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Renewing Our Commitment to the Highest Ideals of the Legal Profession

Harry T. Edwards

RENEWING OUR COMMITMENT TO THE HIGHEST IDEALS OF THE LEGAL PROFESSION*

HARRY T. EDWARDS**

The legal profession is suffering from an uneasy malaise—a malaise caused, I believe, by the fact that too many lawyers have lost sight of the highest ideals of our profession. In my view, members of the legal academy, no less than members of the practicing bar, must take responsibility for this problem and positive steps to cure it.

My conclusions are not based on rigorous empirical research, but, rather, come from my forty years of experience in the profession, including significant periods of time as a practicing lawyer in a major law firm, an arbitrator, a law professor, and a judge. From this vantage point, I will describe the problems I see and offer some suggestions that may help to address some of the profession's ills.

REACHING FOR THE HIGHEST IDEALS OF OUR PROFESSION

I recently had an opportunity to think seriously about the state of the profession when the Association of American Law Schools invited me to participate in their conference on "Legal Ethics in a New Millennium."[1] The purpose of the conference was to consider

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** Senior Circuit Judge, U.S. Court of Appeals for the D.C. Circuit. B.S., Cornell 1962; J.D., Michigan 1965; Adjunct Professor of Law, NYU Law School. Judge Edwards was a faculty member at the University of Michigan Law School from 1970 to 1975 and from 1977 to 1980, and at Harvard Law School from 1975 to 1977, earning tenure at both schools. He was appointed to the United States Court of Appeals for the D.C. Circuit in 1980, where he served as Chief Judge from October 1994 until July 2001. During the past twenty-five years, he has continued to teach part-time, serving as an Adjunct Professor of Law at Michigan, Pennsylvania, Duke, Georgetown, Harvard, and NYU, where he has taught for the past fifteen years.

1. Mid-Year Meeting of the Association of American Law Schools, Workshop on "Legal Ethics in a New Millennium: New Practice, New Rules, New Visions," June 12–14, 2005, Montreal, Quebec, Canada. For more information on this meeting, see Legal Ethics 2005 AALS Mid-Year Meeting, Law School Conference, http://www.aals.org/2005mid year/ethics (last visited Apr. 20, 2006).

whether changes in American society and world affairs threaten settled ways of life in the legal profession. The principal premise of the conference appeared to be that global, economic, technological, and demographic changes will require a reassessment of the fundamental values of the legal profession. I rejected this premise then and reject it now. What I believe is not that the highest ideals of our profession need to be reassessed, but, rather, that we need to renew our commitment to those ideals. I also believe that we need to commit ourselves to passing these ideals to the generation of young lawyers who are now most seriously encumbered by the profession's malaise.

It is indisputable that we have witnessed profound changes in the profession during the last half century. Technology has transformed the way lawyers work and interact with their clients, the courts, and one another.[2] Law schools offer more courses in international and comparative law,[3] and more lawyers now practice in international arenas.[4] There are many more truly large law firms and many more incredibly wealthy lawyers in society.[5] Law practice, especially in our largest cities, is highly competitive, and lawyers often think little of changing firms to advance their practice opportunities and enhance their economic wealth. There are more women and people of color in the profession.[6] And the public is more aware of how lawyers practice, legislators operate, and courts decide cases, due to extensive media coverage, Internet blogging, and television programs like "Court TV."

In my view, however, these and other global, economic, technological, and demographic changes should neither determine nor even affect the fundamental values of the legal profession. I believe that "fundamental values" are founded on the highest ideals of our profession, and that they inspire lawyers to serve their clients and the public good and to understand that these commitments are

2. *See generally* Robert C. Berring, *Legal Research and the World of Thinkable Thoughts*, 2 J. APP. PRAC. & PROCESS 305 (2000).

3. *See* John A. Barrett, Jr., *International Legal Education in U.S. Law Schools: Plenty of Offerings, but Too Few Students*, 31 INT'L LAW. 845, 852–53 (1997).

4. *See* Scott S. Brinkmeyer, *Lest We Forget*, MICH. B.J., Mar. 2004, at 11, 12.

