

RECALIBRATING THE MORAL COMPASS: EXPANDING “THINKING LIKE A LAWYER” INTO “THINKING LIKE A LEADER”

*Karen H. Rothenberg**

“The great aim of education is not knowledge but action.”¹
~Herbert Spencer, English philosopher (1820–1903)

I. INTRODUCTION

THE relationship between lawyers and the public has long been tenuous. Abraham Lincoln acknowledged the “vague popular belief that lawyers are necessarily dishonest.”² Headlines documenting scandal, greed, and malfeasance by lawyers and their clients have led to an even greater distrust and delegitimizing of the legal profession. In April 2002, the American Bar Association released its study *Public Perception of Lawyers: Consumer Research Findings*.³ Its results came as no surprise to most people in and around the profession. Fully seventy-four percent of those polled agreed with the statement, “Lawyers are more interested in winning than in seeing justice served,”⁴ while only thirty-nine percent agreed with the statement, “Most lawyers try to serve the public interests well.”⁵ Close to fifty percent of those polled said they were “extremely” or “very” confident in doctors and the medical profession,⁶ but only nineteen percent could say the same about lawyers and the legal profession.⁷ In a similar study, Professor Deborah Rhode also found that less than twenty percent of the Americans she polled described lawyers as “caring and compassionate,”⁸

* Dean and Marjorie Cook Professor of Law, University of Maryland School of Law. I would like to thank Bryan Pugh, Jamie Smith, and Associate Deans Diane Hoffmann and Teresa LaMaster for their outstanding insights and assistance.

1. HERBERT SPENCER, SOCIAL STATICS 86 (D. Appleton & Co. rev. ed. 1896) (1865).

2. ABRAHAM LINCOLN, MEMORANDUM FOR LAW LECTURE (1850), reprinted in LINCOLN ADDRESSES AND LETTERS 53 (Charles W. Moores ed., 1914).

3. A.B.A. SEC. OF LITIGATION, PUBLIC PERCEPTIONS OF LAWYERS: CONSUMER RESEARCH FINDINGS (2002), available at <http://www.abanet.org/litigation/lawyers/publicperceptions.pdf>.

4. *Id.* at 7.

5. *Id.*

6. *Id.* at 6.

7. *Id.* at 11

8. DEBORAH L. RHODE, IN THE INTERESTS OF JUSTICE: REFORMING THE LEGAL PROFESSION 4 (2000).

more than ninety percent of the parents responding did not want their children to become lawyers,⁹ and fully two-thirds believed that attorneys are no longer “seekers of justice.”¹⁰

How did this happen? Why is this so? Legal instruction retains much of the classic “case dialogue” method perhaps most famously typified by John Houseman’s portrayal of the stern Professor Kingsfield in the movie *The Paper Chase*.¹¹ As he told his first-year law students, “You come in here with a skull full of mush and you leave thinking like a lawyer.”¹² But what kind of lawyer?

Traditionally, especially during the first year of law school, students are taught in the classroom to logically and legally argue every point from every side and clearly see the bottom line. Could it be that learning to “think like a lawyer” just isn’t enough? The Carnegie Foundation’s recent report *Educating Lawyers: Preparation for the Profession of Law* (“The Carnegie Report”) asserted that law schools focus too heavily on teaching skills for legal analysis while neglecting students’ training regarding the “social consequences or ethical aspects” of that legal analysis.¹³ The “signature pedagogy” of legal education—the “case dialogue method”—“often forces students to separate their sense of justice and fairness from their understanding of the requirements of legal procedure and doctrine,”¹⁴ creating a disjunction between the development of substantive legal knowledge in students and the development of their moral and ethical identities as lawyers.

