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Keynote Address

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KEYNOTE ADDRESS

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I am very pleased and honored to be with you on this auspicious occasion when the Cornell Law School celebrates its Centennial and we can be here to reflect on its achievements. I am especially glad to be on hand because this year marks the 50th anniversary of my graduation from Cornell Law School.

Merely to make that statement jars me and must give most of you a sense of incredulity. I vaguely remember that when I was in Law School I regarded with wonder the notion that anyone who had been out of Law School fifty years could still remain vertical.

I owe much to this Law School. Here I sat at the feet of professors who taught me what the law is and what the law should be, who challenged me to try to make my life's work as a lawyer rewarding and fulfilling. As I walk the halls of the Law School even today I look for their faces.

There was Dean Robert Stevens who taught us *all* we wanted to know about corporations; Professor William Farnham who taught us more than we wanted to know about property; Professor George Jarvis Thompson who taught us contracts and made us understand—in Sam Goldwyn's words—that an oral contract is not worth the paper it is written on; Professor Lyman P. Wilson who taught us crimes and torts and would have beaten Perry Mason every time in any court in Oklahoma; Professor Horace Whiteside who, in Alfred North Whitehead's phrase, left the vast darkness of future interests unobscured; Professor Gustavus Robinson who carried his wisdom in his green bag; and Professor John W. McDonald who applied McDonald's law: "Speak loud and carry a small stick."

We came to know, respect, and admire these men as teachers and as friends. For me they are and forever will be the Cornell Law School I remember.

As you have already sensed, one of the hazards of inviting a doddering alumnus to speak on an occasion such as this one is that it quickly becomes an invitation to look back and reminisce. You can relax. I shall resist the temptation to do so any further because long ago I took to heart the advice of the late Satchel Paige: "Never look back—something may be gaining on you."

As a matter of fact something is gaining on me and I want to talk to you about it. It is a keen and disquieting realization of how things have changed in the fifty years since I was graduated from the law school. I am not talking here about the great changes in our time, in our world, and in our nation. Rather, I am talking about the changes in our profession—in the practice of law. I want to share with you some of my great concerns about what has been happening to the legal profession and suggest a few things that might now be done to help us regain the respect and esteem once accorded to us as lawyers.

When I graduated from law school, the law was an esteemed and honored calling. The lawyer was a member of a respected and dignified profession, one which De Tocqueville called the "democratic aristocracy" of this nation. Lawyers regarded themselves as charged with a public trust—officers of the court, committed to the strengthening of our system of law and justice, and obligated to play a role in the public life of the nation.

Over the years, however, something seriously disturbing has been happening to the legal profession. We have become a business—dominated by "bottom-line" perspectives. In too many of our law firms the computer has become the Managing Partner, as we are ruled by hourly rates, time sheets, and electronic devices. We have seen an increase in technological expertise with a corresponding diminution of the human side of law practice. We are making more and achieving less, and in the process, I am afraid, we have lost a great deal of what we were meant to be.

I am not saying anything new here. In a speech on the state of the legal profession in 1986, Chief Justice Rehnquist said:

> [T]he practice of law has always been a subtle blend between a "calling" such as the ministry, where compensation is all but disregarded, and the selling of a product, where compensation is all important. The movement over the past twenty-five years has been to increase the emphasis on compensation—to make the practice of law more like a business.[1]

The Chief Justice summarized how dramatically the practice of law has changed. We have today more than 700,000 practicing lawyers—twice as many as there were in 1970. In 1960, there was one lawyer for every 627 people in this country. Today, there is one lawyer for every 354. In 1960, only four firms had over 100 attorneys; today well over 200 firms have at least 100 lawyers. To keep

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[1] Dedicatory Address by Chief Justice William H. Rehnquist, The Legal Profession Today, 62 IND. L.J. 151, 157 (1986).

these large firms—these business enterprises—going requires enormous billing, close to $40 billion a year.

These escalating numbers disguise an even more pervasive problem facing the profession. The individual attorney has become increasingly distanced from the human client. Associates at our large firms spend years writing research memos before they ever meet a client. And they may never encounter individual clients who need the counsel of lawyers to deal with their personal problems. We have been witnessing the dehumanization of the law and this has been accompanied by a widespread distrust and suspicion of lawyers.

The public impression that the practice of law has become a money-making, profit-maximizing undertaking has brought into question the intention, the integrity, and the value of lawyers generally. Unfortunately, this impression has been strengthened by the misbehavior of too many attorneys who earn public disdain and disapproval when, for example, they descend like vultures as after the Bhopal catastrophe. When I compare this unflattering picture of today's legal profession with the one I entered fifty years ago, I am greatly troubled.

