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An Authentic Life in the Law: A Tribute to James K. Logan*

Irma S. Russell**

When the *Law Review* asked me to write an article about Judge James K. Logan, I was delighted because it gives me the opportunity to praise someone who richly deserves praise for a productive career of service in the law. I also welcomed the opportunity because it allows me to delve into (and thereby discover) my views on what constitutes a valuable life spent in the law. Like many attorneys, I have tried to assess my professional life in light of ethical goals and issues. What constitutes a well-spent life? Do my efforts aid society? Do they add to “the good”?

Like many lawyers today, I am troubled by recent changes in the way Americans think of lawyers and the law and in the way lawyers think about themselves and their role in the legal system. I am troubled by what I see as a crisis of confidence in lawyers and the legal system in this country.¹ Although criticism of lawyers is nothing new, public animosity toward lawyers has increased in dramatic ways in recent years.² Moreover, attorneys’ regard for the careers they have chosen appears to be at an all-time low.³ These are not merely image or

* The title for the Article was inspired by Socrates’s basic question—“How is one to live a good life?”—and application of that question in the legal context—“How is one to make an authentic way of life as a lawyer?” See James R. Elkins, *Pathologizing Professional Life: Psycho-Literary Case Stories*, 18 VT. L. REV. 581, 643 (1994).

** Assistant Professor, Cecil C. Humphreys School of Law, University of Memphis. Judicial Law Clerk to the Honorable James K. Logan, United States Court of Appeals for the Tenth Circuit, 1980-81. The author thanks Professors Thomas L. Russell, Robert H. Jerry, II and Ralph C. Brashier for their helpful comments and Cynthia Ray Eggleston for her research assistance.

1. “[T]here is a palpable anxiety and dismay within the legal profession concerning commercialization and the concomitant decline of professionalism in the setting of the big law firm.” MARC GALANTER & THOMAS PALAY, *TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM 2* (1991).

2. See generally VERDICTS ON LAWYERS (Ralph Nader & Mark Green eds., 1976) (a compilation of essays discussing the selective representation by lawyers of a limited, affluent class).

3. In his book *The Lost Lawyer: Failing Ideals of the Legal Profession*, Dean Kronman summarizes the problem: “[T]he profession now stands in danger of losing its soul.” ANTHONY T. KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION 1* (1993). Numerous surveys point to the problem of job dissatisfaction among attorneys as well as client dissatisfaction and cynicism regarding the law. See, e.g., Stephanie B. Goldberg, *Is This All There Is?—Women and Job Satisfaction*, A.B.A. J., June 1, 1988, at 72; Louise A. LaMothe, *Where Are*

morale problems. They represent the personal, professional and public dimensions of America's crisis in confidence in its legal system and in those who personify the system.⁴

Judge Logan's accomplishments in the law are well known. His contributions to the United States Court of Appeals for the Tenth Circuit and the University of Kansas School of Law are described in greater detail in other articles in this issue of the *Review*.⁵ Jim Logan was born in 1929 in Quenemo, Kansas, a town of approximately 400 citizens. He attended the University of Kansas on the GI bill and scholarships. At KU, Jim was president of the All Student Council and a member of the Owl Society and other honorary societies on campus. The University named him KU Honor Man for 1952, a recognition reserved for students who were both academic and political leaders on campus. He received his A.B. degree in Economics in 1952 with a perfect 4.0 average.

After graduation, Jim was awarded a Rhodes Scholarship for 1952 but resigned rather than entering Oxford so that he could marry Beverly Jennings and attend Harvard Law School.⁶ He graduated magna cum laude from Harvard in 1955 after serving as an editor of the *Harvard Law Review*. Following law school, he clerked for the Honorable Walter A. Huxman, Circuit Judge for the United States Court of Appeals for the Tenth Circuit. Jim practiced law in both California and Kansas and became an assistant professor of law at the University of Kansas in 1957. In 1961 he was appointed Dean of the Law School at the University of Kansas. At the time of his appointment, he was the youngest dean of a law school in America. From 1961 to 1962 he taught at Harvard Law School as the Ezra Ripley Thayer Teaching Fellow. While on the faculty at KU Law School, he served as a part-time special assistant to the Kansas Securities Commissioner from 1959 to 1960 and as a special commissioner hearing condemnation appeals for United States District Courts from 1964 to 1967.

In 1968, the year in which Bob Dole first became a Kansas Senator, Jim made an unsuccessful bid for the United States Senate as a Democrat. After the campaign, he returned to practice in Olathe, Kansas and served a wide range of clients in a business practice. While

We Going Anyway?, LITIG., Fall 1992, at 1.

4. The crisis is exacerbated by the fact that Americans are increasingly dependent on the legal system for resolution of issues that in the past would have been resolved by other institutions such as the church, the school and the family.

5. See Robert C. Casad, *Logan's Legacy*, 43 KAN. L. REV. 489 (1995); Deanell Reece Tacha, *James K. Logan: Colleague, Mentor, Friend, Jurist, Scholar, Teacher, Small-Town Kansas Kid*, 43 KAN. L. REV. 493 (1995).

