

1995

Defining the Ultimate Lawyer

C.M. Steve Aron

Follow this and additional works at: https://scholarship.law.uwyo.edu/land_water

Recommended Citation

Aron, C.M. Steve (1995) "Defining the Ultimate Lawyer," *Land & Water Law Review*: Vol. 30 : Iss. 2 , pp. 515 - 530.

Available at: https://scholarship.law.uwyo.edu/land_water/vol30/iss2/8

This Special Section is brought to you for free and open access by Law Archive of Wyoming Scholarship. It has been accepted for inclusion in Land & Water Law Review by an authorized editor of Law Archive of Wyoming Scholarship.

University of Wyoming

College of Law

LAND AND WATER LAW REVIEW

VOLUME XXX

1995

NUMBER 2

DEFINING THE ULTIMATE LAWYER

*C.M. Steve Aron**

The legal profession has failed to define what makes a good lawyer. It is a great failure with far-reaching effects. Law students with ideals and powerful—but vague—ambitions, are transformed into wanderers in the tall grass. Without assistance from the professionals whom they should be striving to emulate, and with no guiding light except the glow of the dollar sign, they are left to make up their own definition of success. If the organized Bar fails to define its ideals it is likely to end up with none.

The profession's failure is felt most by law students, but the absence of a standard, of an aspirational goal, is pervasive. Even the judiciary appears to have no grasp of lawyer excellence. Judges have contributed little to fill the definitional vacuum. At the appellate level, myriad judicial opinions find ineffective assistance of counsel, and many cases report discipline and legal malpractice; yet all share an absence of judicial philosophy or perception as to just what is a good lawyer. Even where there is clear condemnation of legal practice gone bad, no apparent effort has been made to describe the way it is supposed to be. In trial courts, for a number of obvious reasons, even judges who know the difference between good and bad lawyers try to avoid favoritism to one litigant over another. The result in many trials is an acquiescence, without comment, to inadequate lawyer conduct.

* C.M. Aron is a partner in the law firm of Aron and Hennig, in Laramie, Wyoming. B.S., United States Military Academy, West Point (1965); J.D., University of Wyoming (1975); Recipient of writing awards from the United States Army Armor Association and Departments of English and Philosophy, University of Wyoming.

Since the lawyers themselves do not know the definition of a good lawyer, the meaning surely eludes laymen who seek legal assistance. The low esteem in which lawyers are held by the public might well arise from the public's inability to know or understand what good lawyers are.

Before attempting to define the qualities which make a good lawyer, it is worth reflecting upon that black cloud which looms over every profession. This terrible hidden truth is not open to dispute. It is a truism: Half of all lawyers are in the bottom half.

Maybe the statement is unfair. Possibly the profession is so esoteric that most lawyers are superior in some respects. By some magical interaction of special qualities, the entire legal profession might therefore be on some plane higher than other human endeavors. From that perspective, the practice of law is unique, so that everyone is in the top half.

The law is not alone in its delusion. Consider the military award system in which more military decorations were awarded for the invasion of Grenada than were awarded at Omaha Beach for the Normandy invasion on D-Day in 1944. Though the dangers are only imaginary, maybe the valor of today's soldiers is greater than it was under real fire. Devaluation of standards is not restricted to the military. In some highly regarded academic institutions most students graduate *cum laude*, presumably on the theory that all can graduate with honors if everyone is above average and there is no bottom half. Maybe one should be less critical of inflated self-appraisals; and maybe lawyers are extraordinary. On the other hand, it just might be possible that the truism is true, that half the lawyers are in the bottom half.

The purpose of this discussion is not merely to attempt a definition of a good lawyer. For many purposes that would be sufficient. But the legal profession is supposedly more than a mere association of businessmen. By its monopoly of the court system, the legal profession is entrusted with a more deadly statutory power than a double-zero license to kill. For this reason it should have aspirational goals. It must have ideals. There must be a paradigm for the rest to emulate, a lawyer who is more than just a good lawyer, a lawyer who is not only in the top half of lawyers, but who is also in that small group who are the ultimate lawyers, the legal version of Nobel laureates, the ones on the first ballot for induction to the Hall of Fame. These are the big guns, the heavy hitters. They have attributes and aspects of personal character which distinguish them from the rest of us.

