

THOUGHTS ON DECANAL RECIDIVISM

L. Kinvin Wroth

AS I begin the second term of my second deanship, I find myself reflecting (gotta do something between 2:00 and 4:00 a.m.!) on the contrasts that my passage from a public, university-affiliated law school to a private, free-standing institution has highlighted and on the changes that have occurred in approach and attitude to our common calling during that passage.

When I was asked in 1978 to take on the deanship at the small public law school where I had been an innocent faculty member for fifteen years, my response was brief and to the point. "O.K.," I said. No speeches, parades, or grand flourishes. This simplicity was inherent in the context: Everyone knew what I thought already, the job was one that had to be done by somebody, and the University chancellor was relieved to hear that I would still carry half a teaching load. After all, what was there to do but preside at faculty meetings, give fatherly advice to students, make sure grades were handed in on time, and argue with the provost for a greater share of the University's meager budget?

In my twelve years at that helm, some major changes in attitudes and expectations occurred. When I began, the issues were internal. At the end, we had a development director who had increased the annual fund twenty-fold; we had created an endowed professorship and a specialized research institute and had built a library addition. The law school was in the thick of the pro bono wars and had begun to offer an ADR course, and we had preserved the school's fragile autonomy against the onslaughts of voracious union organizers and centralizing University bureaucrats. But when it was over in 1990, I said, simply, "thanks" (to my colleagues for an excellent tennis racket and to the alumni, bar, and others for numberless plaques), and "so long," and gratefully sank back into the faculty from which I had emerged.

A few years later, in 1996, against all sense and reason, I decided to do the dean thing again, but in circumstances more different from my previous experience than even I imagined at the time. A law school's a law school, right? Faculty who want better salaries, students who want jobs, alumni who need to want to give money, a bar that wants professors to do CLE free? Wrong! All of those features were—and are—present in my new job, and each of those constituencies knows that the Dean works primarily for it, but private, independent law schools present multiple layers of additional issues and challenges. The Dean is the CEO. This means that the ogres of administration that one loves to hate in the university (especially the public university)—business office, budget director, financial aid, buildings and grounds, human resources—all work for me. *La bureaucratie c est moi*, to paraphrase an earlier absolute ruler. Moreover, there's no one else to blame. In the university, when the roof leaks, the primary decanal skill called for is the ability to manipulate the system so that the B&G ogre will leave its cave to come and fix it. In my

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present setting, metaphorically at least, I have to get up on the roof with hammer and nails and patch it. Then there's the Board of Trustees, which *knows* that the Dean works for it and has to be steered gently along the knife-edge that separates enthusiastic support and ownership from micro-management. Dealing with all these constituencies is no different from the widely held and doable job of being president of a small liberal arts college, right? Wrong again! They're *all* LAWYERS!

The difference is epitomized by the contrast in the beginnings of my two deanships. For deanship number two, after I had indeed said "O.K."—and negotiated a contract, if you please—there were in fact speeches, parades, and grand flourishes—in short, an inauguration, complete with music and full academic regalia. I spoke not one but many words on "The Law as a Public Profession," commencing with a formal salutation along the lines of "Mr. President, Mr. Chief Justice, members of the Board, esteemed faculty colleagues, staff, students, worthy graduates, and friends [I still had some!]." In those words, I sought to capture the challenges to legal education and the legal profession as I had come to understand them in my prior life and as I saw them then, a degree of reflection very foreign to my prior career. Now, with a slight grinding of the gears, let me leap to a consideration of the changes in the nature and intensity of those challenges that a mere five years has brought.

On that bright September day in 1996, I described what I had already come to understand about my new professional home—its matchless physical setting, the quality and character of its people, the strength of its academic programs, and the sense of community that harmonized these elements. Then I went on to sound a warning note¹.

