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The Future of the Legal Profession

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Lecture

The Future of the Legal Profession *

Robert A. Stein[†]

Alumni, Faculty, Students, and Guests:

It is a pleasure to be with you this evening and share some thoughts with you. Sandy and I are delighted to see so many wonderful friends here. I hope we have an opportunity to greet each of you before the evening is over. I include my wife, Sandy, in our network of friends because she has been my partner throughout my association with the Law School—during the time I was a student, then a faculty member, and eventually as Dean—and so many friends here tonight are friends of both of ours. I'd like to ask Sandy to stand and ask you all to join me in recognizing her and thanking her for being here with us this evening.

Thank you also for honoring me with the *Law Review* Distinguished Service Award. I'm delighted to be recognized in the same company with the other distinguished award recipients this evening—Jim Hale, former General Counsel of Target Corporation, and the Honorable Jack Tunheim, U.S. District Judge, both friends for many years. All three of us are proud to join the distinguished alumni you honored with this award last year.

The *Minnesota Law Review* experience was very important in my professional growth and education, and I am very appreciative to have had this opportunity. As noted in my biography in the program, I was privileged to serve as an Editor—Assistant Recent Case Editor—of Volume 45 of the *Law Review*.

* This contribution is based on the Keynote Address delivered by Dean Robert Stein at the *Minnesota Law Review* Volume 90 Banquet at the Grand Hotel, Minneapolis, Minn., on April 6, 2006.

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Tonight we celebrate Volume 90. Another member of Volume 45 is here tonight, The Honorable David S. Doty, U.S. District Judge, and I am sure he is as unnerved as I am to realize that as many volumes of the *Minnesota Law Review* have been published since we graduated as had been published in all the years of the *Law Review* up to the time of our volume 45.

A lot has changed in our profession since the Editors and Staff of Volume 45 graduated in 1961. And that change over the past forty-five years, and some of the changes we can anticipate in the coming years, are what I would like to talk about this evening.

Of course, one of the major changes in the legal profession since the Volume 45 Editors and Staff graduated is the enormous increase in the number of lawyers—in Minnesota, in the United States, and in the world. When we graduated, there were 4712 lawyers in Minnesota.¹ Today, there are 20,177 lawyers admitted to practice in Minnesota—nearly five times as many.²

In 1961 there were 286,000 lawyers in the United States;³ today there are over 1,100,000.⁴ American lawyers represent about one-fourth of all the 4,000,000⁵ lawyers in the world. The second largest national bar—India has about 750,000 lawyers⁶ (not quite three-fourths of the number of lawyers in the United States), and Brazil, the third largest national bar, has almost 500,000 lawyers (less than half the number in the United States).⁷

Clearly, we are a much, much larger bar today than in 1961, and the consequences of that increased size are numerous. Relationships between lawyers are more impersonal today

1. AM. BAR FOUND., THE 1961 LAWYER STATISTICAL REPORT 8 (1961).

2. MKT. RESEARCH DEP'T, AM. BAR ASS'N, NATIONAL LAWYER POPULATION BY STATE 1 (2006), http://www.abanet.org/marketresearch/2006-national%20lawyer_population_survey.pdf.

3. AM. BAR FOUND., *supra* note 1, at 11.

4. MKT. RESEARCH DEP'T, AM. BAR ASS'N, LAWYER DEMOGRAPHICS 1 (2006), http://www.abanet.org/marketresearch/lawyer_demographics_2006.pdf.

5. *See* E-mail from Tim Hughes, Deputy Executive Director, International Bar Association, to author (Oct. 4, 2006, 16:53:00 CST) (on file with author).

6. *See id.* (“The Bar Council of India reports 711,500 members, which supports a projection of 750,000 lawyers in India.”).