THE TOP HALF

Every ultimate lawyer is first a good lawyer, and there are several qualities shared by all good lawyers. This declaration sounds overstated, but it is probably true. Though good lawyers, the top half of the profession, come in every size, shape, race, creed, disposition, temperament, idiosyncrasy, specialization, style and political bent, certain attributes apply to almost all of them.

1. Clear Ethical Distinctions.

Good lawyers are ethical lawyers. Even the worst lawyers, perhaps not talented or smart, and not blessed with natural legal ability, can be ethical. Competence and ability are not prerequisites to being ethical. Nevertheless, a good lawyer has an attribute not shared with bad lawyers. The good lawyer draws clear and unequivocal ethical distinctions.

It has been said in ethics articles, in classes on ethics, and among lawyers, that one or another ethics problem falls into the "gray area." To a good lawyer there is no such thing. Surely there are difficult questions. Problems arise which are blinding in their intensity or difficult to see clearly in all their dark subtleties. But once clearly identified, they do not fall into a gray area. The lawyer facing an ethical problem must make a decision. As Pascal said in an arena that is not much different from ethical questions—the minor matter of eternal damnation: You must bet, you have no choice, you are in the game. The same is true of a lawyer confronting an ethical question. The lawyer must, by action, come down on one side or the other. There is no gray area in which to act.

The story of LORD JIM is instructive. Joseph Conrad's novel is about a young merchant marine officer of good qualities and great potential. "His prospects were good."

In time, when yet very young, he became chief mate of a fine ship, without ever having been tested by those events of the sea that show in the light of day the inner worth of a man, the edge of his temper, and the fibre of his stuff; that reveal the quality of his resistance and the secret truth of his pretences, not only to others but also to himself.

The ship in which Jim went to sea was carrying Moslem pilgrims on the way to Mecca. The ship was caught in a terrible storm and appeared to be sinking. The crew was in the process of abandoning the ship and deserting the passengers who had been entrusted to their care. Jim was at

the ship's rail. The other officers had already abandoned ship and were in a lifeboat by the side. Jim was anguished and torn in his decision. He later described the details of the event in a conversation with the narrator of the novel:

"There were eight hundred people in that ship," he said, impaling me to the back of my seat with an awful blank stare. "Eight hundred living people, and they were yelling after the one dead man to come down and be saved. 'Jump! Jump! Oh, jump!' I stood by with my hand on the davit. I was very quiet. It had come over pitch dark. You could see neither sky nor sea. I heard the boat alongside go bump, bump, and not another sound down there for a while, but the ship under me was full of talking noises. Suddenly the skipper howled. 'Mein Gott! The squall! Shove off!' With the first hiss of rain, and the first gust of wind, they screamed, 'Jump! We'll catch you! Jump!' The ship began a slow plunge; the rain swept over her like a broken sea; my cap flew off my head; my breath was driven back into my throat. I heard as if I had been on the top of a tower another wild screech, 'Jump. Oh Jump!' She was going down, down, head first under me"

He raised his hand deliberately to his face, and made picking motions with his fingers as though he had been bothered with cobwebs, and afterwards he looked into the open palm for quite half a second before he blurted out—

"I had jumped" He checked himself, averted his gaze

"It seems," he added.

Ethical problems are little different from the problem which confronted Jim. You either jump or you do not jump. There may be many dismal clouds between you and the object of your concern. It may be dark on the sea of ethics. You may be storm-tossed. Your ulcer may be in an uproar. Beneath it all, however, there is no gray area of decision. You are either on the ship or you are off the ship. For a good lawyer, to use Conrad's phrase, the "perplexities are mere child's play." More about Jim later.