5. *See* EQUAL JUSTICE WORKS ET AL., FROM PAPER CHASE TO MONEY CHASE: LAW SCHOOL DEBT DIVERTS THE ROAD TO PUBLIC SERVICE 14 (2002), *available at* http://www.napil.org/publications; Scott L. Cummings, *The Politics of Pro Bono*, 52 UCLA L. REV. 1, 3, 36–37 (2004); *see also* Harry T. Edwards, *Speech: A New Vision for the Legal Profession*, 72 N.Y.U. L. REV. 567, 570 (1997).

6. *See* AM. BAR ASS'N, J.D. ENROLLMENT STATISTICS, http://www.abanet.org/legaled/statistics/jd.html (last modified Apr. 5, 2005).

not mutually exclusive. The rules governing the behavior of lawyers come from a variety of sources—our federal and state constitutions, statutes, procedural and evidentiary rules, the common law, court rules, and, most importantly, various codes of ethics and the cases construing them. Taken together, the rules from these traditional sources roughly codify the fundamental values of the profession. But these codified rules do not fully capture what Professor Stephen Gillers calls "the idea[l] of professionalism."[7] This ideal has no precise boundaries, but it is premised on the view that "a professional subordinates self-interest and private gain to the interests of clients and the public good generally."[8] It is my belief that truly great lawyers far exceed what the codes of conduct require, reaching instead for the highest ideals of our profession—the ideals from which our fundamental values are derived. I will try to amplify these views.

THE FUNDAMENTAL VALUES OF THE LEGAL PROFESSION

My starting point is quite simple: Law schools are professional schools, not graduate schools. We grant JDs, not Ph.Ds. Upon graduation, our students are qualified to seek licenses that normally are not available to persons who do not have a legal education. Therefore, the public has a right to assume that lawyers have attained a certain level of technical competence, share a commitment to a defined set of ethical norms, and accept the responsibility to interpret and practice the law in public-regarding ways.[9]

The tools that lawyers use to perform their work have changed over time; lawyers' clients and the nature of their problems have changed; and the laws that attorneys must interpret and apply have changed. But the basic responsibilities of lawyers have not changed. The principal work of most lawyers is to find, interpret, and apply the law on behalf of clients. In pursuing this work, lawyers counsel their clients on how to comply with the law; draft contracts and other documents that establish benefits for their clients and protect their interests; and represent their clients in courts and other tribunals that adjudicate the rights of parties. Some lawyers teach the law; some enforce the law; some legislate; and some judge. But the principal mission of most lawyers is to represent clients' interests within the bounds of the law.

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7. STEPHEN GILLERS, REGULATION OF LAWYERS: PROBLEMS OF LAW AND ETHICS 1 (6th ed. 2002).

8. *Id.* at 12.

9. Harry T. Edwards, *Another "Postscript" to "The Growing Disjunction Between Legal Education and the Legal Profession,"* 69 WASH. L. REV. 561, 563–64 (1994).

It may be more difficult now than it was fifty years ago for lawyers to find, interpret, and apply the law, because there is so much more law emanating from so many more state, federal, and international regulatory agencies, legislative bodies, and courts. Big corporate clients, many of whom have global interests, generate problems that are entirely different from and more complicated than those handled by lawyers even a decade ago. Criminal lawyers must now understand the science of DNA evidence. Administrative lawyers must understand the economics of regulatory regimes and the changing science and technology that underpins their substantive area of expertise. And the business side of law practice—including the notorious billable-hours mania; fierce competition for clients; difficult conflicts problems; internal management issues that are a by-product of complicated firm bureaucracies, far-flung branch offices, and mergers; and personnel turnover due to departures by young associates and resignations by partners who find better arrangements with competing firms—has no resemblance to the law firm life that I knew forty years ago when I was an associate with a "big firm" of thirty lawyers.

I could go on with countless additional examples of "change" in the legal profession, but to no good end. The point that I want to make is that these global, economic, technological, and demographic changes have not altered the basic responsibilities of lawyers—the principal mission of most lawyers continues to be the representation of clients' interests within the bounds of the law. This was true well before the birth of our nation and it is true now.

If lawyers' basic responsibilities have not changed over the centuries, one might wonder whether the same has been true with respect to lawyers' codes of conduct. Professor Carol Rice Andrews considered this question in a recently published article entitled *Standards of Conduct for Lawyers: An 800-Year Evolution.*[10] Professor Andrews found that, over the past 800 years, the core duties underpinning the ethical codes for lawyers in Great Britain, France, and the United States have remained "surprisingly constant."[11]

> The statement of ethics standards has evolved in subject matter, detail, and degree of enforcement, but the central elements of a lawyer's professional duty have remained substantially

10. Carol Rice Andrews, *Standards of Conduct for Lawyers: An 800-Year Evolution*, 57 SMU L. REV. 1385 (2004).

11. *Id.* at 1386.

