

035 A Law Department Built to Last

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Faculty Biographies

Amiram Elwork

Dr. Amiram Elwork is a psychologist specializing in working with the legal profession. He is president of the Vorkell Group, Inc., a firm that publishes books, provides organizational and individual consultation, and conducts workshops and retreats for professionals and professional services firms. Dr. Elwork is also the director of the law-psychology graduate training program at Widener University near Philadelphia.

Prior to his position at Widener University, Dr. Elwork was the director of the law-psychology program that is jointly administered by Hahnemann and Villanova Universities. His first line of research was on the effectiveness of jury instructions. Serving as a forensic expert on issues related to mental health law, he became increasingly aware of the high level of distress among lawyers and wrote a book on his findings.

Dr. Elwork has served on the Pennsylvania Bar Association's Task Force on Life Balance. In addition to his interest in enhancing the psychological skills of lawyers, he is very interested in improving the quality of public education in the nation and has served his community on this matter in several capacities, including as a school board member.

Dr. Elwork received a BA from Temple University, a PhD from the University of Nebraska, and served his internship at the University of Pennsylvania's Center for Cognitive Therapy.

James R. Jenkins

James R. Jenkins is senior vice president and general counsel of Deere & Company in Moline, Illinois. He is the chief legal officer for Deere & Company worldwide, with executive management responsibility for the law, patent, and government affairs departments. One of the world's oldest and most respected enterprises, Deere & Company creates smart and innovative solutions, in the form of advanced machines, services and concepts, for customers on the farmsite, worksite, and homesite worldwide.

Before he joined Deere & Company, Mr. Jenkins was vice president, secretary and general counsel at Dow Corning Corporation in Midland, Michigan. He served in a variety of leadership roles while at Dow Corning—including the senior management team responsible for the resolution of the breast implant controversy, and participation on the corporate executive, finance, trademark, and public policy committees.

Mr. Jenkins currently serves on the boards of directors of ACCA, the Putnam Museum (Davenport, Iowa), and the Illowa Council of Boy Scouts of America. He is also a member of the American Law Institute, the Executive Leadership Council, and is chair of the Alma College Board of Trustees.

Mr. Jenkins received a BA from the University of Michigan. He then served in the U.S. Army, including a year as an interrogation officer at the Combined Military Interrogation Center, Saigon, Vietnam and was awarded a Bronze Star for meritorious service. Following his military service, he received a JD from the University of Michigan Law.

Anastasia D. Kelly

Anastasia D. Kelly is executive vice president and general counsel for Sears, Roebuck and Co., where she has responsibility for the law department, public affairs, government affairs, and the office of the corporate secretary.

Previously, Ms. Kelly was senior vice president, general counsel and corporate secretary for Fannie Mae in Washington, DC. Prior to joining Fannie Mae, she was a partner at Wilmer, Cutler & Pickering in Washington, DC, where she practiced in the area of corporate and securities law. She also practiced with the law firm of Carrington, Coleman, Sloman & Blumenthal in Dallas.

Ms. Kelly serves on the board of directors of ACCA and Lawyers for Children America; she is also a member of the Woodrow Wilson International Center for Scholars.

Ms. Kelly graduated *cum laude* from Trinity College and received her law degree *magna cum laude* from George Washington University National Law Center.

Matthew P. Mulroy

Matthew P. Mulroy is vice president and assistant general counsel for Willis North America, Inc. in Nashville. While not his sole focus, he is the primary employment lawyer for the U.S. operations of the world's third largest insurance brokerage firm. Mr. Mulroy currently works on litigation management, mediation, commercial contracts, affirmative action/diversity, and general employment law matters.

Previously, Mr. Mulroy was vice president of legal affairs for the Hermitage Health and Life Insurance Company.

Mr. Mulroy serves on ACCA's board of directors and served previously as chair and vice chair of ACCA's Small Law Departments Committee, chair of ACCA's Council of National Committees, and on the board of directors of ACCA's Tennessee Chapter.

Mr. Mulroy received a BS *cum laude* from the University of Tennessee School of Business and a JD from the University of Tennessee School of Law.

Mark R. Siwik

Mark R. Siwik is senior counsel with Risk International where he counsels commercial policyholders on insurance claims and acts as their settlement representative. He is also coeditor of *Success Briefs for Lawyers: Inspirational Insights on How to Succeed at Law and Life*, a book of autobiographical essays written by distinguished lawyers on goals and values for the legal profession. He is a member of The Vorkell Group, which trains lawyers on how to achieve professional excellence.

Prior to joining Risk International, Mr. Siwik practiced insurance coverage law and was a partner with the Ohio law firm of Brouse McDowell. He also clerked for the Honorable John M. Manos of the United States District Court for the Northern District of Ohio.