6. In 1952 the Rhodes Scholarships did not provide funds for married scholars.

in private practice, Jim served on the Kansas Judicial Council Special Advisory Committee which recommended mandatory continuing legal education for all Kansas lawyers. From 1971 to 1972 he served as a special assistant to the Attorney General of Kansas to handle a major antitrust case. In 1977 President Jimmy Carter appointed Jim Logan to the United States Court of Appeals for the Tenth Circuit. Great changes and an ever-increasing work load for federal judges have marked Judge Logan's years on the federal bench.⁷ His consistency in authoring the highest number of opinions among the circuit judges reflects his dedication and hard work. He authored more opinions than any other judge on the court during four of the last ten years. Additionally, Judge Logan frequently authors the court's opinion in cases involving difficult and complex litigation. During his years on the court, Judge Logan has also served in significant administrative capacities for the circuit. In 1989 Chief Justice Rehnquist appointed him chair of the Federal Judicial Centers Committee on Appellate Educational Programs. Last year Judge Logan began a three year term as the chair of the Advisory Committee on Federal Rules of Appellate Procedure of the Judicial Conference of the United States.

What this brief, unfinished history of Judge Logan portrays is the range of his life experience: from obscurity to national responsibility. In a sense, his life is the classic American success story in which early promise is fulfilled through a mixture of hard work and native intelligence. If luck inevitably plays a part in success, we clerks always felt that in Judge Logan's case success had been earned and prepared for all of his life. And the Judge never seemed to doubt himself, his clerks or the ability of the judicial system to find the best answer to the disputes before the court.

While the American success story often seems to begin in a small town, nostalgia about small towns is dangerous. While small towns may generate self-reliance, those of us who come from small towns know that they can produce their own insularities, biases and ready-made excuses. Some individuals from small towns take up the law, partially, to enter the wider world beyond the city limits sign. Perhaps this was part of the Judge's motivation as well. Still, he did not renounce his past or his origins. Traditionally, he takes his crew of clerks on an annual journey to his hometown. In an age when self-invention has much to do with selective amnesia, Judge Logan has never forgotten where he came from. These trips to Quenemo are not

7. "[T]he decade between the late 1960s and the late 1970s saw the appellate caseload in most federal and state courts at least doubled, with very few additional judges made available to deal with the increase." FRANK M. COFFIN, *THE WAYS OF A JUDGE: REFLECTIONS FROM THE FEDERAL APPELLATE BENCH* 70 (1980).

mere nostalgic reminders of his ascent (although surely he must feel some pride in what he has accomplished). The trips are reminders of the real people in the towns and cities whose controversies we explore in the seclusion of the judge's chambers. These trips reconnect us with the community where the decisions of the court have their effect.

Part of what the Judge took from these small-town origins is an ability to be open to all levels of human experience, whether complex or clear, rural or urban, poor or rich. While the Judge would not describe himself as a man of destiny, how else can one explain his path from Quenemo, Kansas? The Judge gives this explanation: "If you come from a small town, you believe there's nothing you can do or you believe there's nothing you can't do." Who knows, perhaps the Judge (like the rest of us) has always had to prove to himself that he can make his mark. Whatever it is that drives his ambition, it has not been money or personal prestige. I doubt the Judge would explain his ambition or the work he has undertaken purely in terms of principles,⁸ yet he is an idealist. Considering his continuing desire to make a positive difference in the world, how could he be anything but an idealist who believes that he has a responsibility to share his gifts with others? For him the law is the sacred trust, the compact that knits society together. His legal career has been an expression of that ideal, despite the fact that throughout his life public respect for that ideal has been eroding steadily.

When Americans think of lawyers, it is unfortunately no longer Jim Logan or Atticus Finch⁹ whom they envision.¹⁰ Last year, the American Bar Association reported: "Public disdain for lawyers is widespread, it appears to be growing, and the very credibility of the profession may hang in the balance."¹¹ According to a Louis Harris poll, twenty-four percent of the public had "high regard" for lawyers in the early 1970s.¹² Recently, that favorable rating has declined to eight percent.¹³ Of course, "lawyer bashing" has been a sport for decades, perhaps as long as there have been lawyers,¹⁴ but recently the intensity of ill-feeling

8. Not that he does not have principles, but he is far too practical to be such an ideologue.

9. See HARPER LEE, *TO KILL A MOCKINGBIRD* (1960).

10. Dean Kronman chronicles the loss in this country of the public image and reality of the "lawyer-statesman," a lawyer with the virtue of "practical wisdom." KRONMAN, *supra* note 3, at 11-13. Kronman notes Chief Justice William Rehnquist's belief in the current absence of exemplary leaders in the law such as Thomas Jefferson and Alexander Hamilton. *Id.*

11. STEPHEN P. JOHNSON, *AMERICAN BAR ASS'N, JUST SOLUTIONS: SEEKING INNOVATION AND CHANGE IN THE AMERICAN JUSTICE SYSTEM* 58 (1994).

12. *Id.* at 59.

