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Keynote Address

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KEYNOTE ADDRESS

HONORABLE KENNETH W. STARR*

Thank you so very much, Dean, and my best wishes to you as the torch passes from you to your very distinguished Dean-Elect, a great judge and great scholar, Joe Bellacosa. The Dean-Elect showed his love for the law, for the court system, but also his abiding love for legal education. Throughout his tenure, he remains deeply interested in, and committed to legal education; including, if recollection serves me, spending some considerable amount of time reading briefs at night and at breaks, as you would review in the accreditation process, the situation with law schools around the country. Given your abiding love for the law and legal education, how appropriate it is that you return home as Dean of this great institution and I congratulate the school on its splendid and fitting choice on this, your 75th jubilee anniversary.

It is so kind of you to invite me to reflect on legal education, yet I must admit that I feel somewhat uncredentialed to speak about these things. I inhabit the world of adjunct professors. Perhaps one or more of you have actually either served as adjunct professors or the students have had adjunct professors. You know, those are not full-time folks, and so much of what happens within the academy just kind of passes by unnoticed by a humble adjunct professor. I think that is true not only for day-to-day events, but also for the larger issues of policy that interests the legal community as a whole, and indeed, beyond that to society as a whole. After all, it is society that should at least be keenly interested in the process by which we train our rising generation of lawyers.¹

After stating that caveat, I can say that I have had the experience

* J.D., Duke University Law School. See *supra*, INTRODUCTION, for biography of Judge Starr.

¹ See Harry T. Edwards, *The Growing Disjunction Between Legal Education and the Legal Profession*, 91 MICH. L. REV. 34, 41 (1992) (stating that society will be worse off if law schools continue to stray from their principal mission of professional scholarship and training); John Riley, *Law School Deans Quest for Funding*, NAT'L L.J., Sept. 26, 1983, at 1 (positing that to extent there is shift in direction of legal education it will reflect interests of law students and society in general).

and the advantage of being physically in a number of law schools over the years, through lecturing, moot courts and the like, as well as serving in various capacities as a private lawyer, a government lawyer, and for awhile as a judge, that brought me, in various ways, close to the subject of legal education. What I am trying to do, Dean, is to establish not expert credentials, because you will not be able to qualify me in that respect, but instead to establish that I am qualified to say at least a few words on the subject. In light of those marginal qualifications, I am all the more grateful to the Dean, to Professor Barrett, and others for giving me the opportunity to reflect on the great issues that are of interest to this conference.

My observations this afternoon are really four-fold. Observation Number One. Law schools should, in my judgment, increasingly prepare its students for a life that is one of general contribution to society as opposed to training for the narrow confines of a specific, albeit great, profession.

Increasingly, in this quite mobile age, individuals are entering and then leaving institutions with dizzying speed. I think we can all bear witness to this phenomenon. These institutions throughout our society no longer hold the loyalty that they once commanded. This is also true for law graduates, who increasingly drift away, not only from firms, but also more pertinently for this part of my reflection, from the law itself.² They do so by choice. This phenomenon should not go unnoticed by the legal academy in terms of the way that we approach the mission of legal education.

It is increasingly evident that a driving force behind this phenomenon is the training lawyers receive in problem solving, which tends to be quite strong in modern legal education and is a testament to effective legal training. This training produces very able and analytical problem-solvers that are able to utilize those skills beyond the traditional confines of lawyer-client relationships.³

² See Avina Hunter, *Deborah L. Arron's Running from the Law: Why Good Lawyers are Getting Out of the Legal Profession*, 4 UCLA WOMEN'S L.J. 117, 118 (1993) (arguing widespread flight of lawyers from legal profession to pursue alternative careers is function of dissatisfaction with nature of professions evolution). See generally Marilyn Tucker, et al., *Whatever Happened to the Class of 1983?*, 78 GEO. L.J. 153 (1989) (discussing statistics related to lawyers leaving legal profession).