7. Marcos Lessa, Legal Profession in Brazil 3, http://www.law.northwestern.edu/career/students/documents/Brazil_presentation.pdf (last visited Oct. 18, 2006).

than they were 45 years ago—when lawyers knew each other so well a handshake or a lawyer’s word could seal an agreement. The business environment is significantly more competitive, forcing more lawyers to operate at the margin of economic success. Loyalties are reduced all around—lawyers have reduced loyalty to their firm, and firms and clients have reduced loyalty to their lawyers. I view these as negative developments; others may see them as just differences from the profession as we used to know it.

But, clearly a positive development is the greater diversity in our profession today than was the case in 1961. When Volume 45 students entered the bar, women lawyers represented only 2.6 percent of all American lawyers.⁸ In actual numbers there were about 6500 women lawyers in the country⁹ and only eighty in the entire Minnesota bar.¹⁰ In law schools, women represented less than 4 percent of the student body, and some classes were completely male.¹¹ In 1961, we had two women in our graduating class.¹²

Today, women lawyers represent approximately 30 percent of the profession,¹³ and women represent about half of all students in our nation’s law schools.¹⁴ Within a generation, men and women will be about equally represented in our profession. And that growth in the proportion of women lawyers has been very good for our profession in a number of ways we don’t have time to talk about tonight. One consequence I would note, however, is that women lawyers were amongst the first to raise concerns about work-life balance issues. Now these concerns are shared broadly and expressed by both young male and female lawyers in our ABA surveys—and many firms have responded by establishing part-time practice opportunities, posi-

8. AM. BAR FOUND., *supra* note 1, at 18.

9. *See id.*

10. *Id.* at 15.

11. SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, AM. BAR ASS’N, FIRST YEAR AND TOTAL J.D. ENROLLMENT BY GENDER 1947–2005, at 2 (2005), <http://www.abanet.org/legaled/statistics/charts/enrollmentbygender.pdf>.

12. E-mail from Scotty G. Mann, Director of Alumni Relations and Annual Giving, University of Minnesota, to Joshua L. Colburn, Lead Managing Editor, Minnesota Law Review (Sept. 13, 2006, 16:07:52 CST) (on file with the Minnesota Law Review).

13. COMM’N ON WOMEN IN THE PROFESSION, AM. BAR ASS’N, A CURRENT GLANCE AT WOMEN IN THE LAW 2006, at 1 (2006), <http://www.abanet.org/women/ata glance.pdf>.

14. SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, AM. BAR ASS’N, *supra* note 11, at 1.

tion-sharing possibilities, and telecommuting, among other arrangements for young lawyers.

The increase in diversity represented by racial and ethnic minorities has also been significant, but not as dramatic as the increase in the number of women lawyers. In 1961, minorities represented less than 1 percent of the lawyers in the country.¹⁵ In 2000, the ABA estimated that percentage to be between eleven and twelve percent.¹⁶ In our nation's law schools today, minority students represent about twenty-one percent of the law school student bodies,¹⁷ and so we can anticipate the proportion of minority lawyers growing to that percentage within the next generation. This is certainly a huge increase over the percentage in 1961, but far less than the proportion of the U.S. population represented by persons of color.¹⁸ That proportion, as you know, is projected to grow to more than a majority of Americans in the middle of the century.¹⁹ But, it is certainly a positive development that our profession now represents more of the richness of the diversity of America than was the case forty-five years ago.

Another major development in the profession since the graduation of Volume 45 law students is the enormous growth of the large law firms—the mega size law firms. In 1961, Dorsey, Owen, Barber, Marquart & Windhorst was the largest law firm in Minnesota and it had forty-one lawyers in one office.²⁰ Today, the firm is known as Dorsey & Whitney, and it has more than 600 lawyers²¹ in twenty offices in four countries.²²

15. See HERMA HILL KAY, REPORT OF THE DIVERSITY COMMITTEE 1998, <http://www.abanet.org/legaled/committees/diversityreports/diversity-1998.html>. (“In 1965. . . . [o]nly three out of every 100 lawyers were women; less than 1% were African-American; and the number of other minority lawyers was so small that it was not even tallied in the reporting sources.”).

