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Lawyer Professionalism

TIMOTHY J. SULLIVAN

LAWYERS are distinctly out of fashion. Evidence to prove that proposition abounds. In a recent public opinion poll conducted by the *National Law Journal*, respondents were asked which of a number of professions they respected most. Only 5 percent answered "lawyers." Proof of my point does not depend wholly upon polling data. Consider a recent Peanuts cartoon strip. In it, Lucy reads a list of human disasters: plague, famine and pestilence. To which Snoopy replies, "Blame the lawyers."

Mine is not another voice in the dismal chorus of those who view the practice of law as at best anti-social and at worst, an indictable offense. Lawyers as a class have never been much loved. I could—but won't—quote Shakespeare or Dickens to devastating effect. The durability of popular dissatisfaction with lawyers is no cause for complacency, but I am more troubled by what I hear from lawyers themselves. To be blunt, we face an internal crisis of confidence. If lawyers were clerics, I would use a different phrase. I would call it a loss of faith.

My work as a teacher and dean permits me to meet both experienced lawyers and first year law students. Some have disturbing things to say. A recent student wrote:

"Lawyers are seen as different from other professions such as physicians or garbage collectors in that lawyers are responsible for their own necessity. The supposed guides through the wilderness of law may be largely responsible for creating that wilderness in the first place."

EDITOR'S NOTE: *The remarks set forth above were first delivered by Dean Sullivan to the Boyd-Graves Conference in Williamsburg on October 24, 1986. Dean Sullivan has kindly consented to their use here.*

Or consider these comments by a partner in a major law firm:

"Most of my law school friends who are partners in big firms—they are dead men. Law really squeezes your mind into a box. The question is, do you have enough mind left after several years to take that discipline and then convert it into something creative."

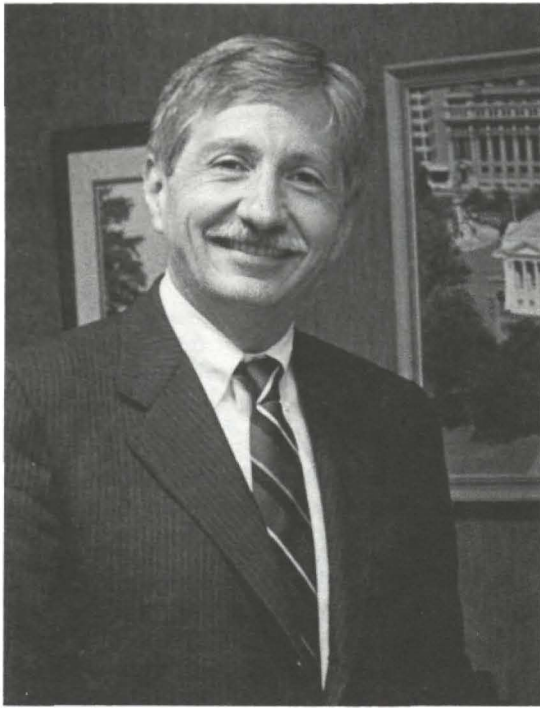
Such sentiments are extreme. Most lawyers would strongly disagree. Yet I have heard in too many conversations the hint of a conviction that lawyers are in danger of forfeiting their credentials as members of a learned profession and that law is fast becoming a modestly significant branch of an increasingly specialized world of commerce.

The symptoms of crisis are described variously by those with whom I speak. Some things recur: the practice of law is less fun, less personal, not satisfying, too much driven by a compulsion to increase billable hours. Ultimately, one theme dominates: a fear that traditional standards of professionalism have been dangerously weakened and will continue to erode.

What do lawyers mean when they speak of "professionalism"? I suspect no single definition will suffice. For me, the late Roscoe Pound said it best when he defined a true profession "as a group pursuing a learned art as a common calling in the spirit of public service—no less a public service because it may incidentally be a means of livelihood."

What explains current doubts within the profession about its future *as a profession*? No one really knows, but these statistics may offer help:

—In 1960 there were 286,000 lawyers in this country. Today there are 700,000. In 1960, the ratio of lawyers to layman was 1 to 627. By 1985, it was 1 to 354. By the year 2000, experts predict a further 50% increase.



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—In the last decade, the scale of legal education has likewise been transformed: 44 new law schools have been accredited and enrollment nationally has increased from 50,000 to 127,000.

—While nearly half of American lawyers still practice by themselves, the structure and size of law firms is changing rapidly. In 1985, there were 72 firms with at least 200 lawyers, 25 with at least 300 and 12 with more than 400. The growth of these mega and multi-state firms has profoundly affected the way law is practiced—not only within larger firms themselves, but among smaller firms and by single practitioners.

Such data make it hard to imagine the world view of a 1959 special committee of the American Bar Association. Its greatest fear was that not enough people wanted to be lawyers. “In the face of the country’s ever growing need for lawyers,” the committee reported “the law is becoming a dwindling profes-

sion.” That is one fear that we may put aside for the foreseeable future.

