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Letter to Judge Harry Edwards

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LETTER TO JUDGE HARRY EDWARDS

*James J. White**

Dear Harry:

I write to second your statements concerning the disjunction between legal education and the legal profession and also to quibble with you. By examining the faculty, the curriculum, and the research agenda at Michigan, your school and mine, I hope to illustrate the ways in which you are right and to suggest other ways in which you and your clerk informants may be too pessimistic.

I. THE FACULTY

A comparison of the faculty of the law school today with the faculty as it existed in one of the school's prior golden periods, the late 1950s, shows dramatic differences. Today, about one-third of our faculty is AC/DC. For this purpose an AC/DC is anyone who: (1) holds an indefinite appointment in the law school and in any other department of the University, (2) has both a J.D. and a Ph.D., *or* (3) has a J.D. and writes principally in a cognate nonlaw area. For the purpose of this paper, all who are not AC/DCs are "lawyers."

The AC/DCs come in at least three forms and the different forms have markedly differing stripes. The earliest AC/DCs are J.B. White and others, such as Richard Posner, who have law degrees but no Ph.D. in their cognates (J.D. only). They are now graying, and their type will ultimately be driven from the market by the new wave of J.D./Ph.D.s. In the future most self-respecting lawyer-economists or lawyer-philosophers will (*à la* our newly tenured Avery Katz) have both a J.D. and a Ph.D. Second are those with a Ph.D. or comparable degree but without a J.D. (Ph.D. w/o). The earliest representative of that class on our faculty was Andy Watson, a psychiatrist. Current Ph.D.s w/o are Michael Bradley from the Business School, Phoebe Ellsworth from the Psychology Department, Bruce Frier from the Classics Department, and Don Herzog from Political Science. The Ph.D.s w/o differ systematically not only from the lawyers, but also from the J.D.s only and the J.D./Ph.D.s. I would say they are more careful scholars than we lawyers and, sensitive to their nonlawyer status, they are sometimes more careful lawyers than lawyers themselves.

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Finally are the J.D./Ph.D.s. This crop includes Merritt Fox, Tom Green, Heidi Feldman (a Ph.D. in bud), Avery Katz, Rick Lempert, Catharine MacKinnon, Bill Miller, Don Regan, and Phil Soper. Some of these were J.D.s first and Ph.D.s second (at least one vice versa), but most of them pursued the degrees simultaneously. Typically their Ph.D. was granted later because it takes longer to take the course work and write the dissertation than it does to complete a three-year course of study in law school. This year's new recruit pool was full of talented young J.D./Ph.D.s.

One of your accusations will surely strike a raw nerve with the AC/DCs. This is the charge that AC/DCs are second-class economists, philosophers, political scientists, and the like. On our faculty, that is not correct. Consider first the Ph.D.s w/o. Without exception the Ph.D.s w/o have outstanding records in their own fields. The law school faculty was attracted to them principally because of their high standing in the Arts and Sciences. They give away nothing to the other members of the law faculty in their standing in their cognate fields. They have degrees from distinguished institutions and, at least as frequently as the lawyers, are the beneficiaries of offers from other distinguished places that try to woo them away. Looking at our Ph.D.s w/o, I would say that your point is exactly wrong. It appears to me that we are not dipping out the mediocre, but skimming the best and the brightest from the Arts and Sciences both as scholars and as teachers. Their standing in the Arts and Sciences universe equals or exceeds that of our lawyers in the law universe.

I believe the same is true of the J.D./Ph.D.s and of the J.D.s only. Nothing tells me that Rick Lempert, Don Regan, Phil Soper, Bill Miller, J.B. White, or the other Ph.D./J.D.s or J.D.s w/o do not have first-rate standing in their other disciplines. Because most of these professors never established an independent reputation in another discipline, the J.D./Ph.D.s have not achieved the same status outside of law as the Ph.D.s w/o — who, by hypothesis, came to our attention principally because of their standing in their other discipline.

