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The large law firm dominates debate and analysis of the major issues facing the legal profession today.[1] To some extent, this dominance is appropriate. Large law firms are the most successful institutional component of the American legal profession according to the criteria of economic prosperity, proximity to the corridors of economic and political power, and the influence exerted on the legal profession generally. This success makes it especially appropriate to focus on large firms when discussing such issues as the position of women and minorities in the profession.[2] From an academic perspective, another subject may seem even more important—the increasingly close connection between the large corporate law firms and the law schools.[3] Opinions may differ on the desirability of that phenomenon,

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1. For example, the literature on the rise and decline of professional values, including the value of independence, tends to emphasize the crucial role of the large law firm. According to Robert Gordon, "[T]he ideology of lawyers as a separate estate in society originated with and has tended most to flourish around the elite bar." Gordon, *The Independence of Lawyers,* 68 B.U.L. REV. 1, 31 (1988). *See also* Luban, *The Noblesse Oblige Tradition in the Practice of Law,* 41 VAND. L. REV. 717 (1988); Rehnquist, *The Legal Profession Today,* 62 IND. L.J. 151 (1987); Simon, *Ethical Discretion in Lawyering,* 101 HARV. L. REV. 1083, 1094 (1988) (Prosperous lawyers can exercise more discretion because "lawyers will have to balance their legitimate financial concerns with their commitment to a just distribution of legal services."). The era of attention to "social change through law" both in the United States and abroad highlighted the power and approach of the "first rate metropolitan lawyer." J. GARDNER, LEGAL IMPERIALISM 37 (1980) (quoting a speech by Justice Douglas). Recent attention to changes in the market and increased competition in the United States and in the other centers of commerce and industry bring the U.S. large law firm and comparable entities elsewhere into focus. Flood, *Megalaw in the U. K.: Professionalism or Corporatism? A Preliminary Report,* 64 IND. L.J. 567 (1989).

2. *See* Rhode, *Perspectives on Professional Women,* 40 STAN. L. REV. 1163, 1178-79 (1988).

3. *See generally* Macaulay, *Law Schools and the World Outside Their Doors II: Some Notes on Two Recent Studies of the Chicago Bar,* 32 J. LEGAL EDUC. 506 (1982). The relationship between the firms and the schools has been changing. Probably the fit between the large firms and the law schools has grown much closer in recent years simply because the law firms have raised their salaries in order to attract a larger number of graduates and fuel the incredible growth dynamic that characterizes the large law firms. One could simply celebrate this phenomenon, but, unlike many business schools, no law school would define educational success solely according to the market as reflected in the starting salaries of its graduates. Law schools do, however, like to report salary figures as well as the percentage of students with jobs at graduation, the number of firms who come to the school to recruit, and the number of places where students go to practice, and all of those figures relate directly to recruiting by the large law firms. If we wish, we could trace the connections even further. Certainly there are counter trends, but the new interest in public interest alternatives may reflect an upsurge in student concern, or it may be largely a symbolic act to allow the illusion that today's students can resist the pressures to join the large law firms.

and certainly an academic institution cannot define itself according to the priorities of a privileged segment of a diverse profession. Nevertheless, a close connection between large firms and law schools is inevitable, and it necessarily raises some basic questions about curriculum and teaching. One especially timely question is how the general teaching program at the law schools promotes or hinders certain aspects of the *professionalism* of the large firm lawyers. Not everyone is precise about what professionalism means, but there seems to be a growing literature suggesting that we need more of whatever it is.

Chief Justice Rehnquist's remarks at our building dedication in 1987[4] called for more research and reflection by law schools about the changes taking place in the profession and especially in the large law firms. He expressed concern about a decline in what he deemed to be certain essential features of professionalism, including lawyers' involvement in public service. The American Bar Association's Report on Professionalism outlines similar themes in its lament on the rise of commercialism.[5] It tries to find ways to involve the law schools in the revitalization of the profession, but the conclusions about law schools are limited: Professors should serve as role models; ethics and professionalism should be taught. Such proposals are fine as far as they go, but they avoid the controversial question of how the basic teaching program itself builds or hinders particular ideals of professionalism. One of these ideals is that of "independent professional judgment," which can be defined in a way that links it both to the values of the legal system and to an ethic of personal integrity. A big question is whether law schools can help to cultivate this ideal and bolster it in large law firms.