³ See Don Bauder, *IPO's Light a Rocket of Lawyer-Pay Inflation*, SAN DIEGO UNION TRIB., Feb. 5, 2000, at C1 (stating lawyers are leaving their firms and going to dot-coms for "juicy stock options"); Julie Kay, *Big Raises, Big Worry; Will Clients Pay for Associate Salary Hikes? Depends on the Competition; Associates Are Promised Hefty Salary Increases, but Partners Don't Know Where the Money Will Come from*, PALM BEACH DAILY BUS. REV., Apr. 21, 2000, at B1 (noting increase in associate salaries by firms concerned about losing lawyers to dot-coms).

And, in truth, we should be somewhat pleased with that fact. Therefore, the legal academy should encourage students and graduates to expand their professional lenses, as it were, once they leave the academy, and to consider a wide range of constructive problem-solving situations and professional opportunities that transcend the narrower notions of lawyering.⁴

Point Two. Increasingly, the marketplace is seeking, and in fact, demanding, the most exquisite efficiencies. You had a panel this morning discussing the economics of various aspects of legal education.⁵ As we are increasingly seeing throughout society, middlemen are out and e-commerce is in.⁶ Does that mean, I simply ask, that there will continue to be, as the next century unfolds, an assiduous examination of the cost effectiveness of the current system of three years of post graduate legal training?

The idea of less than three years of legal education is being silently discussed, and at times it is being openly discussed within the legal community. Even judges are now speaking openly of the utility or the relative lack thereof, of the third year of legal education.⁷

⁴ See Roger C. Crampton, *The Future of the Legal Profession: Delivery of Legal Services to Ordinary Americans*, 44 CASE W. RES. 531, 575 (1994) (discussing possible benefits to legal services market from enlarged competition by allowing accounting firms, banks, insurance companies, or retailers to diversify into providing legal services); Christopher T. Cunniffe, *The Case for the Alternative Third Year Program*, 61 ALB. L. REV. 85, 90 (1997) (arguing for combined degree programs for legal student with specialized interests). *But see* William R. Trail & William D. Underwood, *The Decline of Professional Legal Training and a Proposal for Its Revitalization in Professional Law Schools*, 44 BAYLOR L. REV. 201, 216 (1996) (noting that as changes in law practice suggest law schools should allocate resources to practical courses, but instead they allocate resources to courses examining legal doctrine).

⁵ See generally, Warren E. Burger, *The Special Skills of Advocacy: Are Specialized Training and Certification of Advocates Essential to Our System of Justice?*, 42 FORDHAM L. REV. 227, 232 (1973) (stating that basic legal education could well be accomplished in two years, after which more concrete and specialized legal education should begin); Cunniffe, *supra* note 4, at 97-110 (outlining alternative to formal schooling in third year of law school with paid externship to avoid both tuition costs and opportunity costs of lost earnings associated with this last year of law school training); Robert MacCrate, *Lecture on Legal Education*, Wake Forest School of Law, 30 WAKE FOREST L. REV. 246, 266 (1997) (explaining basic ideas in recently published MacCrate Report is that skills and values of lawyers are developed along continuum that neither begins nor ends in law school).

⁶ See Kris Gautier, *Electronic Commerce: Confronting the Legal Challenge of Building Identities in Cyberspace*, 20 MISS. C. L. REV. 117, 119 (1999) (discussing effect on businesses and employees from changes due to e-commerce); Cheryl R. Lee, *Cyberbanking: A New Frontier for Discrimination*, 26 RUTGERS COMPUTER & TECH. L.J. 277, 304 (2000) (recognizing effect e-commerce will have in changing how business is done).

⁷ See Generally Edwards, *supra* note 1, at 63 (arguing doctrinal legal education does not require three years of school but only first year and part of second). *But see id.* at 57 (indicating that scope of law today is too broad for three year program and advocating program similar to medical residency where lawyers would learn specialized practice areas).

I must confess, in this respect, to an abysmally high level of ignorance on the subject and a concomitant lack of reflection on this very complex policy question. I simply note that it exists and that it will continue to be discussed.

