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ON RETIRING *FROM* A DEANSHIP†

John W. Reed*

The reason for the italicized "from" in the title of my remarks is to distinguish it from the comments that I made at our meeting in Tucson four years ago, under the title "On Retiring *to* a Deanship."[1] For those of you who were not there, I should mention that five years ago, as I was about to reach retirement age at the University of Michigan Law School—what the late William L. Prosser used to call the age of mandatory senility—Wayne State University in Detroit asked me to serve as its dean for a term of five years. Lobbied by our fellow Barrister, James Robinson, one of Wayne's most prominent alumni, seduced by the school's excellence and promise, and reluctant to get off the main track, I accepted the invitation. It was in that first year that I spoke to you about what it was like to make that transition.

The deanship has been mostly pleasant, though there have been days when I felt like the javelin thrower who won the toss of the coin and elected to receive. It was flattering to be asked at that age to take on such a responsibility. I remember what Mischa Elman, the great violinist, said as he was leaving for Europe on his seventieth birthday for a farewell concert tour: "When I was a twelve year old in Berlin at my debut, people said, 'My, isn't he wonderful for his age.' And they're beginning to say it again!"

Now, with what seems to me to be incredible speed, I am nearing the end of that five year term and I have elected not to consider a second appointment. This time I really shall retire. For the first time since I graduated from law school, fifty years ago this spring, I will not have the daily pressure of a full time professional commitment and responsibility. Instead, in a more relaxed setting, I shall do the mostly fun things for which there never seemed time enough before: spending more time with Dot; getting better acquainted with our adult children and their children; reading; undertaking long deferred writing projects; teaching occasionally as a visitor; and, especially, working more vigorously and diligently to make the International Society of Barristers a shining beacon for our profession.

As I approach this next transition, this retirement from a deanship, I want to

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[1] *See* 23 INTERNATIONAL SOCIETY OF BARRISTERS QUARTERLY 360 (1988).

offer some personal observations about universities, about law schools in particular, and about the legal profession.

THE UNIVERSITIES

First, about universities. Like so many other institutions in our society, universities are in change and in trouble. In substantial part, they are in trouble because of the breadth of the mission they have undertaken. I speak not only of Michigan and Wayne State but of American universities generally. The motto of the university where I went to law school, Cornell, is a quotation from the founder, Ezra Cornell. It appears on the seal of the university: "I would found an institution where any person can find instruction in any study." Though that novel concept at mid-nineteenth-century Cornell brought a welcome breath of fresh air into the stuffy classicism of the traditional university built on the European model and produced schools of forestry and home economics and agriculture and social work and the like, it led to educational empire building, program duplication, and, often, inefficiencies.

As is true of bloated commercial enterprises, the excesses were not readily apparent in prosperous times, but limited resources today have starkly revealed the seriousness of our problems. Schools ranging from Ivy League leaders like Yale to third rate teachers' colleges (now called not teachers' colleges or normal schools but universities) are eliminating academic programs because of shrinking budgets. Overall budget cuts of twenty percent are not rare, even with large increases in tuition that threaten our ideal of equal access to education. In short, there is a crisis of resources that endangers the quality of higher education.

Morever, there is widespread doubt that a return to national prosperity will bring with it a return to educational prosperity because the public seems to have lost faith in our universities. Much of the loss of faith is, of course, simply part of the public's loss of faith in institutions generally—government, the church, the professions, corporate enterprise, the United Fund, and on and on. It is not a good time for society's institutions. Some of the loss of faith in universities is the result of a bureaucratic higher education which overcharges for research projects, fields professional athletic teams in the guise of students, and awards too many degrees to students who really have not gotten an education. Recently a secretary in our office was transcribing a tape recording of a lecture at the school. The secretary is herself within a semester of graduating from the school of education and will become a teacher. And she typed the lecturer's phrase "Dead Sea Scrolls" as "dead sea squirrels"!

Another part of the problem, financial stringency aside, is higher education's ambivalence about its role, that is to say, about what it should be doing. Is the Cornell motto the proper one for the end of the twentieth century? Let me sug-

gest to you some possible goals of higher education, some of them mutually inconsistent, and ask you to consider which ones you believe in and would give priority in a time of limited resources.

