SPEECH

A NEW VISION FOR THE LEGAL PROFESSION

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It is an honor for me to speak at the Seventy-Fourth Annual Meeting of the American Law Institute, before so many esteemed colleagues and old friends. When President Charles Alan Wright invited me to address the opening session, he graciously suggested that I was "free to choose any topic that [I] wish[ed] to speak about;" however, he was also quite pointed in telling me that he "would be [most] delighted to hear [me] talk about" the "parlous state" of legal education and the profession.

Professor Wright's invitation reminded me of the occasions when my mother would say, "I assume that you will be home by midnight, but I will trust you to use your good judgment." My "good judgment" always coincided with my mother's expectations, so I never tested the advisability of coming in after midnight. In the same way that I bowed to my mother's authority, I will bow to the prerogative of the Chair and speak today about the parlous state of legal education and the profession.

I have had much to say about the gap between legal education and the needs of the legal profession over the past five years. In the October 1992 edition of the *Michigan Law Review*, I expressed my deep concern about "the growing disjunction between legal education and the legal profession," in an article with the same title.[1] My thesis was as follows:

> I fear that our law schools and law firms are moving in opposite directions. The schools should be training ethical practitioners and producing scholarship that judges, legislators, and practitioners can use. The firms should be ensuring that associates and partners practice law in an ethical manner. But many law schools—especially the so-called "elite" ones—have abandoned their proper place, by em-

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[1] Harry T. Edwards, The Growing Disjunction Between Legal Education and the Legal Profession, 91 Mich. L. Rev. 34 (1992).

> phasizing abstract theory at the expense of practical scholarship and pedagogy. Many law firms have also abandoned *their* place, by pursuing profit above all else.
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> . . . My view is that if law schools continue to stray from their principal mission of *professional* scholarship and training, the disjunction between legal education and the legal profession will grow and society will be the worse for it.[2]

The editors of the *Michigan Law Review* received so many strong reactions to my article that, in August 1993, they devoted an entire Symposium edition to the subject.[3] I have been literally inundated with letters, calls, and oral comments from law school deans, faculty members, students, and members of the bench and bar, and with scores of invitations to discuss and debate the issues about which I wrote.

One of the legal scholars from whom I heard was Professor Wright. In December 1992, he wrote to me, saying:

> I think that what you say is exactly right. Legal education is moving away from the needs of the legal profession, it is doing so at an increasing pace, and this is a great loss. If you believe, as I do with all my heart, that the rule of law is indispensable to a civilized society, then we need good lawyers to be handmaidens of the law and good lawyers must understand doctrine and the "practical" side of the law as well as understanding theory.[4]

Professor Wright and I are not alone in our views. Indeed, since 1992, there have been a number of major books ruing the state of the legal profession: among them are Anthony Kronman's *The Lost Lawyer*,[5] Sol Linowitz's *The Betrayed Profession*,[6] and Mary Ann Glendon's *A Nation Under Lawyers*.[7] Each author approaches the issue from a unique perspective: Kronman, Dean of Yale Law School, has a deeply philosophical approach, looking back to Aristotle for guidance; Linowitz, a highly respected practitioner, bases his assessment and prescriptions on his life of practice; and Professor Glendon combines the two, viewing the profession from the vantage point of both a practitioner and a Harvard law professor.

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2 Id. at 34, 41.

3 See Symposium, Legal Education, 91 Mich. L. Rev. 1921 (1993).

4 Letter from Charles Alan Wright to Harry T. Edwards 1 (Dec. 23, 1992) (on file with author).

5 Anthony T. Kronman, The Lost Lawyer: Failing Ideals of the Legal Profession (1993).

6 Sol M. Linowitz, The Betrayed Profession: Lawyering at the End of the Twentieth Century (1994).

7 Mary Ann Glendon, A Nation Under Lawyers: How the Crisis in the Legal Profession Is Transforming American Society (1994).

What is interesting about these three accounts is how similar they are in chronicling the problems of the legal profession. All see a profession in crisis. They decry the modern law firm: its preoccupation with money, its tendency to make lawyers mere technicians, and its rejection of the notion that lawyers should counsel clients regarding ends. Kronman and Glendon also share a critique of legal education: they argue, as I have in the past, that law schools have exhibited a disturbing trend toward teaching abstract theory, and have eschewed their obligation to teach the skills necessary for the practice of law.

Viewed together, these books provide a rich assessment of the many problems of the legal profession today. The question that now needs to be addressed, however, is where do we go from here. What is the appropriate *vision* for the legal profession that will lead us out of these troubled times?