13. *Id.*

14. See BENJAMIN M. BECKER & DAVID L. GIBBERMAN, *ON TRIAL!: LAW, LAWYERS, AND THE LEGAL SYSTEM* 43-50 (1987); Fred R. Shapiro, *Battle of the Quotes*, A.B.A. J., Dec. 1993,

toward lawyers has escalated.¹⁵ The ABA recently devoted \$700,000 to a campaign to improve the public's perception of lawyers.¹⁶

Not only does the public respect for attorneys seem to be at an all-time low, so also does job satisfaction for attorneys.¹⁷ The two trends appear to be related. Job dissatisfaction, especially among young attorneys, has been the subject of intense study and comment over the past decade.¹⁸ Writers talk about the "misery index" in the law¹⁹ and "pervasive lawyer discontent."²⁰ In 1984 and 1990 the ABA did extensive surveys on attitudes of attorneys toward their profession. Despite rising incomes, lawyer dissatisfaction was also on the rise. "Many were beginning to leave the practice, while those who stayed had become increasingly cynical."²¹ Other surveys found that "increasing acrimony among lawyers . . . has eroded the professionalism of the bar."²² Lawyers suffer from "the highest depression rates of any group in the workplace, according to a study published last year by

at 62. In 1850, Abraham Lincoln stated:

There is a vague popular belief that lawyers are necessarily dishonest. I say vague, because when we consider to what extent confidence and honors are reposed in and conferred upon lawyers by the people, it appears improbable that their impression of dishonesty is very distinct and vivid. Yet the impression is common, almost universal.

Fragment: Notes for a Law Lecture (July 1, 1850), in 2 THE COLLECTED WORKS OF ABRAHAM LINCOLN, 1848-1858, at 82 (Roy P. Basler ed. 1953).

15. A recent television commercial for Miller beer featured a rodeo in which panic-stricken lawyers were run down and lassoed. The commercial drew both humorous praise and serious criticism. See Robin Abcarian, *Make Lawyer Jokes a Crime? Maybe Just Bad Ones*, L.A. TIMES, July 11, 1993, at E1; David R. Boldt, *When Lawyers are Seen as Victims, Will Affirmative Action Follow?*, PHILA. INQUIRER, Feb. 6, 1994, at E7; Roni Rabin, *Lawyer Bashing Has Moved into Prime Time*, NEWSDAY, July 1, 1993, City Edition, Part II, at 60. Some bar associations banned the use of Miller beer at association events in response to the ad. See *Lawyers Bar 'Miller Time' After Joke*, L.A. TIMES, Aug. 3, 1993, at D1. Ultimately, Miller pulled the ad.

16. See Rabin, *supra* note 15.

17. Despite recognition that "laments about commercialization and the loss of professional virtue have recurred regularly for a century," Galanter and Palay assert that the "present 'crisis' is the real thing." GALANTER & PALAY, *supra* note 1, at 2-3.

18. See, e.g., Deborah L. Arron, *Running From the Law*, LEGAL ECON., Sept. 1988, at 45; Timothy Harper, *The Best and Brightest, Bored and Burned Out*, A.B.A. J., May 15, 1987, at 28; Jon Jefferson, *But What Role for the Soul*, A.B.A. J., Dec. 1991, at 60; Mark Rust, *Satisfaction Not Just a Paycheck*, A.B.A. J., May 15, 1987, at 40.

19. Jefferson, *supra* note 18, at 60. "At virtually all ranks of the profession, job dissatisfaction rose sharply between 1984 and 1990, according to surveys by the ABA's Young Lawyers Division." *Id.*

20. Duncan C. Smith, *Total Quality Leadership: Building Your Team, Keeping Your Clients*, LAW PRAC. MGMT., March 1993, at 34, 35.

21. LaMothe, *supra* note 3, at 1. "The dissatisfaction rate among attorneys in corporate law departments was scarcely better than those in private practice—it had jumped 77 percent in the six years between the two studies." *Id.*

22. *Id.* at 1-2.

John Hopkins University."²³ In 1992 the California Bar found that seventy percent of lawyers responding to the survey would "start a new career if they could."²⁴

The crisis of confidence in the legal profession has been acknowledged by legal scholars as well as journalists and social commentators.²⁵ Clients have become more demanding, disgruntled and systematic in evaluating attorney services and in requiring documentation of services.²⁶

One reason for the dissatisfaction of both the public and attorneys is frustration with a legal justice system that is widely perceived to be overly burdensome, mired in delay and so flawed that it awards millions of dollars for frivolous claims.²⁷ Lawyers are often portrayed in literature as well as jokes as grasping and small-minded, preoccupied with slight or crafty advantages over others.²⁸ Scholars have asked "whether it is possible at once to be a lawyer and a good person."²⁹ Public animosity toward lawyers frequently seems to center on the idea that lawyers are preoccupied with self-interest—either their own or that

23. Jefferson, *supra* note 18, at 60.

24. JOHNSON, *supra* note 11, at 59.

25. See, e.g., AMERICAN BAR ASS'N, THE REPORT OF AT THE BREAKING POINT, A NATIONAL CONFERENCE ON THE EMERGING CRISIS IN THE QUALITY OF LAWYERS' HEALTH AND LIVES—ITS IMPACT ON LAW FIRMS AND CLIENT SERVICES (Apr. 5-6, 1991); MERIT BENNETT, LAW AND THE HEART: A NEW PARADIGM FOR LAWYER-CLIENT RELATIONSHIPS (1994); JOHNSON, *supra* note 11; KRONMAN, *supra* note 3; Colin Croft, Note, *Reconceptualizing American Legal Professionalism: A Proposal for Deliberative Moral Community*, 67 N.Y.U. L. REV. 1256 (Dec. 1992).