But, alas, all is not well in this Eden. The snake has been doing a land-office business in apples lately throughout the paradise of the legal profession and legal education. The effects of our consumption of this forbidden fruit are manifest: The public no longer understands or appreciates, much less respects or admires, the profession for which we train our students. The bar, facing this public disdain, is uncertain or divided about its role; is it merely another form of high-end business enterprise, or is it a true profession as once defined by Roscoe Pound, a group "pursuing a learned art as a common calling in the spirit of public service?"²

As a result of the profession's uncertainty, law schools are suffering an identity crisis. Are we the gatekeepers to the profession or its severest critics? Are we a guild of dedicated scholars and mentors or, as the Department of Justice would have it, a cartel? Should the content and purpose of legal education be shaped to respond to the bar's perception of its needs as the American Bar Association's *MacCrate Report*³ suggests, or to the needs of the society at large as we inhabitants of the legal academy may perceive them?

1. These passages from my 1996 remarks are quoted from L. Kinvin Wroth, *Inaugural Address: The Law as a Public Profession*, 21 VERMONT L. REV. 375, 376-78 (1996).

2. ROSCOE POUND, *THE LAWYER FROM ANTIQUITY TO MODERN TIMES* 5 (1953).

3. See Task Force on Law Schools and the Profession: Narrowing the Gap, *Legal Education and Professional Development—An Educational Continuum*, 1992 A.B.A. SEC. LEGAL EDUC. & ADMISSIONS TO THE BAR (Robert MacCrate ed.).

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To regain [the] public trust, lawyers must first recapture for themselves the sense of the law as a learned and public calling. The profession of the law must be distinguished from others such as accountancy, real estate sales, acting, and oil burner repair—though, admittedly, at times the law may appear to share many attributes with those callings. The foundation of the distinction is the unique nature of the law and the lawyer's role. "The law," Sir William Gilbert's Lord Chancellor sang, "is the true embodiment of everything that's excellent."⁴ I am sure that his Lordship meant to say that the law is the concrete manifestation of our society's moral foundations in a form capable of being applied to resolve the problems and disputes of daily life.

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If lawyers recapture this sense of their own professionalism, they will come to practice the law with traditional skills, ethical judgment, and civility. They will also adjust and adapt their modes of practice to the changing ability and needs of the public to have access to the system of justice. Lawyers of the future must be able to represent their clients as effectively in mediation and arbitration as in the court room, must be able to provide legal services for those unable to pay, must accept the need to package those services in ways that will assist those who want or need to represent themselves, and must extend their competence to include methods and practices that onrushing technology makes possible. Lawyers must also understand and view the law in its larger social context and be able to work in the regimes of international and foreign law in which increasingly the business of our global economy is done. Through all these avenues, the public's trust will be regained.

The challenge as I saw it in 1996 was to lead my new institution—"to herd its cats, as the all-too-accurate metaphor has it—in harnessing [its] resources . . . in the great enterprise of training lawyers to love the law and to practice it with integrity, honor, moral sense, common sense, skill, intelligence, vision, humanity, enthusiasm, and pleasure, to practice the law as a public profession."⁵

The challenge of 1996 remains the fundamental challenge of legal education in this or any age. Yet, how different the context in which we face it, and the tools for the task, have become in five short years! The difference is dramatically illustrated by a comparison of the activities that my law school has engaged in during that time with the achievements of the school that I led in the 1980s. In the last five years, we have developed one strategic plan and are completing another; made significant increases in the diversity of the faculty, staff, student body, and Board of Trustees; shared programs and courses with other law schools through video and online technology; developed joint interdisciplinary programs with neighboring universities; expanded relations with foreign law schools; established senior administrative positions dedicated to student affairs and academic support; designed and built an award-winning classroom building with state-of-the-art technology and environmental features; and made rapid advances in technology which, though never

4. W.S. GILBERT, *IOLANTHE, OR THE PEER AND THE PERI* act I (1882), reprinted in IAN BRADLEY, *THE COMPLETE ANNOTATED GILBERT AND SULLIVAN* 375 (1996).