2. *Honesty.*

A good lawyer is honest. Some good lawyers are not naturally honest. They act honest for pragmatic reasons. They know in the long run credibility is essential to a successful practice. This is the one quality which is so clear and unmistakable that it is not worth discussing. Those who inquire what it means to be an honest lawyer can only be reminded

of the comment made by the great Louis Armstrong when someone asked him what good jazz was. "If you gotta ask," he said, "then all the explainin' in the world ain't going to help you any."

3. *Insight.*

The insight of good lawyers is called for in a great many legal situations, possibly in all of them. Insight into problems, clients, issues, human motivations, situations, pleadings, juries. It could be called understanding, knowledge, or the ability to realize what the implications of a situation portend.

The essence of insight is the ability to part the cobwebs and see through to the crux of a problem. We all know many lawyers, as well as many quality people in other walks of life, who possess great insight. Many are born with the gift, a natural instinct for insight. Despite those few naturals, one of the encouraging aspects of the profession is that many lawyers learn insight: from experience of cases, from listening well to others, from watching, or from just trying hard to gain insight. It could be argued that the cliché as to the purpose of law school, to teach a student to "think like a lawyer," is nothing more than a description of that kind of thinking which permits the parting of the mists so as to see the essence of a situation. That is insight.

4. *Word Sharpness.*

Another skill parallel to "thinking like a lawyer" is an ability to read finely with a sharpness of vision, particularly toward one's own writing. This is not a matter of writing with clarity or with grammatical expertise. It is instead the ability to read into a sentence all manner of important implications based on unstated contingencies and possibilities. A good lawyer must be Word Sharp.

This is not to say good lawyers do not use the same language or phrases as others, or avoid documents with latent problems. On the contrary, a good lawyer is as likely as is another to use dangerous language, but will do so with understanding and without illusion. For a number of reasons, a good lawyer might negotiate an agreement which can be expected to later develop problems. What counts is that s/he does so with appreciation of the potential for disaster. A client has an inalienable right to do stupid things. When a good lawyer, or a good lawyer's client, does something stupid, at least it is knowingly stupid.

It should not be overlooked that the exercise of these two lawyer abilities—thinking and reading "like a lawyer"—is highly dependent on

knowledge of the law. These skills are not academic in a pure sense, and are not dependent on law school grades, but there is a point at which one cannot be a good lawyer without an understanding of substantive law. A gift for insight and a sharp eye are valuable assets, but good lawyers also know what they are talking about.

5. *Tactical Presentation Skill.*

For good lawyers it is a *sine qua non* to be able to make tactical presentations. The word presentation simply means preparing and communicating a position. In the diverse practice of law, many presentations are not made in courtrooms. Most are made to opposing counsel, insurance adjusters, hearing officers, administrative boards and tribunals. Other significant presentations are made to the lawyer's own client. Explaining a position to the client—basically identifying the problem and articulating how the law can be applied to it—is an important function in legal practice. Likewise, presentations to co-counsel, or to one's own associates and partners, can be important in preparing a client's position. These same internal statements of client positions can also be at the heart of a law firm's success. They are essential to the process of making the fundamental law firm decision: whether or not to take a case.

To make a tactical presentation involves not merely an ability to communicate effectively. That talent is of lesser importance. Some of the worst lawyers speak well on their feet, communicate well, have considerable manipulative skills, and generally know their stuff, but they are not good lawyers. The reason is simple: They do not know what to talk about.

A lawyer with tactical skill knows what to talk about by an insight not into others, but into his/her own position and self. Without that skill many lawyers forcefully and persuasively argue unimportant points. The presentation might be well done; a point might be well made; but it is the wrong point. Often there is little significance to how you say it or even what you say about it. What matters is "it."

When lesser lawyers argue the wrong point, or respond to a decoy like hounds after a red herring, they somehow obscure their own position so as to lose persuasion before the opponent begins. This allows good lawyers to apply the fundamental principle of the tactical presentation art: Never murder an opponent who is in the process of committing suicide.

6. *Savvy*.