Mr. Siwik is a member of ACCA, the ABA, Ohio State Bar Association, and the Akron Bar Association. He is the former chair of the Ohio State Bar Association's Law Office Automation & Technology Committee. The Akron Bar Association has twice honored him for his leadership in the legal community.

Mark received his BA *summa cum laude* from the University of Akron and his JD from the University of Cincinnati where he was a member of the Order of Coif and Order of the Barristers.

William A. Wise

Corporate Counsel

Analog Devices, Inc.

Section One

Program Overview

Did you know that by 1983, one-third of the 1970 *Fortune 500* companies had been acquired or broken into pieces, or had merged with other companies? Sadly, the average life expectancy of a corporation today is below 20 years. In some respects, a short corporate life expectancy is to be expected because corporations are relative newcomers in the course of human history, having been around for only 500 years. In other words, we have much to learn about how to get companies to exploit their full potential.

In the last ten years, researchers have begun studying enduring companies – companies that beat the high mortality rate and are considered to be preeminent in their field. There are several success factors, but a primary one is the development of a value system. In his seminal work entitled “The Living Company,” Arie de Gaus explained:

The manager of a living company understands that keeping the company alive means handing it over to a successor in at least the same health that it was in when he or she took charge. To do that, a manager must let people grow within a community that is held together by clearly stated values. The manager, therefore, must place commitment to people before assets, respect for innovation before devotion to policy, the messiness of learning before orderly procedures, and the perpetuation of community before all other concerns.

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Above all, in the living company, members know “who is us” and they are aware that they hold values in common. They know the answer to the definitive question about corporate identity: What do we value? Whoever cannot live with the company’s values cannot and should not be a member. The sense of belonging pulls together even the most diverse members of the company.

De Gaus, *The Living Company*, Harvard Business Review, p.51 (Mar.-Apr. 1997).
Stanford researchers, J. Collins and J. Porras, reached the same conclusions in their work entitled *Built to Last – Successful Habits of Visionary Companies* (1994).

What can corporate counsel learn from these research studies as we enter the third generation of legal departments and in-house counsel? What makes a truly successful corporate counsel and legal department? What factors impede corporate counsel from having the impact, success, and fulfillment that is consistent with the "Built to Last" theme?

The objective of this program is to explore the degree to which values can positively affect the practice of law, in the same way that they matter for the vitality of corporations. In so

doing, our goal is not to judge what values are appropriate but only to show that values impact the way that corporate counsel feel about their jobs, their work environment, and the way the company uses legal services.

When you think of values, it may be helpful to keep in mind the following categories that have emerged from the numerous research studies on the impact of values on human relations. As you go through this list, remember that everyone shares these values to a greater or lesser extent. The difficulty arises from resolving conflicts internally and interpersonally, respecting and appreciating diversity in value systems among people, and knowing how to use values to achieve individual and organizational effectiveness.

Value Descriptions

Financial well-being. The dimension of values that relates to material needs, economic achievement, security, wealth and status.

Work. The dimension of values that relates to being productive, ambition, goal orientation, personal advancement, strive and drive.

Character. The dimension of values that relates to the qualities of integrity, trust, honesty, loyalty, responsibility, honor, courage, and discipline.

Society. The dimension of values relating to community, including finding purpose in causes, sacrifice for others, altruism, advancing justice and fairness for all, standing up for what is right, nobility.

Personal Growth. The dimension of values relating to creative freedom and self-expression of full abilities, imagination and curiosity, continuous growth, intellectual and emotional self-fulfillment.

Relationships. The dimension of values relating to human bonds, family, friendship, love, and group affiliation.

To explore the relationship between values and building a law department to last, we have adopted the hypothetical scenario format used in the Fred Friendly public television programs that have appeared on PBS since 1984. The Friendly programs are known for their use of the Socratic Dialogue and their success in compelling viewers to confront knotty but essential issues in their own mind.

As you listen to the panel discuss the hypotheticals, please remember that the problem-solving will not result in solutions that are satisfying for everyone. Choosing one worthy thing may deny others. Further, our questions do not have right or wrong answers - the goal will be to have honest answers and to illuminate the fact that struggling with dilemmas is the best way to clarify our values and to align our behavior and that of the corporation with those values. Our

answers will not be as important as whether we reach them in a way that promotes better understanding of the issues and of ourselves.