A discussion initiated at the Law School's 1988 symposium on large law firms by two leading practitioners, Bryant Danner of Latham and Watkins and James Fitzpatrick of Arnold and Porter,[6] provides a useful way to frame the issue. Each emphasized a different role for the law schools in preparing students to practice effectively in large law firms. Danner emphasized the traditional first year curriculum and the skills of case analysis and legal reasoning. Fitzpatrick, reflecting in part the entrepreneurial approach of his firm, emphasized "problem-solving" and the case method used in business schools rather than that of traditional law schools. The approaches are directed to the problem of how best to promote craft, not

4. Rehnquist, *supra* note 1.

5. AMERICAN BAR ASSOCIATION COMMISSION ON PROFESSIONALISM, ". . . . IN THE SPIRIT OF A PUBLIC SERVICE:" A BLUEPRINT FOR THE REKINDLING OF LAWYER PROFESSIONALISM (1986).

6. *See generally* Danner, *Looking at Large Law Firms—Any Role Left for the Law Schools?* 64 IND. L.J. 447 (1989); Fitzpatrick, *Legal Future Shock: The Role of Large Law Firms by the End of the Century,* 64 IND. L.J. 461 (1989).

independent professional judgment. The standards for craft, however, cannot be separated from the troubling issue of professionalism.

The two educational approaches correspond with two ways to approach legal practice. One approach is "delivering legality" through the dissemination of law and legal principles to clients. The other is the "delivering solutions" approach of the problem solver.[7] Neither approach to technique is necessarily more client-centered or "adversarial" than the other. They differ on another scale—what values to push in giving legal advice. Danner and Fitzpatrick have good reasons for linking one or the other approach to success in the large law firm setting.[8] The question here, however, is not what makes for success, but how a certain kind of success structures our central professional values. We can explore that question through the dichotomy of delivering legality versus problem solving. This important dichotomy, found in both teaching and practice, can highlight the unsettled issues and suggest some approaches that might fruitfully be taken.

I. DELIVERING LEGALITY

The "delivering legality" approach[9] has a respectable pedigree in the canons of legal ethics:

> The most effective realization of the law's aims often takes place in the attorney's office, where litigation is forestalled by anticipating its outcome, where the lawyer's private counsel takes the place of public force. Contrary to popular belief, the compliance with the law thus brought about is not generally lip-serving and narrow, for by reminding him of its long-run costs the lawyer often deters his client from a course of conduct technically permissible under existing law, though inconsistent with its underlying spirit and purpose.[10]

As captured well in this often-cited quotation, the delivering legality approach has a number of interesting features. It creates in the first place a rather appealing picture of the law and the lawyer. The lawyer, trained to establish the principles and goals underlying a particular law, advises the client about just those principles and goals. The lawyer's power is used to tame the client and bring the client within those socially beneficial purposes. Delivering legality civilizes the client through wise counsel grounded in legal principles. According to this approach, the lawyer's independent professional judgment derives from the ability to ascertain and apply neutral legal principles and goals.

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7. While this dichotomy differs from that of William Simon, *supra* note 1, Simon's category of "regulatory" lawyer has many similarities to the "legality" model.

8. *See* Danner, *supra* note 6; Fitzpatrick, *supra* note 6.

9. *See generally* Galanter, *Delivering Legality: Some Proposals for the Direction of Research*, 11 LAW & SOC'Y REV. 225 (1976).

10. American Bar Association Joint Conference on Professional Responsibility, *Professional Responsibility: Report of the Joint Conference*, 44 A.B.A. J. 1159, 1161 (1958) (reprinted in MODEL CODE OF PROFESSIONAL RESPONSIBILITY EC 7-8 note 19 (1981)).

This approach has considerable appeal, but it is grounded in a particular social context. First, it is closely intertwined with the regulatory state. The emphasis is on compliance with the principles of the law even if the client could be shown ways to avoid compliance. It is assumed without question that the avoidance of regulation increases long-run costs.[11] Evasion of the law through lip service is characterized without analysis as costly in the long run. The idea that "private counsel takes the place of public force" clearly *extends* the regulatory state instead of pushing public force away in the interests of private initiative. Delivering legality, in short, is biased toward regulation.