I
WHAT IS THE CURRENT CONTEXT?

Kronman, Glendon, and Linowitz are undoubtedly correct in asserting that the face and character of the profession have changed dramatically in recent decades.

First, the number of lawyers in our society has multiplied. In 1960, there were 286,000 lawyers; now there are over 800,000.[8] The incredible growth can be seen in the number of lawyers per capita: in 1960, there was one lawyer for every 627 persons in society; in 1991, there was one lawyer for every 313 persons.[9] As Harvard Law School Dean Robert Clark has joked, if the current trend continues, there will soon be more lawyers than people![10] Law schools, of course, have helped to fuel this growth. Since 1960, annual law school enrollment has tripled.[11]

With so many lawyers, and so many law students graduating each year, there is a "glut" of lawyers in society. This has helped to fuel a "culture of entitlement," with people believing that the courts can and

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8 See Lewis A. Kornhauser & Richard L. Revesz, Legal Education and Entry Into the Legal Profession: The Role of Race, Gender, and Educational Debt, 70 N.Y.U. L. Rev. 829, 835-36 (1995).

9 See id. at 836 n.11.

10 See Robert C. Clark, Why So Many Lawyers? Are They Good or Bad?, 61 Fordham L. Rev. 275, 276 (1992).

11 Compare Office of the Consultant on Legal Education for the ABA, ABA Approved Law Schools: Statistical Information on American Bar Association Approved Law Schools, 1998 Edition, 450 (1997) [hereinafter ABA 1997 Report] (reporting 128,623 law students in 1996), with Section of Legal Education and Admissions to the Bar of the ABA, Law Schools and Bar Admission Requirements in the United States: 1960 Review of Legal Education 19 (1960) (reporting 40,381 law students in 1960).

should redress every wrong. Consequently, law suits have spun out of control. Both justice and the prestige of our legal system have been wounded as a result.

This lawyer glut also has had a deleterious effect on law schools. With so many lawyers in society, law schools appear to feel less pressure to produce stellar practitioners concerned with public service.

Yet, the growth in the number of lawyers has had positive aspects as well, as it has helped contribute to an opening of the profession. In 1960, only 3% of all lawyers were women; now women comprise 20% of all lawyers.[12] The absolute numbers paint an even more dramatic picture: in 1960, there were only 7,400 female lawyers; by 1991, there were 160,000—an increase of 2,100%! This promising trend is likely to continue, as 44% of current law students are women.[13]

People of color have made similar (though less dramatic) progress. In 1970, only 1% of all attorneys were people of color; by 1990, that figure had risen to 7%.[14] Once again, the absolute numbers are more dramatic: in 1970, there were only 4,600 minority lawyers; there are now 56,000.[15] As with women, this upward trend is likely to continue, as people of color now make up 20% of the students in law school classrooms.[16]

Second, as the number of lawyers has increased, big firms and big money have come to dominate the legal landscape. Today, nearly four times as many lawyers work in big firms as in 1980.[17] In addition, the "big firms" are much larger now than they used to be: in 1975, the top 50 firms had an average of 133 lawyers; in 1989, this number had risen to 476.[18] The largest law firm in the country recently reported an astounding 1,858 lawyers worldwide![19]

Modern law firm practice has disenchanted many young lawyers. They see it as nothing more than a big money enterprise—resulting in

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12 See Kornhauser & Revesz, supra note 8, at 847-48.

13 See ABA 1997 Report, supra note 11, at 450 (reporting 128,623 law students in 1996, 57,123 of whom were women).

14 See Kornhauser & Revesz, supra note 8, at 860.

15 See id. at 835-36 (total of 355,000 lawyers in 1971 and 806,000 lawyers in 1991); id. at 860 (1.3% of lawyers were people of color in 1971; 7% of lawyers were people of color in 1990).

16 See ABA 1997 Report, supra note 11, at 453.

17 In 1980, fewer than 30,000 attorneys worked at firms with over 50 lawyers. By 1991, more than 110,000 attorneys worked in big firms. See Kornhauser & Revesz, supra note 8, at 836 n.11 (542,000 lawyers in 1980; 806,000 lawyers in 1991); id. at 838 (72.1% of lawyers in private practice in 1980; 76.4% of lawyers in private practice in 1991); id. at 840 (7.3% of lawyers in private practice worked in firms with over 50 lawyers in 1980; 17.9% of lawyers in private practice worked at firms with over 50 lawyers in 1991).