If there is a danger in hiring a large population of AC/DCs, it is not that one will get second-rate scholars, but that one will get first-rate economists, philosophers, and classicists who are attracted to the law school not by an interest in the law, but by its generous pay and perquisites. I would not accuse any of our current AC/DCs of such motives (though some might be guilty), but I think I saw one or two pretenders during the interviewing season this year. These were young J.D./Ph.D.s who had thin answers to questions about their interest in law. One of them naively admitted that there were only two reason-

able spots in the country at good schools of Arts and Sciences for his particular area of expertise. He did not need to explain to me that law teachers' salaries are substantially higher than the salaries in his Arts and Sciences field. There is a risk, therefore, that people who should be in the departments of History, Philosophy, or Economics will come to the law school not because of a sincere interest in the law, but because there are more places in the law and because those places carry better salaries and more perquisites. The hard times that we face may protect us from these pretenders; in times of financial stringency, appointing uninterested AC/DCs would be a luxury that only the wealthiest of schools could afford.

To see the magnitude of the change in faculty degrees and interests, compare the law school faculty in 1956 with the faculty in 1993. In 1993 at least sixteen of forty-eight tenured and tenure-track professors were AC/DCs. In 1956 none of the thirty-two members were AC/DCs. For reasons that I will not explain here, both numbers (sixteen and forty-eight) are subject to dispute, but the point is clear. About one-third of our current faculty are Ph.D.s w/o, J.D./Ph.D.s, or J.D.s w/o; in 1956 no one, not even radical realist Hessel Yntema, was an AC/DC. Conceivably Hessel or one or two others might have qualified if one stretches the definition some, but even those who occasionally wrote for nonlaw audiences did most of their work in the law. In 1956 the faculty had many great names; most of them made their names teaching law and writing about it.

II. TEACHING OF THE AC/DCs

One might think that a faculty of AC/DCs would bring undergraduate teaching styles to the law school and might dilute our precious Socratic and case-study methods even more than they have been diluted by the modern lawyer teachers. That has not happened. In general the AC/DCs teach conventional law courses in precisely the same way one would expect lawyers to teach those courses. While the lecture is more prevalent than it was ten or twenty years ago in all law courses, the migration of AC/DCs to the law school has not caused this phenomenon. I suspect that if you compared AC/DC teaching to lawyers' teaching in traditional courses, you would not be able to tell which was which. So far as I am able to tell from my colleagues and their students, Bill Miller teaching Property or J.B. White teaching Criminal Law would exercise the same rigor and expect the same case analysis that the most traditional law teacher would demand. I believe the same to be true of Rick Lempert's evidence class; Phil Soper might be the most rigorous bastard of all. I would bet a small amount of

money that the AC/DCs are no more deviant in their teaching of the traditional courses than the lawyers; they may even be less so.

Some of our Ph.D.s w/o are so conscious of their nonlawyer status that they are even more careful to be good lawyers than the lawyers themselves. I am thinking of Bruce Frier, whose class I visited for a semester while he visited mine. Both of us taught Contracts from the same book. To my chagrin, he was more rigorous than I; he relentlessly pushed the students' noses into the cases and forced even the most reluctant to analyze those cases in careful detail. Bruce's care about and respect for doctrine far exceed that of many of his lawyer colleagues.

Some nontraditional courses of Ph.D.s w/o are different from traditional courses, but even more "practical." I am thinking particularly of Andy Watson's course on law and psychiatry and of Phoebe Ellsworth's course on the jury. Both of those courses concentrate on important events or institutions in a practicing lawyer's life, in the office or in the court room. These subjects are more relevant to the lawyer's success than any appellate decision ever could be. Phoebe's research into jury decisionmaking and the use of instructions to jurors gives her an insight into an important part of trial practice that is unknown to most of us. The same, of course, is true of Andy's consideration of the relationship between the client and the lawyer, and of Michael Bradley's consideration in corporate finance of the financial interests that drive mergers, acquisitions, and the like.

Notwithstanding the examples set by Phoebe, Andy, and Michael, I suspect that the AC/DCs' teaching is on the whole less "practical" than the teaching of lawyers for other reasons. Many faculty lawyers consult with practicing lawyers. Invariably the cases that justify a professor consultant are interesting and novel. I have frequently enlivened my classes by the use of examples from practice. As you are well aware, the complexity and diversity of real cases make any professor's hypothetical cases look barren. For example, in the last several years I have been involved in take-or-pay litigation concerning natural gas contracts in the state and federal courts out West. The take-or-pay contract presents difficult and unique interpretive questions under the damage provisions of Article 2 of the Uniform Commercial Code (U.C.C.). I am certain that my teaching of those sections has been improved and the students' interest heightened by my bringing those issues from practice into the classroom. AC/DCs are less likely than lawyers to have that kind of practical interaction with practitioners outside of the classroom and, accordingly, are less likely to be able to inform their classes by that learning.