When I first began the practice of law, I went to work for the firm of Sutherland and Sutherland in Rochester. The father was a distinguished judge and one of his two sons became a professor at Cornell and later Harvard Law School. These were men of learning and achievement who devoted themselves to service to the Rochester community. As a young lawyer, I had the exhilarating experience of dealing with human problems on a human scale. I drew wills, tried negligence cases, dealt with domestic relations matters, handled real estate deals, negotiated contracts, counseled people in need and despair. I learned the deep satisfaction of helping to solve a problem or settle a dispute among people. I knew the fulfillment of having men and women who had entered my office in panic and distress leave it grateful and at peace. I came to understand that human relations is the stuff of which law is made, and that no lawyer worth his salt can practice his calling impersonally; that to be a lawyer in the real and deep sense of the word is to concern yourself with people and with the things which hold people together or drive them apart; and that being a real lawyer involves knowing how to work with those you must serve. The law for me was truly a human profession.

It was also a learned profession. We spoke of people as "learned in the law." The leaders of the Bar were men who read in the classical languages for pleasure, who quoted the Bible and Shakespeare in their briefs as a matter of course, relying on clerks

sometimes for their law but never for their literary analogies. They were people who agreed with Thomas Jefferson that history, politics, ethics, physics, oratory, poetry, criticism, etc. are as necessary as law to form an accomplished lawyer. They understood what Felix Frankfurter had in mind when he wrote to a youngster seeking advice on how to prepare himself for a legal career: "No one can be a truly competent lawyer unless he is a cultivated man. . . . The best way to prepare for the law is come to the study of the law as a well-read person."[2] And when he called for lawyers to prepare themselves by "reading poetry, seeing great paintings, and listening to great music."[3]

They believed that a lawyer should know accounting but *needs* philosophy; that for understanding the idea of a contract, acquaintance with anthropology and psychology is apt to be more valuable than case law; that you can often learn more about people from great novels than you can from studying the law books.

Those of us who have spent long years in the practice of law know very well that all that is still true—that the need for a lawyer to have a broad education is as great today as it was in Thomas Jefferson's time. For it is as trne today as it was then that a good lawyer—almost by definition—should be a person of breadth, one who has a grasp of what yesterday teaches us about today and tomorrow, and one who knows that the real meaning of words like "freedom" or "justice" can only be found in the tapestry of history.

Lawyers—above all others—must understand that we are a nation with deep roots of justice which go far back to some simple words in the Magna Carta: "To no one will we sell, to no one will we refuse or delay, right or justice." A lawyer must know that when our Founding Fathers constructed the Constitution and the Bill of Rights they were remembering things—like the trials of Sir Walter Raleigh and the Earl of Essex in which both were browbeaten, condemned without the right of counsel, without the right to call witnesses, without the right to testify; they were recalling the Bills of Attainder under which Parliament had, as judge, prosecutor, and jury, sent men to their death without giving them a chance to defend themselves. They remembered Somerset mounting the chopping block a few months after he had sent his brother there by another Bill of Attainder; they recalled the despairing cry of Stafford, who was condemned to death for a political act and heard it asked in Parliament: "Why should he have law himself who would not that others should have any?" Because they remembered, they created a

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2 Frankfurter, *Advice to a Young Man Interested in Going into Law*, in OF LAW AND MEN 103-04 (P. Elman ed. 1956).

3 *Id.*

Bill of Rights which has been described as the only political philosophy which entitles the individual to say 'No' to government—and get away with it.

But it is not enough that lawyers alone understand all this. For lawyers alone cannot sustain the foundation of the rule of law. We are all in this together, and all of us have to have an awareness of what we are about. *Before there can be respect for lawyers, there must first be respect for law.* I suggest that lawyers and law schools should together press for acquaintance with our system of justice as part of the core curriculum in our high schools. I believe we have an obligation to try to give the young people in our schools an understanding of what we mean by rights and freedom. We need to instill respect for our legal system by demonstrating the relevance of the Constitution and the Bill of Rights to those daily events in the lives of students that concern them most—whether the issue is the freedom to write an uncensored article in their school newspaper; or a debate concerning the propriety of mandatory drug testing of student athletes; or the question of whether a girl can have an abortion without informing her parents or without their consent. These raise questions in which we all have an important stake and these are all issues of concern to students; and in a well taught course the students will be able to learn about these issues and ultimately they will learn to care about the system of law and justice that has been developed to protect those rights.