26. The "consumer movement" focuses on getting full value for each dollar spent on legal services. See Demetrios Dimitriou, *Current Law Firm Trends That Will Have An Impact on the Profession*, LEGAL ECON., Oct. 1988, at 26.

27. In September 1994, a woman was awarded over nearly \$3 million for a burn she received when she spilled hot coffee on herself in her car after purchasing the coffee in a McDonald's drive-thru. See, e.g., *McDonald's Settles Lawsuit of Woman Burned By Coffee*, LIABILITY WEEK, Dec. 5, 1994, No. 47, Vol. 9. The case ultimately settled for an undisclosed sum. *Id.* A McDonald's employee reported the following order from a recent customer: "Give me a cup of your scalding hot coffee and the name of a good attorney."

28. A related belief is that lawyers cause or exacerbate controversies for their own benefit. See, e.g., RUDOLPH J. GERBER, LAWYERS, COURTS, AND PROFESSIONALISM 5-6 (1989); Robert A. Kagan, *Do Lawyers Cause Adversarial Legalism? A Preliminary Inquiry*, 19 LAW & SOC. INQUIRY 1, 15-22 (1994) (concluding that lawyers are a secondary cause of adversarial legalism).

29. See GERBER, *supra* note 28, at 2; see also THOMAS L. SHAFFER & MARY M. SHAFFER, AMERICAN LAWYERS AND THEIR COMMUNITIES: ETHICS IN THE LEGAL PROFESSION 14 (1991) ("It has become a novel proposition, believe it or not, to say that if we want communities of good people we need lawyers who are good people."); Stephen Gillers, *Can a Good Lawyer Be a Bad Person?*, 84 MICH. L. REV. 1011 (1986); Geoffrey Hazard, Jr., *My Station as a Lawyer*, 6 GA. ST. U. L. REV. 1 (1989) ("One of the most persistent criticisms of lawyers' professional entities is that lawyers are permitted or required to act ex officio in ways that they would not consider proper in their personal conduct.").

of their clients. We are called "ethically challenged."³⁰ One joke circulating recently is about a lawyer who, when asked by a client, "What is two plus two?" responded, "How much do we want it to be?" Public disdain for the law and lawyers seems connected to the belief that the legal system benefits lawyers more than the public it is ostensibly intended to serve.³¹

The view of a lawyer as a public servant traditionally elevated the legal profession to a position of respect in the community.³² The professional was regarded as an individual who served society's principles.³³ Lawyers were viewed as the guardians of the law.³⁴ "Ours is a learned profession, not a mere money-getting trade."³⁵ It is not surprising then that the public expects lawyers to maintain high standards of ethical conduct and to accept responsibility for legal reform.³⁶

30. See Boldt, *supra* note 15.

31. According to Charles E. Sherman,

The fact is that the law simply does not work, not for the average person. . . .

This helps to explain why people see lawyers as professional buzzards who prey upon people's troubles. It also helps to explain why lawyers tend to be such a joyless lot who often have trouble keeping even their own self-respect.

RALPH WARNER & TONY IHARA, 29 REASONS NOT TO GO TO LAW SCHOOL 85 (1982) (quoting Charles E. Sherman, Boalt Hall School of Law, University of California); see also Kagan, *supra* note 28, at 2-6 (analyzing the costs and benefits of adversarial legalism in this country).

32. One distinguishing feature of any profession, unlike other occupations that may be equally respectable, is that membership entails an ethical obligation to temper one's selfish pursuit of economic success by adhering to standards of conduct that could not be enforced either by legal fiat or through the discipline of the market. . . . Both the special privileges incident to membership in the profession and the advantages those privileges give in the necessary task of earning a living are means to a goal that transcends the accumulation of wealth. That goal is public service

Shapiro v. Kentucky Bar Ass'n, 486 U.S. 466, 488-89 (1988) (O'Connor, J., dissenting); see also Sandra Day O'Connor, *Foreword* to RUDOLPH J. GERBER, LAWYERS, COURTS, AND PROFESSIONALISM at xi-xii (1989); Robert W. Gordon & William H. Simon, *The Redemption of Professionalism?*, in LAWYERS' IDEALS/ LAWYERS' PRACTICES: TRANSFORMATIONS IN THE AMERICAN LEGAL PROFESSION 230 (Robert L. Nelson et al. eds., 1992).

33. See SAMUEL HABER, THE QUEST FOR AUTHORITY AND HONOR IN THE AMERICAN PROFESSIONS, 1750-1900, at 75-78 (1991) (discussing the role of attorney as an officer of the court and contrasting the low income of attorneys with the status of the profession); MICHAEL J. KELLY, LIVES OF LAWYERS: JOURNEYS IN THE ORGANIZATIONS OF PRACTICE 14-15 (1994).