Apparently of dual ancestry, the word *savvy* derives through Scotch usage, probably from the French *savez vous*, “do you know?” It is also a slang expression from the Spanish phrase *sabe usted*, “you know.” Dictionaries define it with a scattering of meanings: common sense; understanding; shrewd or discerning; practical sense; to know. The OED suggests a more impressive definition: “*nous*: from Greek philosophy—mind, intellect, intelligence, gumption.”

Whatever it is, good lawyers have it. “Savvy” is the common ground among good lawyers of different types. A trial lawyer has the feel of the courtroom and simultaneously senses the pulse of judge, jurors, witness, and opponent. Outside the courtroom the same understanding and perceptiveness is required in varied arenas: negotiations, business acquisition planning, partitioning ranch property among estranged family members, and every other circumstance where legal merits are mixed up with emotions and perceptions of the participants. The situations are diverse, but lawyer savvy is a constant.

Savvy is a generalized ability to handle conflicting input under pressure. It is not so much a matter of thinking well as an ability to function well; keeping many plates spinning while maintaining enough awareness to catch the falling one before it hits the ground. Savvy might best be exemplified by the aircraft pilot’s skill in staying ahead of his cockpit. A pilot reaching a final approach fix for landing might have five or six acts to perform at the same time: start a clock, make a turn, initiate a descent, set a heading on an instrument, change frequency setting on one or more radios, and call an air traffic controller. These tasks can be overwhelming to a novice, but the experienced pilot is ahead of the aircraft, well aware of these requirements before they occur. In the correct, forward-thinking frame of mind, to perform them all flawlessly is no more difficult than the routine driving tasks of flashing a turn signal and changing lanes before stopping for a red light, then turning up the volume on the CD.

This ability to focus not on what is happening but on what is about to happen is the essence of savvy. Good pilots and good lawyers all have it.

It seems good lawyers possess all these characteristics. To be in the top half is it enough to have four of these six attributes? Five of the six? Probably not. There are just too many good lawyers in the field. The competition is among people with many years of schooling, broad life experience, and the great lessons of law practice. At the top echelon of the legal profession are individuals who possess all the attributes, plus—in varying degrees—many other qualities: wit, quick-

ness of mind, charisma, intellect, eloquence, flamboyance, dedication and, frequently, a good putting stroke.

THE ULTIMATE LAWYER

At the very top of the good lawyers are those few who have additional special attributes which make their counsel valuable in any situation, to people in every walk of life from workers to captains of industry, from candlestick makers to king makers. These special attributes are the qualities of the Ultimate Lawyers.

Enlightened Ambivalence

There was a movie several years ago entitled "Black Sunday." The story was a fictional account of a Palestinian terrorist attempt to set off a bomb during the Super Bowl. The movie opens with an Israeli commando raid on a terrorist headquarters near Beirut. The main character in the film is an Israeli officer. During the raid, with bombs and timing devices set to explode, this Israeli bursts into a room where he confronts a beautiful woman naked in the shower, defenseless and at his mercy. He points his rifle at her but does not pull the trigger. As the story develops, the woman becomes the leader of the terrorist band which is planning the assault at the Super Bowl. The Israeli expresses his remorse at having spared this terrorist when he had the chance to kill her. He feels inadequate, because he knows that in his more aggressive past he would have killed her without hesitation and the present threat would not exist. In his prime, he had what it takes to pull the trigger. A compatriot listens to this self-deprecation, then explains the cause of the failure: "The trouble is, David, that you have come to see both sides of the question. That is never good."

This anecdote illustrates with dramatic effect the first and foremost quality of the Ultimate Lawyer. The story aptly demonstrates that it is not good for a soldier to see both sides of the question. When it counts, the soldier must be able to pull the trigger. In life-and-death combat situations there is little to be gained by identification with, or empathy for, your enemy. Slight hesitation or lack of conviction can be fatal. This truth highlights the primary quality of the Ultimate Lawyer. A real lawyer is not a soldier. However bitter the fighting, the practice of law is not war. In the practice of law it is quite easy for any fool, any gunslinger, any irresponsible but licensed member of the Bar to pull the trigger. The very best lawyer is the one who does not fire at every target of opportunity, who knows the value and cost of firing on the innocent and defenseless. Before pulling the trigger, an Ultimate Lawyer always sees both sides of the question.