For obvious reasons I do not want to make too much of that point. Carried to the extreme, outside practice can stultify and interfere with one's work in the law school; it can turn classes into egocentric story hours if the real cases are not integrated into the other substance and theory of the course. Since many lawyer teachers do not consult, one cannot claim that every class would be enriched even if all AC/DCs were turned into lawyers. Nevertheless, I suspect that the classes of lawyers here and at other schools are often improved by issues brought from the legal frontiers outside the law school. Except for classes like Andy's and Phoebe's, the courses of AC/DCs are seldom enriched in that way.

III. CURRICULUM

Even if the presence of many AC/DCs on the faculty does not affect the teaching in most traditional first-year courses, their presence does affect what is *not* taught. As I indicate below, the curriculum of a faculty with many AC/DCs will surely differ in systematic ways from a curriculum of a faculty of lawyers. One would expect Bruce Frier to want to teach a course in Roman law, Bill Miller to want to teach *Blood Feuds*, J.B. White to want to teach *Legal Imagination*, and so forth. That would be their normal expectation, and it would be implicit in their hiring that they would have an opportunity routinely to do such teaching either in the law school or elsewhere. Of course, that means that their second course cannot be Tax, Labor Law, Commercial Transactions, Corporations, Trial Practice, or the like. Our second- and third-year curricula have been significantly, if subtly, shaped by the large number of AC/DCs on the faculty. If each of them were replaced with a lawyer, one would expect the Arts and Sciences curriculum to shrink and the pure law curriculum to grow both broader and deeper.

Because students and the organized bar have little influence on the curriculum and because there are no other external restrictions, the presence of AC/DCs on the faculty can lead to significant curricular distortions. Particularly at elite law schools the curriculum fits the fancy — some might say the whim — of the faculty. I perceive no particular political bias in our selection of courses, only *laissez-faire* carried to the point of irresponsibility. My AC/DC colleagues are as willing to have me teach *Negotiation* or an advanced commercial law course as I am to have them teach *Political Obligation* or *Legal Stories and Legal Institutions*. You have heard the story of the faculty who sets the curriculum by allowing each teacher to list what he or she wants on a slip put in a hat. When all of the slips say “Con. Law,” the

entire curriculum is Constitutional Law. While no school has reached that point, we feel only slightly constrained by particular student demands or by the need for substantive law coverage. The presence of many AC/DCs means either that they will teach one semester in the Arts and Sciences or that one of the courses they teach in the law school will be a course principally drawn from their nonlaw specialty. Therefore, the presence of large numbers of AC/DCs certainly has an impact on what is and what is not offered in the second and third years; common agreement on courses that must be taught does little to limit this impact.

To illustrate the point, take my area of expertise. We now have no advanced courses in Commercial Law or Bankruptcy. The course in Consumer Credit Law formerly taught by Frank Kennedy is gone. The course that I occasionally taught in Banking Law is gone, and the seminars he and I taught on advanced topics in Bankruptcy, Creditors' Rights, or Commercial Transactions are also gone. If three members of the faculty taught Commercial Transactions and Bankruptcy instead of one and one half, we would certainly offer advanced courses. Over the past ten years the same case could be made for Tax and Labor Law. Recent additions to the faculty may alleviate the problem in the latter two areas. Note, too, the subjects that have never been taught but that should and would be taught if qualified persons were on the faculty. I am thinking particularly of courses on Real Estate Development, Real Estate Finance, and the like. To see how thin our offerings have become in some semesters, consider the second- and third-year courses that were offered in the winter term of 1993.¹