Section Two

An Essay On A Values-Based Approach To The Practice Of Law

INTRODUCTION

To achieve a satisfying and rewarding career in the practice of law, a lawyer must learn and continually develop abilities in three disciplines: (1) knowledge of the law and legal procedures; (2) practice skills required to represent and serve clients in legal matters; and (3) personal and organizational leadership and management skills essential to creating the right environment in which to provide legal services. This third domain is the area where we have spent the least time as a profession and as a result we tend to rely on experience and the example of others—sometimes that works, sometimes it doesn't. There were no law practice leadership or management classes when I went to law school and for the most part the subject remains ignored by practicing attorneys and bar associations.

We often complain that the quality of the legal profession is declining because it is becoming too much of a business. Some say we need to be more professional. To look at the problems in our profession as being a choice between becoming more professional or being better business people is a mistake. We are a profession *and* a business and to find long term success and satisfaction, we must build careers which are based on fundamental and enduring values.

Values help create satisfaction and fulfillment at three levels:

- the *individual* level—creating our law practice
- the *organizational* level—building a law firm or legal department
- the *professional* level—serving as counselors of law and officers of the court

PART ONE

The Joy Of Lawyering.

To some degree the problems and stresses we face are not new or unique. Consider for a moment that a century ago, Oliver Wendell Holmes was asking lawyers how to make out a life when practicing law was seemingly nothing more than “the laborious study of a dry and technical system, the greedy watch for clients, and the practice of shopkeeper's arts.”

Over the last 30 years, the problems in finding joy in the practice of law have become even more pronounced. In large part, the problem has been that we, like all of society, have become obsessed with time. In fact, the number one complaint in large firms (fifty or more lawyers), medium-sized firms (fifteen to forty-nine lawyers) and solo to small firms (one to fourteen

lawyers) is long hours and an overly burdensome workload—in short, time. The cries are too many billable hours or not enough time to meet client demands. How do we solve the problem of time?

The solution is to put time in its proper place and consider what is the purpose of being a lawyer. In some respects, our professional identity has become tied to identifying how much time we are spending on something. Historically, however, lawyers were paid on the basis of value added, as opposed to time spent, working on a client's problem. It's only in the last 30 years that we have become accustomed to hourly billing and have begun to refer to all other types of billing as "alternatives."

The problem in measuring the value we add to a situation is not as difficult as we think it is. Generally, legal problems fall into four basic types:

1. "Commodity" services—services for which any good lawyer can perform the service and for which clients tend to shop for the best price (e.g., preparation of a will/60% of legal work);
2. "Brand name" services—services that are more important to a client, but still somewhat routine, institutional reputation for doing a particular kind of work may be important (e.g., estate planning work/20% of legal work);
3. "Experiential" services—high impact and high risk work where the best possible lawyer must be retained (e.g., business with IRS tax audit/16% of legal work); and
4. "Unique" or "Bet the Company" services—services crucial to a company's survival (e.g., business in need of debt restructuring/ 4% of all legal work).

Looking at the types of services we perform, it is obvious that the chief mistake the legal community has made is that it values each of its hours and its services identically.

To overcome our obsession with time, we must look at the value of the service we are really providing a client. In doing that, we discover the first principle of success and satisfaction is recognizing that becoming a lawyer is a calling to *service*. Louis Brandeis said it best:

Some people buy diamonds and rare works of art, others delight in automobiles and yachts. My luxury is to invest surplus effort beyond that required for the proper support of my family to the pleasure of taking up a problem and solving or helping to solve it for the people without receiving any compensation.

We also discover the related principles to practicing law with joy—***creating and constantly nurturing a service-related practice we love***. For as Thomas Jefferson said "it is neither wealth nor splendor, but tranquility and occupation, which give happiness."

How do we find tranquility in our occupation as a lawyer? Holmes's answer was to create it. He would say that *"if a lawyer has the soul of Sancho Panza, the world to the lawyer will be Sancho Panza's world; but if the lawyer has the soul of an idealist, the lawyer will make—I do not say find—his or her world ideal."* Contemporary composer and conductor Lukas Foss preaches something similar to his music students. He tells them that *"if one uses music that one does not really love, then one will not succeed in making it one's own. Therefore, you must steep yourself in music you really love and then find a way to express that love."*

So it is with the practice of law. We must define our practice. As former ABA President John J. Curtin said the *"question each lawyer must answer for himself or herself remains the same: What kind of lawyer do I want to be?"* Dr. James M. Read encourages lawyers to consider the following questions on a regular basis:

Where do I want to be in 5 years, 10 years, and how realistic are these goals?

Am I using my time and energy effectively in progress toward these goals?

Is my lifestyle properly balanced between work, family, friends, play, and so forth?

Do I have an accurate sense of my responsibility or do I try to do too much and fail to acknowledge my limitations?

Do I handle disappointments and losses satisfactorily?

