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Access to Justice: The Social Responsibility of Lawyers

Introduction

Karen Tokarz*

The 1999-2000 school year marked the second annual Washington University School of Law Public Interest Law Speakers Series, entitled “Access to Justice: The Social Responsibility of Lawyers.” This important Series serves to further three essential goals in educating students and the legal community: first, highlighting the social justice responsibility of lawyers to provide access to justice; second, bringing together students, faculty, alumni, and members of the community in an evolving, interdisciplinary discussion about the future of the legal profession; and third, celebrating the excellence of the Law School clinical program, through which many of our students experience public service and public interest law practice, and confront first-hand their personal and professional responsibility to provide access to justice to all individuals. This Series continues to dispel soundly the myth that lawyers work only for high wages and “prestige,” and provides a truly inspirational look, through the words and stories of real leaders, at the broad responsibilities and aspirations of lawyers.

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The 1999-2000 Series featured speakers from diverse backgrounds and careers, but under the same unifying and unmistakable theme—an independent dedication to providing access to justice, all demonstrating in their professional and personal lives the very best aspirations of the legal profession. The discussions ranged in focus from the positive societal influences of lawyers, to normative legal transformations, to battles against concerted and organized efforts to deny groups access to justice, to the role of the rule of law in modern society, to the federal government’s place in issues of family law.

DEAN KATHLEEN M. SULLIVAN—THE GOOD THAT LAWYERS DO

Kathleen M. Sullivan, Dean of Stanford Law School, visited Washington University in September 1999. In her Article, *The Good That Lawyers Do*, she provides uplifting reassurance to those pursuing a legal career. She describes her work as a “vaccination against every relative, classmate from college, or taxi driver” who bashes the legal profession. Dean Sullivan feels these longstanding attacks warrant a response and she rebuts them with a refreshing look at “the good that lawyers do”.

Dean Sullivan uses the concept of “good” in both a utilitarian sense and a benevolent sense. She argues that lawyers accomplish good as a social product in their roles as public sector or public interest attorneys. According to Dean Sullivan, the legal profession also contributes to “normative ordering” through the myriad ways that lawyers work “to create, find, interpret, adapt, apply, and enforce rules and principles that structure human relationships.”

In addition, Dean Sullivan demonstrates that lawyers also accomplish good as a social virtue. She explains that three structural features of lawyers’ work require that lawyers serve the common good. First, because the result in one case will leave behind a precedent for the resolution of similar future situations, lawyers constantly “ratchet back and forth between broad principles and specific situations.” This process demands that lawyers necessarily consider the interests of society when dealing with particular situations. Second, law is a distinctive social practice. Dean Sullivan notes that lawyers ensure that the insights of other important social

disciplines, such as economics, literature, and history, are included in the legal arena. Finally, lawyers are self-regulated which, according to Dean Sullivan, evokes a duty of service.

PROFESSOR VOJTECH CEPL—BOTTLENECKS IN THE TRANSFORMATION OF EASTERN EUROPE

Professor Vojtech Cepl, Justice of the Czech Republic Constitutional Court, visited Washington University in October 1999. In his Article, *Bottlenecks in the Transformation of Eastern Europe*, Professor Cepl discusses the continuing transformation in Eastern Europe resulting from the 1989 revolutions. He effectively conveys his message through a comparison of the transformation in the Czech Republic with that of the former East Germany. He argues that a society's legal system must be in accord with its normative order if it is to function properly. Although East Germany made the transformation under theoretically "better" circumstances than did the Czech Republic, the new legal system failed to thrive, he opines, because it "conflicted with the informal normative system in East Germany." Professor Cepl draws this conclusion through the concepts of linguistic formalism, legal realism, and legal consciousness.

Professor Cepl suggests that the Czech and East German societies inherited a hatred of law from their communist regimes. In order for those societies to internalize and therefore derive benefit from their new legal systems, those societies must learn the rules of that legal system and be motivated to obey them. Professor Cepl cites four main tools for institutionalizing acceptance of the new legal order: the state, civic organizations, the family, and the media. These social mechanisms provide transforming societies with legitimization of the new legal system. This, in turn, stabilizes society and facilitates the citizens' access to the legal system of the post-communist regime.

Professor Cepl concludes his Article by emphasizing the importance of transforming the hearts and minds of society in addition to changing the official written policies. "[T]ransformation requires more than just learning the rules," he writes, "learning by osmosis... is an unparalleled experience and cannot be substituted merely with lectures about new rules."