Arguably, a university should:

(1) Organize and preserve the knowledge and wisdom of the past;
(2) Transmit that knowledge and wisdom to students so that
(a) they may lead fulfilling lives;
(b) they may be prepared for occupations and professions;
(c) we may have an educated and humane citizenry;
(3) Inquire deeply into the nature of the universe and of man (basic research);
(4) Support innovation and the application of technology to make us more successful in an increasingly competitive world (applied research);
(5) Encourage the creation of literature and fine art;
(6) Provide a time and place in which students can mature from adolescence to adulthood, where they can try on all kinds of ideas, all kinds of "hats," and yet largely be insulated from the consequences (many of us relied on college or university for that);
(7) Provide education for middle and late years and retraining for career changes; and
(8) Especially in an urban school like Wayne State, provide research, training, teaching, and leadership in community revitalization and the solution of social problems.

One could go on. There are other possible goals. No school can do all these things, some of which are in competition, if not conflict, with each other.

What I am suggesting is that universities can no longer be all things to all people, if indeed they ever could. Each school must determine what it can do best within its means and resolve to do that with dedication and excellence and efficiency. The danger, of course, is that efficiency is often the enemy of creativity. The popular image of the brilliant scholar as rumpled, absent-minded, and socially awkward has considerable validity. An attempt to put him in a buttoned-down-collar, time-study mode surely would be counterproductive, and the pressures for accountability in higher education do pose that kind of threat. But the universities must change. They must evolve. They must do better than they have been doing because they are critical to the future in which our children's children will live and serve.

I hope that each of you will play a role in the present and the future of your own school. Ask questions, keep informed, offer advice, and offer it again even when it seems not to have been heard the first time. Help your school obtain the financial resources it genuinely needs.

THE LAW SCHOOLS

Second, an observation or two about law schools in those universities. Although there has been relatively little fundamental change in the way law is taught, the law school of today is different in many ways from the post-World War II law school in which I began my teaching forty-six years ago this fall. The most obvious difference is in the size and makeup of the student body.

In this half century, there have been three surges in law school enrollments. The first, of course, was immediately after World War II when the GI Bill and working wives put thousands of young men through law school. Then enrollments ebbed during the Korean "police action" and remained somewhat lower for almost two decades.

The second surge came in the early 'seventies, post-Vietnam. Women's realization that law was a legitimate career choice brought them in considerable numbers to law school. Where we used to have classes in which there were three or two or no women, law schools now have classes consisting of 35% to 40% women. In an urban school like Wayne State the ratio is nearly 50:50. Indeed, the near doubling of law student population since World War II is the result of the addition of women; there scarcely are any more men in law school now than there were in that long ago time.

The third surge came in the late 'eighties. No one is quite sure what produced it. But going to law school became the "in thing." Occupations like investment banking fell into disrepute. Big city law firms paid beginning salaries that were almost obscenely high. "L.A. Law" portrayed a glamorous profession in which all lawyers have BMWs and affairs. And lawyers played leading roles in televised congressional hearings and in other dramatic public forums that caught the nation's imagination. Whatever the causes, there was a large increase in applications. In the five years that I have been at Wayne State, applications have doubled. Only now is the growth curve beginning to flatten out as the extraordinarily tight job market makes itself felt, but the applications in most law schools are still at or near their historic highs.

You can well imagine the admissions pressures. Today's admissions process is not at all like the story that our fellow Barrister and former president, Judge Douglas Hillman, tells about his own admission to the University of Michigan Law School. When Doug was an undergraduate at Michigan headed for journalism, he and Sally were playing bridge one evening with a law student friend and his wife. The friend said that he liked law studies and suggested to Doug that he too ought to consider going to law school. And they talked on into the night about it. The next morning Sally went off to work and Doug went to class. When she came home for dinner that evening, Doug said, "I have enrolled in the law school." There was no LSAT; there was no formal process at all. He just

decided one morning to go to law school, and that afternoon he was in law school. Not so these days!

The student body's contemporary diversity is not only one of gender, it is also ethnic and generational. About 15% of the members of my school's entering class this year are Black, with another 3% Hispanic and Native American. About 20% are second career students: nurses and physicians, engineers, teachers, police officers, and mothers whose children are now old enough to go to school so that the mothers can continue their own educations. As a consequence, the average age of our students is now 28, about four years older than a generation ago. Law school is a diverse and yeasty place.

Student bodies have changed, but so also have faculties and deans, perhaps even more. Law schools increasingly are torn by the conflicting demands placed upon them that they engage in more skills training and, at the same time, teach law as, primarily, an intellectual, philosophical discipline. More and more we have "law and" courses—law and sociology, law and economics, law and political science, law and literature, and the like. And so we have more and more teachers who, with law degrees and graduate degrees in these other fields, have had no practical experience in the legal profession, indeed who neither understand the legal profession nor, sometimes, even like it very well. Viewing the law as one of several disciplines employed to bring order and fairness to society is useful and important. But we stand at some risk that law schools will become more and more a kind of graduate program in the humanities and social sciences, and less and less a program of professional training.