I do want to offer an example of one aspect contained within the traditional three-year framework that, in my judgment, fosters a tradition that I fear is in danger in legal education and more broadly in the legal profession itself. I am referring to the tradition of lawyers engaging quite seriously in public service, quite broadly defined, as opposed to the interests of the private marketplace, as legitimate and as important as that interest is. It is a tradition that this law school, and its graduates, have taken quite seriously over time.

In particular, I want to share with you the example of a program, which I am personally involved, within the District of Columbia School system, that demonstrates an enrichment of legal education. This year, on an experimental basis, law students from American University's Washington College of the Law, have been going into the public schools of the District of Columbia, not on law day, but every day. They are teaching, and for the law students here you will be pleased to note they are being paid to teach. They are part of a program in Washington known as the Brennan Marshall Fellows Program.⁸ It is financially supported by the American University and by a very generous grant from a Washington D.C. based foundation.

They are going into the public schools as law students to teach constitutional law and they are becoming mentors. They are becoming pillars of their respective high school communities. The students love it. That is both the law students, who are doing the teaching, and their students who are typically high school seniors in Washington.

The program seeks to address, what seems to me to be a growing problem, what legal education should be concerned about in our

⁸ The Marshall-Brennan Fellows Program was developed by American University law professor Jamin Raskin to help high school students better understand their constitutional rights and how the law affects them. See Andrea Billups, *Starr Returns to Court as Schoolteacher; Celebrity Counsel Helps Law Students Hold Civics Class*, WASH. TIMES, Dec. 1, 1999, at A4. The classes are taught by 25 American University Law Students who were named Marshall-Brennan Fellows. *Id.* The program is currently active at several D.C. public schools and a juvenile detention center. See also Nat Hentoff, *The Constitution Comes Alive; A New Curriculum Captures Students Interest*, WASH. TIMES, June 12, 2000, at A23 (stating same).

society at large; that being the relative constitutional illiteracy on the part of the American people.⁹ The program includes instruction in the basic structural principles of our government, that have served the public so well over the last two centuries plus including issues such as the separation of powers and federalism, in addition to those hardy perennial and always interesting questions that arise under our beloved Bill of Rights.¹⁰

These law students in Washington are now operating in five public high schools and a juvenile detention facility. They are energized and motivated and are doing, in my judgment, very good and fine work for the community. They are developing skills that dovetail very neatly with the skills that lawyers need to develop, ideally, in the process of legal education, by organizing a body of material and presenting it in a way that is engaging and effective.

These law students, in short, are literally on their feet every single school day, but in the classroom rather than the courtroom. The result is that the law students are not only teaching, but they are learning and they are reaping the richest moral rewards from being public servants. They are paid public servants, in the highest traditions of the legal profession, and, in the process, helping to defray the increasingly expensive process of legal education.

Does this experiment, which has already been pronounced a ringing success in Washington, bode well for the possibilities of efforts elsewhere and a systematic effort across the country, to put law students, if we are going to retain the three-year program, into public high school programs and especially schools of the inner city, where the needs are so particularly keen and acute? I, for one, hope so, and indeed, I think we should hope to see that as the next few years unfold, law students, particularly in their third year, but possibly expanded to include second year law students, being engaged in the process of teaching the law in our public schools. If

⁹ See Billups, *supra* note 8, at 4 (discussing results of national test showing one-third of America's high school seniors lack basic understanding of how government is run); see also Erwin Chemerinsky, *The Supreme Court, Public Opinion, and the Role of the Academic Commentator*, 40 TEX. L. REV. 943, 950 (1999) (stating public is remarkably ignorant about Supreme Court and Constitution).

¹⁰ In 1789 the first ten amendments, known collectively as the Bill of Rights, were drafted. See BAILY KULKIN & JEFFREY W. STEMPEL, *FOUNDATIONS OF THE LAW: AN INTERDISCIPLINARY AND JURISPRUDENTIAL PRIMER* 76-77 (West Publ'g Co. 1994). The Bill of Rights was later ratified by a requisite number of states in 1791. *Id.* These amendments established the basic individual American freedoms recognized by the Constitution. *Id.* See generally Akhil Reed Amar, *The Bill of Rights as a Constitution*, 100 YALE L.J. 1131 (1991) (giving overview of Bill of Rights as originally conceived).

nothing else, and this is quite something, it would be a very good thing for the country, because these programs attempt to restore and inculcate the basic traditions of our constitutional democracy in a free society.