PROFESSOR ROBERT KUEHN—DENYING ACCESS TO LEGAL
REPRESENTATION: THE ATTACK ON THE TULANE ENVIRONMENTAL
LAW CLINIC

Professor Robert Kuehn, the director of the Tulane Environmental Law Clinic from 1989 to 1999, was named “Runner-up” for the Lawyer of the Year Award in 1999 by *The National Law Journal* for his work defending local citizens’ rights, and ultimately the Tulane law clinic itself, from attacks by Louisiana politicians, judges, and business interests. In his Article, *Denying Access to Legal Representation: The Attack on the Tulane Environmental Law Clinic*, Professor Kuehn tells the story of one of the most controversial legal and political challenges to citizens’ access to justice—the politically motivated changes to the Louisiana law student practice rules. He describes the concerted efforts of local and state business interests, judges, lawyers, and politicians, to impede the law clinic’s representation of citizen groups.

Professor Kuehn analyzes all aspects of the attack on the law clinic. In his detailed account, he describes efforts by Louisiana Governor Murphy J. “Mike” Foster, Jr., the Louisiana petrochemical industry, the Louisiana Chambers of Commerce, the legal profession including government as well as private lawyers, and the Louisiana Supreme Court to stifle what was vilified as “anti-development” citizen group legal challenges to chemical industry expansion.

Professor Kuehn addresses the widespread harm to society that results from denials of access to justice and identifies ways to deter such denials. Professor Kuehn also focuses his attention on the issue of judicial integrity and independence. Professor Kuehn advocates disciplinary procedures to address particular abuses of the legal system by individual lawyers, and recommends changes to the Model Code of Judicial Conduct to increase judicial integrity and independence. He concludes by offering valuable and important resolutions to the myriad of ethical dilemmas presented by the attacks on the Tulane law clinic.

PRESIDENT GERHARD CASPER—THE UNITED STATES AT THE END OF
THE “AMERICAN CENTURY”: THE RULE OF LAW OR ENLIGHTENED
ABSOLUTISM?

Gerhard Casper, President and Professor of Law at Stanford University, describes the application of the rule of law to situations where absolutism results in abuses of societal values and the intrusive extension of governmental powers. In his Article, *The United States at the End of the “American Century”: The Rule of Law or Enlightened Absolutism?*, he discusses the current state of the American Legal system and questions its legitimizing underpinnings and assumptions as we enter the new millenium.

Through the use of real-life examples, President Casper explains how an extension of the rule of law to its extremes can yield undesirable consequences. President Casper points to disturbing incidents of police brutality, unchecked I.N.S. bureaucracy, recently publicized Independent Counsel investigations, tyrannical extensions of federal statutes to reach limitless possibilities and situations, and protracted litigation to illustrate the inadequacies and limitations of the rule of law as a guiding principle for society. President Casper asks the thought-provoking question: Just because something is legal, does that make it ‘right’? He concludes that “enlightened absolutism” leads to political unaccountability and, therefore, those that are poor and lacking access to justice are the very ones who suffer at the hands of governmental tyranny.

PROFESSOR SYLVIA LAW—FAMILIES AND FEDERALISM

In March 2000, Sylvia Law, Professor of Law at New York University, presented a fascinating lecture on the appropriate role of the federal government in all aspects of family law. In her Article, *Families and Federalism*, Professor Law poses the question: When is it proper for any branch of the federal government to exert control over family law and policy? She discusses the historical development of family law, outlining the underlying power of intervention vested in the federal government. She explains that the state controls and decides most of the core issues of family law, but that the federal government has the power to unify national policy at any time.

Professor Law discusses moments when a display of federal control is beneficial to the policy goals of family law. She describes the beneficial effects of federal legislation regarding child support standards and enforcement that require states to take certain actions to ensure protection for children and their custodial parents. She points to the Family Medical Leave Act as another example of an important and unifying national initiative.

However, Professor Law cautiously notes that there are instances where federal action is ill advised. First, federal policies dealing with the financial obligations of spouses during both marriage and divorce are drastically at odds with well-established state policies. Second, federal subsidized loans for college and graduate students blur the parents' legal obligations vis-à-vis their children when they turn eighteen. Lastly, Congressional knee-jerk reactions to "hot button" issues frequently conflict with long standing state laws and values.

Professor Law concludes by describing the general principles which ought to guide the future balance between state and federal control of family law issues and policies. She indicates that the federal government should act cautiously and prudently while ensuring the least conflict with existing state law. Professor Law argues that the federal government should act only when there is good reason to unify national policy and override state law. This well-advised approach ensures the federal government will resist the impulse to act on whims and secures a sound future for the balance of federal and state interests in family law and policy.

CONCLUSION

The *Journal of Law & Policy* is honored to be an integral part of the Series each year, as it is a fitting vehicle to further one of *Journal's* missions—to publish scholarship on legal and public policy that critically analyzes the ever-developing differences between law and justice.