As a result of learning to argue from any point of view, lawyers often find themselves placed in a “no-man’s land” where the needs of the client and society collide. Moreover, with professional ethics being offered as a separate course that focuses on specific legal rules rather than character and moral formation, lawyers must face these moral challenges with little more than the Model Rules of Professional Conduct to guide them. Their dispassionate procedural and legal analyses are effectively segregated from their moral and ethical duties as lawyers. Accordingly, lawyers’ knowledge of the law’s ability to advance their clients’ interests may overtake their sense of what is right and just. In that way, while we are successful at creating individuals who can think like lawyers, we have been missing our opportunity to create individuals who think like leaders.

II. EXPANDING “THINKING LIKE A LAWYER” INTO “THINKING LIKE A LEADER”

Many difficult ethical issues related to the practice of law arise because of conflicts inherent in a lawyer’s simultaneous and competing roles as a representative of clients, an officer of the legal system, and a public citizen

9. *Id.*

10. *Id.*

11. THE PAPER CHASE (20th Century Fox 1973), based on the novel by JOHN J. OSBORN, JR., THE PAPER CHASE (1970).

12. THE PAPER CHASE, *supra* note 11.

13. WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW 187 (2007).

14. *Id.* at 57.

having special responsibility for the quality of justice.¹⁵ Law school is the place where law students begin to explore these conflicts and formulate their responses. They develop notions of professionalism and the roles of their personal conscience and ethical reflection in practice. It is also where they have an opportunity to engage in honest and sometimes difficult dialogue about race, gender, age, disability, and socioeconomic class, and how perceptions and attitudes about these differences may affect their relationships with other members of the law school community and even with their clients.

Education provided by most law schools is fundamentally instrumental, focused on imparting the knowledge and skills needed to “enhance one’s competitive advantage in life.”¹⁶ These skills remain grounded in the traditional adversarial legal system with little attention to the societal risks associated with such a system or the benefits of alternative means of dispute resolution. As Richard Zitrin and Carol Langford commented, “In short, while law schools are training young men and women to ‘think like lawyers,’ they should also be reminding them to think like human beings. If these lessons aren’t taught in law school, the nation’s law firms are unlikely candidates to teach them instead.”¹⁷

As the gateway to the profession, law schools can be catalysts for renewal and transformation. As the Carnegie Report suggests, key to this effort is the recovery of the formative dimension of legal education.¹⁸ The habit of self-reflection, an understanding of how the past has shaped the present, knowledge of one’s relationship to the larger social world, and the probing of models of professional identity are all elements of what the Carnegie Report calls “formative pedagogy.”¹⁹ In an ideal world, young lawyers would develop these habits of reflection and self-analysis in law school, be more attuned to their own values, and have the moral courage necessary to be leaders and agents for change in the profession.

Law schools are more than gateways to the profession, however. While all law schools are interested in providing teaching, research, and service, some law schools have at the core of their mission the improvement of law and society. In collaboration with the bench, the practicing bar, and a host of advocacy organizations and governmental entities, law school faculty members can identify and research problems in law practice and legal services. They also can propose reforms, develop and implement models for the delivery of legal services in clinical settings, and evaluate the impact of those changes.

Law schools are perceived by most as neutral arbiters. Thus, they are in a unique position to convene stakeholders for discussion, mediation, and consensus-building on contentious issues. Although practicing attorneys play

15. “A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.” MODEL RULES OF PROFESSIONAL CONDUCT pmb1. § 1 (2007).

16. *Id.* at 31.

17. RICHARD ZITRIN & CAROL M. LANGFORD, *THE MORAL COMPASS OF THE AMERICAN LAWYER: TRUTH, JUSTICE, POWER, AND GREED* 238 (1999).

18. SULLIVAN ET AL., *supra* note 13, at 85.

19. *Id.* at 32.

important leadership roles in certain aspects of law reform, the heavy demands of practice leave little time or opportunity to engage in empirical research or reflection. Practicing lawyers may not have the time and, in all likelihood, may not have had the exposure during law school to thoroughly consider the overall state of the law or their impact on it. When examining the overall merits of an individual case, the lawyer might not be considering the far-reaching questions: How should the legal system be improved? How could the legal system be made more accessible? How can lawyers and the legal profession as a whole make a positive impact on the current state of the law?