Compared to the curriculum of a faculty made up exclusively of

1. Accounting for Lawyers; Administrative Law; Advanced Legal Research; Commercial Transactions; Constitutional Litigation; Criminal Appellate Practice; Criminal Procedure Survey; Democratic Theory; Economics and the Law; Employment Discrimination; English Legal History; Enterprise Organization; Estate and Gift Tax; Evidence; Evidence Workshop; Federal Antitrust; Federal Courts; Federal Environmental Law Survey; Fourteenth Amendment; Government and Business in Western Europe; Individual Employee Relations; Insurance Law; Juries; Jurisdiction and Choice of Law; Labor Law; Law, Medicine and Bioethics; Lawyer as a Negotiator; Modern Legal Theory; Patent Law; Professional Responsibility; Securities Regulation; Sex Equality II; Tax I; Trademarks; Trading In and With Europe II; Trial Practice; Trusts and Estates I; Abortion and Public Policy; Business Combinations; Communication Science and the Law; Contemporary First Amendment Issues; Estate Planning; Gender and Justice; History of American Legal Thought; Jewish Law Seminar; Law and Culture; Liberalism and Its Critics; Public Interest Litigation in the 90s; Race, Class & Cultural Diversity: Anthropology Perspectives; Race, Racism, and Law; Seminar on Election Law; Separation of Powers; Sexual Harassment; Tax Practice Seminar; The Criminal Law of Rape; Advanced Clinical Law; Child Advocacy Clinic; Child Advocacy Seminar; Clinical Law I; Clinical Legal Advocacy Seminar; Environmental Law Clinic; Legal Assistance to Urban Communities; Women and the Law. Because some of the "practical" courses were taught at the same time, the student selection was even narrower than appears from the list.

lawyers, our curriculum is less rich in practical or substantive law courses and more rich in courses drawing principally on the Arts and Sciences. In part because more and more of our teachers have graduate degrees from, or an attachment to, a particular area of the Arts and Sciences, other curricular changes are now being proposed that may also lead further from and not closer to the bar and practical legal practice.

Of course the mere demonstration that the presence of AC/DCs leads to diminished practical or business law offerings in the second and third years will not carry the day for our argument. You will recall from your days as a teacher that law professors do not agree and never have agreed about what we can and do teach. Some (Terry Sandalow is one) argue that there is not much point in teaching a large amount of substantive law because any law so taught will soon be forgotten or out of date and, in any case, can easily be learned after law school. That attitude naturally favors fewer substantive law courses, more courses on theory and perhaps even on skill development. You and I would argue that much substantive law can be efficiently taught in the classroom and that knowledge of substantive law is an important ingredient in the successful practice of law. I would go beyond that assertion; I maintain that highly theoretical courses are of smaller value to most of our students than my colleagues claim. This not because the insights from theoretical courses are unhelpful to a lawyer, but because most of our students do not have the intellectual enzymes to transform these abstract ideas into digestible, intellectual food. In such courses the teachers say *X*, but the students hear *Y*. The teacher sees manifold opportunities to apply his theories in other courses, but the students cannot see beyond the horizon that consists of a merciful escape from the torment of theory. The teacher writes an examination that calls for "student analysis and creative use of the theory"; the student knows that faithful regurgitation on the final examination will earn an A.

While there is not a direct connection between one's curricular opinion and one's status as an AC/DC, I think they are related. I would expect the large presence of AC/DCs on a faculty to bend any curricular change toward the theoretical and away from the practical. One must concede, on the other hand, that many of the AC/DCs have a sincere respect for law and a few, particularly some of the Ph.D.s w/o, have a bent toward the practical that exceeds even that of the lawyers.

In any event, my observation of our own curriculum and of the pending proposals for its modification leads me to agree with you in

general. It seems to me that the new courses we are offering are more heavily weighted toward theory as practiced in the Arts and Sciences and less heavily weighted toward practical legal application and substantive legal learning. To the extent that more of our colleagues regard themselves not merely as legal scholars, but as scholars in the Arts and Sciences as well, one would expect them to support and encourage such change in the curriculum. Even if they do not support such change, their presence means the absence of others who would teach practical, substantive law courses.

IV. RESEARCH

Although I have not counted the pages of practical and nonpractical research in elite legal publications, surely it is true that the "theoretical" greatly exceeds the "practical." The elite journals (and, perhaps even more so, those that aspire to be elite) publish far more pages than formerly that are directed only at other academics and not at members of the bar. Few of the articles in most of the elite journals would be of interest to — some not even comprehensible by — a practicing lawyer. Good doctrinal research that might have appeared in elite journals twenty or thirty years ago has been driven mostly to lesser journals, to treatises, or to nonlaw school publications such as *The Business Lawyer*.