The quotation tends also to support "no" as a particularly valued outcome of legal advice. The lawyer deters the client from a course of conduct that is inconsistent with the spirit of a law or regulation. The great lawyer essentially says,

> I can think of a way that you could accomplish your goal that would technically be legal, but it would violate the purposes of the legal regulation. Moreover, there are costs of going against those purposes. In particular, there will be embarrassment and a certain ill will generated against you when others find out that you have exploited a technicality not meant to allow you to proceed.

Thus the assumptions are that legal regulation ought to be implemented, and that hesitation and caution are essentially costless outcomes. The ethical lawyer is characterized above all by a courageous fidelity to legal principles and aims.

The same approach applies to the resolution of disputes. The deliverer of legality advises the client as to who is right and who is wrong according to the law. That does not mean the lawyer avoids negotiated settlements, but the law casts a definite shadow over any negotiated solution. Negotiations take place as if the parties are trying to predict what the outcome would be at trial. The public policy of the delivering legality tradition thus finds its way into the model of the negotiating process. Again, wise counsel helps to implement the principles and aims of the legal system.

II. DELIVERING SOLUTIONS

For obvious reasons, delivering legality seems a little anachronistic as a professional ideology in an era of deregulation. The "delivering solutions"

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11. Another vivid example is MODEL CODE OF PROFESSIONAL RESPONSIBILITY EC 7-8 (1981), which notes that "it is often desirable for a lawyer to point out those factors which may lead to a decision that is morally just as well as legally permissible. He may emphasize the possibility of harsh consequences that might result from assertion of legally permissible positions." Again, only the consequences of avoidance are emphasized. Compliance or legality is assumed to be moral and economically good.

approach, however, rejects the bias toward regulation and the respect for the conservative "no." It focuses attention on "yes" as the preferred outcome of first-rate legal advice.[12] The paramount goal is to find a way to unleash private initiative in the face of governmental regulation. The astute lawyer does not find ways to discourage clients from going ahead because of some asserted public policy, but rather treats the governmental regulation as a challenge to be overcome on the way to consummation of a deal. The emphasis is less on courage and more on creative problem solving.

The deliverer of solutions seeks instrumental goals that are not necessarily rooted in legality. The goal may be to satisfy the aims of a client, whether it is to win a particular fight or to make peace and get along with the business or social arrangement. The defining point, however, is that the law or legal regulation is simply a potential obstacle to be overcome or circumvented—or even used where appropriate. Whether making deals or resolving disputes, the two approaches lead to pronounced differences.

The differences in practice can be seen in the setting of a hypothetical merger between two large corporations that traditionally have competed with each other.[13] Many kinds of legal advice are possible. An example in the delivering legality tradition would be advice that the merger is probably legal, but is inconsistent with the spirit of competition that the antitrust laws were meant to foster. The pure problem solver, on the other hand, might advise that, while the letter of the law clearly prohibits the transaction, the chances of enforcement are very small and the potential sanctions are less than the expected value of the transaction. There are several kinds of advice between these two extremes, but these examples illustrate the tendency toward different outcomes. The first approach inserts the presumed policies of the law into the transaction. The second finds a way to keep the law and its policies away.

The example suggests several important implications. First, the delivering solutions approach can be identified with *deregulation* rather than regulation. There is no reason for lawyers concerned only with solutions to advise their clients that the transaction should be modified for the purposes of regulatory legal principles. It is true that the lawyer might think there are negative long-run consequences that might occur from saying yes, but there may also be negative long-run consequences from saying no. The lawyer certainly can and should evaluate such positive and negative consequences,

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12. *See* R. FISHER & W. URY, GETTING TO YES (1981) (reflecting a similar approach to problem solving). For an example of "yes" lawyering, see P. HEYMANN & L. LIEBMAN, THE SOCIAL RESPONSIBILITIES OF LAWYERS: CASE STUDIES 106 (1988).

13. Gordon, *supra* note 1, at 26-29, and Simon, *supra* note 1, provide much more sophisticated analyses of the options available to the lawyer-counselor.

but regulatory policy is not given any *special* weight in the problem-solving balance of these consequences.