34. See MODEL CODE OF PROFESSIONAL RESPONSIBILITY pmbl. (1981).

35. ABA Comm. on Professional Ethics and Grievances, Formal Op. 250 (1943).

36. For example, lawyers are expected to address problems in the legal system such as the need for providing legal services to indigent Americans. See Laurence A. Benner, *Tokenism and the American Indigent: Some Perspectives on Defense Services*, 12 AM. CRIM. L. REV. 667 (1975); see also Martha Minow, *Law and Social Change*, 62 UMKC L. REV. 171 (1993) (discussing the relationship between law and social change and the responsibility of the law's role in social change).

An important connection exists in the disaffection between lawyers and the public. When lawyers forget the professional role they play in society and focus instead on billable hours or symbols of personal success, the result is a public perception of lawyers as self-seeking. A corollary to this result is the profound sense on the part of attorneys that they are isolated and separated from others in the community.³⁷ In his article *Pathologizing Professional Life: Psycho-Literary Case Stories*,³⁸ James R. Elkins discusses narratives of the dark side of lives spent in the law. He scrutinizes the stories of lawyers and judges who have lost themselves in their legal careers.³⁹ Each of these characters is isolated in some essential way. Either in comfort, aloofness or drudgery, they have erected walls between their professional and personal lives. Each lawyer is a study in anomie, dissatisfied and cut off from his own life. Elkins's depiction of the "psychic numbing and disaffection"⁴⁰ of such "compartmentalized life"⁴¹ applies to many real-life lawyers as well as to these fictional ones.⁴² "[T]he legal profession today is characterized by the alienation of the attorney from the human client, from the community, and even from himself."⁴³

This impulse to compartmentalize life, which Elkins and others describe,⁴⁴ occurs in other professions,⁴⁵ but the isolation has particular impact and danger in the law.⁴⁶ Young people drawn to the study of law seem especially interested in ideas and ideals. Many come to law school with high hopes not only for personal success but also to "make a difference" in society. Whether they hold a desire to help the poor or to make markets more efficient, many bring with them a notion that the

37. The problem of isolation may be even more pronounced in the judiciary than in the practicing bar, although for different reasons. Isolation for judges comes often as a requirement of the job. Judges are constrained to a great extent in their relationships with former associates by the Judicial Code. See, e.g., TENN. CODE OF JUD. CONDUCT Rule 10, Canon 2 (1994).

38. Elkins, *supra* note *.

39. These stories include a divorce lawyer in Stephen Greenleaf's novel *The Ditto List*; Robert Service, the lawyer protagonist in Louis Auchincloss's *Diary of a Yuppie*; and Leo Tolstoy's fictional lawyer in *The Death of Ivan Ilych*. *Id.* at 581-608.

40. *Id.* at 608.

41. *Id.*

42. For example, one of the lawyers Elkins discusses is a living person, Charles Reich, whose autobiographical account of law practice is found in CHARLES REICH, *THE SORCERER OF BOLINAS REEF* (1976).

43. Maria L. Ciampi, *The I and Thou: A New Dialogue for the Law*, 58 U. CIN. L. REV. 881, 881-82 (1990) (footnotes omitted).

44. See, e.g., GERBER, *supra* note 30, at 6 ("Lawyering of the 1980s and 1990s is increasingly severed from the bonds that unite citizens within the city wall.").

45. For example, the emergency room doctor must separate his life from the emergency room and the surgery ward.

46. For an American classic on separation, see EVAN S. CONNELL, JR., *MR. BRIDGE* (1969).

law can make dramatic and worthwhile changes in the world. After graduation, young lawyers too often find that their practice of law has little impact on society. Their practice may seem a far cry from the intellectual experience they expected, hoped for and worked for while in law school. The truth is that the law can be grinding, boring work, filled with deadlines and stress, competition and criticism.⁴⁷ Some associates feel they research endlessly, without hope of ever meeting the client or the client's representative. Even when their work is intellectually challenging, it often presents a life of isolation.

To guard against fragmentation and isolation, the practitioner must invest himself in real commitment to work and clients without abandoning his private life. He must care about the client but value home and family, and he must combat the self-importance that Elkins refers to as "inflation" and "illusion."⁴⁸ For the law professor, it would at least include expending the effort necessary to communicate with students both inside and outside the classroom, rather than "hiding the ball" or simply presenting the dry drill of legal analysis, the shell without substance referred to by Professor Llewellyn.⁴⁹ For a judge, perhaps, it is to continue to care about the impact of each decision on the lives of litigants, resisting the impulse to make the easy categorization of legal disputes. The committed judge must find the center of each lawsuit, engaging in the demanding process of study to apply the law (with the facts that formed and inform it) to the next case.

In dealing with the crisis in the American legal system, many commentators speak of the legal profession standing "at the crossroads."⁵⁰ This is at least the case for each of us as individuals in the legal profession. We must choose each day how to act as professionals in the law. How can we reclaim that respected place as a profession? What must be regained in order to have fulfilling

47. [P]racticing law is the only profession in which there is an equal and opposite professional whose job it is to prove that you are wrong. A doctor does not ordinarily face a second doctor objecting to what he or she does. No opposing preacher is there to argue for the devil. The adversary system means there is little margin for error, as opposing counsel forever lurks, waiting to pounce on any mistake. Additionally, any error is forever part of the record, able to come back to haunt you long after you have retired to Hawaii and quit paying your malpractice insurance.