Some may object that law schools are ill-equipped to handle this task; or that this is not part of a law school's mission; or that student teachers should be guided under the tutelage of education professionals from education departments of teaching programs rather than law school faculty.¹¹ I am not going to resist that and perhaps that can and should be considered in an age of multi-disciplinary efforts. I just want to show you that the early returns in Washington suggest that close coordination of the law school program, with the academic leaders in the high schools and the existing faculty in each of the five high schools in Washington, does in fact support the finding that these law school student teachers are capable of teaching the one class each day in constitutional law and individual liberties.¹²

Point Three. The nature of the law school itself. Over the past generation, it seems to me that we have seen the emergence of the truly academic faculty in most law schools all around the country. Simply stated, the current belief in many law schools is that the law faculty should, above all, consist of scholars and teachers and not necessarily those who have been steeped in the profession itself. In fact, in many schools, as we know, too many years of practice and experience in the profession, could actually be viewed as a mark against one's likelihood of success in moving into the academy.¹³

This new model is, of course, not the only model, and is not

¹¹ See generally Harriet N. Katz, *Pedagogy: Using Faculty Tutorials to Foster Externship Students' Critical Reflection*, 5 CLINICAL L. REV. 437 (1999) (explaining why third year students should be supervised and guided throughout their externship experiences by law school faculty); Gary S. Laser, *Educating for Professional Competence in the Twenty-first Century: Educational Reform at Chicago-Kent College of Law*, 68 CHI.-KENT L. REV. 243, 261 (1992) (describing role of clinical professor as "coach" of student's efforts); Ann Shalleck, *Clinical Contexts: Theory and Practice in Law and Supervision*, 21 N.Y.U. REV. L. & SOC. CHANGE 109, 180-181 (1993-94) (analyzing interaction between supervisor and student in clinical context, and asserting that supervision includes critical inquiry about skills and "institutional structures").

¹² See generally Derek Simmons, *The High Court in High School*, LEGAL TIMES, May 29, 2000, at 26 (supporting Marshall-Brennan Fellows Program and complimenting law students involved).

¹³ See James R. P. Ogloff, *Annual Nebraska Survey & Survey of Legal Education: More Than "Learning to Think Like a Lawyer:" The Empirical Research on Legal Education*, 34 CREIGHTON L. REV. 73, 131-32 (2000) (stating that tendency to hire law professors with practical experience is most evident in lower level law school, as opposed to more elite law schools, implying that as to elite law schools, professors are not encouraged to receive practical experience).

rigidly followed even in schools that claim to embrace it with unrelenting rigor. There was always flexibility. In short, there was always a place for us humble adjuncts. In particular, law schools welcomed individuals, especially judges, who would be kind enough and good enough to teach a course, on occasion, or to serve as a judge in residence, or a visiting specialist in a particular area, going beyond what judges have been kind enough to engage in, primarily participating in and judging moot court competitions. Currently, it seems to me, the trend in legal education is moving beyond interdisciplinary studies, which has long been accepted, and on to a transnational legal education.¹⁴ I am referring specifically to the programs created by Dean John Sexton at the New York University School of Law.¹⁵ The foundation of this remarkable idea is based on presenting a truly global education, with scholars from literally around the world who, in turn, draw students from literally around the globe, especially to a university's graduate programs.¹⁶

For my part, I have doubts as to the practicality of this idea for the whole of legal education. Is it a good thing? I believe that the idea should be encouraged and I, for one, was an early supporter of the concept. Other law schools, perhaps to a greater or lesser extent, can tap into this deep well of globalization.