18 See Clark, supra note 10, at 277.

19 See Aspen Law & Business, The Lawyer's Almanac 1997, at A-1 (1997).

insane hours, tedious work, and sometimes questionable ethical decisions. Large numbers of graduates still seek employment in the big firms, for the money is good. But a number of young lawyers flee the "rat race" after only a short stay. Often, very bright young lawyers seek to move from law practice to law teaching as quickly as possible, with little practical knowledge or professional experience. This creates a conundrum whereby many of these smart young people who escape to academia have nothing good to say about practice, though they are the "teachers" of the next generation of the legal profession.

And as law firms have grown, support for public interest work has dwindled. After an initial burst following the civil rights movement, public interest jobs have become increasingly scarce in recent years. Two years ago, Congress cut off funding for death penalty resource centers, which had provided representation for death row inmates in federal habeas proceedings. Congress has also made drastic cuts in legal services for the poor, slashing funding by a third. Even before these cuts, half of Legal Services's clients were turned away because of inadequate funding.[20] The situation now is only worse.

II
A New Vision

Given these changes in the profession, the question becomes: What should be done? What is the appropriate vision for the legal profession as we enter the twenty-first century?

Kronman, Glendon, and Linowitz all suggest possibilities. But each of them—to one degree or another—looks back to the past for a vision. Kronman, for example, looks to the nineteenth century when the "lawyer-statesman" epitomized the ideal of the profession. He bemoans the changes in the last half-century—in law firms, law schools, and the judiciary—that have eroded this ideal. He concludes on a pessimistic note: no other ideal, he states, can provide a comparable sense of meaning for the profession, and it is unlikely that the lawyer-statesman ideal will be revived. Glendon and Linowitz similarly look to the past: although Professor Glendon offers some useful remedies for the perilous state of the profession, she still sings the praises of the common law tradition; and Linowitz roots his perspective in his years as a practicing lawyer, during an era when law practice looked very different than it does today.

I must say that I am highly skeptical of suggestions that we should look to the "good old days" to find cures for our profession's ills. In

[20] See Legal Services Corp., Budget Request for Fiscal Year 1998, at 12 (on file with the *New York University Law Review*).

the "good old days," I could not have been a member of the federal bench. In fact, when I graduated from the University of Michigan Law School in 1965—with top grades, law review, and Order of the Coif honors—I could not get a job with most of the major law firms whose cases I now hear and decide. I recall interviews with several partners from prominent law firms who said that, although they were impressed with my record, their firms would not hire a "Negro." I, for one, am hardly enamored of the "good old days."

However, even if the past offers some useful guideposts, I think it is futile to look back. We cannot revive the past. We need to articulate a vision that accepts the here-and-now as a starting point. We need to set out a vision—for both our law schools and law firms—that takes account of the current reality.

A. Law Schools

Not too long ago, in an article for the *Washington Law Review*, I discussed some of the worst effects of the problems that I see in legal education: faculty hiring that is tilted in favor of "impractical" scholars; inattention to written work, clinical training, and ethics; an increasing number of law teachers who hold the profession in disdain; a proliferation of legal scholarship that does not aim to serve the profession; and a growing inattention to the needs of the disadvantaged.[21] I concluded by saying that "I am not entirely sure what can or should be done to cure the problems that I see in legal education. The underlying issues often are laden with sharp ideological differences among law faculty members, so resolution of these issues will not come soon or easily."[22]

I am now less pessimistic, for I believe that there are things that can be done and that are being done to improve legal education. I have seen such efforts at New York University School of Law, where I have taught as an adjunct professor during the past six years, witnessing a transformation in legal education that is truly inspiring. Under the extraordinary direction of Dean John Sexton,[23] the school has aimed to create what I would call a truly integrated model of legal education, one that fully embraces theoretical and doctrinal scholarship, critical legal studies, clinical education, strong involvements with members of the judiciary and practicing bar, a new "global" law component focused on international issues, and powerful support of public

[21] See Harry T. Edwards, Another "Postscript" to "The Growing Distinction Between Legal Education and the Legal Profession," 69 Wash. L. Rev. 561, 568-69 (1994).

[22] Id. at 570.

[23] See James Traub, John Sexton Pleads (and Pleads and Pleads) His Case, N.Y. Times, May 25, 1997, §6 (Magazine), at 27.

interest ventures. Faculty hirings have focused on diversity of perspectives, with no ideological or academic group having favored status. As a result, practical, theory-oriented, and critical legal scholars, along with their clinician counterparts—all with very different interests—flourish in an environment of mutual respect, sharing equal status and prominence on the faculty. And in any given term, faculty and students may be exposed to a conference on alternative employment opportunities, or a colloquium on feminist legal theory, or a "National Conference on Judicial Biography,"[24] or a scholars program on comparative law, with each getting comparable funding and billing, drawing equally talented participants, and attracting similarly large and enthusiastic audiences. This lively, integrated approach, I have noticed, has a profound effect on both students and faculty. Polarized views are minimized, because all parts of the institution are made to fit in a cohesive whole, and all are cherished.