Why the change? Partly it is a function of who controls the reviews. Since these journals are mostly run by extremely smart but extremely inexperienced students, it should not be surprising that current fashion is closely followed in the reviews. The editors of an elite law review who published a purely doctrinal issue might endanger their elite status by such nonconformity. Also, the student editors are influenced by the intellectual inclinations of the faculty. To the extent that doctrinal research is in eclipse and more theoretical writing is favored, one would expect the student editors to favor the latter over the former simply because their choices reflect the dominant views of the faculty.

The current tenure process also has a hand in determining what is and what is not written. It is now far more difficult to qualify for tenure than when I received it in 1968 or when you did in 1973. It is often unclear to an external (in some cases to an internal) observer why one person receives tenure and another is denied. Nor do our rules — which are necessarily vague about the quality of work — minimize that uncertainty. As a consequence, a tenure candidate views the process through opaque glass. Even a candidate who should be completely confident cannot be convinced of that. Presumably, there-

fore, every single nontenured person asks himself or herself, "What will this or that group of the faculty think of this piece of work?" To the extent that doctrinal work is held in lower repute by even a significant part of the faculty (only one-third blocks the grant of tenure), the candidate who relies on such writing for tenure runs a risk. Even in the 1960s, when I was up for tenure, some of these things influenced my decision. My second piece published in this Review was entitled *Some Petty Complaints About Article Three*.² I carefully withheld that article from the tenure committee because even then I did not want them to suspect that I was a mere technician writing only for lawyers.

I suspect that your perception, namely that doctrinal and "practical" work is less well respected than more theoretical work, is correct and is so perceived by the candidates for tenure. That fact will dissuade tenure candidates who are the least bit neurotic from presenting doctrinal work for more than a small part of their portfolio. Because youngsters contribute more to the elite reviews than old people and because they are the ones so influenced by the perception, this phenomenon may skew the research in the elite journals even more than would otherwise be the case.

Beyond the deleterious influence of the tenure process and of the predilections of the students who run our reviews, I am quite uncertain about why one thing and not another is written. I am even more uncertain about what and how much should be written. But here I am more sanguine than you are. I suspect that most of our writing can only be justified as a form of self-teaching. Clearly that is the justification for almost all student writing. (When did you last read and profit from a student piece?) Students' writing can and should be fully justified as part of their education; we should expect nothing more of it. Any writer, including young and old faculty, benefits from the discipline of putting things in print. Much legal writing, such as my own 1968 article on negotiable instruments, should not be justified on the basis of its benefit to some remote audience. Much writing can and should be justified as a form of self-teaching by faculty and by students.

Other writing, including much of which you and I think little, might be classified as intellectual exhibition. When she is dressed up in her best dress, my four-year-old granddaughter is fond of holding out her arms and squealing: "Look at me; look at me." Much legal writing published in the elite and other journals falls into the "look at

2. James J. White, *Some Petty Complaints About Article Three*, 65 MICH. L. REV. 1315 (1967).

me" category. It is not intended for lawyers; it is not principally to educate the author; it is merely to exhibit the beauty of the writer's intellect to an adoring audience.

Finally are those for whom writing has become second nature; they are like aging athletes who cannot shake the habit of working out. Surely, Brian Simpson fits that category; Richard Posner is another good example. I would also put Jerry Israel and myself in that category. That some of the writing of this group might be "practical" is mere happenstance, for these persons are not principally motivated by a desire to educate but by the need to write.

The work of the faculty of 1956 makes an interesting comparison with the writing of today's faculty. First, they did not write as much as current faculty members do. Second, what they wrote was often specifically directed at lawyers and judges. Often their writings appeared in bar journals and the like. But even the faculty of 1956 wrote many things that were not directed at lawyers but only at other scholars, sometimes scholars from other disciplines or other countries. Consider for example, William Wirt Blume's *Probate and Administration on the American Frontier: A Study of the Probate Records of Wayne County — Northwest Territory 1796-1803, Indiana Territory 1803-05, Michigan Territory 1805-1816*,³ or Al Conard's empirical study of the costs of automobile accidents, *Automobile Accident Costs and Payments: Studies in the Economics of Injury Reparation*.⁴ Jack Dawson ranged from the mundane *Estoppel and Statutes of Limitations*⁵ to the sublime *The Equitable Remedies of the French Chancery Before 1789*.⁶ Even Paul Kauper, a prototypical lawyer in my terms, wrote *The Constitutions of West Germany and the United States: A Comparative Study*.⁷

Perhaps more representative of that time is George Palmer's writing on *The Contract Price as a Limitation on Restitution for Defendant's Breach*⁸ and his treatise on restitution.⁹ One of Lewis Simes'

3. William W. Blume, *Probate and Administration on the American Frontier: A Study of the Probate Records of Wayne County — Northwest Territory 1796-1803; Indiana Territory 1803-05; Michigan Territory 1805-16*, 58 MICH. L. REV. 209 (1959).

