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Timothy J. Sullivan

William & Mary Law School

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THE LEGAL PROFESSION AND ITS FUTURE: RECAPTURING THE IDEAL OF THE STATESMAN-LAWYER

*Timothy J. Sullivan**

My subject is our profession and its future—a future measured not by the condition of its bottom line, but by the state of its soul. And my message is one of profound concern.

More than a decade ago, William B. Spong, then Dean of the William and Mary School of Law, described with apprehension the transformation of the practice of law from a learned profession to a business enterprise tied, in his view, far too closely to the imperatives of a consumer oriented society.¹ He warned gently, but clearly, against the danger of treating clients not as individuals, but as disembodied problems, passing through a bloodless bureaucratic process. Finally, he said to those about to begin their professional lives:

You should try to avoid awakening in your middle years, after the coveted partnership is obtained, to discover that a life of billable hours, club memberships and foreign automobiles is not enough; that professional success and happiness are not always the same.²

Dean Spong's words, as they did so often, touched the truth; but the trends against whose corrupting effects he warned have accelerated. The professional world whose advent he feared has come. And the question for today—the question we must stay to answer—is whether we are willing to be passive observers of our profession's continuing decline, or whether we are prepared

* President, College of William and Mary, Williamsburg, Virginia. A.B., 1966, College of William and Mary; J.D., 1969, Harvard University School of Law. This essay is an adaptation of a speech President Sullivan presented at the University of Richmond School of Law on December 3, 1997.

1. William B. Spong, Address at the Marshall-Wythe School of Law Commencement Exercises (May 12, 1985) [hereinafter Dean Spong's Address].

2. *Id.*

to act in defense of critical values that have, for more than 200 years, defined what it means to be a lawyer in this country.

Before attempting my own answer, let me render in short hand the sum of what I think we have lost. What is gone—perhaps not from our memories, but from our lives—is the animating ideal that Dean Anthony Kronman of Yale has described as “the statesman-lawyer.”³ For Dean Kronman, the vision of the statesman-lawyer, long a figure of powerful historical importance in our profession, still stands as an affirmation of the possibility of profound human fulfillment within the practice of law. For the highest ambition of the statesman-lawyer, in Dean Kronman’s own words, was “the attainment of wisdom that lies beyond technique—a wisdom about human beings and their tangled affairs that anyone who wishes to provide real deliberative counsel must possess.”⁴

The inspirational image of the statesman-lawyer, either as an ideal or as a real professional possibility, required a supportive culture that strongly affirmed the value of certain virtues, virtues without which (as ideal or reality) the lawyer-statesman cannot survive. These essential virtues are perhaps best expressed in three complementary roles—roles that together, I believe, capture the essence of what it meant (what it still means) to be a statesman-lawyer:

The first is the role of the lawyer as a learned person. Bill Spong worried that lawyers were destined to become mere sophisticated artisans.⁵ Others have expressed similar fears using different words.⁶ The point is that to be learned means to be broadly and to be deeply educated—not just in techniques—but in values; not just in the narrow knowledge of high specialization, but in the complex and the powerful forces that shape civilization and govern human conduct. To be a learned lawyer is to be at home with art, to know history, to be moved by

3. ANTHONY KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* 3 (1993). Kronman characterized this ideal as the “lawyer-statesman.”

4. *Id.* at 2.

5. See Dean Spong’s Address, *supra* note 1.

6. See, e.g., MARY ANN GLENDON, *A NATION UNDER LAWYERS: HOW THE CRISIS IN THE LEGAL PROFESSION IS TRANSFORMING AMERICAN SOCIETY* (1994); SOL M. LINOWITZ, *THE BETRAYED PROFESSION: LAWYERING AT THE END OF THE TWENTIETH CENTURY* (1994).

great literature. To be a learned lawyer means to feel the truth in Holmes' suggestion that in law one hears an "echo of the infinite, . . . a hint of the universal."⁷

The second is the role of the lawyer as a helping person. By this I mean the lawyer's function as a counselor to the heart as well as to the head. The greatest lawyers have always been reliable guides to wise human conduct. This role requires learning of the kind I have just described, but it requires more; it demands a capacity for sympathy, an aptitude for decoding the complexity of human motivation and a gift both for feeling and for thinking deeply.