How am I coping with the stresses, worries, anxieties and other painful emotions in my life?

What is the quality of my personal relationships with others? Friends? Family? Loved ones?

From whom do I receive emotional support—and to whom do I give the same? Do I avoid asking for help because I am afraid of appearing weak?

Am I truly able to give and receive love? How do I express my feelings for and to others?

What is my day to day interaction with staff and colleagues like? Am I a positive, helpful, contributing source of support and energy or am I a toxic source of stress and criticism?

What is most important in my life? Is my behavior consistent with this value?

Similar questions can be posed to law firms or law departments:

What is most important to the firm?

What contribution can we make?

What is the meaning of what we do?

What are we about?

What do we want to be?

What do we want to do?

What is best, highest, noblest?

Once we capture these aspirations, they should be recorded in a mission statement. Once you create the mission, you must constantly work on executing a game plan that is consistent with your fundamental mission. This is a continual process as explained by Robert Frost:

My object in living is to unite

My avocation and vocation

As my two eyes make one in sight.

Only when love and need are one,

And the work is play for mortal stakes

Is the deed ever really done

For heaven and the future's sakes.

In sum, satisfied lawyers have taken ownership of their careers. They possess strong leadership and management skills, they have pride in their vocation and they are diligent in monitoring their professional and personal development. They display the attitude of J. Harris Morgan, a lawyer in Greenville, Texas: "I was honored to be called to the State Bar of Texas 36 years ago, have practiced law continuously, and since that time I've never 'worked' a day in my life."

PART TWO

The Making Of A Law Firm Or Legal Department.

Nothing is more heart-wrenching than to watch the disintegration of law firms and law practices because of an inability to maintain a cohesive organization. In some instances, the turnover in personnel is so great, lawyers look like "free agents." Others, particularly women and minorities, struggle with obstacles such as balancing family and work or advancing within the organization. This section focuses on the ideal qualities of a law firm. In talking about law firms, however, remember that the principles for building a law firm apply to all successful organizations including legal departments.

The key to building a law firm is to ask what type of a law firm you want and then to design a system that is compatible with the personality of the firm. Law firms essentially fall into two categories:

1. The Confederation Model
2. The Unity Model

The *confederation* model typically has the following characteristics:

1. Each lawyer develops individual client relationships.
2. Independence. Each lawyer is viewed as the master of his or her own work and client.
3. Statistical model is used to determine compensation based on one or two criteria:
 - a. business generation and/or
 - b. personal productivity (billable hours worked).

The *confederation* model may also have some or all of the following undesirable characteristics:

1. Competition between practice areas or lawyers for clients.
2. Lack of accountability—work hoarding, ineffective delegation.
3. Inability to cross-sell and market as a firm because lawyers are rewarded for originating and producing their own business.
4. Undue emphasis on short-term performance at the expense of sound long-term planning and decision-making.
5. Insufficient attention to personal development, emotional health and balancing work and family.

What then is a *unified* firm? It is imbued with the philosophy of America's most successful basketball coach, John Wooden, who defined life as "*the united effort of many.*" It is a firm which moves beyond talking about what clients each lawyer has, how the partnership will affect each person's overhead, and how each potential partner's reputation may affect the partnership. At bottom, it is a firm comprised of lawyers who want to create something better than what they can do individually.

Jeffrey Tolman, a lawyer in Washington, suggests that lawyers need to focus on the human questions when practicing law together:

1. How do potential partners view their jobs?
2. How do they view the office in relationship to their families, friends, hobbies, and leisure time?
3. What are their outside interests?
4. How do they view and treat staff and associates?

Tolman argues that if potential partners have dissimilar answers to these questions, their partnership is likely to suffer dysfunction or ultimately fail. Scott Hunter, a management consultant on the West Coast, makes the same point. He argues that successful law partnerships must possess the following qualities: (1) a shared vision; (2) inclusion; (3) trust; (4) listening skills; (5) respect for each other; (6) open and honest communication; (7) compassion for each

other's feeling; (8) no internal competition; (9) no righteousness and (10), a willingness to embrace the differences.

What then would the ideal law firm or department look like? To me, the ideal legal organization would have the following attributes:

1. Fair & Balanced Compensation. Design a compensation system to build, not destroy firms. Business origination and personal productivity are only two measuring sticks for compensation. Other equally weighted factors include:
 - a. Client Service—obtain client feedback through client surveys and reward the lawyers who exceed client expectations thereby strengthening client relationships.
 - b. Project management and team management—the value in managing client projects and deploying appropriate resources to bring about cost-effective results.
 - c. Quality of work—reward those who add value by using intellectual creativity and knowledge to solve clients' problems.
2. Emphasis on Personal Development. In many places, training and mentoring have become things of the past. But development of human resources should be our foremost consideration.
3. Commitment to Universal Advancement. One of the most distressing developments in the profession has been the inability to accommodate the needs of working parents, particularly women. Studies show that when support is provided, women who seek more family time will be as productive as men, particularly once their children are 10 years old. The solution then is to allow flexible alternative work schedules. Further, parents who choose to work part-time should be promised the same opportunities for advancement, albeit at a slower rate or lesser rate of pay.