> unchanged. Lawyers have long had the core duties of fairness in litigation, competence, loyalty, confidentiality, reasonableness in fees, and public service. The continuation of these standards suggests certain inherent characteristics of lawyers and society's reaction to them. The changes in basic subject matter tell us how the practice of law itself has evolved. The addition of detail in the statement of the core standards reveals uncertainty and division as to the underlying core duties. The added detail also reflects an increased regulatory environment, but the official statements of standards over time have been both regulatory, in reaction to specific abuses, and aspirational to inspire lawyers in their calling. This suggests that actual lawyer behavior typically falls between the two extremes. Finally, the 800-year tradition of the core standards suggests something far more fundamental: that lawyers always have played an important role in society and that society demands integrity in that role.[12]

Professor Andrews' study suggests that the traditional core duties underlying the rules governing the behavior of lawyers will continue to provide a foundation for our codes of ethics in the foreseeable future, regardless of global, economic, technological, and demographic changes in society. The published rules governing the behavior of lawyers will change to take account of the changing details of how we practice law. But as long as the principal mission of lawyers is to represent clients, the core duties of the profession are unlikely to change.

THE RESPONSIBILITIES OF PRACTICING LAWYERS

As noted above, I believe that, even though the published rules governing the behavior of lawyers roughly codify the fundamental values of the profession, truly great lawyers far exceed what the codes of conduct require. In other words, in my view, the highest ideals of our profession include more than the codified rules require. There is no doubt that the "core duties" of a lawyer identified by Professor Andrews emanate from our highest ideals. It is also clear that these core duties underpin our codes of ethics. The legislative process, however, rarely leaves grand ideas intact, so, unsurprisingly, the highest ideals of the legal profession invariably are diluted in the process of codification. The result is that, although the published

12. *Id.* at 1388–89.

rules governing the behavior of lawyers seek to incorporate and fortify our highest ideals, they necessarily fall short. Great lawyers recognize this and always look beyond the published rules in striving to reach our highest ideals. They aim to give content to the grand but illusive "ideal of professionalism," which inspires them to serve their clients and the public good and to understand that these commitments are not mutually exclusive.

In an article published sixteen years ago,[13] I argued that lawyers have a duty to conform their practice to our highest ideals—what I then called the profession's "public spiritedness."[14] In advancing a standard of "public spiritedness," it is my view that, as a part of their professional role, lawyers are obliged to serve the public good.[15] It is this standard of public spiritedness that embodies the "highest ideals" of the legal profession.

Justice Brandeis said that a lawyer who ascribes to these highest ideals is the "people's lawyer."[16] Brandeis emphasized how the profession's "happy combination of the intellectual with the practical life" makes lawyers uniquely fit to facilitate public and private transactions of all kinds; hence the indispensability of attorneys to the business world.[17] But precisely because the lawyer's special skills make him or her indispensable in conducting social affairs generally, the lawyer could not, in Brandeis' view, legitimately represent only the interests of business. Instead, Brandeis argued, a lawyer must both participate in the political process and aim to influence private clients to view their interests in ways that are consistent with the public good.[18]

Lawyers who profess a professional obligation to employ means to achieve ends "which as citizens they could not approve," Brandeis wrote, "justify themselves by a false analogy. They have erroneously assumed that the rule of ethics to be applied to a lawyer's advocacy is the same where he acts for private interests against the public, as it is in litigation between private individuals."[19] Unlike a party in a lawsuit, Brandeis noted, "the public is often inadequately represented or wholly unrepresented" when matters of social importance are

13. *See* Harry T. Edwards, *A Lawyer's Duty To Serve the Public Good*, 65 N.Y.U. L. REV. 1148 (1990).

14. *Id.* at 1150.

15. *Id.*

16. *Id.* at 1155 (quoting Louis Brandeis, The Opportunity in the Law, Address Before the Harvard Ethical Society (May 4, 1905), *in* BUSINESS—A PROFESSION 313, 321 (1914)).

17. *Id.* (quoting Louis Brandeis, *The Living Law*, 10 ILL. L. REV. 461, 469 (1916)).