The skill at seeing both sides of a question can be thought of as enlightened ambivalence. It goes beyond a simple technical matter of seeing the other side's position. Any competent lawyer has the ability to look at the facts which favor the other side. A pertinent statement has been attributed to Abraham Lincoln. He said he spent one-third of his time worrying about what he was going to say, and two-thirds worrying about what the other guy was going to say. That attitude is one facet of good preparation. It is merely a technique of advocacy. The quality which elevates the Ultimate Lawyer goes beyond an ability to appreciate an opponent's position. Enlightened ambivalence pushes mere perspective to the point of real understanding.

Lawyers are quick to talk about independent judgment. But what is the value of independent judgment if it lacks a true understanding, a real appreciation, a deep awareness, of both sides of the question. This ability to see both sides of the question is not a mere trick of analysis. It is a mind-set, a way of thinking. For example, it is difficult for an Ultimate Lawyer to hold extreme views. Extremism in politics is surely not fatal, but unavoidably a laziness of thought is associated with it. On either extreme of the political spectrum, the answer to every issue is pre-packaged. One need not think at all. It is for this reason that commentators who pride themselves on extreme liberalism or extreme conservatism seldom say anything unexpected or interesting. For such a person, all politics is easy. There is no possibility of truly seeing both sides of a question with anything remotely like enlightened ambivalence.

The same shortcomings apply to advocates of all single-interest politics, taking simplistic positions from those of the NRA and the VFW, to the anti-military organizations, the extreme environmentalists and the health fanatics. In mind-set, there is not a great difference between "ban the bomb," "ban the smokers," and "love it or leave it." Advocates of extreme viewpoints and bumper-sticker positions all seem to pride themselves on seeing only one side of their pet question. Such a mode of thinking, susceptible to blind support for the position of any single-interest group, is the antithesis of the Ultimate Lawyer.

Selectivity

Enlightened ambivalence of the Ultimate Lawyer is an ability to see both sides of a question. The complementary quality, selectivity, is directed not outward, toward the issue, but inward toward one's own position. It is not a function of the opposite side of the question, the opponent's position, or of any other external aspect. Rather, it is a matter of intense, objective, unyielding criticism of one's own position. In a nutshell, it is the ability to concede that which must be conceded.

The Ultimate Lawyer is always on the right side of an issue. This is not to say s/he only takes easy cases. That particular trick for winning every case is in the repertoire of famous and successful trial lawyers and can lead to financial success. Some lawyers devote much effort to choosing unlosable cases, but that talent is not selectivity. On the contrary, the quality of selectivity refers to a singular ability to take the worst side of an issue, the unwinnable side, yet somehow appear to be in a reasonable, logical position. This is accomplished by conceding that which is not open to dispute. The Ultimate Lawyer concedes not quite enough to abandon one's essential position, but just the right amount so that the opponent has no ability to destroy a case. It is insight taken one step further.

In adversary matters, disputes often seem to come down to a perception of conflict between the good guys and the bad guys. The black hats versus the white hats. The Ultimate Lawyer somehow has an ability to take a bad guy and put a white hat on him. The secret? It is an ability not to claim the bad guy is good, but instead to suggest plausibly that this bad guy has some redeeming quality to overshadow a tainted appearance. Without selectivity, one defends a corporate raider as a choir boy. It is much more convincing to concede he is a raider, but defend the raid as being in the shareholders' interests. Without selectivity, one argues—in the face of convincing adverse evidence—that the light was green. The chances for success might be much greater if it is conceded that the light was red, but that the driver with the green light pulled out without looking.