16. MKT. RESEARCH DEP'T, AM. BAR ASS'N, *supra* note 4.

17. SECTION OF LEGAL EDUC. & ADMISSIONS TO THE BAR, AM. BAR ASS'N, FIRST YEAR J.D. AND TOTAL J.D. MINORITY ENROLLMENT FOR 1971–2005, at 1 (2005), <http://www.abanet.org/legaled/statistics/charts/jdminorityenrollment.pdf>.

18. Pub. Info. Office, U.S. Census Bureau, Estimates of the Population by Race in the United States (Aug. 4, 2006), <http://www.census.gov/Press-Release/www/2006/cb06-123table1.xls>.

19. See POPULATION DIV., U.S. CENSUS BUREAU, PROJECTED POPULATION OF THE UNITED STATES, BY RACE AND HISPANIC ORIGIN: 2006 TO 2050, at 1 (2004), <http://www.census.gov/ipc/www/usinterimproj/natprojtab01a.pdf>.

20. Telephone Interview with Kimberly Linn, Assistant to Chief Org. Dev. Officer, Dorsey & Whitney LLP, in Minneapolis, Minn. (Mar. 21, 2006).

21. Dorsey & Whitney LLP: About Dorsey: About the Firm, http://www.dorsey.com/about/about.aspx?FlashNavID=about_about (last vis-

Upon graduation, I joined the law firm of Foley, Sammond & Lardner in Milwaukee, when the firm was only twenty-five partners in size.²³ Today that firm, now known as Foley & Lardner, has nearly one thousand lawyers in twenty offices and three countries.²⁴

And these two law firms are certainly not unique. The rise of the mega-size law firm has been a noteworthy development in our profession over the past 45 years. A significant proportion of the law practiced in America today is practiced in this setting. This trend, along with the increased complexity of the law, has in turn led to the great increase in specialization. Some predict that the growth in “mega firms” will lead to the demise of, or at least a concurrent decrease in the prevalence of the mid-sized firm, leaving room for growth opportunities for solo and small firms.²⁵

The management and economics of law practice have also changed dramatically. Firms are run more as a business, with professional managers, marketing departments, business consultants, and a large number of ancillary personnel.

Yes, the profession and the practice of law have changed in dramatic ways since the editors and staff of Volume 45 graduated. And I haven’t begun to describe the enormous changes technology has brought to the practice of law—from how we access information and conduct our legal research, to electronic court filings, ubiquitous emails, and the need to be on-call all hours of the day, all days of the week. What a different world the practice of law is today.

But, I would submit, as enormous as the changes of the past forty-five years have been, we will continue to see more dramatic changes in our profession and practice in the coming years. When Volume 135 has its *Law Review* banquet in 2051 and reviews the changes of the preceding forty-five years since Volume 90, our profession may be hardly recognizable from

ited Oct. 18, 2006).

22. Dorsey & Whitney LLP: Locations Worldwide, http://www.dorsey.com/locations/alloffices.aspx?FlashNavID=locations_all (last visited Oct. 18, 2006).

23. Telephone Interview with Lauren H. Schudson, Mktg. Specialist, Foley & Lardner LLP, in Milwaukee, Wis. (Mar. 21, 2006).

24. Foley & Lardner LLP, About Foley Overview, <http://apps.foley.com/students/aboutfoley/> (last visited Oct. 18, 2006).

25. See, e.g., Joseph B. Altonji, *Why Firms Must Restructure Now*, *WORLDLAW BUS.*, May 2000, at 33, 37, available at http://www.hildebrandt.com/PublicDocs/Doc_ID_1155_51520031246140.pdf.

what it is today. Let me suggest some of the changes and challenges I see already looming on the horizon.

I anticipate there will be extraordinary change in the relatively near future in the way our profession is regulated. Today, lawyers are licensed and regulated in their practice by the highest court in each state, much the way we were in 1961.²⁶ I believe the practice of law has become much more national, and indeed global, since that time. Powerful economic forces, therefore, suggest a move to a national or even international model of regulation.