Second, the emphasis on solutions rather than legality can be seen as a *deprofessionalizing* approach. It de-emphasizes the law and makes *equally* important the other potential costs and benefits of the transaction. It is helpful to know what risks the law might create, but those risks are not counted any differently than the risks of the economic marketplace. The boundaries between the professions are blurred, as is any boundary presumed to exist between business and profession. The professions can compete for leadership in tying together the various forms of advice and information that are required to evaluate a given transaction. The individual or organization that "quarterbacks" the transaction earns more money and gains more influence. The legal profession has no special claim to preeminence in this kind of environment with this kind of orientation.

The emphasis on solutions also has an impact on the professional marketplace. A law firm that stubbornly insists that legal principles and the purposes of various laws counsel against a potentially profitable transaction will have some trouble attracting business. More aggressive law firms will find ways to satisfy the aims of their business clients. It may also be that more aggressive advisers from other professions will have success competing against law firms. An accounting firm that provides accurate tax advice even further removed from legal principles than solution-oriented law firms may prove especially successful. Pressures to minimize concerns of legality, in short, have an impact throughout the market in business advice and dispute resolution. Lawyers, one can argue, had better learn to play well in this competitive market, or the business community will rely primarily on advisors able to find the best *economic* solution to their problems. Perhaps the concern for legality is a needless obstacle to large law firm success.

III. Implications for Legal Education and Professionalism: Revival or Abandonment of Legality

Legal education is inevitably affected by what can be seen as a trend toward deregulation and de-professionalization. Legal educators concerned with a professional ideal grounded in legal principles face an apparent dilemma. On the one hand, they want law graduates to be successful in the era of deregulation. Success may require that the law schools teach more in the tradition of business schools with an orientation toward the bottom line rather than toward legal principles and purposes. The specifically legal component of legal education would focus mainly on developing plausible arguments and assessing the costs of a plausible argument that does not work. Ascertaining traditional legality would still matter as one aspect of a lawyer's skills, but it would bring no special commitment. The crucial part

of the curriculum would integrate that legal component with the skills of problem solving so that lawyers would be able to quarterback the large business transactions. They would learn to mobilize and draw upon the skills of accountants, architects, engineers, and business people, who would play other positions on the successful transactional team.

That apparent recipe for success is troubling for educators who would like to preserve the independent voice of the *legal* profession. Legality concerns give a basis for that voice. One response might be to seek to revitalize the teaching program in order to rebuild a consensus about legal principles and goals, and to rekindle the role of the lawyer as a relatively cautious adviser and strong protector of the principles of legality. Such a reform program, however, goes directly against the grain of recent events. The notion that legal principles and purposes can be divined and taught has the ring of fantasy. Few today believe that the antitrust laws, for example, provide a clear set of principles in the abstract. Rather, the principles depend on an understanding that derives from political and social contexts and opinions. In short, no one will be fooled if we spend all our reform energies trying to revive a view of legal education that we identify so strongly with the nineteenth century.[14]

A respectable body of opinion, moreover, would consider lawyering to be at its finest and most professional if it sought only to find a way to say "yes" to economically rational transactions.[15] Law schools that push a somewhat anachronistic vision of legality will thus not only have trouble gaining a consensus on *which* legality, but also will create controversy over the entire enterprise of promoting legality.

The legality ideal cannot be revived as a means to promote independent professional values in the large law firms. It simply overlooks too much in the name of a *contested* set of principles. The delivering solutions approach, in addition, has merit of its own. It develops important skills to help the firms gain a competitive advantage in the large transactions so important to their economic prosperity. Nonetheless, we are still left wondering about the implications for the legal profession. The question remains whether the value of independent professional judgment is worth anything, and, if so, what might be done to strengthen it in today's world.

IV. Between Revival and Abandonment

The problem is easy to state. It is increasingly difficult for law schools to cultivate traditional professional values in large law firms. Legality asks

14. *See generally* Grey, *Langdell's Orthodoxy*, 45 U. Pitt. L. Rev. 1 (1983).

15. *See, e.g.*, Fried, *The Trouble With Lawyers*, N.Y. Times, Feb. 12, 1984, § 6 (Magazine), at 56.

too much, and problem solving asks very little. Before giving up, however, we should consider some alternatives between revival and abandonment of the delivering legality paradigm. One possibility is to help students identify what is truly fundamental in our legal system. Perhaps students can be persuaded that delivering legality applies to *some* core of legal values, such as due process and the right to be heard.