Our profession needs diversity and I am persuaded that many of the healthiest changes have been brought about by the infusion of women and minorities in the legal workplace. Further, the best lawyers are those with well-rounded life experiences. One of my favorite passages on this point is a letter from Supreme Court Justice Felix Frankfurter to a 12 year old boy aspiring to be a lawyer:

My dear Paul:

No one can be a truly competent lawyer unless he is a cultivated man. If I were you I would forget all about any technical preparation for the law. The best way to prepare for the law is to come to the study as a well-read person. Thus alone can one acquire the capacity to use the English language on paper and in speech and with the habits of clear thinking which only a true liberal education can give. No less important for a lawyer is the cultivation of the imaginative faculties by reading poetry, seeing great paintings, in the original or in easily available

reproductions, and listening to great music. Stock your mind with the deposit of much good reading, and widen and deepen your feelings by experiencing vicariously as much as possible the wonderful mysteries of the universe, and forget all about your future career.

Some may criticize this description of a unified firm as too idealistic. To that I say, look at the best and most enduring companies in this country. Study them and you will find that a key to their success is that they work diligently to build a company, not to earn profits. They have a pragmatic idealism. David Packard of the Hewlett Packard Company described this pragmatic idealism as follows:

I want to discuss why a company exists in the first place. In other words, why are we here? I think many people assume, wrongly, that a company exists simply to make money. While this is an important result of a company's existence, we have to go deeper and find the real reasons for our being. As we investigate this, we inevitably come to the conclusion that a group of people get together and exist as an institution that we call a company so they are able to accomplish something collectively that they could not accomplish separately—they make a contribution to society, a phrase which sounds trite but is fundamental. . . . You can look around [in the general business world] and still see people who are interested in money and nothing else, but the underlying drive comes largely from a desire to do something else—to make a product—to give a service—generally to do something which is of value. So with that in mind, let us discuss why the Hewlett-Packard Company exists. . . . The real reason for our existence is that we provide something which is unique and makes a contribution.

32 years later, Hewlett-Packard's CEO John Young was saying the same thing:

Maximizing shareholder wealth has always been way down the list. Yes, profit is a cornerstone of what we do—it is a measure of our contribution and a means of self-financed growth—but it has never been the point in and of itself. The point, in fact, is to win, and winning is judged in the eyes of the customer and by doing something you can be proud of. There is a symmetry of logic in this. If we provide real satisfaction to real customers—we will be profitable.

These principles for building companies apply to building law firms. Instill a common purpose throughout the firm; give it reasons for existence beyond just making money. Develop also a core set of values. Former IBM chief executive Thomas J. Watson said it best in his 1963 booklet, A Business and Its Beliefs:

I believe the real difference between success and failure in a corporation can very often be traced to the question of how well the organization brings out the great energies and talents of its people. What does it do to help these people find common cause with each other? . . . And how can it sustain this common cause

and sense of direction through the many changes which take place from one generation to another? [I think the answer lies] in the power of what we call beliefs and the appeal these beliefs have for its people. . . . I firmly believe that any organization, in order to survive and achieve success, must have a sound set of beliefs on which it premises all its policies and actions. Next, I believe that the most important single factor in corporate success is faithful adherence to those beliefs Beliefs must always come before policies, practices, and goals. The latter must always be altered if they are seen to violate fundamental beliefs.

In short, the great and enduring firms, large and small, are comprised of lawyers who share a common belief system and vision. In turn, they are able to articulate those beliefs and vision into long and short term goals and objectives with a constant focus on what is best for the common good.

PART THREE **Values and Professionalism.**

Defining professionalism is like trying to define obscenity—it's hard to describe but you know it when you see it. The Delaware Supreme Court offers this definition: "Professionalism goes beyond the minimum standards required of all lawyers . . . Professionalism is a higher standard expected of all lawyers . . . [It] embodies an attitude and dedication to civility, skill, businesslike practices and a focus on service, rather than making money." In re Mekler, Del. Supr., No. 305, 1994, slip op. at 25-26 (November 27, 1995) (per curiam).