Legal education, at bottom, is preparation of a rising generation of leaders and problem-solvers, including, but not limited to, law practitioners and, of course, future judges. Therein lies the mission of institutions, which by design, are seeking to foster egalitarian values by opening doors that would otherwise have remained closed, so that law is not simply for the elite. Law, at least in this country, is for the people, and the opportunity to receive a legal

¹⁴ See NYU School of Law Website, at <http://www.law.nyu.edu/globallawschool> (last visited Sept. 6, 2001) (describing New York University's Global Law School program, which assembles world's leading law professors from six continents to teach about law).

¹⁵ See NYU School of Law Website, at <http://www.law.nyu.edu/globallawschool/newsletters/spring1999/worldleasers.html> (last visited Sept. 6, 2001) (reporting that New York University School of Law hosted world leaders in dialogue on strengthening democracy in global economy).

¹⁶ See Tim Haggerty, *Georgetown Law Program Draws Clinton Praise*, HOYA, Sept. 29, 2000 (discussing Georgetown's plan to build Eric K. Hotung International Law Center, school's commitment to excellence in education and its "inclusive and diverse community" as demonstrating school's commitment to "global education"); see also Robert J. White, *Minnesota and the World Abroad*, DAEDALUS, June 22, 2000, No. 3, Vol. 129, at 307 (discussing small Minneapolis Lutheran college's Center for Global Education, which includes staff in Namibia, Mexico and three Central American countries).

education must remain open to everyone.¹⁷ It should be education for the people, broadly available. A rather radical view, perhaps, but it is one that I think this law school has richly suggested over its distinguished life. In particular, as this law school has in fact done and done so proudly, we should be encouraging law schools to open their doors to those who are first-generation lawyers in their families and perhaps even first-generation college graduates.

The materials that you were kind enough to provide me on this 75th jubilee speak very eloquently and movingly about opening doors to young men and women who may not have had all the advantages in life, who may have come from very humble origins. Isn't that a grand tradition in our profession? Not the only one, but it is a grand one, the tradition most remarkably of Abraham Lincoln.¹⁸

The justice for whom I was privileged to clerk for two years, Chief Justice Warren Burger,¹⁹ was immensely proud of the fact that he was the product of a part-time, evening program at the William Mitchell School of Law.²⁰ He never came East to go to school, even though he was given a scholarship opportunity at Princeton University as an undergraduate, because he needed to stay close to his home in St. Paul to help support his family, and I mean by that, his parents and his siblings.²¹ May law never become, in this

¹⁷ See Martin Dyckman, *Key to Diversity in Law Schools: Branching Out*, ST. PETERSBURG TIMES, Feb. 27, 2000, at 3D (arguing that to help solve problem of few minority attorneys in Florida, State should put state-funded law program in same areas where minorities reside, and provide it with reasonable tuition); Matt Flores, *Justices May Take Look at Hopwood; Courts at Odds over Race-Based Admission Policies*, SAN ANTONIO EXPRESS-NEWS, Dec. 25, 2000, at 1A ("Our new leaders need to be exposed to diversified institutions, and we must open the gates for minorities to the very best institutions our society has to offer"); Rena Warden, *CLEO and ISBA Unite to Promote Diversity*, IND. LAW., Nov. 22, 2000, at 3 (describing "Gateway to Diversity" summer employment program, which was developed to help minority law students interact with legal community).

¹⁸ See White House Website, at <http://www.whitehouse.gov/history/presidents/all16.html> (last visited Sept. 7, 2001) (stating that Abraham Lincoln, who struggled for living and learning, eventually became captain in Black Hawk War, legislator and sixteenth President of United States).

¹⁹ See Arlington National Cemetery Website, at <http://www.arlingtoncemetery.com/weburger.htm> (last visited Sept. 7, 2001) (discussing Chief Justice Warren Burger's legal career and personal life); see also Encyclopedia.com, at <http://www.encyclopedia.com/articles/02025.html> (last visited Sept. 7, 2001) (presenting Chief Justice Warren Burger's biography).

²⁰ See William Mitchell College of Law Website, at <http://www.mitchell.edu>.