Just a word about deans. Although the title has a certain cachet, the modern dean is limited in what she or he can accomplish. As Dean Prosser said, "The dean does what no union rules let the janitor do." Educational decisions are faculty driven. Financial decisions in these times of increased accountability and scarce resources are controlled by the central administration. It is small wonder that few deans have long tenures anymore. The median tenure of 175 current deans is about four years. There are thirty or forty deanship searches underway at any given moment.

I do not suggest, however, that there are no rewards. They include successful searches for promising young faculty members. I take special pride in the fact that Wayne State, which had never had any faculty members who had served as clerks to United States Supreme Court justices, now has two such young teachers. Other rewards consist of helping individual students overcome personal and academic problems, of seeing the pride of parents at commencement time, of getting to know hundreds of grateful and generous alumni, of seeing the reputation and standing of the school rise during one's term—those things do give one a sense of accomplishment. But the idea that a dean is a chief executive who can manage a school into his or her predetermined course of action is surely an ex-

aggeration in this day and age; and the length of the term in which to make the attempt is much shorter than when you and I were in school.

In many ways, this is a scary time for law schools because they are less sure what it is they're supposed to be doing. And the cacophony of conflicting counsel from a host of sources does not make it any easier. At the same time, however, it's an exciting time for the wise and innovative and courageous deans and faculties who will preside over the changes that must inevitably come. They will shape legal education at the beginning of the twenty-first century.

THE LEGAL PROFESSION

Third and finally, a few observations about the legal profession. I shall not say much because there already are too many people making pronouncements about lawyers. Indeed, I have done that myself in previous presentations to you, and undoubtedly I'll do it again in the future, both in person and in the pages of the *Quarterly*. I think of the story of the early-day Minnesota bride and groom going in a horse-drawn buggy from the wedding to their new home in the country. They had driven for several miles in total silence when Helga, not able to endure the silence any longer, exclaimed, "Oley, vy don't you say someting?" Oley was quiet for several moments and then said, "Ban too much said already." Well, there may already have been too much said about the current state of our profession, and I shall offer only the briefest addendum to what you all have been reading and hearing.

The charge that there are too many lawyers was given prominence seven or eight years ago by Derek Bok, then the distinguished president of Harvard University and formerly dean of its law school. You remember that he said that too many of our best and brightest young people go into law rather than into "productive pursuits" like engineering and the sciences. And he seemed to imply that the economic disparity between the United States and Japan is attributable in substantial part to the difference in the sizes of our legal professions.

The Vice President, as chair of the President's Council on Competitiveness, intensified the debate over that charge in his now famous speech at the 1991 American Bar Association meeting, in Atlanta. John Curtin, the ABA president at that time, immediately responded with great force, although some felt he chose a poor time and mode in which to do it. Others continue the response. Two of those responses were published recently in our *Quarterly*.[2] The rhetoric is heating up, and we shall hear much more in this election year. The Vice President continues to attack, and the President has joined him. In a campaign speech in Michigan just last week, the President again named litigation as one

[2]*See* Smith and Corboy, *Comments on Vice President Quayle's Criticisms of the Civil Justice System*, 26 INTERNATIONAL SOCIETY OF BARRISTERS QUARTERLY 377 (1991).

of the major problems of our nation, like crime, unemployment, the national debt, and so on. Charles Beckham, of El Paso, warns that lawyers are about to become the Willie Horton of the 1992 presidential campaign. One critic of the profession writes: "With the demise of communism, for the first time since Pearl Harbor we no longer have a credible foreign adversary in this country. We're going to start looking for domestic enemies, and the bar is made for the part. In short, lawyer bashing will intensify, at least in the short run, with government officials leading the charge."

I have in mind not just talk but real attacks on the profession. A prime example is the government's seizure of Kaye, Scholer assets and the earnings of 110 of its partners, forcing that large firm to an enormously costly settlement. Kaye, Scholer may or may not have misbehaved, but the government's high-handed H-bomb attack left the firm no reasonable alternative to paying the $41 million. Seizure of fees that allegedly come from illegal activity also threatens the profession, as does the subpoenaing of lawyers' financial records. It appears things are going to get worse before they get better. And you and I are going to have stand strong if we are not to lose more and more of the profession's independence, which is so important to the individual freedoms of the American people.

