table with me, I felt a spontaneous, strong kinship with them. Over the years since then, however, I have gotten to know a few of my classmates quite well. Indeed, I believe that the friendships generated within my law school experience have been among the closest and most rewarding of my adult life. And I believe that the reason for this happening is that we have been able to build upon "friendships of the road" and create "friendships of the heart." Not only have we come to speak the same language and empathize intimately with one another, but also we have nurtured one another's growth by continually redefining and rediscovering our individual selves through critical examinations of our dreams, our frustrations, our fears, and our doubts, i.e., "Who am I, what am I doing in this world, and what do I want to do in this world?"

**Who Does She Think She Is, After All?**

*Who am I?*

*I am she*

*Who's been sleeping in my bed,*

*Who's afraid of the big bad wolf,*

*Who stole the cookies from the cookie jar,*

*Who put the bop in the bop-shoo-bop-shoo-bop,*

*Who was the masked man, anyway,*

*Who will stop the rain,*

*Who knows what evil lurks behind those doors,*

*Who cares what the 'morrow may bring.***

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[T]o the communitarian scholar, the central concern of law is not the tension created by our ambivalence between obedience and rebellion. . . . The promise and the problem of law are centered, respectively, on the individual's potential for embrace and withdrawal. We create our own world, including the degree of connectedness we feel with others. One of the ways in which we create our world is through legal norms, which can in turn be understood only by reference to the schism between self and other. The potential that law holds out, when so conceived, is . . . the resolution of "horizontal" affective tensions between citizen and co-citizen—between self and other, egotism and altruism, individualism and communitarianism. The Rule of Law, as well as particular laws, contracts, or moral norms, becomes, potentially, not an impersonal imperative to which subsequent obedience is owed, but an opportunity for recasting the net: for redrawing, once again, the line between self and other, between separateness and unity. [Citations omitted.]

*Id.* at 861.

*Social-psychotherapist Lillian B. Rubin distinguishes two basic types of friendships: those "of the road,"*

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Among my law school friends there is no place for the petty jealousies of competitiveness. On the contrary, we revel in one another's personal successes and academic achievements. We study together for our individual and collective benefit, because in every such shared educational experience each one of us is both learning and teaching, and thereby clarifying her own understanding of the law as well as reinforcing her own sense of "self" as lawyer. In this holistic environment, we actualize the importance of communication, of discourse, of dialogue. This positive interaction, this construction of our own, immediate community, brings to all of my study group a feeling of connectedness, of identity and purpose. The better we have gotten to know one another, through genuine caring and sharing of our "selves," the more we feel good about and confident in what we are doing: becoming lawyers. This personalized example of the interrelation of empathy and self-esteem has provided each of us with a meaningful reference for how we should conduct ourselves in the practice of law. Each of us can and does take pride in our individual ability to effect a better world, and it is not such a long jump from our worlds, our realities as students, to how we will fashion our worlds as practicing attorneys.

In the context of law school, the comradery among students results in part from mutual need for peer support in dealing with stress and other aspects of inner turmoil. As described above, a student's sense of community is strengthened by this mutuality of support (in contrast to the competitiveness) experienced in law school. So too, the student's sense of self-esteem, of identity and purpose, is furthered by being able to establish a "friendly" rapport with some faculty. Ideally this rapport will blossom into a mentor-protégé relationship. But even short of that end, establishing a more personal rapport with faculty is rewarding, and in ways not always immediately apparent. Epistemologically, any affirmation that a student receives from a teacher can have a profound affect on the student. Moreover, each student enters law school believing that becoming a lawyer will "validate" the "self" — in terms of those features of her personality which she genuinely likes and those aspects of her character and fundamental values about which she genuinely feels good. A prideful student intends that the study and practice of law will result in fulfillment of worthy aspirations regarding "self." Our teachers are our most immediate role models. To be accorded a professor's personal nod of approval is based on a common experience of the moment, and those "of the heart," based on shared fundamental values and the allowance/acceptance, within a continuing relationship, of deeper explorations into the "self." L. Rubin, Just Friends 106 (1986).

The importance of mentoring is noted, e.g., in Blodgett, Whatever Happened to the Class of '81?, A.B.A. J. 56, 58-59 (June 1, 1988).

Belenky, note 11 supra, at 214-29. See also Brandon, note 86 supra, at 202-03.

Conversely, limited student-faculty interactions often contribute to elevated levels of psycholgical distress among students; student-faculty relations in law school were rated lower than for any other type of graduate program. This distance between law faculty and their students . . . is related significantly to graduate student dissatisfaction, both academic and nonacademic. . . . [I]ncreased faculty contact [is recommended] to ameliorate the effects of . . . law students' 'emotionally and intellectually dropping out' without formally withdrawing from law school." Benjamin, note 6 supra, at 249.
a prized indicator\(^3\) that the recipient not only is an individual of worth and merit, but also is an adult\(^4\) on the right path to professional success.