Currently, negotiations are underway in the World Trade Organization (WTO) regarding the extent to which the existing system of licensure of lawyers impedes fair trade.²⁷ If the WTO rules eventually provide that a lawyer from France or Japan or Brazil must be allowed to practice law in Minnesota in support of his or her clients, how will it be possible to deny that privilege to lawyers from Wisconsin or California?

Furthermore, the reality of today's national law practice is making it increasingly difficult for states to enforce their rules about the unauthorized practice of law against lawyers licensed in other states but not in their state. An ABA Commission looked at this issue a few years ago and adopted a more liberal policy that recognizes that a lawyer's practice frequently crosses state lines: to take depositions in jurisdictions around the country; to represent clients and subsidiaries in all of the states where the clients do business; and, in the case of corporate counsel, to do legal work for a corporate client employer in jurisdictions all over the country.²⁸

Perhaps the way this change in licensure and regulation will begin is with more and more regional reciprocal practice agreements being adopted between states in a geographic re-

26. See, e.g., MINN. RULES OF PROF'L CONDUCT (1985).

27. Ctr. for Prof'l Responsibility, Am. Bar Ass'n, Materials About the GATS and Other International Agreements, <http://www.abanet.org/cpr/gats/home.html> (last visited Oct. 18, 2006). The current round (referred to as the "Doha Round") of negotiations was suspended after the author originally delivered this lecture in April 2006. Press Release, World Trade Org., Talks Suspended: "Today There Are Only Losers" (July 24, 2006), available at http://www.wto.org/english/news_e/news06_e/mod06_summary_24july_e.htm. World Trade Organization members continue to discuss a revival of negotiations pursuant to the General Agreement on Trade in Services (GATS). See *id.*

28. See COMM'N ON MULTIJURISDICTIONAL PRACTICE, AM. BAR ASS'N, REPORT 201B: ABA COMMISSION ON MULTIJURISDICTIONAL PRACTICE REPORT TO THE HOUSE OF DELEGATES 2-4 (Aug. 2002), available at <http://www.abanet.org/cpr/mjp/201b.doc>.

gion. Such an agreement now exists in the northwestern United States among the states of Montana, Utah, Washington, and Wyoming.²⁹ A similar regional agreement exists in the Northeast among the states of Maine, New Hampshire, and Vermont.³⁰

And our federal government has made numerous attempts in recent years to regulate our profession nationally, in such federal legislation as the Sarbanes-Oxley Act,³¹ the recent bankruptcy law revision,³² and a statute known as Gramm-Leach-Bliley, which regulates the privacy of data of financial institutions.³³

So, I anticipate our legal profession will be regulated in vastly different ways in the years to come. All of these forces—WTO negotiations, regional reciprocal practice agreements, and federal legislation, among others—will combine to move us toward national or even international licensure and regulation.

Another area of looming change is in the nature and ownership of law firms themselves. Many of you will recall the debate about Multi-Disciplinary Practices (MDPs) in the late 1990s. Advocates urged their approval, saying “one-stop” shopping was consumer-friendly and would enable a single firm to satisfy all of a client’s needs by providing legal, accounting, architectural, and engineering services within one MDP entity.³⁴ At the time, the largest law firm in France was one of the big four accounting firms.³⁵ The same was true in Australia.³⁶

29. See SUP. CT. OF THE STATE OF OR., RULES REGULATING ADMISSION TO PRACTICE LAW IN OREGON § 15.05 (2005), available at <http://www.osbar.org/docs/rulesregs/admissions.pdf>.

30. See ME. BAR ADMISSION R. 11A (2006), available at http://www.courts.state.me.us/rules_forms_fees/rules/MBarAdmRules5-06.htm#RULE11THEMULTISTATE; N.H. SUP. CT. R. 42, available at <http://www.nhbar.org/pdfs/AppendixURule42.doc>.

31. Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745 (codified as amended in scattered sections of 11, 15, 18, 28, and 29 U.S.C.).

32. Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (codified as amended in scattered sections of 11 U.S.C.).