The third is the role of the lawyer as civic leader. Here I mean the beneficial use of lawyerly skills—outside the lawyer-client relationship—in service to the larger community, whether that larger community is a legislative body, a civic group, a charitable cause or a religious organization. Our professional training uniquely encourages a talent for practical statesmanship, and lawyers have heretofore been generous in the use of that talent in the building of our country's civic culture. The creative and resilient character of that culture owes much, I think, to the legacy of the statesman-lawyer.

The lawyer as a learned person, the lawyer as a helping person, the lawyer as a civic leader—these were the roles that gave life to the statesman-lawyer. And these roles are, without question, of diminishing significance both in the way the modern lawyer imagines himself and in the way the profession today conducts its own affairs. Why, sadly, this is so is a subject of great complexity. Even if I had the ability and the wisdom (and I have neither) to provide a full explanation, this is not the right occasion for it.

But a part of the explanation—the part I do understand—is money. The nearly single-minded, ferocious pursuit of greater wealth. That pursuit has driven the statesman-lawyer from a central place in our professional culture. That pursuit and its symptoms are in no small part responsible for the disaffection many lawyers feel for their own profession; that pursuit tells

7. OLIVER WENDELL HOLMES, *The Path of the Law*, in COLLECTED LEGAL PAPERS 167, 202 (Harold J. Laski ed., 1920).

much about why the public's esteem for lawyers has sunk to such dismal levels.

Do not mistake my meaning. The practice of law never has never (and never should) require a vow of poverty. I know that a comfortable income is an honorable ambition that gives well-earned personal satisfaction and provides a good life for one's family. What I do say is that too many lawyers—and too many law firms—have ceased to regard as nearly sacred the line that separates them and the profession which they practice from the businesses they represent.

I yield to no one in my admiration for the liberating power of the free market, but the practice of law is not the same thing as the practice of capitalism. Capital seeks perfect liberty—for itself. Upon capital's powerful acquisitive impulse, the law imposes wise restraint so that there is liberty for all.

A lawyer who practices, or a firm which organizes itself, in the relentless pursuit of the last billable hour demeans the spirit which defines a learned calling and traduces the values which gave life to the ideal of the lawyer-statesman.

Where do we go from here? Can we build a new profession for a new century on the foundation of old values—values that will permit us to recall the statesman-lawyer from ignoble exile? There are many, perhaps a majority, who would say that such a goal is delusional. Why delusional? The answers vary. Some despair that the contemporary love of power and money will overwhelm any contrary impulse; others, more stoic perhaps, believe that the status quo is simply too deeply entrenched, and that there are not many who long to lead a cause so certain to fail.

If our profession's plight mattered only to its members, I would be tempted to join the pessimists who say that reform is doomed. The larger world does seem so often deaf to all but the noisy chorus of commercial considerations. But it is not our profession alone that is at risk, it is our system of justice, the very idea of the rule of law. In singular ways, lawyers are guarantors of the success of the American experiment. The fate of our nation's freedom is linked to the future of our profession. With so much at risk, we must—we simply must—be prepared to battle hard to restore the reality of the law as a learned

profession and to make a new and compelling case for the education of statesmen-lawyers. We need not believe that the story of the last twenty-five years defines our fate for the next twenty-five, let alone the next century. But we must think (and carefully), speak (and honestly), act (and decisively), if we are to save for ourselves and for our country the historical heart of a great profession.

But where to begin?

Why not here, at the University of Richmond, with the leadership of a learned and decisive dean, a fine faculty, and close connections to professional leaders in our Commonwealth and in the country. I can think of no better place. And for inspiration, I offer familiar words from one of the greatest figures in American law. Justice Holmes, speaking a century ago to the members of the Harvard Law School Association, said:

[T]he business of a law school is not sufficiently described when you merely say that it is to teach law, or to make lawyers. It is to teach law in the grand manner, and to make great lawyers.⁸

In a peroration that moves the modern reader as it must have touched his listeners, Holmes then described what he called "the golden light" of legal learning and concluded: "He who has once seen it becomes other than he was forever more. I have said that the best part of education is moral. It is the crowning glory of this law school that it has kindled in many a heart an inextinguishable fire."⁹

"To kindle in many a heart an inextinguishable fire." Do that here and see your success replicated elsewhere, and you will have helped restore our profession to its proper greatness and made real—for a new generation and a new time—the glory of the lawyer-statesman.

With so much to gain . . . with so much to lose . . . dare you—dare you—settle for an ambition less exalted?

8. OLIVER WENDELL HOLMES, *The Use of Law Schools*, in COLLECTED LEGAL PAPERS 35, 37 (Harold J. Laski ed., 1920).

9. *Id.* at 48.