Is it misguided for a student to want, even expect, such validation? I do not think so. Essentially, to the extent possible under the circumstances, the professor should respond to the student with at least the same degree of professional competence as a lawyer is supposed to demonstrate towards her client.\(^5\) And as discussed above, that competence subsumes the sincerity and sensitivity of persons interacting as individuals. Is law school \textit{sui generis} or, rather, should it represent some semblance of the reality of the practice of law? No doubt part of the problem here stems from the fact that, generally, law professors are not trained as teachers, and their training as lawyers was by their predecessors who were cast in the standard mold.\(^6\)

Both in and out of the classroom, when professors “hide” behind their desks, lecterns, or office doors as formal and formidable distancing barriers, the student will likely interpret the message as “I am not a proper role model,” or “you are not a student about whom I care,” or “your questions do not deserve my time and attention.” Regardless, the opportunity is lost for establishing the sort of rapport that students actually need in order to break the prevailing silence and to develop confidence as aspiring professionals. Further, a detached and dispassionate “attitude”\(^7\) by faculty evidences a disrespect for their profession as much as for their students.\(^8\) To ignore that there are valuable lessons to be learned outside the “discrete texts”\(^9\) of cases and materials, or that the search for Truth transcends the “coverage” requirements of the Bar Examiners, serves only to reinforce the pejorative image of the legal profession, and likely leaves many students with more than a sour taste in their mouths.

\(^{93}\) “The strength of reinforcements . . . relates to the significance of its source, which in turn depends on the relative importance of the individual’s various attachments and group memberships.” Greenbaum, supra note 17, at 561.

\(^{94}\) Observes Professor White, note 4 supra, at 164: Only when students are treated as intelligent adults — capable of and responsible for reading and thinking on their own — can legal education be more “exploratory, self-reflective, and critical.” Toward this end, the intellectual activity of legal education should encourage the contrast of “legal language, legal methods of thought, and legal communities with others” in order to gain greater and deeper insights, provide richer analogies, which will make invention and reform more “thinkable and possible.” Id.

\(^{95}\) See generally Greenbaum, note 17 supra. “[M]odels of human behavior and social processes . . . influence the goals we select and the effectiveness and responsibility with which we pursue them,” Id. at 573.

\(^{96}\) “Law professors use what they probably consider time-tested teaching methods. The professors either employ the methods that were used on them or employ other methods that are based on an intuitive feeling about effectiveness.” Barkai, note 74 supra, at 509.

\(^{97}\) “[T]he essence of institutions is to be found in the ‘mental attitudes’ of the participants rather than in behavior[].” Golding, Jurisprudence and Legal Philosophy in Twentieth-Century America — Major Themes and Developments, 36 J. LEGAL EDUC. 441, 475 (1986) (citing L. FULLER, THE LAW IN QUEST OF ITSELF 118 (1966; first published 1940)).

\(^{98}\) See text supra at note 53.

\(^{99}\) Observed White, note 4 supra, at 158: The common emphasis is on highly-edited textual material, with the inference easily drawn that the student is responsible for the covered rules of law and for nothing else.
Are our “heroes” to be nothing more than shibboleths personified, undifferentiated one from another? And is that what we are being taught to become, surplus ballast to an already-sinking ship? Unless our teachers as individuals relate to their students as individuals, the requisite reflection/validation cathexis cannot operate as a source of inspiration. Worse yet, imagine students’ cognitive dissonance, the disappointment and disillusionment that result if, relatively systematically, “respected authorities” fail to provide a meaningful opportunity to affirm, or actually discredit, one’s best sense of “self.”

Specific Performance Remedy

Since when did Socrates
Include but not limit me to
Madness in
The method of choice
By such professors of knowledge
For whom specific performance
Is testing
What I rote
Not what I questioned?
Jacket straight
Laced blouse
The identifying pin on a striped lapel
Dots the I of conformity
And tees me off
Crossed
Claiming I quit
Differentiating
My self.

"The focus on discrete texts and the chain of texts, which is the key to the first year, thus becomes a focus on doctrine in a vacuum. Such a class . . . is likely to proceed by plowing through a casebook at the just the wrong speed, with just the wrong attitude: too fast to engage in real analysis of the cases or questions presented, too slowly to function as an overview." Id.

Psychological and emotional tensions can cause deep and long-lasting inner turmoil on the road, ultimately, hopefully, to spiritual growth. Academic epistomology, however, is generally characterized more by intellectual than emotional dialectics. In a professional school setting, both forms are prevalent where the student, properly so, has made a commitment to her calling, an emotional investment in her aspirations. The degree to which these assorted tensions are paralyzing or productive is a function of the individual’s ability to modulate her exposure to them and channel them constructively.

