THE *PRACTICE* OF LAW

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I am embarrassed to admit that my starting point for this essay was television. More specifically, *The Practice*, a current TV series about criminal defense lawyers and prosecutors struggling with complex ethical dilemmas—and some pathetic plot lines as well. One night, as I watched with my family, I was fixated, not on the characters, not on the plot, but on the name of the show—the Practice. It was the word *practice*. I began to think how this word might relate to our graduates as lawyers.

Since they were children, every time these graduates tried to learn something new, such as tying a shoe, riding a two-wheel bike or writing in cursive, a chorus of caring, but sometimes annoying parents and teachers echoed the words "practice, practice, practice." Of course, the TV show uses the term practice as a noun to describe the law firm that specializes in criminal law. Or maybe it is shorthand for "the practice of law"—a phrase defined as the professional work of a licensed lawyer (in other words, you've passed the Bar). Many centuries ago, the exercise of the professions of law and medicine were linked with the term "practice." Other professions, however, never adopted the link. For example, we don't use the phrase "the practice of architecture."

The most important definition for us to focus on is thus the verb "practice"—"the studying or exercising for the purpose of attaining proficiency" (not perfection) with the goal of working toward excellence. Our graduates will need drive, commitment, reflection, perspective, and flexibility to keep at it, to try to do better and to know when to consider a new strategy or direction.

A skill or game can also be practiced, but the law is different. The stakes are high. Many graduates will give voice to those who would not be heard otherwise. Outsiders do not speak law, nor do they practice law. The practice of law is a privilege. As a society, we cannot afford for those charged with the administration of justice to become desensitized to the pain and violence, and joy and happiness of those whom they are bound to give voice. Practicing the law requires more than just knowing the rules.

This is not a new idea. In fact, I want to share a story written almost two hundred years ago that I read about when researching how the practice of law and lawyers are depicted in American literature. Coincidentally, this story is about a Maryland lawyer, Morcell, the protagonist in George Watterston's book *The Lawyer; or, Man As He Ought Not to Be.*[1] Morcell's father, a wealthy Maryland landowner, hires an ex-lawyer, well acquainted with legal villainy, to train his son in the knowledge of technical, legal rules. Unfortunately, the ex-lawyer is neither able nor disposed to train Morcell on the fundamentals of justice.

According to the story, Morcell's only reason for practicing law is to make money, not to strive for justice. After losing a poor widow's case through his own

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1. CARL S. SMITH ET AL., LAW AND AMERICAN LITERATURE: A COLLECTION OF ESSAYS 140 n.18 (1st ed. 1983) (citing GEORGE WATTERSTON, THE LAWYER; OR, MAN AS HE OUGHT NOT TO BE (Pittsburgh, Zadok Cramer 1808)).

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negligence, he seizes her belongings, including her sickbed, to satisfy his fee. However, he continues to attract clients because he has great courtroom presence—a Perry Mason without integrity. He rises to prominence in the Maryland bar, only to later experience feelings of guilt. He retires to a distant part of the state, living in obscurity, hoping to repent for "the crimes of which I have been guilty."[2] Moral of the story—our graduates must practice the profession with care and compassion. When all is said and done, they and we, their educators, have to live with their actions and be able to sleep at night.

Let's transition back from 19th century fiction to present reality. Each of our graduates probably thinks repeatedly during the three or four years of law school that the process will never end. If we have taught them well, it never will. Graduates and educators must keep practicing. We must help students develop the tools of learning, which, of course, are far more important than any specific legal doctrine or skill.

It is also important that we and they gain perspective from other interests and disciplines. Although this advice might be a little extreme, consider the words of Ephraim Crabbe, a leader of the Maryland bar, who described the best method of study to his law clerk, Clement Falconer, in his 1838 book, *The Memoirs of a Young Whig:*

> Read six hours a day . . . and let it be your study to understand, rather than to remember all you read. . . . If . . . you understand the law, . . . it is all you can expect; nor need you wish for more. After your legal studies are finished for the day, read history, poetry, romance, chemistry, botany, any thing and every thing. Change of occupation is the best relaxation for the mind, and a lawyer's mind should be full of every thing.[3]

Perhaps Crabbe did not have much of a life or a family. He might have been a little off on the details, and he was innocent of modern relaxation techniques such as yoga and massage. At the core, however, his message still rings true. We must instill in our students the drive to understand, keep learning, put their legal work in context, respect themselves and their profession, and practice to achieve excellence.

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2. *Id.* at 140 n.19.

3. *Id.* at 136 n.11 (citing CLEMENT FALCONER, THE MEMOIRS OF A YOUNG WHIG (Baltimore, N. Hickman 1838)).

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