Along with a full and integrated curriculum, students are encouraged to consider and pursue diverse professional interests: the strong clinical program emphasizes the need and value of good practitioners, and generous scholarship awards for students committed to public interest work make it possible for smart people to avoid debt and pursue legal careers that will serve the disadvantaged. Recently, NYU embarked on an unprecedented $10 million study to determine the best ways to encourage public interest careers.[25] As a result of these efforts, the school creates an atmosphere that teaches students that all realms of the legal profession are deserving of their best energies.

An NYU law graduate recently told me a story that captures my point. The NYU graduate was talking to a friend from another top law school about career paths. The friend was hoping to get a teaching job as soon as possible and was also exploring non-law careers. When asked about his future plans, the NYU graduate responded: "This may sound crazy—but I want to be a *lawyer*." Without pausing, the friend offered a powerful insight: "Well, that's because you went to NYU."

It is noteworthy that Dean Sexton's vast fundraising efforts on behalf of public interest work are taking place in the midst of the changes in the profession that so many have lamented. Dean Sexton does not assume that the current problems in the profession defy prescriptive remedies. Rather, he has correctly determined that the cur-

[24] See Symposium, National Conference on Judicial Biography, 70 N.Y.U. L. Rev. 485 (1995).

[25] See William Celis 3d, Free Tuition for Public Service Law, N.Y. Times, Nov. 9, 1994, at A25; see also Kornhauser & Revesz, supra note 8, at 943-58.

rent market has a skewed sense of priorities, and he has therefore engaged with the practicing bar to correct these deficiencies. Thus, instead of merely being swept along, or throwing up their hands in defeat, or wistfully looking to a bygone day, school officials have engaged with the current realities to steer a new course.

My experience with NYU has helped me to understand that there is much good that can be accomplished in legal education even in these changing times.

B. Law Firms

What about law firm practice? What is the new vision for law firms as we enter the twenty-first century? Like Kronman, Glendon, and Linowitz, I am distressed by many of the changes that have occurred in the profession—the exponential growth in law firm size, the big money dominance, and the lack of humanity that seems to drive much of law practice. This, however, does not cause me to yearn for the past. Rather, it makes me know that it is time to articulate a new vision that acknowledges where we are today.

As I see it, there are two ways that law firms can proceed. One option is for firms to slow down and stop the madness—to reassess and recognize that the current trends breed unhappiness among practicing lawyers. I fail to see why law firms cannot create more rewarding models. Individual firms could reduce the number of hours that their lawyers are expected to work. Although this would lead to a reduction in salaries, I honestly believe that there are lawyers who would readily choose marginally lower salaries in exchange for rewarding practice and time for rewarding personal lives. Law firms should also reconsider whether growth is a good thing—smaller firms, I am convinced, provide a much better model, as they are more likely to foster collegiality and mentoring for young lawyers.

But I realize that such a reassessment is quite unlikely. As one good friend (who is a partner in a prominent firm) recently told me, "Too many of us have mortgaged away our personal lives on the basis of current earnings expectations. So we simply cannot afford to give up the push for billable hours." Whether driven by the realities of the market or by an irrational frenzy, law firms seem likely to continue on their current path.

The solution, I think, is clear: law firms must commit a meaningful percentage of their profits to public service. These contributions can be given either in pro bono work of attorneys, monetary donations, or both. In any event, such contributions must be made to correct the deficiencies in the present distribution of legal services. If

firms want to pursue big money, so be it; but they should return some of this money to care for disadvantaged members of our society.

Happily, there are signs that law firms are receptive to this notion. For example, leaders of the District of Columbia Bar, in conjunction with four of the Chief Judges of the federal and local courts in the city, recently called upon the city's law firms to increase their pro bono activities in light of the crisis in legal services. A large number of representatives from most of the major law firms met to consider and plan strategies for the future. The results have been heartening.

Fifty-four of the city's largest firms agreed to increase their pro bono efforts. Some firms agreed to establish rotation programs through which firm lawyers work at legal service providers in the community. Other firms agreed to start clinical programs in partnership with legal services or social service providers. Others enrolled in the D.C. Bar's Pro Bono Clinic, handling matters for indigent clients ranging from child custody to landlord-tenant disputes. Still others funded staff positions at legal service providers.[26] Such initiatives should be replicated across the country.