Law professors have some difficulty teaching core values.[16] Brilliant teaching is irreverent.[17] The best post-realist teachers are often masters at showing students that their most cherished beliefs are simply a matter of opinion or supportable only by some more or less plausible arguments that could be countered by other more or less plausible arguments. There are limits, however, even for those who cultivate irreverence. Very few professors, if any, will play devil's advocate for slavery. The argument for slavery is an affront to uncontestable legal values. Perhaps the range of the uncontestable goes further. The basics of due process are still central to any vision of our legal system. Law teachers should ask what other fundamentals are essential to the legal profession, and they should teach that such fundamentals have a special place in professional legal advice.

How far professors should go in this direction is subject to some debate, and this brief article cannot begin to do it justice. I would like, however, to promote two *professional* norms as basic. One is the duty to provide legal services to those who cannot afford them. Not all support this idea, but the organized bar expresses it at all appropriate occasions.[18] The second is the obligation *not* to counsel ways for clients to get away with violations of the law. Returning to the antitrust example, a teacher could instruct students in several ways. Assuming a situation where the merger was clearly illegal, a lawyer might advise the client that illegality can safely be ignored because it would not be prosecuted by state authorities lacking sufficient resources. Such advice is not necessarily immoral by any external (non-legal/professional) standards of morality. Non-enforcement may occur because the executive branch wishes to promote mergers and acquisitions. Non-lawyers can see very well that a merger may be socially desirable from the point of view of the executive branch, even if it technically violates the law. The astute problem solver might thus advise how to allow the "illegal" merger to take place. Legality in this manner counts for nothing. Such advice is economically and practically sound, but I do not think lawyers can ethically provide it.

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16. *See generally* Rueschemeyer, *Doctors and Lawyers: A Comment on the Theory of Professors,* 1 CAN. REV. OF SOC. & ANTHR. 17, 19-22 (1964) (difficulty of defining central values of the legal profession in contrast to that of the medical profession).

17. *See* D'Amato, *The Decline and Fall of Law Teaching in the Age of Student Consumerism,* 37 J. LEGAL ED. 461 (1987).

18. For an interesting expression of concern about the corporate bar's commitment, see Llewellyn, *The Bar Specializes—With What Results?* 167 ANNALS 177 (1933).

Prevailing professional norms oppose that unequivocal rejection of legality. The lawyer should not advise how to disobey the law, even if a respectable argument can be made that it would be in the client's best interests.[19] This professional norm, which I think we ought to continue to support, biases the legal profession toward legality. It may not be rational economically, but it should temper the advice of the problem solver in some situations. Law schools should cultivate this aspect of the legal profession even when it inhibits rational economic decision making. That does not mean lawyers must try to line up clients behind the principles and aims of laws, but it does mean that clients must not be advised how to flout the law in the name of profit. Our independent professional judgment, in short, should be biased somewhat toward legality even for a lawyer primarily focused on problem solving.

There are two strong reasons for law schools to encourage this kind of independent professional judgment. The first is professional survival. If we depreciate legality such that it collapses into just another variable in the equation, it is difficult to make any special claims for the legal profession as worthy of special protection by the state. Whatever lawyers might be tempted to do to support themselves and their practices, they will have problems if the law part becomes too small. Lawyers as a group have a stake in legal regulation and the implementation of legal principles. It may hurt the business of the large law firms to insist on a professional norm against counseling a knowing violation of the law, and to take the norm more seriously than simply "perhaps an argument can be made." But the long term survival of the legal profession is linked to a serious approach to law.

Furthermore, members of the legal profession are still the custodians of a certain tradition. They have invested in the tradition, as noted above, and their power, prestige, and self-image depend on the viability of the tradition. Lawyers tend to believe in many aspects of the legal tradition, as suggested in the discussion of legal fundamentals—the basics of the tradition. It has also emerged in a certain respect for the integrity of a legal argument. Part of our tradition is that not all arguments about legal principle are equally valid. Beyond those aspects of the tradition, we probably have a certain faith that someone schooled in the tradition of laws and principles gives a better, more persuasive, deeper, or more thoughtful form of advice, even when the advice looks closer to the moral and political than to what is conventionally understood as legal. If we take the best in our tradition seriously, it will encourage independent professional judgment.

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19. *See* MODEL CODE OF PROFESSIONAL RESPONSIBILITY DR 7-102(A)(7) (1981); MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.2(d) (1983).