²¹ See generally Arlington National Cemetery Website, at <http://www.arlingtoncemetery.com/weburger.htm> (last visited Sept. 7, 2001) ("Burger worked days as an insurance salesman while earning his undergraduate degree nights from University of Minnesota . . .").

country at least, the province reserved only for the elite and for the advantaged.

I know this raises some very naughty and controversial questions touching both issues of basic equality and indeed, the definition of equality, and the goal of moving toward a society in which consciousness of immutable characteristics is diminished rather than enhanced. This is a great dilemma in the law. It is a great dilemma in higher education generally, and legal education, particularly.²² By my guess, there is no easy answer to this, as all of the debates in recent years have indicated. For my part, I believe there is much to be said for the proposition that education is unique, quite unlike the employment setting, and justifying, all things considered, the use of remedial approaches that might in other settings be less appropriate.²³ I am speaking generally and not about State action. I am, after all, in a private institution. The reason for this at a policy level is very simple and that is that education is empowering and it is door opening. It opens doors that might otherwise remain irrevocably closed.

So, what should we do. My simple thought on this is that what we need is good lawyers and judges to move from the level of debate over abstract principle, over which, in my judgment, society is simply going to remain hopelessly divided, and move to the world of concrete action. Americans, and especially American lawyers and law students, at their best, are problem-solvers. They do not just talk about it, they get a hold of the problem and they

²² See *At Roger Williams University*, PROVIDENCE J.-BULL., Mar. 2, 2001, at 6C (discussing Roger Williams University's "National Minority Law Student Recruitment Month," whose goal is to encourage students to continue their education and possibly decide to attend law school); *'Separate But Equal' is Still Unequal*, AUSTIN AM.-STATESMAN, Aug. 7, 1999, at A14 (asserting that affirmative action policies in higher education opens minds of all people by creating racially diverse classrooms, which improves quality of education for all students); *Women in the Law-Outside Counsel*; Deborah Weinstein: *Promoting Diversity in Law Firms and Corporate Legal Departments*, METRO. CORP. COUNS., Feb. 2001, at 39 (stating that historically, women and minorities were almost completely excluded from practice of law, and that despite vast improvements, law school admission rates are still fairly low for minorities).

²³ See Clark D. Cunningham & N.R. Madhava Menon, *Correspondence: Race, Class, Caste...? Rethinking Affirmative Action*, 97 MICH. L. REV. 1296, 1297 (1999) (indicating difficulties surrounding affirmative action and law school admissions process based solely on GPA and LSAT scores and suggesting new category be introduced to modify GPA/LSAT criteria to address these issues); Thomas J. Ginger, *Affirmative Action: Answer for Law Schools*, 28 HOW. L.J. 701, 706 (1985) (noting LSAT is discriminatory, does not adequately measure future success in Law, harms goal of having diverse legal profession and suggesting alternative models for admission); see also Note, *The Relationship Between Equality and Access in Law School Admissions*, 113 HARV. L. REV. 1449, 1456 (2000) (arguing that Law Schools should grant admission on basis of characteristics and skills necessary for success in law school rather than traditional admissions criteria).

solve it. It seems to me that at least one possibility is to commit to moving toward solving the problem in this new century rather than just endlessly debating the issues, that in many ways, seem only to further and foster divisions and to increase the level of rancor, instead of bringing people together.

This, I do know from my own personal experience. There are wonderful and very talented individuals right now in schools, both in high schools and in college undergraduate programs, who can be identified this afternoon, or on Monday morning. They can be encouraged and assisted in the process of becoming, if they so desire, tomorrow's legally trained problem-solvers. I see them each week, when I volunteer at Anna Costia Senior High School in Washington D.C., one of the inner city high schools participating in the Marshall Brennan Fellows program I described earlier. I heard one such promising problem-solver of the future this very week when I reviewed the essays of young men and women in high school throughout the district. They wrote fabulous pieces on what they would do if they were United States Senators.