In my view, there are two aspects of being a legal professional—(1) counseling our clients and (2) serving as officers of the court. How we approach these dual roles will dictate in large measure the degree of satisfaction we feel.

With regard to being a counselor, two principles merit discussion. The first principle is a recognition that ultimate responsibility belongs to the client. Clients are a little like the seven dwarfs; they come in all shapes and types. Some are greedy, some are dopey, some are angry, some are shift. As such, we need to make sure that they, not we, assume responsibility for their problems. Former Xerox counsel and ambassador Sol Linowitz tells a story that brings this point home:

One of my clients was a farmer who had a sizeable farm and came in regularly with a litany of failed crops, broken machinery, overdue mortgages, too much rain, too little rain, et cetera. I tried to be helpful, even gave him ideas he might use to make his farm a more businesslike proposition, but to no avail. After one listening session, I said to him, "Do you think the problem could be that you are just not a good farmer?" He stared at me, got up, and left without either a word spoken or a bill paid.

According to Kenneth Nolan, the hard-learned lessons in lawyering are these:

1. Beware the client who proclaims: "Money isn't important. It's the principle."
2. Ask the righteous for a sizeable retainer.
3. Avoid the greedy client. "This client will never believe you, never trust you. A reasonable settlement is never enough, a final offer or demand is a mere gambit. There is always more, another offer, another dollar. Your money they will want to spend. Your time they will want to use."
4. Remember that if you promise revenge, you will fail. For the clients who insist on it, make them go to court to observe the system with all its flaws and inequities. If an education won't convince the client, try the case.
5. Good people don't always win. Good cases occasionally lose.

Finally, remember that you don't have to take every case and that you can, within the bounds of the disciplinary rules, fire the client. In fact, noted speaker and lawyer Jay Foonberg recommends that very thing. Foonberg tells other lawyers that one sure way to reduce stress is to review your client roster, single out the most disruptive or worst client and either withdraw from the representation or transfer the representation to another lawyer.

The second principle is to act like a counselor first and a barrister second. We must remember that clients are people with genuine human and business breakdowns. To correct those breakdowns, we must look at the full range of options and litigation should be the last and least desired option.

When the consumer brings his problems to a lawyer, he needs holistic advice. He should be told the alternatives available and the probable consequences to choose his best option. What he probably does not need is a lawyer who knows only how to sue, who is ready to dispatch a demanding letter to the enemy and prepare for courthouse battle. That lawyer is like the doctor whose only answer to pain is to operate.

Judge Thomas Reavely's words echo the sentiments of another lawyer, Abraham Lincoln. Lincoln advised younger lawyers to "persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser—in fees, expenses and waste of time. As a peacemaker a lawyer has a superior opportunity of being a good person."

Today, there is a universal cry about the lack of civility in our profession. Former ABA President N. Lee Cooper conducted a survey of presidents of local and state bar associations. Ninety percent of the respondents believed civility was a problem in their jurisdiction. Ninety percent believed the problem was defined by diminished respect among lawyers. The April 22, 1996 issue of U.S. News and World Report reported the findings of a poll of the general public—lawyers are regarded as symbols of everything that is crass about American society.

How can this be? Could some small measure of this phenomenon be caused by lawyers

occasionally forgetting that values and integrity are their best asset and that the best element of advocacy is courtesy? In discussing these points, I frequently refer to my favorite passage in the masterpiece To Kill a Mockingbird. The passage comes at the end of the trial of Tom Robinson, the innocent black man accused of raping a white woman. Robinson's lawyer is Atticus Finch, the town's best lawyer.

At the end of the trial, the jury is brought into the courtroom. The courtroom balconies are overflowing with Tom Robinson's supporters. Having sneaked into the courtroom to watch the trial, the balconies also contain Atticus Finch's son, Jem and his daughter, Jean Louise whom we know as "Scout." When the jury pronounces its verdict as guilty, hope disappears and a weary Atticus Finch slowly gathers his papers and begins to make his way out of the courtroom. As he exits the courtroom in front of the balconies, every one of Tom Robinson's neighbors, family and friends stands out of respect for Atticus—everyone except little Scout who can't believe what she has just witnessed. At that moment, Reverend Sykes leans over and says in a loud whisper: "Miss Jean Louise . . . Miss Jean Louise, stand up. Your father's passin'."