4. ALFRED F. CONARD ET AL., *AUTOMOBILE ACCIDENT COSTS AND PAYMENTS: STUDIES IN THE ECONOMICS OF INJURY REPARATION* (1964).

5. John P. Dawson, *Estoppel and Statutes of Limitations*, 34 MICH. L. REV. 1 (1935).

6. John P. Dawson, *The Equitable Remedies of the French Chancery Before 1789*, in 1 FEST-SCHRIFT FÜR ERNST RABEL 99 (Hans Dölle et al. eds., 1954).

7. Paul G. Kauper, *The Constitutions of West Germany and the United States: A Comparative Study*, 58 MICH. L. REV. 1091 (1960).

8. George E. Palmer, *The Contract Price as a Limit on Restitution for Defendant's Breach*, 20 OHIO ST. L.J. 264 (1959).

9. GEORGE E. PALMER, *THE LAW OF RESTITUTION* (1978).

early pieces, *Fifty Years of Future Interests*,¹⁰ appeared in the *Harvard Law Review*. He, too, was the author of a treatise on future interests.¹¹

Probably the writers of 1956 were less prolific; some seem to have written very little. But those who did write often published in bar journals and, even when their work was published in elite reviews, it was frequently quite doctrinal and directly applicable to existing practical controversies. Yet even then there was a strong interest in comparative law, and much of the writing of Blume, Dawson, and Kauper had a historical or comparative aspect. This comparison of the work of the faculty of 1956 with the work of the current faculty supports your argument, namely, that there has been a drift away from work for the bench and bar, even though some significant work done at that time was not directed at the bar. Since 1956 there has been a gradual yet large change in the emphasis of, and interest shown by, faculty research.

Return to the youngsters on our faculty. Their work gives hope for the future of "practical" research. Two who have recently received tenure, Kent Syverud and Jeff Lehman, have produced or are producing materials of important practical significance that will and should be read by lawyers. Jeff is working with Doug Kahn on a tax hornbook, and Kent's articles on insurance, *Insurance Law Out of the Shadows*¹² and *The Duty to Settle*,¹³ published in elite reviews, will be read with profit by lawyers, judges, and persons in the insurance industry. Perhaps we can take heart from that.

Ultimately I share your view that the world would be better if there were more writing in the law schools for lawyers and judges, but I do not go as far as you do. What is written, why it is written, and where it is published are questions of considerable complexity. People write for many reasons and to fit many audiences, including themselves. It is even possible that the younger generation is making some tentative steps toward practical research and will write more things that are aimed at lawyers and judges than the prior generation.

V. THE GOOD NEWS

Now I turn to the good news: the reasons I think some of your fears are exaggerated. First, I think both your exemplars, Justice Felix

10. Lewis M. Simes, *Fifty Years of Future Interests*, 50 HARV. L. REV. 749 (1937).

11. LEWIS M. SIMES & ALLAN F. SMITH, *THE LAW OF FUTURE INTERESTS* (2d ed. 1956).

12. Kent D. Syverud, *Insurance Law out of the Shadows*, 89 MICH. L. REV. 1429 (1991) (reviewing KENNETH S. ABRAHAM, *INSURANCE LAW AND REGULATION: CASES AND MATERIALS*).

13. Kent D. Syverud, *The Duty to Settle*, 76 VA. L. REV. 1113 (1990).

Frankfurter and Professor George Priest, were wrong. With characteristic arrogance, Justice Frankfurter exaggerates the role of law schools in "making law and lawyers." To say that we "make" either law or lawyers is to ignore what we do or ever have done, either to our students by our teaching or to the "law" by our writing. We have a modest influence on the students and an even more limited impact on the law. Apart from occasional giants like Karl Llewellyn, few professors can claim to change the law fundamentally. Even those of us who write for judges and lawyers, and who are often cited in the opinions of appellate courts, have modest impact. When a court cites White and Summers,¹⁴ I am always flattered, but I appreciate that the typical citation to our work is merely glue to hold in place an idea that came from elsewhere.