Stephen Feldman, *Feldman's Statement*, in *RUNNING FROM THE LAW: WHY GOOD LAWYERS ARE GETTING OUT OF THE LEGAL PROFESSION* 10-11 (1989).

48. See Elkins, *supra* note 1, at 642.

49. K.N. LLEWELLYN, *THE BRAMBLE BUSH: ON OUR LAW AND ITS STUDY* 12 (1960).

50. See, e.g., Robert L. Nelson & David M. Trubek, *New Problems and New Paradigms in Studies of the Legal Profession*, in *LAWYERS' IDEALS/LAWYERS' PRACTICES: TRANSFORMATIONS IN THE AMERICAN LEGAL PROFESSION* 1 (Robert L. Nelson et al. eds., 1992); Croft, *supra* note 25, at 1259-60 (calling for a "new conceptualization" of the profession as a "moral community").

(authentic) lives as attorneys? Can we, as a profession, refocus and regain the seriousness of purpose that does not veer toward self-interest or log-rolling on behalf of a given client? Can we learn from the tragic stories of lawyers in literature and even from the grotesque images of lawyers in jokes? Can we learn from exemplary individuals in the law such as Judge Logan?⁵¹

I think so. Lawyers—like the law⁵²—grow by analogy, and that is why we must choose mentors with care.⁵³ Judge Logan, for example, made a tremendous difference to me in my view of the practice of law. Doing the work of the court, he subsumes his personality in something larger, while realizing that it is his personal experience and understanding of the legal process that give him the wisdom and confidence to deal with the tangles of other peoples' lives. Those who lack deep curiosity and an interest in the contradictions, ambiguities and paradoxes of humans cannot be good judges. While the law cannot cure all inequities of life, the profound moral commitment of judges is to face the thorny and sometimes paralyzing questions of crime and punishment, disputes and remedies. The law professor can lean back and ponder the conundrums that remain in all doctrine. But a judge must do more than appreciate the competing realities⁵⁴ of the legal

51. Aristotle, like modern virtue theorists, believed that exemplars provide better guidance than rules. See ARISTOTLE, *THE NICOMACHEAN ETHICS* 71-73 (H. Rackham trans., 1926); N.J.H. DENT, *THE MORAL PSYCHOLOGY OF THE VIRTUES* 15-24 (1984); see also Gerald J. Postema, *Self-Image, Integrity, and Professional Responsibility*, in *THE GOOD LAWYER: LAWYERS' ROLES AND LAWYERS' ETHICS* 287 (David Luban ed., 1984). For a description of the changing legal profession by the use of narratives of different law firms and organizations, see KELLY, *supra* note 33.

52. To take an example from the realm of contract law, the claim of promissory estoppel arose by analogy from the earlier claim of equitable estoppel. See E. ALLAN FARNSWORTH & WILLIAM F. YOUNG, *CASES AND MATERIALS ON CONTRACTS* 96 (4th ed. 1988) ("Estoppel: New Wine in an Old Bottle").

53. The need to pass on the values and skills of the profession is acknowledged by both the practicing bar and scholars. See, e.g., Robert H. Jerry, II, *The Legal Profession, Legal Education, and Change*, 41 KAN. L. REV. 1, 8-10 (1992). This need was emphatically stated by the ABA Task Force on Law Schools and the Profession, often referred to as the "MacCrate Report":

Together, the law schools and the organized bar can have no more important function than to pass to each succeeding generation of lawyers an understanding of the profession's relationship to the American legal system. If a single public profession of shared learning, skills and professional values is to survive into the 21st century, the law schools together with the bar and the judiciary must all work for the perpetuation of core legal knowledge together with the fundamental lawyering skills and professional values that identify a distinct profession of law throughout the United States.

Legal Education and Professional Development—An Educational Continuum, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap 120 (1992); see also Robert MacCrate, *Preparing Lawyers to Participate Effectively in the Legal Profession*, 44 J. LEGAL EDUC. 89 (1994).

54. See generally Richard K. Sherwin, *The Narrative Construction of Legal Reality*, 18 VT.

problem. The judge must make the decision. The questions they face cannot be taken lightly, nor can they be viewed as unanswerable dilemmas. Such postmodern relativism leads to moral paralysis. The judge who cannot choose cannot judge.