This bias toward legality can be joined with another approach to encourage independent professional judgment in large law firms: We can encourage lawyers to bring their independent values from *outside* clear legal standards and uncontested legal principles by letting personal morality and perceptions of public policy play a role in all legal advice.[20] If a polluter seeks to circumvent anti-pollution controls and the *law* permits that circumvention, teach lawyers to assert their own interests in pollution control as a value worth taking seriously. Some of our best writers on the legal profession have made very persuasive cases for just this approach to lawyering.[21] Their reaction to the difficulty of finding neutral principles of legality has not been to abandon principles, but rather to promote those that might not be safe and neutral. Independent professional judgment can then mean both the anchoring of advice on legality, where appropriate, and the implication of the lawyers' own values in legal advice and representation.

The good teacher, in short, can cultivate professional values in two ways that counter the manipulation of legal doctrine and the iconoclastic realist questioning. One responsibility is to show where certain icons are located and how they affect legal advice. The second is to insist that we ask what we ought to advise given our own perceptions of morality and public policy. If law schools promote these approaches, then their graduates will be aware that the many virtues of problem solving do not necessarily mean that economic rationality is all that matters from the point of view of fidelity to the legal system and fidelity to personal values.

The question is whether these two approaches toward educating lawyers really can help promote significant professional values in the large firm setting. It might be, after all, that the economic necessities of the competition for clients make concerns with legality or personal integrity beside the point. Clients want particular results or they go elsewhere. We must ask, therefore, about corporate behavior when confronted with each approach. If the corporate client in the antitrust hypothetical simply states that he or she could care less about the so-called fundamentals of professional responsibility and the legal system, there is not much a lawyer can do except give in or withdraw and let the business go elsewhere.

Corporate behavior, however, is not focused entirely on short-term profits. The advice given consistent with fundamental legal principles is tied into a lawyer's professional image, but it also implicates widely shared values that go beyond the profession. The lawyer who advises clients to pay particular attention to due process, for example, or the dictates of a clearly applicable

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20. It is quite possible, as Mr. Fitzpatrick has indicated in a personal communication, that a problem-solving lawyer could be at least as likely as a promoter of legality to insert personal morality and long-term thinking into legal advice.

21. Gordon, *supra* note 1; Luban, *supra* note 1; Rhode, *Ethical Perspectives on Legal Practice*, 37 STAN. L. REV. 589 (1985); Simon, *supra* note 1.

statute, is acting consistent with a strong body of public opinion. One of the striking features of the Iran-Contra Affair was the extraordinary attention paid to the question of legality. The same was true with respect to the investigations of former Attorney General Meese. Each situation could have been approached in a much more "sophisticated" way, but the public (or at least the media) focused predominantly on the narrow question of legality. Lawyers who keep that approach in front of their clients despite the pressures for short-term profits are not out of the mainstream.

Moreover, public opinion is not static and unrelated to developments within the law schools and the legal profession. What law schools teach and how law schools react to public events can affect public opinion. If we are consistent in proclaiming and explaining certain fundamentals in changing contexts, our legal expertise and presumed competence will have some impact on the public.[22] The public may continue to perceive us as the custodians of at least some fundamental American values,[23] and thus perceive us as worthy of support against deprofessionalizing pressures.

But will this logic work with the effort to bring *personal* morality into our legal advice? This approach is more political and divorced from fundamental principles of legality. Thus, it is harder to predict success in this effort to put independent professional judgment into large firm practice. One problem is that *legal* advisers have no particular claim to expertise or insight about these non-legal concerns. If the advice gets in the way of business judgments, we cannot expect the business client to be as indulgent or respectful as when legality concerns inform the judgment. The business client may be even more inclined to take the business elsewhere, even to non-lawyers, if the lawyer will not acquiesce. This kind of legal-moral-business advice, however, is defensible in its own terms for the legal profession and others. Part of good teaching could be that *this* professional approach—integrating personal morality with professional practice—cuts across professions and should be supported by business executives, accountants, and engineers as well. If each one gives advice that is not limited to short-term profits and losses, then business clients generally will be better able to accept this kind of professional role. At the very least, this approach gives clients better access to the unreserved intelligence of their professionals.