What of our influence on students? We do, of course, teach some law, but what else? We claim that we teach our students to "think like lawyers," and perhaps we do. But I suspect that the intellectual rigor that is "thinking like a lawyer" is as much taught in mathematics, physics, and sometimes even in history or English as here. By the time they reach us, law students' minds and souls are set in cement that is fast hardening. That is why teachers of ethics courses are so frustrated and why those courses are so poorly received. Far from "making lawyers" of our malleable students, mostly we bloody our nails.

Professor Priest's claim is even further from the mark than Justice Frankfurter's. The claim that law schools will soon become graduate schools of the Arts and Sciences is nonsense; I doubt even Professor Priest believes it. You know, of course, Professor Priest is a member of the Yale Law School faculty. Since before you were born, Yale has reveled in its deviance. Even if Yale becomes a graduate school, it is unlikely that any others will follow it. But my guess is that many on the Yale faculty would disagree with Professor Priest's proposition. Many Yale graduates do well in practice precisely because, as I pointed out, law schools exert a modest influence on any student. If one attracts a bright enough set of students who are sufficiently self-motivated and ambitious, one need not teach them anything. Their intelligence, motivation, and ambition will overcome or hide every deficiency in their legal education. Were the Yale students more numerous, less gifted, and more interested in practicing law, Yale would have to pay more attention to teaching law. (Would you want President Clinton as your lawyer?)

It is unfortunate but hardly tragic that our teaching does not di-

14. JAMES J. WHITE & ROBERT S. SUMMERS, *UNIFORM COMMERCIAL CODE* (3d ed. 1988).

rectly contribute to our students' success as lawyers. Contrary to the implications of Justice Frankfurter's remarks, the law schools have not descended from great to little influence over the students and the law. Rather we have descended from modest significance to slightly more modest significance, a matter that should concern us but not as greatly as you suggest.

Even if I am wrong about our influence on law and lawyers, there is reason for hope. I see our young faculty moving back toward the bar. As I have indicated above, both Kent Syverud and Jeff Lehman are writing and have written things that will be of interest to lawyers and judges. Both of them are involved in the community and with lawyers in many ways. Both of them had an interesting law practice before they came to the law school. Two of our other youngsters, Debra Livingston and Deborah Malamud, came to us last year — one from the U.S. Attorney's office and private practice in Manhattan and the other from a Washington law firm. Like Kent and Jeff, they enjoyed law practice, feel an affiliation with the bar, and bring important lessons from their practice. Debra Livingston was the prosecutor of Imelda Marcos and had to face Gerry Spence in court. Deborah Malamud was involved in the nitty-gritty of labor law for a Washington labor-side firm. Even the young AC/DCs (here I am thinking of Heidi Feldman and Avery Katz) are respectful of lawyers and are deeply interested in how the law works and in legal institutions. Moreover, one of our other youngsters, Rick Pildes, whose writing in public choice is hardly the thing that a typical lawyer would write or read, is a fine lawyer. Last year he wrote a winning brief in the Supreme Court in *General Motors Corp. v. Romein*.¹⁵ I suspect, therefore, that the claims you hear from your clerks about the academic disdain for practice were actually more characteristic of Lee Bollinger's generation than of the current youngsters. I certainly see none of this disdain from our young people and, quite the opposite, I see close association with the bar in the work and writing of many of our youngest teachers.

Perhaps the fashions in research, teaching, and writing are cyclical. Instead of deviating ever farther from the standard to which you and I would adhere, our young people may be moving back toward that standard. That is not to say that all of these young scholars are going to become doctrinal writers or indeed that most of their writing will be directed to lawyers and judges, but it does mean that the kind of disdain for practice that you describe is not shared by them. It does

15. 112 S. Ct. 1105 (1992).

mean that many of them will write for lawyers and judges and will be engaged with lawyers and judges in other ways, both in and out of the law school. So, if our school is any measure, I think you should take heart. Here even the young AC/DCs are good lawyers, and many of our youngest lawyers will be recognized by the next generation as important contributors to the bench and bar.