These types of broad questions, ripe for policy and research analysis, are well suited for the academic and research initiatives in which law schools excel. As a result, in addition to developing talent for future leadership, the best law schools have a far-reaching impact, working to bring about systemic changes in policy and practice within the profession and the legal system. Given this need for leadership in the ranks of lawyers and the inherent moral conflicts created by the current paradigm in legal pedagogy, how does a law school expand “thinking like a lawyer” into “thinking like a leader?”

III. INCORPORATING LEADERSHIP AND REFLECTIVE PRACTICE INTO THE LAW SCHOOL CURRICULUM

The University of Maryland School of Law has a long history of addressing emerging issues in the legal profession through pragmatic and evidence-based programs. In the 1980s, when the Maryland General Assembly passed an initiative to increase the access of poor and marginalized communities to legal services, we reframed the clinical program, one of the oldest clinical law programs in the country, to develop the Cardin Requirement.²⁰ This requirement mandates, as a condition of graduation, that each full-time student at the School of Law have an experience providing free legal services to the poor and marginalized in society so as to reflect on the ways law and policy operate on and impact those who are economically and politically disadvantaged.²¹ Rather than focusing simply on skills development in our clinical program, the Cardin Requirement provides opportunities for students to examine the theoretical foundations of law practice and to foster the habit of vigorous reflection about their professional identities.²²

In 2002, despite decades of enrollment parity between men and women in our graduating classes, we had yet to see evidence of parity in the advancement of women to top leadership roles in the profession. In response, we developed the Women, Leadership & Equality Program, which engages faculty and students in research and critical thinking about cutting-edge issues in gender and leadership. This program seeks to produce lawyers, both male and female, who

20. See University of Maryland School of Law, The Cardin Requirement, <http://www.law.umaryland.edu/publicservice/cardin.html> (last visited Dec. 26, 2008).

21. See *id.*

22. See *id.*

are aware of the barriers that women seeking positions of leadership in society face and who will actively promote women in these roles. It also provides professional skills training and experiential practice-based learning in areas including organizational dynamics, leadership, and personal negotiation.²³

Having established ourselves as a law school with a nationally recognized clinical program, a ground-breaking women's leadership program, and a faculty committed to developing in lawyers the habits of reflective professional practice, our law school attracted the attention of the Fetzer Institute. An operating foundation based in Michigan, the Fetzer Institute has worked in a variety of professions, most notably medicine and teaching,²⁴ to examine ways to deepen the grounding of professional identity and vocation in ethics, leadership, and service.²⁵ Through its Center for Law and Renewal, the Fetzer Institute made its first foray into the legal profession and sought to find a home for continuing this work in the legal academy.²⁶ The Fetzer Institute recognized that our law school already facilitated students' exploration and development of personal values and that we aided our students in applying these values in the context of a professional legal practice through our clinical and leadership experiences.²⁷

Thus, in the fall of 2006, we began a fascinating two-year collaborative conversation among the School of Law and many external partners, including the Center for Law & Renewal and the Fetzer Institute.²⁸ The goal of this conversation was to stimulate discussions, both within the law school communities and among members of the profession at large, about how best to address lawyers' conflicts between personal values and the competing demands of their professional roles.

As part of this conversation, in the fall of 2007, we collaborated with the James MacGregor Burns Academy of Leadership at the University of Maryland in College Park to solicit perspectives from the bench, bar, business, government and civic sectors on the distinctive needs and challenges for leadership in the legal profession.²⁹ The project began with the *Delphi Questionnaire on Leadership Education for Law Students*, which asked respondents for their perspectives on leadership education in law schools and the theoretical basis and possible content of a leadership education program.³⁰

23. *Id.*

24. See Fetzer Institute, About Us, <http://www.fetzer.org/AboutUs.aspx?PageID=About&NavID=1> (last visited Dec. 26, 2008).

25. *Id.*

26. See Overview of the Center for Law and Renewal, http://www.healingandthelaw.org/Centre_Overview.html (last visited Dec. 26, 2008).