In addition to committing profits to public service, I believe that law firms should make public service activity a criterion for partnership. When an associate is considered for partnership, his or her billable hours and client-getting capacities should not be the only matters under consideration. The firms should also ask: How much pro bono work has this associate done? When was the last speech she gave? How involved has he been with bar activities? Institutionalizing such criteria would benefit *everyone* involved—members of the community at large (who gain additional legal services); the individual lawyers (who will be liberated from the confines of billable hours); and the law firms (which will promote the development of whole, well-rounded lawyers more likely to remain at the firm).

Making public service a criterion for partnership would also benefit the profession in general. The problem now is that too many young lawyers are narrow. They bring narrow perspectives to their

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[26] See D.C. Bar Public Service Activities Corp., Responding to the Crisis in Legal Services: New Pro Bono Commitments of the District of Columbia's Largest Law Firms (Feb. 1996) (on file with the *New York University Law Review*). One year later, 45 of the 54 firms had implemented their proposals. See D.C. Bar Public Service Activities Corp., The Crisis in Legal Services: One Year Later: Law Firm Partnerships with Legal Service Providers Produce Results for the Community (June 1997) (on file with the *New York University Law Review*); see also John Greenya, Partners in Justice: Mentoring in the Pro Bono Program, Wash. Law., May/June 1997, at 26, 28 (describing mentoring program of D.C. Bar's Law Firm Pro Bono Clinic); Saundra Torry, Firms Team Up to Make Innovative Partnerships Fly, Wash. Post, June 9, 1997, at F7 (describing initiatives of D.C. Bar).

law firms and easily plug into the billable hour mentality. But this bodes ill for the future of our profession. An outstanding lawyer is *not* narrow. Professional excellence can only flow from breadth of perspective and experience. And, if we allow our profession to degenerate into a craft of narrowly focused technicians, we will most certainly lose the best and brightest.

III
CONCLUSION

It is undoubtedly true that the legal profession is troubled. But we cannot simply mourn for the past or throw up our hands in defeat. Instead, we must take where we are as the starting point and *act* to create a new vision for the legal profession.

The law schools and the law firms have much work to do. But the ALI itself should not feel exempt from this critical gaze. When Chief Judge Posner spoke to this group two years ago, he challenged the ALI to take on questions of *institutional* reform, including the state of our profession.[27] I wholeheartedly agree with this challenge. Just as the ALI led us in doctrinal reform in the early part of this century, it is uniquely situated to lead us to a new vision for the legal profession as we enter the next.

Not too long ago, I heard Joseph A. Califano, Jr., give the keynote address at the District of Columbia Bar's Annual 1997 Mid-Year Conference. His words are a fitting conclusion to my thoughts on the parlous state of the profession and the challenge that we face:

> We lawyers must get our house in order. We must do so not simply out of our own self interest and desire for status and prestige in society. We must do so because in a turbulent democracy, lawyers are key to nourishing freedom and protecting it when it is threatened. Lawyers bear responsibility to craft ways for individuals to perceive and receive justice in a society that threatens to swallow citizens in ever larger and more impersonal government, corporate and union bureaucracies. Lawyers are key to prosecuting criminals and protecting law abiding citizens.
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> Without lawyers, equal protection is a phrase carved on a federal building. Without lawyers, legal segregation would still be a way of life in the nation's capital. Without lawyers, corrupt government will become the customary way of doing the public's business. Without lawyers, tenants' rights would be subject to the whimsy of landlords, the First Amendment would be more rhetoric than real-

[27] See Richard A. Posner, Chief Judge of the United States Court of Appeals for the Seventh Circuit, Address at the Annual Dinner of the American Law Institute (May 18, 1995) (on file with the *New York University Law Review*).

ity, battered spouses and abused children would have little recourse. It is lawyers who must devise processes to assure that our scientific genius supports individual freedom and does not suppress it; and lawyers who must shape ways to cushion the harsh blows of free market forces on the individual.

Lawyers should be the most reliable life preservers for a people tossed in a sea of powerful government and private institutions, slammed by tidal waves of scientific discovery and technological revolution. That's why it's worth a herculean effort to rebuild the credibility, respect and integrity of the profession. And that's why each of us should get about doing just that.[28]

[28] See Joseph A. Califano, Jr., Address at the District of Columbia Bar Annual 1997 Mid-Year Conference Luncheon (Feb. 26, 1997) (on file with the *New York University Law Review*).