Although the most popular charges have been leveled at litigation, much hostility toward lawyers is really the consequence of the gross financial excesses of the 1980s and the roles played by lawyers in the orgy of mergers and acquisitions against the interests of hundreds of thousands of investors and hundreds of thousands of employees. The apparent greed of many of the "M&A" lawyers has sullied the name of the profession. The brighter side is that trial lawyers have the best chance to redeem the profession. It is you who stand for individual rights. Working essentially alone as individuals, you bring into clear focus the law's concern for people, one by one. When that happens, the public is more likely to understand the role of the law and to have high regard for lawyers. With your visibility and your individuality, you have a much better chance to persuade a skeptical public and a hostile government of the bar's importance than does any other breed of lawyers. Most lawyers, alas, do not speak persuasively. Most lawyers, somebody said, "do to words what steam tables do to vegetables." But good trial lawyers have a special ability to persuade. And since you have that ability, you have a special obligation. To whom much is given, of him much is required.

FAITH IN THE FUTURE

In the universities, in the law schools, in the profession, there will continue to be changes—some evolutionary, some dramatic, some for the better, some for the worse. But I have confidence in the future. I have it for two reasons. First, I

know today's young people, those in the universities and in the law schools who will soon make their mark in the world and on our profession. Faith in them, I submit to you, is not misplaced. They have a higher level of idealism than in recent years past. They represent the best and brightest of all segments of our richly heterogeneous nation, and they can be counted on to use their considerable talents to solve or at least to attack many of the problems that you and I have left them—or, indeed, created for them. I know today's young people, and they give me faith in the future.

My second reason for faith in the future is that I know you. As long as there are stalwart men and women like you in the profession, your commitment to excellence and your embodiment of integrity and professionalism will generate and multiply those qualities in others, particularly in the young who, associated with you, will learn from you and carry those qualities into the generations ahead, just as you and I have been inspired by the Craig Spangenbergs of our era. It should go without saying that we all must continue our efforts to improve the system: discovery reform, improved policing of the ethics of the profession, better ways of handling complex litigation, improvement of court systems, and on and on. But the real need is individual commitment to integrity and service.

It is one of my pleasures to be a member of a group in Ann Arbor called the Scientific Club. It consists of about thirty men and women from different disciplines in the university who come together one evening a month during the academic year for dinner and then for a presentation by one of them in his or her own field. At one of the recent sessions, I was talking before dinner with two outstanding senior scholars: James Neel, an internationally known geneticist whose longitudinal study of the genetic effects of the Hiroshima and Nagasaki bombs has established that, mercifully, there has been no genetic damage to the subsequent generations, and Sidney Fine, a noted labor historian and biographer of Mr. Justice Murphy. The three of us were talking about that day's news report that a satellite photograph of arid land in the Middle East had revealed the vestiges of trails and formations that led archaeologists to the site of a lost city which was believed to be the place from which frankincense came. Though the city had been mentioned in ancient writings, no one had been able to find it until the miracle of satellites in space.

As we spoke of the wonders of technology, these wise men said, in effect: "We have ever higher technical knowledge, but at the same time there is an apparent decline in the unlearned arts of civility, self-reliance, and unselfishness and in such basic skills as clear, grammatical speech. We're more and more excellent in technological things, but less and less excellent in the fundamental values." I thought to myself that we probably looked and sounded like a bunch of fuddy-duddies yearning for the old days. But of course it *is* vital that we think seriously about how we are going to use all the wonderful products of modern

science. They are not ends in themselves. If they are not placed in the service of our highest values, then they will be a bane, not a boon, to humanity.

The reference to the lost city of frankincense reminded me of the first recorded instance of negotiation. Last evening in our hotel room I picked up the Bible that is there, to look for what I had in mind. (Incidentally, you may remember that wonderful illustration of "mixed feelings": the father who sees his teenage daughter coming home from a date at 3:00 a.m. with a Gideon Bible under her arm.) I turned to the negotiation between Abraham and God over the fate of the city of Sodom. God was prepared to destroy Sodom for its sins, and Abraham asked if it might be spared if there could be found fifty righteous persons in the city. And God said, yes, he would not destroy the righteous with the wicked; if Abraham could find fifty righteous persons, then the city would be spared. Sensing that it might be hard to find fifty, Abraham said how about forty-five? And God said, yes, I'll spare them. And the number went to forty, and thirty, and twenty . . . and ten. Each time God said yes. Of course, not even ten were found, and the city was destroyed. But the point had been made that there could be a "saving remnant": A few who are dedicated to the highest ideals can save the whole.

You and I, the Barristers, are small in number—a hundred gathered here, six hundred all told. But that's enough to leaven the whole lump. I hope you will resolve to be part of the saving remnant by emphasizing what my scholarly friends described as the unlearned arts of civility, of unselfishness, of caring—in short, by resolving, each of you, one by one, to serve as examplars of true professional responsibility. For what you do with excellence, I salute you. For what you are, I honor you.