27. *See id.*

28. See Campaign for the University of Maryland School of Law, School of Law Launches Groundbreaking Ethics and Leadership Initiative, <http://www.law.umaryland.edu/campaign/ethics.asp> (last visited Dec. 26, 2008) [hereinafter School Launches Initiative].

29. See UNIV. OF MD. SCH. OF LAW & ACAD. OF LEADERSHIP AT UNIV. OF MD. SCH. OF PUB. POL'Y, DELPHI QUESTIONNAIRE ON LEADERSHIP EDUCATION FOR LAW STUDENTS 1 (2008), available at http://www.law.umaryland.edu/faculty/conferences/conf63/survey_results.pdf.

30. *Id.*

Responses to this survey framed a day-long leadership roundtable discussion among scholars, judges, practitioners, business leaders, and students in the winter of 2008.³¹ The participants concluded the American legal profession had been slowly drifting away from its core values of the pursuit of justice, ethical representation of clients, and civic and community leadership. Instead, influences including increased globalization and competition and an ever-growing pursuit of greater profit margins have shaken many in the legal profession off their ethical moorings. As a result, the public and members of the profession perceive that fewer and fewer lawyers are relying on their “moral compass” in the practice of law. The overwhelming consensus at our roundtable discussion was that one of the best places to reverse this trend is where all lawyers begin their careers—law school.

During this discernment process, the Carnegie Foundation released its report, which confirmed our own conclusion that the current paradigm in legal education is not providing lawyers with the training and skills necessary to maintain their moral compass over the course of their careers.³² As a result of our law school’s continuing collaborative dialogue with Fetzer Institute and hard work from some very dedicated faculty members and administrators,³³ the University of Maryland School of Law received \$1.6 million to partner with the Fetzer Institute in developing a new initiative that emphasizes leadership, ethics, and democracy-building in legal education.³⁴

While we are still in the initial stages of implementing the overall initiatives, the pieces of this revolutionary shift in emphasis are slowly falling into place. While “thinking like a lawyer” mandates the intricate dissection and reconstruction of facts and case law, “thinking like a leader” further requires a student to consider the impact of his or her decisions and actions on the community as a whole, especially when community considerations conflict with a client’s interests. In developing our new cross-curricula focus, we stress the need to think critically about law and society, recognize the needs of

31. *See id.*

32. *See generally* SULLIVAN ET AL., *supra* note 13.

33. More than twenty-five faculty members participated in discussions through the development of this project. They included both traditional classroom teachers and clinical faculty. Their expertise ranged widely across the major substantive areas of faculty scholarship from constitutional law and jurisprudence, to more specialized fields like business, health, environmental, and intellectual property law. This collaborative process was led by Associate Dean for Academic Programs, Diane Hoffmann, with the help of Associate Dean for Institutional Advancement, Teresa LaMaster. Professor Brenda Blom, Director of the Clinical Program, played a critical role in conceiving the project. Today, the project director is Michael Millemann, Jacob A. France Professor of Public Interest Law. The Leadership component of the project is led by Paula Monopoli, Marbury Research Professor of Law and Director, Women Leadership & Equality Program. Bonnie Allen of the Center for Law & Renewal and Guillermina Hernandez-Gallegos of the Fetzer Institute have been invaluable partners throughout the development of this project and continue to provide important assistance and insight today. Jeffrey Raymond, *Law School Launches Groundbreaking Leadership, Ethics, and Democracy Initiative*, VOICE (Univ. of Md., Baltimore, Md.), Sept. 2008, at 1, 7; Maryland Law, LEAD Faculty & Staff, <http://www.law.umaryland.edu/programs/initiatives/lead/faculty.html> (last visited Nov. 24, 2008).

34. School Launches Initiative, *supra* note 28.

marginalized populations, and reflect on the decisions and the manner in which those decisions affect others. This initiative is not so much a new kind of clinical offering but a new paradigm for teaching core legal content areas. Engaging in a transformational goal of this magnitude was not without precedent; we were able to build on the solid foundation of our successful clinical and leadership programs already in place.