18. *Id.* at 1155–56 (citing Brandeis, *supra* note 16, at 321–23).

19. *Id.* at 1156 (quoting Brandeis, *supra* note 16, at 323).

decided in corporate boardrooms and legislative chambers.[20] Thus, consistent with our ethical standards, lawyers must take account of the public interest even when working within the realm of their private representations.[21]

Great lawyers are measured by intangible qualities—qualities that cannot be achieved by merely honing one's conduct to the regulatory or even the aspirational standards of our codes of ethics. Great lawyers care about law in the sense that they have a strong intellectual interest in it; they care about the well-being of their clients; they care about their own image as professionals; and they take the time to mentor younger members of the profession so that they will understand and embrace "the ideal of professionalism." Great lawyers have a sense of their professional self that leads them to internalize and update good standards of behavior, that reinforces pride in their work, and that pushes them routinely to provide high-quality services. A great lawyer does not view the "law" solely in instrumental and market terms as the outcome of aggressive assertions by opposing forces in courts, legislatures, and other institutions. Neither does the great lawyer consider "justice" to be largely subsumed within whatever our pluralistic system comes up with as a modern definition of the term. Rather, great lawyers seek to serve their clients *and* the public good, and these commitments are not seen as mutually exclusive. Great lawyers always aim to reach the highest ideals of our profession.

In recent years, this noble view of our profession has been tarnished. Corporate scandals have caused the public to denounce some members of the legal profession for their perceived failures in the face of fraud committed by executives of their corporate clients. Lawyers have even been accused of criminal and unethical conduct, including encouraging or allowing clients to destroy documents, abetting fraud, and conducting investigations in the face of conflicts of interest. Many attorneys believe they are immune from criminal or civil liability when they ignore signs that people in control of a client corporation are committing fraud. The current legal and ethical rules are controversial, so I will not venture into those thickets. The courts will determine, in due course, whether, and to what extent, attorneys are culpable in these situations.

I will say, however, that I do not accept the suggestion that a lawyer necessarily avoids culpability in the face of misdeeds so long as

20. *Id.* (quoting Brandeis, *supra* note 16, at 324).
21. *Id.*

she or he acts within the bounds of our codes of conduct. I have found that, in most cases, if a lawyer is disdainful of corrupt practices and counsels clients to eschew such practices, the clients will follow the lawyer's advice. I suspect that some of the problems that we have seen in recent years have arisen because some lawyers, in their pursuit of billable hours, assume that they may lose clients if they press to achieve morally just practices. If my suspicions are correct, this would be a truly dismaying situation.

A lawyer is a "counselor." This means that lawyers are obliged to explain to clients how their interests may be pursued or protected within the bounds of the law and the public good. A lawyer should not "look away" when a client seeks to pursue lawful goals through perverse means, or to achieve unlawful goals through lawful means. Good lawyers counsel against such behavior, and they do not need a code book to explain to clients the difference between right and wrong. If lawyers did more counseling of this sort, we would not need to debate whether lawyers must take meaningful steps to stop a client's ongoing fraud, whether attorneys have a duty to third parties to correct their client's misrepresentations, or whether attorneys have a duty to disclose problematic behavior occurring higher up the corporate hierarchy. Lawyers who counsel their clients on good behavior from the outset will destroy many of the seeds of corruption that have caused both lawyers and their corporate clients to be brought before the courts in recent years to account for their alleged misdeeds.

As Sol Linowitz argues in his book, *The Betrayed Profession*:

> The essence of the claim to professional status and professional privilege is that the members of the profession hold themselves to higher standards than other people.... A lawyer ... is supposed to be ethical, even when he [or she] could make more money by being unethical.... What makes the lawyer professional is his insistence that in the legal realm he sets the parameters of what he will and will not do.[22]

I think it is clear that lawyers have an obligation to promote legally and morally just behavior, and to teach young members of the profession to do the same. But the highest ideals of our profession require even more. We must also initiate action on behalf of those in need. Over the past quarter century, there has been a decline in

22. SOL M. LINOWITZ WITH MARTIN MAYER, THE BETRAYED PROFESSION: LAWYERING AT THE END OF THE TWENTIETH CENTURY 229 (1994).

federal support of the Legal Services Corporation, which funds local programs to provide civil legal services to poor people, and which remains the primary source of funding for such services. Adjusted for inflation, federal appropriations for the Legal Services Corporation are about half what they were in 1980.[23] Perhaps not surprisingly, Legal Services offices can no longer meet the Corporation's goal of providing two lawyers for every 10,000 people living below the poverty line.[24] Our failure to meet even this very modest goal poses a serious problem if we believe that lawyers have a duty to promote access to justice for all.