5. Wroth, *supra* note 1, at 378.

enough, have made the web and electronic communication integral to both the academic and administrative life of the institution.

Five years ago, everybody was doing some of these things. The point is that today, the demands of a world being made daily smaller through rapid social and technological change mean that we must all do all of them as a matter of course to keep up. We are tempted to ask whether any of this activity helps us better to address the fundamental challenge of training lawyers who serve their clients and the public with professional skill, moral integrity, and humane vision. Who among us has had time to step back and truly press that question as the world roars by? We tend to take an affirmative answer on faith and forge ahead, trying not to look over our shoulders in the role of either Lot's wife or the long-distance runner.

Assuming an affirmative answer, the true challenge today is to harness all the rapidly moving currents of change in a vision of a law school that will still meet the timeless challenge of legal education. Developing such a vision in this dot com world is an uncertain business. We must proceed on three assumptions: (1) our society will continue to have significant need for well-trained, competent, ethical lawyers, but rapid change will create new demands and opportunities for non-lawyers with specialized legal knowledge and skills; (2) technology, advanced beyond what we now have, will offer new methods for delivering instruction to those who are preparing to practice law, as well as for reaching new markets with new forms of instruction and new configurations of legal content; and (3) though distance learning and telecommunication will be a major component of all legal education, full-time faculty and students will still seek out the collegiality of a campus-based community of teachers and learners.

If you accept these assumptions, we are led to the conclusion that the law school of the next decade must still be a source of rigorous teaching and scholarship. It must connect with a variety of other institutions around the world through technology and direct exchange in ways that will immeasurably broaden the offerings available to its students. Law schools will still offer full-time professional instruction on campus, with teachers equipped and able to deliver that instruction in the classroom and at remote sites by both electronic and traditional means. At the same time, our schools must offer their strengths to a variety of other audiences at other institutions or in professional or commercial settings in both degree and non-degree programs. In sum, law schools must use both their talent and their technology to serve the changing world with their expertise and ingenuity in all areas of law and policy.

Fulfillment of this vision depends first on comprehensive strategic planning—in all aspects of the academic program, for marketing and admissions strategies, to increase diversity and improve the campus climate for all students, for the enhancement and organization of technology, for the continued improvement of the school's physical plant, for a comprehensive long-range alumni and development effort, and for financial strategies to emphasize conservation and reallocation of resources. With such planning, we can achieve a number of more specific goals that underlie the vision:

1. The core J.D. program must retain its traditional intellectual rigor but must be adapted to the changing needs of the profession and the public, and the faculty

must become familiar with and use new teaching methods and technology in delivering that program. Experiential programs, interdisciplinary studies, alternative dispute resolution, and international and comparative law are fields in which all law schools must expand.

2. All components of the academic program must be reviewed and repackaged to serve new needs, new constituencies, and new markets as opportunity demands.
3. The technology platform of the law school and its connectivity must be continually expanded to assure the capacity to serve the needs of traditional students and to deliver programs to new types of students in distant and nontraditional markets.
4. The physical facilities of the law school must be upgraded to house changing technology and teaching methods while preserving the individual spirit of each institution.
5. In all programs, the law school must attract a diverse faculty and student body of the highest quality and must provide adequate academic and nonacademic support for all students.
6. The law school must allocate its existing resources efficiently and must seek new program revenues and increased philanthropic support from alumni and others.

Five years ago, I declared that the challenge—and the goal—of legal education was to train lawyers “to love the law and to practice it with integrity, honor, moral sense, common sense, skill, intelligence, vision, humanity, enthusiasm, and pleasure, to practice the law as a public profession.”⁶ We can have no higher goal today, though we might add the hope that we can instill the same values in the non-lawyers to whom increasingly we extend our offerings. As the context and the setting of legal education change, we must learn to adapt to those changes in modes of delivery, in demands of students, in the needs of society, so that we can stay focused on the overriding need to meet the old familiar challenge, the one that doesn’t go away

6. *Id.*