A similar situation prevails in many lender liability and bad faith insurance claims. When banks and insurance companies fare poorly in bad faith cases one reason is simple: They never admit they are wrong. Such an admission in the proper case is an application of the selectivity principle. The foreman of a jury which awarded a large verdict against Bank of America commented that the jury might well have returned a defense verdict except that bank officers needlessly lied on the stand. What could be a better example of failure to apply selectivity than for a banker to testify to a jury that a written bank memorandum approving a loan did not really mean the loan was approved? He said that in the bank's jargon an approval did not mean what it says. This is an example of taking a good guy and successfully turning him into black-hatted bad guy. Ultimate Lawyers likely would position the client differently. It would, after all, be quite proper to prepare a bank officer's testimony in a different way, by coaching honesty. Subornation of perjury is a far cry from putting pressure on one's witness to tell the truth.

In the political arena the same technique applies. For an example of failure to apply selectivity on the grand scale, it is necessary only to

reprise the saga of Gary Hart. Advised by an Ultimate Lawyer, or having the qualities of one himself, Mr. Hart would have conceded what needed to be conceded, and he might have become President.

A Sense of Injustice

The third quality of an Ultimate Lawyer has been lost in the fast current at the mainstream of the legal profession. Too many lawyers take pride in their cynicism. They accept the bromide that the College of Law is not the College of Justice. Because of countless unjust results of which they are aware, some lawyers become so foolish they think justice is an insignificant component of the legal system. Nothing could be further from the truth. The legal system is imperfect, but to the most important people who play on its stage—the clients—nothing is more important than a desire for justice. It is hard to imagine a great lawyer who does not also have a refined sense of injustice.

There are many strong human motives. Lawyers see them all: avarice, hatred, bitterness, guilt, envy, revenge, *et cetera*. But in all human experiences, few factors motivate a person more strongly than to have suffered genuine injustice. Significantly, an important characteristic of injustice is that the scale of the injury does not equate to the strength of feeling about its unfairness. A small injustice can cause a strong reaction. The parameters of injustice are as broad as human experience. The four-year old child who was punished for stealing cookies which were eaten by the dog; the execution of an innocent man. The geography of injustice covers much ground.

. . . We appreciate this better
 In the agony of others, nearly experienced,
 Involving ourselves, than in our own.
 For our own past is covered by the currents of action,
 But the torment of others remains an experience
 Unqualified, unworn by subsequent attrition.
 People change and smile, but the agony abides.

T.S. Eliot

Dispassionate Self-Evaluation

Meaningful evaluation of a lawyer's ability takes three forms: professional evaluation by peers; lay evaluation; and self-evaluation. Furthermore, one's perspective on evaluations by peers or clients is itself a form

of self-evaluation. Ultimate Lawyers are different from the rest of us by the clarity of that self-evaluation. With no delusion, yet without foolish self-deprecation, Ultimate Lawyers appreciate their strengths and acknowledge their faults.

In the context of evaluations generally, the Ultimate Lawyer understands a subtle, but important, concept: a great strength can also be a great weakness. It is difficult to expand on this idea without elaborate argument. Instead, consider that common sense dictates the same result. Think of the lawyer in court who is aggressive and argumentative. Can there be much doubt that excessive aggressiveness can cause that lawyer's failure? Some lawyers are superior in academic knowledge and skill. Frequently they prevail because they know, or are able to bring to bear on an issue, a persuasive authority. But how many of those same lawyers fail repeatedly by not seeing the forest for the trees, by fighting esoteric points of law when the facts and equities are predominant? Is your greatest strength the ability to focus attention and concentrate? If so, it is likely your strength is your undoing when the time comes that you must try to spin four plates at the same time. And vice versa.

Evaluations can take several objective forms, but most are of little significance in defining the Ultimate Lawyer. Money is not the standard. Some of the worst lawyers make the most money. To suggest that the best lawyers are the wealthiest would be akin to asserting that the best clergymen are the televangelists. The Martindale-Hubbell rating also does not tell the whole story. Quite likely most Ultimate Lawyers are rated high, but the correlation is not conclusive. Martindale-Hubbell ratings probably correlate most highly to the wealth and prominence of the attorney's clients, the quality of the attorney's practice, rather than to the personal qualities of the attorney.