No comparably significant part of our intellectual heritage is so neglected in school, or so superficially treated when it cannot be ignored. It is tragic that so many students today cannot tell what a constitution is, what ours is about, and what the Bill of Rights means. The challenge to lawyers and law schools is to try to prepare a high school course that will help students understand the underpinnings of our legal and judicial system.

By the same token, I have long felt that our colleges and universities should give thought to the creation of a course on the principles of Anglo-Saxon justice—to help convey to college and university students a sense of what it is that has made us the kind of nation we are, and to suggest the tone and climate of our legal rules of fair play. I would try to give our college students a "feel" for the meaning of basic rights, for the right way and the wrong way of judging evidence, of sifting truth from untruth, of measuring liability or guilt, or evaluating arguments on both sides and then making up one's mind. Such a course could with broad strokes trace the need for law in society and the forces and rules which have shaped and nourished our legal system. In short, I believe that today more than ever we must make room in our structure of education for ex-

posure of all students to time-tested principles of justice so that as many as possible may understand how rights are granted or acquired, how law relates to justice, how justice is administered, and what makes law and order secure in a republic.

As for our law schools, I would charge them to help us find our way back toward the learned and human profession we once were. Perhaps the American Association of Law Schools might consult with the Educational Testing Service about the Law School Admissions Test to explore whether the test should not be amended to reward mastery of a traditional liberal arts education. Perhaps law schools—knowing that many students arrive with gaps in their educational background—can do more to fill in those gaps, for example, by requiring a course in legal history. Law schools might also consider imposing a requirement that each law school student take a single semester course each year from the catalogue of the Faculty of Arts & Sciences to keep his or her hand in, as it were, while their feet tread the narrow path of a more specialized education.

To emphasize the profession's responsibility to serve the community and to give law students a feeling for the impact of the law on individual lives, perhaps law schools should institute a program that would permit—or even require—law students to spend a semester as law interns in a community legal service clinic, providing legal services to those in need. I know that some law schools do provide for such service but we need to make this an integral part of legal education.

Not long ago a report by the American Bar Association Commission on Ethics and Professional Responsibility—endorsed by the House of Delegates—called upon the bar to pursue "principle" over "profit" and "professionalism" over "commercialism" in the practice of law. But it did not make at all clear how this is to be kindled. I submit that a good place to start would be leadership toward fulfillment of the vision of a society where all stand equal before the law. I am not talking here about trying to legislate equality or to assure—in Anatole France's famous example—that a just law equally forbids rich and poor from sleeping under bridges. What I am talking about is finding a way for equality of access to the law—of assuring that our legal process does indeed help people otherwise disadvantaged bring their problems before courts—problems which for them are "great." Judge Learned Hand said it memorably: "If we are to keep our democracy, there must be one commandment: Thou shalt not ration justice."[4]

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4 Address by Judge Learned Hand before the Legal Aid Society of New York, Thou Shall Not Ration Justice, Feb. 16, 1951, in A BRIEF CASE 5 (1951).

It is a measure of how far we have moved from the world where ordinary people live when we tell students to look to the Supreme Court decisions for achievement of equality before the law. Those decisions are of course indispensable; they say what the constitution is and we must study them carefully. But in thinking about equality, it is important to remember that the reformers of Louis Brandeis' time fought for small claims courts as a way to give people *access* to the law. In many jurisdictions that reform has not worked as well as the pioneers hoped, but it stands, and probably resolves more disputes than the rest of the court system put together. The task is to create a better, equally inexpensive analogue to small claims procedures that would resolve quickly and fairly the disputes ordinary people need resolved—and also winnow out for further process within the cultural legalism those issues of the broadest scope or siguificance. To achieve this will require nothing less than the dedication of all of us at the bar.

In Willard Straight Hall, there is carved a line from Terence: "Homo sum: humani nil a me alienum puto:"—I am a man: nothing human is alien to me." Some years ago—in a more innocent time—I called for that to be part of the creed of the law student. But before the law student can be held to such a standard, we must make it part of the rationale of the law itself.

The test of our system of justice will be whether we learn how to serve those whose need is great by their measurement if not by ours. The pride of the profession must be that it stands ready to serve not only the rich and mighty, but also the poor and powerless. In short, we as lawyers must in the truest sense be able to say "nothing human is alien to me"—that our concern is with the human and humane—that we accept our obligation to serve all of the people in our society—that we are truly committed to the principle of equality of access to the law. In achieving this, we will as lawyers find we have won and will have earned the respect and gratitude of those we seek to serve.