IV. THE LEAD INITIATIVE

Through our partnership with the Fetzer Institute, we created several distinct goals for this new initiative. First, by restructuring our emphasis on leadership, we sought to develop lawyers who were prepared to practice in the multicultural and diverse environment present in today's global, regional, and local legal areas. Second, we decided to create opportunities for law students and practicing lawyers to explore their personal values, the legal profession's requirements, and how one might reconcile the two. Third, we wanted to begin a movement across law schools and the legal profession to develop lawyer-leaders who seek solutions that satisfy their clients' goals, improve community life, and address issues requiring systemic change. We named this reinvigorated emphasis on teaching leadership across the curriculum the LEAD initiative (Leadership, Ethics, and Democracy-building). The LEAD initiative, with its emphasis on broadening moral and civic leadership skills, was the culmination of an evolutionary process.

To serve as the foundation for this growth process, we decided to concentrate on three distinct but related component parts: (1) Lawyers as Leaders; (2) Ethics and Professional Responsibility Integration; and (3) Democracy-building.³⁵ As we move forward by implementing each piece of the initiative, we gain enthusiasm, momentum, and strength.

A. Lawyers as Leaders

Collaborating once again with the Burns Academy of Leadership, our faculty is also partnering with the Maryland State Bar Association and others in the legal community to design, implement, and evaluate a leadership development program at the law school. The process for development builds on what we learned from the responses to our questionnaire as well as the input from leaders in law firms, the judiciary, corporations, government agencies, legislatures, and nonprofit institutions. This program includes several components: coursework, clinical or externship experiences, extracurricular activities, and community service. As we outline the plan integrating leadership across the board, we plan to disseminate our observations and suggestions to law schools nationally.

35. Maryland Law, LEAD: Leadership, Ethics, and Democracy, <http://www.law.umaryland.edu/programs/initiatives/lead/> (last visited Dec. 26, 2008).

In addition, we have established a Leaders Forum connecting law students, legal practitioners, and legal academics with an interest in leadership in the law.³⁶ The forum will meet several times a year to discuss current leadership challenges facing the legal profession, such as diversity in legal practice, work-life balance, the economics of law practice, and law practice in a global environment. Combining the knowledge gained from the curriculum development process and the Leaders Forum discussions, we will publish and distribute a monograph series on Lawyers as Leaders.

We are also developing a Fetzer Legal Fellows program for students who have completed the leadership curriculum, undertaken leadership of a community-based project, and analyzed their work in a scholarly paper. The program will allow students to identify others with similar interests and create a mechanism to promote the benefits of this curriculum to those outside the law school.

B. *Ethics*

As a member of the legal profession, a lawyer is a representative of clients, “an officer of the legal system and a public citizen having special responsibility for the quality of justice.”³⁷ The Model Rules of Professional Conduct recognize that many difficult ethical issues related to the practice of law result from these sometimes conflicting roles.³⁸ All too often, however, law schools have been more effectively teaching about the situations governed by the Model Rules of Professional Conduct than about those for which the Rules are silent. What should a lawyer do, for example, when it is in a client’s interest to make an argument that would be at odds with the common good? What if a lawyer can win a case against a poorly financed adversary just by litigating very aggressively so that the opponent, who simply cannot afford the cost of proceeding, must settle cheaply? Should lawyers treat all opponents equally or focus most aggressively on those with the “deepest pockets,” even if they may have the most attenuated and limited culpability?

Through this project, the law school will help students explore and develop their own personal values and consider how they apply in the context of professional practice. We will develop materials and cases that allow students to examine a “relationship-centered ethic” in law practice. For example, students will examine whether the role of lawyers extends beyond one of merely technically advancing clients’ legal interests to one that considers the holistic needs of clients and helps the clients make decisions in a larger context. The LEAD initiative provides opportunities for examining professionalism in numerous venues, including an innovative course on professional responsibility, integrated curriculum with case studies, and a student-led initiative to explore

36. See Maryland Law, LEAD: Lawyers as Leaders, <http://www.law.umaryland.edu/programs/initiatives/lead/curriculum/leaders.html> (last visited Dec. 26, 2008).