What moves us all about the scene is the love and respect the African-American community had for Atticus Finch even though his client and their friend Tom Robinson was convicted. You see what they saw in Atticus was a human being whom they trusted to do the best he could in an imperfect world and imperfect legal system. Trust is the foundation of all we do and the foundation of our legal system. Look at the history of lawyers. The earliest lawyers in ancient Greece were speech writers who secretly prepared scripts for litigants to recite before the court. At that time, it was rare for the lawyer to appear on the litigant's behalf and if the lawyer did, it was an interested friend whose appearance was assumed to mean the lawyer personally believed in the litigant's character and cause. Some would argue that the public's distrust of lawyers is based on a perception that lawyers have moved too far from these origins, that we have become too facile in our representation and that we really don't believe what we are saying. In short, we are susceptible to practicing law without respect for our soul.

To keep our soul, we must preserve our values, both professional and personal values, for as Judge Charles Wyzanski once said values remind us that "life is not a game, nor is it the opposite: a struggle of deadly serious implications. That is, it is not a wager of Heaven or Hell. No such gamble is offered to man. He plays for less substantial stakes—for an ethically satisfactory life while on earth."

What are the benefits of an ethically satisfactory life while on earth? For me it means the ability to do one's work honorably in service of his or her family, profession, and community and then to sleep well at night. Recently, PBS television ran an hour long special on character and the American Presidency. The show involved a discussion led by biographers or assistants to the past nine Presidents, people of the caliber of Stephen Ambrose, Ben Bradlee and Peggy Noonan. One of the most fascinating points of the show involved a discussion of two great lawyers, both of whom served as President of the United States. The first lawyer threw his whole career away in a single act of foolishness and cover-up called "Watergate" and then spent the last 20 years of his life trying to repair his reputation. The second lawyer followed the first lawyer and in pardoning him for his alleged crimes, sacrificed his opportunity for reelection in order to save his

country from additional emotional turmoil. And while that second lawyer lost an opportunity to continue as President, he never the lost the ability to sleep well at night.

Courtesy is the best element of advocacy because the way we do things counts as much as what we do. Juries and judges see through incivility—they view it as a sign of weakness rather than strength, and as an effort to obstruct rather than to present fairly the facts and the law. Barry Fish, formerly of the Phoenix, Arizona firm, Lewis & Roca, describes the “classy courteous lawyer” as follows:

A Classy Lawyer

Being a classy lawyer is important because it's a small town. If you are not classy, word gets around. Classy lawyers get better results. Judges, juries, and appellate courts trust classy lawyers more.

It's more efficient. Less time is wasted on needless (often petty) disputes. It's more economical. Classy lawyers get things done with less hassle—quicker and cleaner.

Classy lawyers get more referrals. It's good for the firm. A firm with a classy reputation provides each of its members with tremendous advantages.

Rules for Being a Classy Lawyer

Being tough doesn't mean macho; being civil doesn't mean weak.

Give extensions, unless true prejudice results to the client.

Waive formalities, unless true prejudice results to the client.

Cooperate on scheduling.

On discovery, play the game straight.

Focus on substance, not form.

View compromise as a tool.

Always be punctual.

Treat all other attorneys and staff with utmost courtesy and respect.

Summed up, to return our profession to public respect and to feel good about our service, we must move beyond being simply barristers who try cases in court. We must reclaim our historic role of “counselors at law.” Further, we must remember that deference to the court and obedience to the law takes precedence over one’s duty of loyalty to a client. An opinion from the Eleventh Circuit describes our duties as professionals well:

All attorneys, as “officers of the court,” owe duties of complete candor and primary loyalty to the court before which they practice. An attorney’s duty to a client can never outweigh his or her responsibility to see that our system of justice

functions smoothly. This concept is as old as common law jurisprudence itself. In England, the first licensed practitioners were called “Servants at law of our lord, the King” and were absolutely forbidden to “decei[ve] or beguile the Court.” In the United States, the first Code of Ethics in 1887, included one canon providing that “the attorney’s office does not destroy . . . accountability to the Creator,” and another entitled “Client is not the Keeper of the Attorney’s Conscience.”

Unfortunately, the American Bar Association’s current Model Rules of Professional Conduct underscore the duty to advocate zealously while neglecting the corresponding duty to advocate within the bounds of the law. As a result, too many attorneys have forgotten the exhortations of these century-old canons. Too many attorneys, like defense counsel in this case, have allowed the objectives of the client to override their ancient duties as officers of the court. In short, they have sold out to the client.

We must return to the original principle that, as officers of the court, attorneys are servants of the law rather than servants of the highest bidder. We must rediscover the old values of the profession. The integrity of our justice system depends on it.

Malautea v. Suzuki Motor Co., 987 F.2d 1536, 1546-47 (11th Cir. 1993) (footnotes omitted).

PART FOUR **How Can We Change Things?**

We always end our programs with question and answer sessions where we talk about problems that may be affecting particular lawyers. Sometimes, these sessions take on an air of helplessness as if the audience is powerless to do anything about their complaints. In these moments, we become even more committed to reminding ourselves how we can make changes in our lives and our practices.