33. Gramm-Leach-Bliley Act, Pub. L. No. 106-102, 113 Stat. 1338 (1999) (codified at 15 U.S.C. §§ 6801–09 (2000)).

34. Comm’n on Multidisciplinary Practice, Am. Bar Ass’n, app. C, pt. I.A., <http://www.abanet.org/cpr/mdpappendixc.html> (last visited Oct. 18, 2006).

35. Comm’n on Multidisciplinary Practice, Am. Bar Ass’n, *Background Paper on Multidisciplinary Practice: Issues and Development*, pt. I (Jan. 1999), available at <http://www.abanet.org/cpr/mdp/multicomreport0199.html>; Comm’n on Multidisciplinary Practice, *supra* note 34.

36. Comm’n on Multidisciplinary Practice, *supra* note 34.

Critics were concerned that MDPs would erode the core values of the legal profession—values such as independence of the attorney, client protection, client loyalty, confidentiality of client communications, and avoidance of conflicts of interest. An extensive study by a commission of the American Bar Association approached MDPs with caution and concluded they should be permitted only in a firm controlled by lawyers.³⁷ The Minnesota State Bar Association recommended a somewhat more liberal rule, but the Minnesota Supreme Court declined to adopt it.³⁸

The whole issue receded from attention in the post-Arthur Andersen, post-Enron environment. Those scandals spotlighted the dangers of diluting core functions of a profession, such as the audit function of the accounting profession, by adopting a multidisciplinary practice that includes consulting practices.

The MDP issue is about to raise its head once again. Late last year, the government in the United Kingdom adopted a very significant report on regulation of the legal profession in that country, known as the Clementi Report.³⁹ The new policy of the British government has wide ranging consequences, but among them is an invitation for law firms to experiment with new forms of ownership and doing business. Public ownership of law firms, through the sale of stock, is one possibility. Another is for large corporations to establish legal departments to offer legal services to the public, raising the specter of a law department in Wal-Mart stores or Marshall Fields (or, should I say, Macy's). This development would drastically change the practice of law as we know it. The Clementi Report is being watched closely throughout much of the world—particularly in Australia, Europe, and Japan. The issue will soon surface in this country once again.

The likelihood of future change is present in many other ways. The pace of technological change is unlikely to slow in

37. See Comm'n on Multidisciplinary Practice, Am. Bar Ass'n, Report to the House of Delegates (July 2000), <http://www.abanet.org/cpr/mdp/mdpfinalrep2000.html>.

38. See Edward J. Cleary, *Multidisciplinary Practice: Minnesota Moves Forward*, BENCH & BAR MINN., Oct. 2001, at 14, available at <http://www2.mnbar.org/benchandbar/2001/oct01/prof-resp.htm> ("The [Minnesota State Bar Association] will be filing a petition with the Minnesota Supreme Court regarding the recommended changes to the Rules of Professional Conduct . . .").

39. See SIR DAVID CLEMENTI, REVIEW OF THE REGULATORY FRAMEWORK FOR LEGAL SERVICES IN ENGLAND AND WALES (2004), available at <http://www.legal-services-review.org.uk/content/report/report-chap.pdf>.

the years to come. Will the new technologies level the playing field so that solo and small firm practitioners will have the same practice resources presently available primarily in large firm settings? Will we see virtual law firms develop where the partners are connected by cyberspace rather than by physical proximity in the same office building? Will more and more of the traditional lawyer's practice, such as real estate transactions, tax planning and representation, and estate planning, be done by other specialized professions? We must demonstrate that the legal profession can do this work better, faster, and cheaper, or economic forces will move the work somewhere else.

I think it is likely that the *Law Review* banquet for Volume 135 will reflect upon changes in the legal profession at least as great as those we have observed in the last forty-five years. Nevertheless, it is my hope and expectation that this banquet in 2051 will continue to celebrate a great legal profession dedicated to defending liberty and pursuing justice. A strong and independent bar and an independent judiciary are essential to the rule of law. Without the rule of law, tyranny and oppression can succeed. With the rule of law, and a strong legal profession, a free and democratic society can continue to enjoy the American dream.

Thank you very much.