37. MODEL RULES OF PROF'L CONDUCT pmb. § 1 (2004).

38. *Id.* pmb. § 9.

best practices in the profession and issues of justice with members of the broader community. While Maryland will be a demonstration site for the implementation of these initiatives, these efforts will also be made available to other law schools through blueprints for their own implementation.

C. *Democracy Building*

Lawyering in our global environment requires cultural competence and leadership that recognizes diversity and respects local values and differences. Many communities are struggling with staggering poverty, racism, and declining infrastructures that fail to provide basic access to health, education, safety, and economic opportunity. Some of our students, through their work in our clinics, have engaged in “community recovery.” Community recovery refers to long-term, comprehensive, community-driven processes by which community organizations and enterprises seek to reduce poverty and recover from disinvestment. The term is most often used in reference to communities that are recovering from major natural disasters, like those in the Gulf Coast, but lessons learned from such efforts are also being applied to communities, like many in Baltimore, that are suffering from sustained, chronic degeneration.

Clinical work in these communities provides a learning laboratory and basis for critical reflection about community lawyering in an urban environment with a multiracial population. It also offers students opportunities for leadership as agents for positive social change. Recently, more than twenty students and alumni traveled to Biloxi, Mississippi to work with the Mississippi Center for Justice on the tremendous backlog of legal issues related to housing redevelopment in communities still recovering from the devastation of Hurricane Katrina.³⁹ In this experience, the students provided legal assistance and researched the disparities in the FEMA grant process. We have incorporated this clinical experience into a ten-week summer clinical program at the Mississippi Center of Justice to reinforce the leadership skills needed by lawyers working for community transformation and public interest law.⁴⁰

Building on our international partnerships and experiences, the LEAD initiative is in the process of identifying a recovering community in a developing country where we will establish a related clinical opportunity for our students. This collaboration will enable students to articulate more explicitly the connections between community-building and democracy, multicultural competence and democracy-building, and the fundamental skill sets necessary to do this work. It will enable them to use a unique set of skills to work with communities worldwide to build conflict resolution capacity for preventing, resolving, and healing after conflict.

39. See Maryland Law, Maryland Law Katrina Project, <http://www.law.umaryland.edu/students/life/orgs/katrina/> (last visited Dec. 26, 2008).

40. See Maryland Law, Course Catalog, Mississippi Center for Justice Clinic, http://www.law.umaryland.edu/academics/program/curriculum/catalog/course_details.html?coursenum=511Q (last visited Dec. 26, 2008).

A key element of this work will be the inclusion of client groups in the reflective components of the project. While building these communities' capacity to take part in their own recovery, the project will explore notions of community healing, community justice, and self-determination. The framework created by these discussions will enable the communities, if they choose, to embrace a long-term commitment to these strategies and the work they are doing. Providing models of community recovery and introducing skills for engaging the myriad challenges these communities face will build a foundation for democracy to grow and flourish.

V. CONCLUSION

In response to the ethical challenges of modern law practice, an expanded focus on ethics and problem-solving will help students learn the habits of reflection and analysis needed to develop and retain a professional "moral compass." Legal practitioners, legal educators, and commentators acknowledge the need for law schools to seriously approach the development of the next generation of leaders in the legal profession. There is a need to reawaken the leadership roles lawyers can play in working towards a more just society. Through programs and initiatives that incorporate theoretical and practical leadership training, law schools can answer the call for visionary civic leadership and courageous moral action in today's legal system. By equipping future lawyers with the legal knowledge, leadership skills, and habits of reflection to fulfill all of the lawyer's myriad roles, law schools can truly recalibrate the legal profession's moral compass and expand "thinking like a lawyer" into "thinking like a leader."