The problem is exacerbated by the fact that young lawyers face significant financial disincentives weighing against careers in public interest and government practice. The cost of going to law school has soared. For example, between 1987 and 1997, law school tuition more than doubled.[25] And, there has been a tenfold increase in the gap between starting salaries in public interest and corporate law firm jobs since the 1970s.[26]

We must take steps to fill the gap in the provision of legal services to less affluent members of our society. We must also support young lawyers who are inclined to pursue careers in public interest and government practice. Established private practitioners should contribute resources to ensure that all members of the public have access to legal services. Fortunately, many law firms do take this professional obligation seriously. However, despite the substantial pro bono work performed by many firms, our drive to provide legal services to all in need has fallen dismally short. The number of people, both poor and middle class, without access to the legal system remains intolerably high.[27]

In short, when students graduate from law schools, they should have more than a good understanding of the ethical standards of our profession. They should also have a clear sense of our highest ideals.

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23. Deborah Rhode, *Access to Justice: Connecting Principles to Practice*, 17 GEO. J. LEGAL ETHICS 369, 379–80 (2004).

24. *See* LEGAL SERVICES CORP., ANNUAL REPORT 2003–04 18, *available at* www.lsc.gov/about/pdfs/AnnualReport2003-2004.pdf; Michael A. Mogill, *Professing Pro Bono: To Walk the Talk*, 15 NOTRE DAME J.L. ETHICS & PUB. POL'Y 5, 12 (2001).

25. Susan D. Carle, *Re-Valuing Lawyering for Middle-Income Clients*, 70 FORDHAM L. REV. 719, 738 & n.67 (2001).

26. *Id.* at 739.

27. LEGAL SERVICES CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS 5 (2005) (concluding that at least eighty percent of the civil legal needs of low-income Americans are not being met).

Young graduates who choose highly remunerative private practice should be prepared to serve the public good, whether through assisting in the establishment of pro bono programs; volunteering their time to public interest groups; contributing money to worthy causes; running for public office; working on important bar association projects; speaking and writing in support of public interest endeavors; or tutoring inner-city youths who are the victims of a poor education in some of our disastrous public school systems. Law schools should help law students to understand these commitments and cherish the opportunities they present, so that law graduates are inspired to serve the public good following graduation.

THE RESPONSIBILITIES OF THE LEGAL ACADEMY

I have heard many law professors say that the legal academy cannot be blamed for the shortcomings of practicing lawyers. This is a dangerous attitude, because I do not believe that the profession's malaise can be cured if members of the legal academy turn a blind eye to the problems that we are now facing.

In constructing a vision of legal education, I agree with Professor J.B. White, who has written that, in order for legal academic work "to be of value to the law it is essential that the work in question express interest in, and respect for, the possibilities of what lawyers . . . do."[28] Unfortunately, in my view, too many legal academics do not produce such work. Why? Because they seem to forget that law schools are professional schools, not graduate schools, so they have little interest in the work of practitioners. Indeed, there are still a number of law professors who express outright disdain for the practice of law.

In a recent article entitled *The Dangers of the Ivory Tower: The Obligation of Law Professors To Engage in the Practice of Law*,[29] Professor Amy B. Cohen lamented the fact that too many law professors are simply clueless when it comes to assessing the challenges, burdens, and rewards of law practice:

> The intellectual effort and energy that practicing attorneys expend is inspiring. Law professors tend to forget, I believe, that the practice of law is as much an intellectual pursuit as is the teaching of law. Our students do not forget what we teach them; they use those skills to solve the problems of real clients while under the tremendous stresses of maintaining client

28. James Boyd White, *Law Teachers' Writing*, 91 MICH. L. REV. 1970, 1976 (1993).

29. Amy B. Cohen, *The Dangers of the Ivory Tower: The Obligation of Law Professors To Engage in the Practice of Law*, 50 LOY. L. REV. 623 (2004).