The first principle in effecting change is to remember that it starts with you. A tomb of an Anglican Bishop in the crypts of Westminster Abbey reads as follows:

When I was young and free and my imagination had no limits, I dreamed of changing the world. As I grew older and wiser, I discovered the world would not change, so I shortened my sights somewhat and decided to change only my country.

But it, too, seemed immovable.

As I grew into my twilight years, in one last desperate attempt, I settled for changing only my family, those closest to me, but alas, they would have none of it.

*And now as I lie on my deathbed, I suddenly realize: **If I had only changed my self first**, then by example I would have changed my family. From their*

inspiration and encouragement, I would then have been able to better my country and, who knows, I may have even changed the world.

The second principle for effecting change is that we must be proactive. As George Bernard Shaw said:

People are always blaming their circumstances for what they are. I don't believe in circumstances. The people who get on in this world are the people who get up and look for the circumstances they want and if they can't find them, they make them.

Of all the professions, the legal profession may be one of the most difficult to change. Why? Lawyers are conservative. To solve problems, we use *stare decisis*. In other words, we look to the past to solve problems. Our mind set is risk-adverse. Other professions, however, grasp the wisdom in Albert Einstein's statement that "the significant problems we face cannot be solved at the same level of thinking we were at when we created them." Science, medicine, psychology, business—all push into new areas with an experimental mind set; so must we.

Apart from individual change, we must work within our institutions to cause change. Let me give you two positive examples of institutions working to make changes. The University of Houston Law Center has created a new course called "Personal and Professional Responsibility." The designers of this course have recognized that relationships are at the core of the human condition and that the key to long term success (whether as an individual or as a business) is healthy relationships. Litigation and win-lose thinking destroy relationships. Accordingly, the university tries to teach law students responsibility, leadership, the value of integrity, trustworthiness, and compassion. This is accomplished by inviting guest speakers such as judges, disbarred and alcoholic attorneys, other practicing attorneys, and clients. Students also address issues such as honesty, stress management, addictive behavior and developing habits that lead to personal and professional satisfaction. Comments from students underscore the importance of this training:

Before long I realized that the problem was that my core values were out of sync with what law school seemed to be about. Much to my horror—after years of dreaming about being here—I felt that "I did not belong." Just when I had decided that I did not care anymore, I had the good fortune to join Professor Mixon's Professional Responsibility class. This experience, for several different reasons, has changed my life forever. . . . To my great delight, I have read between the lines that there really is nothing wrong with me at all—what's out of sync is law school and the profession itself. My core values are where law was at one time, and where other professions are striving to be today.

* * *

When is mere hard work good enough? The answer for the ego-driven lawyer is "never." And money, success, victories and whatever else we pursue in this profession will never be enough to feed that which drives us. . . . How can I practice in such a way that I am not pursuing satisfaction but I am satisfied every

step of the way? Can legal practice be constructive rather than destructive, consensus-building rather than adversarial, healing rather than predatory? My hope is that I can leave here, practice law in a way that I can be proud, and live life without slipping by unnoticed.

Another example is taking place in Cincinnati, Ohio. There, the Cincinnati Bar Association and the University of Cincinnati College of Law have developed the Cincinnati Academy of Leadership for Lawyers (CALL). This program focuses on practical, professional and ethical issues facing attorneys in the greater Cincinnati area. It attempts to cultivate integrity and high ideals to elevate the attorney's role to one of a leader in both the profession and the community. It also seeks to promote renewed pride in the legal profession.

The third principle for effecting change is to be patient. We must take each day one day at a time and look to make progress over the long haul. We must also be patient with ourselves. One of my favorite essays on this subject is set forth below.

If I Had My Life to Live Over

I'd dare to make more mistakes next time. I'd relax, I would limber up. I would be sillier than I have been this trip. I would climb more mountains and swim more rivers. I would eat more ice cream and less beans. I would perhaps have more actual troubles, but I'd have fewer imaginary ones.

You see, I'm one of those people who live sensibly and sanely hour after hour, day after day. Oh, I've had my moments, and if I had to do it over again, I'd have more of them. In fact, I'd try to have nothing else. Just moments, one after another, instead of living so many years ahead of each day. I've been one of those persons who never goes anywhere without a thermometer, a hot water bottle, a raincoat and a parachute. If I had to do it again, I would travel lighter than I have.

If I had my life to live over, I would start barefoot earlier in the spring and stay that way later in the fall. I would go to more dances. I would ride more merry-go-rounds. I would pick more daisies.

Nadine Stair

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