Professor Weinstein, note 27 supra, at 89, characterizes the typical educational atmosphere of law school as tending to precipitate self-repudiation. Professor Weinstein’s experimental seminar demonstrated as justifiable the concerns of many legal educators “that neglect of self and abrogation of one’s personal values is an outgrowth of the process of learning the law,” and concluded that such as result can be forestalled by a learning climate that validated self and feeling. Id. at 97-98.

Like the tragic Emma Bovary, her passion rejected with disdain, the disillusionment can be devastating.
What school of thought justifies
Calculating losses
By appealing to external authority
If no experts witness
The measures of damages
To me
From illusory promises
And nondelivery of
Tendered dreams?
A brain storming of issues
Wants to precipitate a dialogue and
Needs the sustenance of feedback
To grasp holdings on
Understandings leveled
At my core
Sew that I may reap
Instead of barren doctrinations
A mantle of wisdom.

These observations are not meant to suggest that legal education as presently constituted is wholly deficient, or that the generalities of the caricature hold true for every student, every professor’s course, or every law school. Indeed, my point is that there are so many shades of gray, so many countervailing ingredients that comprise every facet of the legal system, that no aspiring lawyer can afford to go through school with either intellectual or emotional blinders on. Notwithstanding the responsibility of legal institutions to yield to critical scrutiny, ultimately each student is responsible for her personal and professional life-choices, i.e., for the “self” that she is, and is ever-evolving to be. Once a student identifies the nature and the source of these challenges and concomitant tensions, rather than her undoing, they can become the wellspring for spiritual growth by and through her formulating her own response.102

“Coping skills” vary from person to person and context to context, and yet creative enterprise and initiative inhere in all practical solutions.103 Law students can

102 “In the depths all becomes law.” R. Rilke, quoted in J. Mood, Rilke On Love and Other Difficulties 22, 35 (1975).
103 The first step is in recognizing the double-edged sword which, in the words of a dear friend and classmate, casts a law student’s life into “one big, f***ing balancing test” between commitment to virtue, honor, and justice on one hand, and pragmatism and experience on the other. Not every “selling-short” need be a “selling-out,” however, and an important lesson to learn is the distinction between compromising with Life (i.e., any given situation) and compromising principles. As idealistic as any of us is at the start of her rookie year, allowing for legitimate loopholes and shortcuts may well be the only way to survive emotionally over the long haul.

More importantly, is the student’s utilization of these techniques to “slice through” the routine and plunge forward from that point — on her own, whenever necessary — to truly think about the Law. This justification/rationalization goes only so far, however, as the student conscientiously applies herself.
and must develop individualized survival skills which reduce the number and disruptive impact of the tensions encountered in school, just as in practice. Learning to prioritize, to establish one's own standards and frames of moral and ethical reference, and to appreciate resourcefulness—all this positive potential can rise like the Phoenix from the ashes of the caricature itself for the student who successfully applies her "facts" to her "law." 104

Ultimately, each student should come to view herself as a microcosm, as an embodiment of the ideals of the profession which she has undertaken to study and aspires to join. Toward this end, the duty of law professors is to convey that "the law that we teach, and that we hold as entitled to respect and authority, is not a set of rules to be learned[,] but a set of ways of thinking and talking and acting together about questions of justice, a method and a community which it should be our task to exemplify and constitute[.]" 105 Law—not only as the substantive glue which holds our society together, but also as the means of conflict-resolution—begins and ends with each individual lawyer. Before a lawyer can speak clearly, persuasively, indeed passionately, for her client, however, she must learn to speak for herself; before a lawyer can make peace for her client, she must effect a peace within herself.

A Cappella Solo

Be not a prisoner for  
Life absent soul  
Identity  
Is missing  
The point  
Of comparison  
Harken to the truth that is borne within  
Each sole  
The Sing Sing of a mind sets  
No bars for this music  
Take notes carefully  
Down so  
Lo, one by one  
Recitative accumulates  
Until the aria is ripe  
And one voice  
Phrasing

Relying on commercial study aids and hornbooks merely to reduce the workload is actualizing the caricature at the expense of character.

104 "[T]he work of most lawyers moves along a wide spectrum of thinking and doing, shifting back and forth between the role of the scientist searching out principles and that of the artist designing practical solutions." Mudd, Beyond Rationalism: Performance-Referenced Legal Education, 35 J. LEGAL EDUC. 189, 197 (1986).

105 White, note 4 supra, at 161.
Answers above the chorus
To peace the sounds together
As a harmony unto itself
Without accord as necessary accompaniment
For such clear resolution.

Just for the record, as a result of writing this paper, I have either relinquished or forfeited (depending on one’s perspective) my corner seat in the library. Regardless, I wish my successors much insight, as I move on to other vistas.