Is it so strange that, in this information society, law schools should have partnerships with high schools and with colleges? Can't we problem-solvers help identify these promising individuals early on and encourage them and provide assistance in mentoring as they ascend the education ladder? Can't we, in short, think outside the box and move away from the tyranny of scores and other objective indicia, and move into the world of real human beings, who may have great promise.²⁴

Cannot, at the same time, these same partnerships be built with the business community, not just law firms, because the business community, and I now know this from my own volunteer activity,

²⁴ See Eric Brazil & Larry D. Hatfield, *Cal Law School Hit over Diversity: Post-Prop 209 Admission Program Called Harmful to Women, Minorities*, S. F. EXAM'R, May 9, 1997, at A1 (citing study conducted criticizing U.C. Boalt Hall School of Law's admissions policies and suggesting establishing outreach programs to college and high school students who might not otherwise consider legal careers). See generally Eli Denard Oates, Note, *Cureton v. NCAA: The Recognition of Proposition 16's Misplaced Use of Standardized Tests in the Context of Collegiate Athletics as a Barrier to Educational Opportunities for Minorities*, 35 WAKE FOREST L. REV. 445, 446 (2000) (noting NCAA's minimum standardized test score requirements often deny student-athletes opportunities to matriculate as scholarship athletes at Division I colleges and limit their ability to fully participate in such institutions' intercollegiate athletic programs); *Medical Schools: Number of Minority Applicants Drops*, AM. HEALTH LINE, Nov. 3, 1997 (noting medical school admissions committees reliance on only standardized test scores and GPA and acknowledging individual's character and ability to communicate effectively are critical in evaluating ability).

earnestly wants to be of assistance in communities of need where future generations of problem-solvers, as well as business persons, consumers, members of the clergy, and the like, will emerge if we will simply be there.²⁵

One final point. Not only are we, in legal education, the professionals charged with maintaining our system of constitutional democracy through education and of the role of the courts in the exercise of government by the people, especially through our jury system, but we can also serve as the best advocates for society's conscience, not to put too fine a point on it, but a source for society's conscience.

We are, at our best, willing to stand in the face of majority sentiment and willing to question and challenge an assortment of basic ideas of law and of liberty, that at times are quite unpopular in particular communities. This is at the heart of the ethical and moral component of our body of law. This pursuit was the basic ideal of Justice Benjamin Cardozo,²⁶ the brilliant jurist and intellect who so loved his service as a common-law judge on this State's highest court before he was demoted to the United States Supreme Court. It was Justice Cardozo who saw the rich and deep ties of law to community and to the underlying morality of the community, and helped this morality to evolve into legal standards that changed the dynamism of a free society.²⁷ He spoke so eloquently in *Snyder vs. Massachusetts* of the authentic forms of justice that manifest themselves as the voice of the community in law.²⁸ Law is the

²⁵ See Ladawn Ashley, *Mentors Help Mold Young Lives*, HOUS. CHRON., June 14, 2000, at 1 (stating Minute Maid \$300,000 grant to YMCA funded program where business professionals, attorneys, retired teachers, and college students mentor younger students in academics); Art Weissman, *PCCC Mentor Program Stays*, RECORD, June 24, 1990, at A7 (noting success of Career Beginnings Program which encourages high school students to work with mentors from business community toward goal of attending college); *Local Professionals Honored for Giving Back to Community Children; Pio Pico Elementary School Mentoring Program Honors Volunteers from Local Businesses and Community*, PR NEWSWIRE, Sept. 5, 2000 (noting mentoring of students by business community members makes measurable difference in child's life).

²⁶ See ANDREW L. KAUFMAN, *CARDOZO* xii-731 (Harv. U. Press 1998) (discussing ideals of Cardozo in biography); RICHARD POLENBERG, *THE WORLD OF BENJAMIN CARDOZO: PERSONAL VALUES AND THE JUDICIAL PROCESS* xiv-288 (Harv. U. Press 1997) (discussing ideals of Cardozo); See e.g., John C.P. Goldberg, Note, *Community and the Common Law Judge: Reconstructing Cardozo's Theoretical Writings*, 65 N.Y.U. L. REV. 1324 (1990) (discussing Cardozo's greatness as judge but lacking ability as theorist).