Another objective standard is a lawyer's batting average, at least as to trial lawyers. Yet with notable exception lawyers do not win cases. Cases win cases. Lawyers who never lose are mostly skilled at picking winners.

A cliché of peer evaluation is that one strives to earn the "respect" of one's foes. Possibly. It seems, however, that it is particularly easy to respect someone you can beat. Not many lawyers are inclined to feel that their victories are a result of the opposing counsel's ineptitude.

An alternative to the theoretical concept of respect is one more practical and real. An Ultimate Lawyer, consciously or not, strives for something different. When the lawyer's name appears on the pleading, on the contract, the initial negotiation, what is the reaction from the other side? What does opposing counsel say to *his* client who asks if the other lawyer is any good?

An Ultimate Lawyer is one to whom the reaction should be twofold. First, the opposing counsel should experience the feeling of relief the s/he will be able to discuss the matter and expect comprehension, rationality, and an absence of foolish triviality. When opposing an Ultimate Lawyer, the other attorney should be able to enjoy the practice of law, to remember what it feels like to be a real lawyer. When dealing with a bad lawyer, this is not always the case. All attorneys, and probably all judges, know of lawyers so unpleasant to deal with that the natural reaction to their appearance in a case combines disgust, disappointment and despair, plus equal pity for one's own client and theirs.

There is a second reaction when one finds an Ultimate Lawyer on the opposing side. Whether such reaction is sought or expected is immaterial. Even if it is only to a slight degree, and even if it is in the form of only a brief flash or feeling, the Ultimate Lawyer inspires in his opponent a small, but clearly discernible, twinge of fear.

Lawyers are also evaluated by clients and other laymen with whom they interact. Most clients are loyal to their own lawyers. Having paid expensive fees, most clients are likely to feel their lawyers are good ones. But an Ultimate Lawyer is not seduced by the flattery of his/her own client. An Ultimate Lawyer is able to hear opinions of others about himself with the same discerning skepticism with which he might hear the story of a participant in a bar fight. An astute lawyer also realizes that referrals from jurors, court officers, reporters and other lawyers can be more meaningful as to one's evaluation than are referrals by satisfied clients.

The reason for a referral is what really counts. An honest and discerning lawyer knows that the client's opinion about his case or his lawyer might not be important. At the same time, the same client whose opinion is uninformed about lawyer *competence* might well be quite able to offer accurate observations about, and reactions to, the lawyer's *conduct*. Whether or not a client has a particularly meaningful opinion or evaluation about legal performance, his observations of the lawyer's integrity, diligence and cooperation can be accurate, valuable and insightful.

Self-evaluation is the most important form of evaluation, because the legal profession is not structured for criticism of lawyers. It is most often discourteous, and usually just plain tactless, to tell your opponent what s/he did wrong. Invariably, each side in a matter never knows for sure exactly how the lawyer's conduct looked from the other side anyway. That is why settlements can be deceiving. Is a settlement a good one when it is twice what the client and the lawyer ever hoped for? Possibly, but what if it is also half what the opposition was expecting to give up? Judges also withhold comments for fear of showing favoritism. Furthermore, the results of the

particular case can overwhelm the reality of the lawyer's conduct of it, either positively or negatively. Except for lawyers in big firms which have the luxury of utilizing multiple lawyers on simple matters, allowing a capacity for critique, most lawyers are never criticized in any formal way.

Guidelines can be applied to evaluation. Two useful ones are unscientific but valid: (1) In judging another lawyer, ask one question: Would you refer your mother to this lawyer in a matter which involved utmost confidentiality, and in which her entire life's savings hung in the balance? If one is capable of objectivity, that same standard can be applied to oneself. (2) In judging oneself, consider one's reaction when a desirable client comes into the office with a good case. Does the lawyer feel it is lucky that the client arrived? In the lawyer's heart of hearts does s/he know another lawyer who could better serve the client in the matter? Or is the lawyer able to look in the mirror, as can an Ultimate Lawyer, and know—without conceit or undue pride—that it was a lucky day for the client to have walked into that office?