The legal profession and the law schools can do more. As others have emphasized, we can *reject* one aspect of the professional norms that retains support in the abstract—the idea that lawyers are in no way responsible for the actions of their clients.[24] Lawyers have a complicated set of duties, but

22. *See* Garth, *Independent Professional Power and the Search for a Legal Ideology with a Progressive Bite,* 62 IND. L.J. 183 (1987).

23. *See* ACKERMAN, RECONSTRUCTING AMERICAN LAW (1984).

24. *See* Gordon, *supra* note 1; Luhan, *supra* note 1; Rhode, *supra* note 21; Simon, *supra* note 1.

clearly no obligation to take particular cases. To say, however, as the *Model Rules of Professional Conduct* do, that legal representation of a client "does not constitute an endorsement of the client's political, economic, social or moral views or activities"[25] is to oversimplify dramatically. It would also oversimplify to say a lawyer only represents clients whom the lawyer thinks are morally correct. Other systemic values are implicated. The point, however, is that part of our responsibility in the law schools is to question the division between lawyer and client responsibility. Our questioning can be discomforting to a person whose law practice leads to representation of entities whose behavior he or she does not like, but professionalism requires some introspection and self-criticism. The law schools will have diminished impact on corporate law firms if they fail to encourage self-criticism and a sense of personal integrity in practice.

Law schools, in addition, possess the means to encourage professional responsibility for client actions. As institutions, they can recognize and reward those who have rejected the artificial divorce between lawyer and client. Law schools help to decide who will be honored most within the legal profession. We teach students what we consider to be the standards for top lawyers, and we recognize lawyers through alumni awards and the like. If law schools work to reward careers characterized by professional excellence and integrity, they will help inspire that career path in others.

What we value in the law schools, moreover, affects value in the marketplace. Law firms develop their own cultures[26] with respect to working conditions and expectations, aggressiveness in litigation, general ethical approach, willingness to take certain kinds of cases, and public service. The culture can help create the market value of a firm's services. It may be that law schools can help promote a market where clients shop not just for a "yes," but rather for the blessing of a concerned and demanding law firm.[27]

This possibility seems at first to be paradoxical. If clients want their problems solved with a minimum of legally generated friction, why would they seek out and pay premium dollars for lawyers who make it more difficult for them? Consider the antitrust example. Suppose one law firm is known for its concerns with professional ethics and legality, and another is known as a good source of affirmative recommendations. A corporation may be convinced that its behavior is consistent with law and the principles of antitrust, and it wishes its shareholders and the public to appreciate its position. Perhaps it fears a private legal challenge or a public challenge if

25. MODEL RULES OF PROFESSIONAL CONDUCT Rule 1.2(b) (1983). As Luban says, "[T]he principle of neutrality has come under vigorous attack in recent years, and in my view is completely discredited." Luban, *supra* note 1, at 738.

26. *See* Rhode, *supra* note 21, at 631-38.

27. Simon makes a similar point about how goodness may have a market value. Simon, *supra* note 1, at 1130.

the regulatory climate changes, and it wants to be sure that everyone understands the legal soundness of the position. It may be efficient to seek approval from a very demanding law firm. For such transactions, there is a particular market in legal services. By valuing the kind of lawyer who cultivates this market, law schools can help create and support a demand for such services.

Law schools can thus participate in maintaining some important professional values. They can help cultivate the essential components of fundamental legality and encourage responsible advice even beyond the limited domain of neutral legal principles. That does not mean a rejection of problem solving or the creativity that helps clients accomplish their goals. It means working with clients not just to achieve a bottom line result, but also to respect certain fundamentals and pay attention to important moral considerations.

A cautious conclusion is in order. My argument has been built on somewhat fragile foundations; the possibility of success cannot be demonstrated. Maybe the professional values supported here will not continue to enjoy a supporting consensus, or they may simply be overwhelmed by the marketplace. Further, it is a little dangerous to try to reach back into the last century to sustain parts of an ideal that we cannot say for sure ever existed. A norm supported in the *Model Code of Professional Responsibility* does not necessarily describe lawyers' conduct. To some extent, therefore, my effort can be seen as another example of unsupported professional nostalgia. The question is far from settled, however, and I would rather place the burden of proof on the critics of professionalism. It is much more fun to teach in a law school if we maintain the belief that there are certain professional values worth professing, and that the cultivation of such values can accomplish some good.