While there is certainly room for disagreement regarding what is the proper outcome of an individual case, the first principle of law must be that it is conceived and implemented for the purpose of enhancing the good in the sense of fulfilling what our society sees as the right choice in given circumstances. Implementing laws and finding their limits depend on conscience and good sense. The recent debate regarding whether values or moral choices are within the appropriate sphere of the judge is documented by Judge Bork⁵⁵ and others.⁵⁶ The call for "judicial restraint" in the sense of casting out moral judgments overlooks the collision of rights and principles that occurs in courts each day in which the judge must decide one way or the other and then apply the law to the next (undecided) case.⁵⁷

I think Judge Logan's personal disposition to explore ideas made academics his first love. He has always been a teacher to one degree or another. Like other good attorneys, Jim Logan taught when he practiced. Like other good judges, he teaches when he hears oral arguments. By his questions, he defines the categories at issue, asks why those categories and rules should control the matter at hand, and why the lines have been drawn as they have in past cases. With his patience and focus, he teaches those around him the importance of individual rights and the principle that each litigant deserves his day in court and his right to appeal.⁵⁸ The model of teacher is a useful way of

L. REV. 680 (1994).

55. Robert H. Bork raised this issue in his book, *The Tempting of America*. ROBERT H. BORK, *THE TEMPTING OF AMERICA: THE POLITICAL SEDUCTION OF THE LAW* 251-59 (1990). Intense debate followed Bork's treatise.

56. See, e.g., RAYMOND A. BELLIOTTI, *JUSTIFYING LAW: THE DEBATE OVER FOUNDATIONS, GOALS, AND METHODS* 229-38 (1992); COFFIN, *supra* note 7, at 195-205; Paul V. Niemeyer, *Law and Conscience*, 69 *NOTRE DAME L. REV.* 1011, 1013-15 (1994).

57. In the context of individual rights, for example, Ronald Dworkin argues that individuals have rights based on moral concepts. See RONALD DWORBIN, *TAKING RIGHTS SERIOUSLY* 266-78 (1977). He argues that both citizens and the courts follow their consciences in determining whether a particular law is moral and whether a particular remedy is justifiable. See *id.* at 82-88, 184-87.

58. Curtis Bok stated emphatically the importance of the judicial quality of patience in *I Too, Nicodemus*:

A good judge must have an enormous concern with life . . . and a sense of its tempestuous and untamed streaming. Without such fire in his belly, as Holmes also called it, he will turn into a stuffed shirt the instant a robe is put around him. The first signs of judicial taxidermy are impatience with trivial matters Show me an impatient judge and I will call him a public nuisance to his face. Let him be quick, if

analyzing the relationship of attorneys and clients, judges and clerks, and perhaps judges and litigants, although it is neither universal nor intended for all settings. It is a model that gives respect to both sides of the relationships, rejecting passivity and paternalism. Judge Logan has always engaged in open give-and-take with his clerks. It is hard to imagine a more active personal and professional involvement between boss and employees. His mentoring process was to open himself to us—his passion of thought and feeling—so that we might understand that the law indeed has a human face, even as it sits in faceless judgment.

While all successful teaching seems electric, teaching the law is special. In addition to the transfer of information, it involves the exercise and development of judgment. Learning the law is the feat of entering an apparent chaos of regulations and opinions to find both the rule and the policy behind the rule. Because the most important case for the attorney is the next (undecided) case, teaching the law seems less a transfer of information than the development of the student's understanding of legal process.

Part of Judge Logan's process of mentoring is to pass on his views through stories. For those of us who spent too long researching or polishing our prose, he told the story of a young attorney drafting a contract for a client. The contract was polished and comprehensive, but its cost rivaled the value of its subject—a chicken shed. This story provided a clear message that clients (and judges) need legal service that is efficient and economical as well as competent. Judge Logan's stories also came from his own life. He would point with pride to businesses of his former clients in Olathe, telling stories of the struggles a new corporation or business must often survive, and teaching us by his example the pride that attorneys rightly feel in being part of the process of making productive businesses that serve the needs of the community.

When I clerked, many of the Judge's stories were about his early days in practice, teaching and his time as a dean. Some were stories of achievements in scholarship or in recognizing and meeting a client's needs. Not all were about success, however. In some, the point of the story was his own misstep or failure. These were cautionary tales, the mentor's equivalent of parental warnings to fasten your seatbelt and do your homework. This kind of legal mentoring goes on in law firms, agency offices and corporate-counsel offices as well as in the chambers

he must be, but not unconcerned, ever. Worse than judicial error is it to mishandle impatiently the small affairs of momentarily helpless people, and judges should be impeached for it.

CURTIS BOK, I TOO, NICODEMUS 4 (1946).

of judges. But what could be better insight than hearing the cautions that a judge chooses to emphasize?⁵⁹

So we return to the question of what is an authentic life in the law.⁶⁰ The answers to a fulfilling life in the law are personal, of course⁶¹—to such an extent that it is like putting down first principles for a professional life. In addition to the guidance found in ethical codes, I wish to suggest these few principles as an antidote to some of the risks (perhaps poisons) that endanger lawyers.⁶²

First, like the physician,⁶³ do no harm. Be able to say of each controversy laid at your door: “I did not make it worse. I did not use the legal process to escape or obfuscate, to frustrate or delay the resolution of a dispute.”⁶⁴ This goal might be served by helping the client see his own long-term interests. The best resolution of a dispute may be to modify a contract which has created unforeseen and significant burdens on the other party. The long-term interest of the client may be to have a future trading partner rather than an exceptional profit on one contract. This goal helps the lawyer to become an advocate and advisor rather than a hired gun. It helps us stay out of the lawyer joke of “How much do you want it to be?”⁶⁵

The second goal I want to urge is to be able to say: “I did make things better.” To accomplish this goal, one must be able to say: “I

59. It is because of my experience as a clerk for Judge Logan that I view with disappointment the movement of judges toward the use of career clerks. While the efficiency of the judiciary may be improved by the use of professional clerks, another benefit may be lost in this trend: the first-hand exposure of young attorneys to judges who are dedicated to the principles of justice and hard work that make our legal system function fairly. This inculcation of young attorneys into the shared value of the profession may not be an articulated goal of the judiciary's use of law clerks, but it has undoubtedly served the purpose of passing on respect and, in fact, reverence for equal justice and the judicial system.