The trends I have described need not be condemned, but they cannot be ignored. They are real, they are permanent and they compel reconsideration of the profession’s basic character. They have also stressed significantly a received and venerable professional culture that was nurtured and handed down from one generation to the next. At the core of that culture was a profound respect for the law’s origins as a learned profession, and a conviction that lawyers were the guardians of a system that prevented chaos and preserved liberty. The preeminent challenge of our time is to protect that conception of a lawyer’s work in the face of the changes I have described.

It will not be easy. Lawyers must contend not only with the impact of vastly increased numbers, but a legal environment transformed by a series of Supreme Court decisions applying anti-trust laws and First Amendment principles to the practice of law. Beginning with *NAACP v. Button* in 1967 and continuing at least through *Bates v. State Bar of Arizona* in 1977, the Supreme Court declared invalid long established practices, many of which were arguably useful in preserving the law as a profession in the sense Dean Pound understood. It is undeniably true that the Court acted in order to enhance competition, increase the availability and lower the cost of legal services. These are praiseworthy objectives. It is also true, as my predecessor, William B. Spong Jr. has written, “one might conclude that the obdurate positions of the organized bars have been inspired by protection of a licensed monopoly rather than protection of the public.”

Surely, the organized bar’s apologies for self-interest, masquerading as arguments for the public interest, must share much of the blame for our present predicament. The cost of that folly has been high. More than 160 years ago in *Democracy in America*, deTocqueville wrote “the love of wealth is at the bottom of all that Americans do.” Others have expressed the thought differently. Calvin Coolidge said, “the business of America is business.” Dwight Eisenhower’s Secretary of Defense equated the national interest to that of his former employer, General Motors.

For most of the last century, the legal profession maintained a partial isolation from the uninhibited competitive and commercial appetites that drive American business. Some of the practices struck down by the Supreme Court in the last 15 years served to subordinate purely economic considerations in professional decision making. The legal profession now marches to the imperatives of the free market. In this, it is in fashion and in step with the rest of the

country. One is compelled to ask at what cost to older values equally important to the integrity of our legal system?

In planning for the future, law schools are the place to start. Recall the figures mentioned earlier showing substantial increases in both the number of law schools and total student enrollment. Beyond this change, legal education is not *greatly* different than it was twenty years ago. Certainly changes have been less pronounced than in the practicing profession. Legal education is marginally different: courses in legal ethics are required, there is a greater emphasis on clinical and skills courses and a greater respect for the insights of other disciplines, especially economics. Law schools also continue to do an excellent job of what they have always done—imparting basic intellectual skills and cultivating the capacity for disciplined legal thinking.

For perhaps a hundred years, the model of legal education has been one professor and a large number of students, a hundred or more, closed in a classroom, engaged in socratic dialogue based upon the reading of appellate cases. The result has been praiseworthy in many ways, but it is now not enough. We must reinvent the law school—preserving its rigor as an intellectual training ground but broadening its ambitions and connecting it more intimately with the practicing profession. Allow me to predict the essential features of the best law schools of the future.

- They will have many fewer students;
- at least twice as many faculty members per student than is now the case;
- retain the essential character of the present first-year experience but in the second and subsequent years place much more emphasis on smaller classes, training in techniques of mediation, negotiation, counseling and alternative dispute resolution;
- provide each student with a carefully selected mentor from practice whose task it will be to educate the student in the life of a lawyer—and the professional culture of the law;
- continue to encourage faculty members to think as scholars but as scholarly lawyers rather than

as scholars who by chance are teaching students learning to be lawyers;

- extend the time from enrollment to award of a degree from three to four years;
- the fourth year of law training will be spent in providing legal services of all kinds to the poor. These services will be offered through free standing legal laboratories operated jointly by law schools and law firms who will make available both partners and associates to assist. Operating expenses will be paid for by public appropriations, increased bar dues, enhanced tuition payments, and the in-kind contributions of participating law firms.

Should my prophesies prove accurate, the gains to legal education, the legal profession and the public will be many. Reduced size would accommodate more intensive personal instruction, students would become better acquainted earlier with the culture of the profession, practitioners and professors would work closely together in meeting an important social need: the wider availability of legal service to the poor. Students should emerge from such a four-year experience with a sound intellectual grounding in the law, a true sense of the profession's best traditions and enhanced practical skills.

There are significant obstacles to achieving these goals. Not the least of which is a considerable increase in the cost of legal education, but lawyers cannot for much longer be educated on the cheap. The profession's work is far too important to perpetuate deficiencies in legal education caused by inadequate funding levels.

Then, too, there is the problem of convincing law professors and lawyers to work together. These two branches of a common profession have not always been the best of friends. The practitioner tends to doubt the professor's practical judgment, and the professor is dubious of the practitioner's depth. Mutual condescension is a luxury neither can much longer afford. The proper course is for each to help the other cope with the changes they jointly confront.

What I propose will not end the emerging professional crisis I have described, but it is a beginning. And we must begin somewhere, and soon, because so much is at stake.