The Heart of the Matter

In a sense, this exegesis of Ultimate Lawyer characteristics is redundant. The attributes, skills and qualities listed here can really be said to comprise one single concept. It is surely neither new nor original. A lawyer—a person in any position—defined by these characteristics is one who possesses wisdom. Enlightened ambivalence, selectivity, refined sense of injustice, and capacity for self-evaluation without illusion are attributes of one who provides wise counsel. The Ultimate Lawyer is first and foremost a good lawyer. S/he is also a wise person.

Beyond wisdom there is another prerequisite of the Ultimate Lawyer: a sense of honor. There is no such thing as an Ultimate Lawyer without honor. This honor is not of the trivial variety, not the tough honor of a cowboy fighting over an insult to his girl. It is not sunshine patriotism, nor raw physical courage. The practice of law provides a crucible for the real thing. Dealing with human problems, lawyers confront situations which test true integrity and real moral courage.

At the heart of the matter is a simple idea. The Ultimate Lawyer is a good lawyer with wisdom and honor. The concepts are not merely old-fashioned, they are pre-historic. Old Testament prophets, counselors to pagan chieftains, and tribal sages are the models which lawyers should strive to emulate. Beyond the complexities of the law, above the avarice and the confusion of massive law firms and monstrous lawsuits, the great lawyer, the Ultimate Lawyer, is a wise and honorable person.

For those who seek wisdom, it is readily found—though not always so easily understood—in the writing of philosophers and poets, and in the great religions. For those who seek honor, it is more difficult to give reference notes, because explanations of honor are not meaningful. Living honorably is what must be comprehended.

Outside the experiences of one's own life it is likely that only in great fiction has honor been well examined. It is therefore worthwhile to return to LORD JIM, because after Jim abandoned his ship, the ship did not sink. It was recovered and returned to port. The rest of the ship's officers fled in disgrace, but Jim chose to face a formal Board of Inquiry. The Board of Inquiry was itself a traumatic affair, bringing to public view such a disgraceful event and reflecting discredit on merchant marine officers everywhere; the officer presiding at the Board later committed suicide. The narrator of the story recounted his conversation with the French Lieutenant, an experienced merchant marine officer involved in the rescue of the ship, with its cargo of 800 Mecca-bound pilgrims, which had been abandoned by Jim and the other officers during the terrors of the storm. These extracts concern more than the honor of seamen:

[The French Lieutenant's] imperturbable and mature calmness was that of an expert in possession of the facts, and to whom one's perplexities are mere child's-play. "Ah! The young, the young," he said, indulgently. "And after all, one does not die of it." "Die of what?" I asked, swiftly. "Of being afraid." He elucidated his meaning and sipped his drink.

* * *

"Man is born a coward. It is a difficulty. It would be too easy otherwise. But habit—habit—necessity do you see?—the eye of others—*voilà*. One puts up with it. And then the example of others who are no better than yourself, and yet make good countenance."

His voice ceased.

"[Jim]—you will observe—had none of these inducements—at least at the moment," I remarked.

He raised his eyebrows forgivingly: "I don't say; I don't say. The young man in question might have had the best dispositions—the best dispositions," he repeated, wheezing a little.

"I am glad to see you taking a lenient view," I said. "His own feeling in the matter was—ah!—hopeful, and . . ."

The shuffle of his feet under the table interrupted me. He drew up his heavy eyelids. Drew up, I say—no other expression

can describe the steady deliberation of the act—and at last was disclosed completely to me

“Pardon,” he said, punctiliously. His right hand went up, and he swayed forward. “Allow me . . . I contended that one may get on knowing very well that one’s courage does not come of itself. There’s nothing much in that to get upset about. One truth the more ought not to make life impossible

“But the honour—the honour, monsieur! . . . The honour . . . that is real—that is! And what life may be worth when” . . . he got on his feet with a ponderous impetuosity, as a startled ox might scramble up from the grass . . . “when the honour is gone I can offer no opinion. I can offer no opinion—because—monsieur—I know nothing of it.”