60. In many ways, the most significant challenge to our profession relates to how we view our own lives and accept the professional demands placed upon us. At a time when lawyers typically work long hours on less interesting types of legal work—which in turn generates only complaints about the cost—it is not surprising that many lawyers, young and old, are expressing dissatisfaction with their professional and personal lives. Paul J. Bschorr, *Challenges for the Decade*, LITIG., Summer 1991, at 1, 55-56.

61. In *The Lost Lawyer*, Dean Kronman reaches the “gloomy conclusion” that “the ideal of the lawyer-statesman” cannot be revived. See KRONMAN, *supra* note 3, at 7. He qualifies this conclusion, however, noting that individual attorneys “may find a way to honor this ideal in their own careers.” *Id.*

62. “[L]awyerhood has become a mercantile business like any other. Only radical change can breathe altruism back into its soul.” GERBER, *supra* note 28, at 23.

63. LUDWIG EDELSTEIN, *THE HIPPOCRATIC OATH: TEXT, TRANSLATION, AND INTERPRETATION* 3 (Henry Sigerist ed., 1943).

64. See MODEL RULES OF PROFESSIONAL CONDUCT Rules 3.1, 3.2, 3.3, 3.4 (1993).

65. See *supra* text accompanying notes 30-31.

followed my own conscience as well as the rules.⁶⁶ I treated others with respect while maintaining my own self-respect. I helped to produce something of value." We should each be proud of the good we do as attorneys—helping businesses function and helping resolve disputes. Of course, to achieve this pride in work we must work to advance the good for society as we discern it.

Finally, in my list of simple goals, I would add that at the end of my professional life it would be good to look back and say: "I did not become my job." I regard this as a useful goal even if the first two are achieved. No matter how important and worthwhile your job, and no matter how well you do the job, you must (in the terms of the current expression) "get a *life*."

The goals that I have discovered all seek connectedness and reject isolation. Judge Logan embodies the qualities I admire, including these simple goals. The guiding principles of his personal and professional life are commitment to and connection with people. It is this connectedness and concern for individuals that allowed him to hear the voices of the clients and students who came to him for help. It is this connectedness that enables him now to hear the voices of litigants. I do not mean by this that Judge Logan adopts an easy analysis of finding for the "little guy" over the corporation, but rather that with each file he picks up he commits himself to the difficult task of seeing the interest or issue from each side of the case in order to apply the law fairly.

When I began my legal career, working as a judicial clerk for Judge Logan, I considered the law to be the noblest of all callings. The court, with its principles of fairness, ordered justice and protection of individual liberties, held an almost religious aura. Part of what I have learned is that, while the law may seem mystical, it does not happen by magic. The law is hard work. It is hard work for students, professors, attorneys and even judges. Knowing the law and possessing a trained legal mind does not make this work easy. For an appellate judge, transcripts of trial, the applicable statutes and controlling or persuasive cases must be studied and understood.⁶⁷

66. Codes and rules of professional conduct provide a threshold of accepted standards rather than providing answers to all ethical issues attorneys face. "The Model Code of Professional Responsibility points the way to the aspiring and provides standards by which to judge the transgressor. Each lawyer must find within his own conscience the touchstone against which to test the extent to which his actions should rise above minimum standards." MODEL CODE OF PROFESSIONAL RESPONSIBILITY pmbl. (1981).

67. Judge Logan is a "hot" judge, meaning that before hearing oral arguments he reads the briefs and considers arguments of a case rather than relying on summaries prepared by law clerks. Although a fast reader and no procrastinator, Judge Logan reads during lift-off on his frequent flights to Denver to meet the demands of his schedule. For a thorough description of the work

As a judge, Jim Logan proves that it is possible to apply the law without defaulting to uncaring classifications. With the diligence and integrity of mind that he exerts on each action that comes before him, Judge Logan is an example that a life in the law is not a life of drudgery, although it is one of hard work. His life shows, by example, that as an attorney, a teacher and a judge, you can be useful without being used or used up. You can represent clients without selling yourself, "selling out" or abdicating your judgment.

When he set his first goals, Jim Logan was a kid from a small town with big ambitions. His choice of a career in the law was motivated by idealism about the law, but also by ambition. He wanted to make his mark, to be a success. He believed that the law was an area in which intelligence and hard work would pay off. But at some point for Jim Logan—as attorney, as professor and as judge—ambition became dedication. What ennobles judges and attorneys is not money or power, winning the big case or winning the lottery that might put you on the Supreme Court. It is serving the community as part of a system of justice that protects individual and economic freedoms. It is doing the work of the next case.