> relationships, conducting themselves ethically, and often finding themselves on the losing side of an issue with a client who does not want to hear that opinion. A law professor has the luxury of taking a position on an issue without worries about losing a client or not getting paid for time spent researching an issue to its depth; a practicing lawyer does not have that luxury and thus, in some ways, must be more creative, more resourceful, and more realistic in addressing legal questions.
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> Every law professor should at some time during his or her teaching career be forced to confront that reality, not only because it will make that professor a better teacher and a better scholar, but also a better, less cynical, more humble and appreciative representative of our profession—the one we share with the lawyers we have all educated and sent out to the world of practice.[30]

In pressing the point that law schools are professional schools, not graduate schools, I do not mean to suggest that law schools are or should be "trade schools." Our law schools must nurture thoughtful lawyers who have first-rate legal minds *and* an understanding of and commitment to the broader public responsibilities that are at the heart of the profession. This requires law professors who are able to address large questions of theory and policy, using modes of research and analysis that extend beyond the lines of inquiry common to the study of legal doctrine. Legal education must therefore include significant elements of interdisciplinary study. Many law schools now attract faculty members who are well-versed in disciplines such as economics, political science, and sociology. We still face the problem, however, that too many legal scholars address material from other disciplines without situating it in a legal context.[31]

I am also distressed that, in recent years, a number of law schools have adopted hiring policies that require teaching candidates to have published major articles *before* seeking employment in the legal academy.[32] These policies baffle me, for they preclude many bright young law graduates who prefer to focus on practice for a few years from subsequently entering the teaching profession. This means that the pool of talented law professors with even a serious taste of

30. *Id.* at 644.

31. Harry T. Edwards, *Reflections (On Law Review, Legal Education, Law Practice, and My Alma Mater)*, 100 MICH. L. REV. 1999, 2002 (2002).

32. *Id.* at 2005.

practice experience is greatly diminished and the gulf between legal education and the practice of law remains too wide.

This problem is not solved by law school fellowship programs that allow individuals interested in law teaching to spend a year writing a major article.[33] In part because of the relatively small stipends they provide, these fellowships primarily attract recent graduates wishing to enter the teaching market. Most have little or no practice experience. And a lawyer who has achieved any real practice experience is not likely to accept a $25,000 fellowship to write a law review article that *might* offer the opportunity of a law teaching position, especially if he or she has acquired any of the obligations of adulthood that almost inevitably come within the half dozen years that it takes to achieve any status as a practitioner.

Nor does the hiring of adjunct professors solve the problem. Although adjunct professors undoubtedly make important contributions to the academy, their roles are limited. Adjunct professors do not have full status as faculty members, which means that they have no real say over student admissions, faculty hiring, or curriculum. And they do not participate in the day-to-day life of a law school, during which faculty members exchange ideas and engage in both serious conversations and fruitful banter during colloquia, luncheons, and faculty meetings. Law schools need scholars and teachers who have real practice experience engaged in these dialogues.

If law schools are serious about recruiting individuals with significant practice experience to fill faculty positions, they must supplement writing fellowship programs and adjunct professorships with other alternatives. One possibility would be to create more visiting professorships for truly talented practitioners who have a real interest in the academy.[34] This would allow a bright lawyer with substantial practice experience to join a law faculty community, devote all of his or her time to teaching and writing, and earn a reasonable salary. Visiting professors would have an opportunity to

33. *See, e.g.*, Harvard Law School, The Houston and Lewis Fellowships 2006–2007, http://www.law.harvard.edu/academics/fellowships/law_teaching_lewis.php (last visited Apr. 20, 2006) (describing two $25,000 fellowships offered by Harvard Law School to "promising candidates for law teaching who have evidenced strong interest in scholarship and teaching").

34. *See, e.g.*, Northwestern University School of Law, Visiting Assistant Professor Program, http://www.law.northwestern.edu/faculty/recruitment/visitingassistant.html (last visited Apr. 20, 2006) (requiring an advanced legal degree or "substantial practical experience" in relevant fields of law before becoming eligible for the program).

prove themselves as teachers and scholars and, if they are successful, ultimately gain tenure.[35]