²⁷ See KAUFMAN, *supra* note 26; POLENBERG, *supra* note 26; Benjamin A. Zelermeyer, Note, *Benjamin N. Cardozo: A Directive Force in Legal Science*, 69 B.U. L. REV. 213, 216 (1989) (citing Cardozo's recognition that law regulates morality of community).

²⁸ 291 U.S. 97, 122 (1934) (discussing justice being due accused and accuser and observing necessity of balancing the administering of justice); see also *Baldwin v. G.A.F. Seelig Inc.*, 294 U.S. 511, 523 (1935) (discussing how Constitution was framed upon theory of national

ultimate voice of the community, and in an authoritative way, as opposed to MSNBC. By that, Justice Cardozo meant not only the common law but, of course, the higher law of the constitution and the ever-growing body of statutory law in the several states.²⁹

Legal education, at its best, is reminded of these great traditions. It teaches reverence and respect for law and for legal process. It was, of course, Justice Frankfurter who commented that the history of liberty is, in no small measure, the history of procedure.³⁰ In that frame of mind, the moral lawyer, is one committed to moral wholeness, to a vision of the good society ruled by law.³¹

This is what I have come to think of in conversations as sort of the judicial model of thinking about the law and legal education; respect for process, not only of the moral legitimacy of it, but of its fundamental importance to a free society for without process, free institutions are imperiled.³² For this reason, it seems to me, that law schools in the future should be filled with more judges. Judges who can reach the students, sharing not only in the traditions of their own profession, but the need for a brightness, honor, and courage, which Mr. Churchill observed in a much different context as the most important virtue because it makes the other virtues possible.

In the end, this profession, at its best, must stand tall for truth. The importance of this very moral vision of truth and the profession's historic and unapologetic commitment to truth seeking is the moral justification for the adversarial system itself.³³

solidarity and applying commerce clause to prevent obstruction of commerce between states); *Williams v. Baltimore*, 289 U.S. 36, 42 (1933) (discussing statutory interpretation and role of court and legislature).

²⁹ See *Snyder*, 291 U.S. at 122 (discussing justice being due accused and accuser and observing necessity of balancing the administering of justice); see also *Baldwin*, 294 U.S. at 523 (discussing how Constitution was framed upon theory of national solidarity and applying commerce clause to prevent obstruction of commerce between states); *Williams*, 289 U.S. at 42 (discussing statutory interpretation and role of court and legislature).

³⁰ See e.g., *Wolf v. Colorado*, 338 U.S. 25, 27 (1949) (discussing due process and fundamental rights).

³¹ See John B. Attanasio, *The Moral Lawyer Forward: The Impoverished States of Law and Morality*, 64 NOTRE DAME L. REV. 773, 773-74 (1989) (considering relationship between law and morality); Kenneth W. Starr, *Christian Life in the Law*, 27 TEX. TECH. L. REV. 1359, 1359 (1996) (stating moral lawyers consider what is right and fair); Calvin Woodard, *Thoughts on the Interplay Between Morality and Law in Modern Legal Thought*, 64 NOTRE DAME L. REV. 784, 784 (1989) (considering term "moral lawyer").

³² See *Wolf*, 338 U.S. at 27 (discussing due process and its fundamental importance to free society); see also U.S. CONST. amend. V (granting due process of law).

³³ See Hon. Bruce E. Bohlman & Eric J. Bohlman, *Wandering in the Wilderness of Dispute Resolution: When Do We Arrive at the Promised Land of Justice?*, 70 N.D. L. REV. 235, 236 (1994) (discussing how proponents of adversarial system allow judges impartiality in seeking truth and opponents feel adversarial system thwarts truth seeking); Fred C. Zacharias, *Structuring*

Those are my four simple points. If you find one or more or, indeed, all of them objectionable, then kindly remember your humble speaker is, after all, only an adjunct professor.