Unless law schools ensure that their faculties reflect a real balance of talent—i.e., including professors with strengths in both "impractical" and "practical" scholarship and teaching[36]—the current gulf between the profession and the academy will continue to grow and become even more distressing. During the past twenty-five years, many of my former law clerks have complained that their legal educations did not give them good measures of practice. And countless young lawyers are disenchanted with practice in large law firms. Many see these firms only as money-making enterprises—involving unreasonable hours, tedious work, sometimes questionable ethical decisions, and little commitment to our highest ideals beyond the codified rules governing the behavior of lawyers. Large numbers of graduates still seek jobs in the major firms, for the employment benefits are good and the high salaries help to pay off school debts. All too frequently, however, some of the brightest young attorneys leave law practice to join the legal academy as quickly as possible, with little practical knowledge and insignificant professional experience.[37] Once they "escape" to the academy, many of these young faculty members have little interest in addressing the problems they saw in law practice. This results in a great loss to the profession. Why? Because it is difficult for law professors who know little about the legal profession to truly inspire law students to serve the public good upon graduation.

In preparing her article, Professor Cohen conducted a small survey among practitioners. The most frequently selected answer to the Practitioner Survey question, "What skills did you find yourself least prepared for when you began your practice?," was "Ethical Issues."[38] Professor Cohen suggests that law schools fail to prepare

35. See, for example, the faculty profile of Professor James B. Speta, an Associate Professor at Northwestern University School of Law, James B. Speta, Professor of Law, http://www.law.northwestern.edu/faculty/fulltime/Speta/Speta.html (last visited Apr. 20, 2006). After a judicial clerkship in my chambers, Professor Speta, a 1991 graduate of the University of Michigan Law School, practiced appellate, telecommunications, and antitrust law with a major Chicago law firm. He joined the Northwestern Law School faculty following a one-year stint in the Law School's Visiting Assistant Professor Program. *Id.*

36. Edwards, *supra* note 9, at 564; *see also* Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34, 36, 50 (1992) (arguing that, on the ideal law faculty, there is a healthy balance of "impractical" and "practical" scholars and teachers).

37. Edwards, *supra* note 31, at 2005.

38. Cohen, *supra* note 29, at 633–34.

students adequately for the ethical dilemmas that they will face in practice, because so many law professors are openly disdainful of practice. This disdain, once conveyed to students, contributes to the cynicism of new attorneys towards practice and thus to some of the ethical problems facing the profession.[39] Professor Cohen asks the right questions:

> [I]f law faculty have a negative view of the profession, should they not hold themselves responsible since they are the ones training these individuals for the practice of law? If lawyers are crass and unethical, who better than their teachers to teach them to be otherwise? . . . Unfortunately, if law professors continue to distance themselves from practice, they cannot teach students to be better, more ethical lawyers because they are not themselves informed about the world of practice.[40]

The questions raised by Professor Cohen are terribly important, because the price that we are paying for continued dissonance between legal education and the practice of law is too high. In a recent article in the *Harvard Law Review*, Professor David Wilkins notes:

> If the financial scandals of the first few years of the twenty-first century have taught us anything, it is that a world in which professionals are encouraged to bleach themselves of every commitment save the ruthless pursuit of profit is a prescription for disaster of near-biblical proportions. It will take much more . . . than moral exhortation to [cure the ills of law practice]. [We need] a normative commitment to seeing the crucial role that . . . lawyers play in the structure of our economic system.[41]

I would disagree with Professor Wilkins in only one respect. I would change the words "normative commitment" to "renewed commitment."

CONCLUSION

The fundamental values of our legal profession are clear and have persisted, unchanged, for centuries. What we need is a renewed commitment to those values and the highest ideals from which they

39. *See id.* at 633.

40. *Id.* at 633–34.

41. David B. Wilkins, *The Rise of Market-Based Diversity Arguments and the Fate of the Black Corporate Bar*, 117 HARV. L. REV. 1548, 1614 (2004).

are derived. We need legal academics who accept Professor White's premise that, in order for legal academic work to be of value, law professors must express interest in, and respect for, the possibilities of what lawyers do. We need law schools fully committed to hiring bright lawyers who have significant practice experience and who have the potential to become serious scholars and teachers. In other words, we need law schools to achieve and maintain a reasonable balance in their faculty hiring so that bright practitioners are not excluded from the academy. And we need members of the bar who understand and promote Justice Brandeis's conception of the "people's lawyer." If we can meet these commitments, we will see more truly great lawyers who far exceed what the rules of ethics require and who always aim to reach the highest ideals of our profession. And our society will be the better for it.