

The Eleventh Annual
Chester Bedell Memorial Lecture

"THE INDEPENDENCE OF THE AMERICAN LAWYER"

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Washington, D.C.

THE HONORABLE SOL M. LINOWITZ

The Honorable Sol M. Linowitz has combined three careers as lawyer, businessman and diplomat. In 1938, he graduated summa cum laude from Cornell Law School where he was Editor-in-Chief of the Cornell Law Quarterly. During the years since then, he has practiced law, become Assistant General Counsel to the Office of Price Administration in Washington, served as an officer in the U.S. Navy during World War II and become Chairman of the Board of the Xerox Corporation. He was appointed as U.S. Ambassador to the Organization of American States and later as the Personal Representative of the President to the Middle East Peace Negotiations. Ambassador Linowitz laments the legal profession's loss of independence in his most recent book, "The Betrayed Profession: Lawyering in the 20th Century."

"THE INDEPENDENCE OF THE AMERICAN LAWYER"

AMBASSADOR SOL M. LINOWITZ

I am pleased and honored to be here as the Chester Bedell Memorial Lecturer and to pay my respects to a man who gave life and meaning to the highest ideals of our profession. Although I did not know Mr. Bedell personally, I knew him by reputation as one who wore the title "lawyer" proudly and with great dignity.

It is particularly fitting that the focus of this lecture series is on the independence of the American lawyer. From what I have learned about Mr. Bedell, he fully recognized the central role of a lawyer's independence in fulfilling our responsibilities in our society.

The issue of the independence of the lawyer is one that has long been of deep concern to me and led me to write my book The Betrayed Profession to which reference has just been made.

I must tell you frankly that I wrote the book with sadness and even anger . . . -- but also with hope and even a measure of optimism. For I believe that while there is good reason for concern about the state of our profession today, I believe we can, if we will it, deal effectively with our problems in a manner that will enhance our profession, strengthen our ethical commitment and restore the bar to the position of trust and respect it once occupied.

Let's start by first recognizing where we are. As we know all too well, lawyers are today viewed with distrust, dislike and suspicion in too many places. There is a widespread public impression that the practice of law has become primarily a money-grabbing, profit-maximizing, hustling business, rather than an admired profession. This has brought

into question the intention, the integrity, the ethics, and the value of lawyers generally.

When I was young, I found attacks on lawyers -- and there were some -- irritating but not disturbing for I was certain of my respect, as well as my love, for my profession and I was confident that whatever misbehavior might be discovered in its lower depths, its leadership was ethically as well as intellectually admirable.

In recent years, however, through experience as well as observation, I have lost some of that confidence and even some of my respect -- but not my love for my profession.

How did all this happen? How did we get to the point where to acknowledge that you are a lawyer is to invite scoffing and derision? I think the answer is quite simple: Too many lawyers have forgotten what we are supposed to be. Too many fail to remember that in entering the profession, lawyers assume solemn responsibilities and obligations which are an integral part of our calling; that lawyers are "officers of the court" precisely because we are vested with important rights and authority under our system of justice -- the right to summon, to direct, to impose -- not because lawyers have an inherent right to do so but because these significant privileges have been granted in exchange for lawyers' undertaking to fulfill important responsibilities in our society.

When I entered the legal profession over a half century ago, a lawyer was a member of an esteemed and honored profession. Becoming a lawyer meant joining a helping profession -- one which dealt with the problems of people and did so sensitively and effectively. Lawyers regarded themselves as charged with a public trust -- committed to strengthening our system of law and justice.

As a young lawyer practicing in Rochester, New York, I had the exhilarating experience of dealing with human problems on a human scale. I learned the deep satisfaction of helping to solve a problem or settle a dispute among people. I knew the fulfillment of having men and women who had entered my office in panic and distress leave it grateful and with peace of

mind. I came to understand that human relations is the stuff of which law is made; and that no lawyer worth his salt can practice his calling impersonally; that to be a lawyer in the real and deep sense of the word is to concern yourself with people and with the things which bring people together or drive them apart; and that being a real lawyer involves knowing how to work with those you must serve. The law was for me truly a human profession.

Over the years, however, something seriously disturbing has been happening to the legal profession. Increasingly, law has become a business rather than a profession. In too many law firms, the computer has become the Managing Partner as law firms are ruled by hourly rates, time sheets and electronic devices. We have seen an increase in technological expertise with a corresponding diminution in the human side of law practice. Lawyers are making more and achieving less and in the process, I am afraid, we have lost a great deal of what we were meant to be.

The major concerns I have primarily involve the large firms in our larger cities which attract the cream of the law school graduates each year and which set the tone for the whole legal profession.

The explosive growth in these law firms has resulted to a major extent from the ever-increasing intrusion of government into business matters making it necessary for corporations to seek more and more legal guidance and assistance. In responding to these corporate requirements, law firms have had to expand and with that, has come a dramatic increase in legal corporate expenses which now represent 5% of corporate budgets.

At the same time, lawyers and businessmen alike have come to accept the proposition that the client is best able to judge what he needs done and the lawyer must be ready to do whatever the client asks.

In acceding to this, the lawyer has, I submit, bartered away what has always been his proudest characteristic: his independence. For if the lawyer stands ready to do whatever the client asks, he deprives the client of the one thing the client is most entitled to have -- the best advice the lawyer can give him as to whether what the client wants done should really be done.

What makes the lawyer a professional is his insistence that in the legal realm, he sets the parameters of what he will and will not do -- and he tells the client what he believes is in the client's best interest. Elihu Root put it succinctly when he told a client: "The law lets you do it -- but don't. It's a rotten thing to do."

So when I talk about putting a stop to much of what is going on in the practice of law today, I am echoing Elihu Root's words urging lawyers to know when to say "The law lets you do it -- but don't. It's a rotten thing to do." And when I talk about restoring the status and dignity of the bar, I believe I am being at least as practical as I am idealistic.

For as a practical matter, I believe neither clients nor the political public will continue to accept what many Americans deplore in the practice of law today. An acceptance of the proposition that law is a business will, I believe, inevitably lead to the kind of government regulation that is imposed on other businesses -- only more so, because of the lawyer's impositional powers.

What I am saying is that if lawyers cannot by themselves reestablish a climate of professionalism and ethical behavior, then government will set the parameters of our conduct.

I submit that the need -- the pressing need -- is for lawyers to recognize that there is much we can and must do to become once again the "democratic aristocracy" Alexis de Tocqueville found in this country.

What should be done? In my book, I suggest a number of steps that can be taken by law schools, law firms, bar associations, judges and society at large. Let me touch on one of them -- our law schools -- where it all starts.

In 1993, there were 176 law schools in this country with enrollment of almost 150,000. In virtually all of these law schools, teaching is done by the Socratic method, and law students are taught (as we like to say) to "think like a lawyer" -- to be ready and able to argue the case for either side of a controversy. But if you must be just as ready to take either side, regardless of the merits, you are not apt to spend time worrying about legal ethics or

right and wrong. The Socratic method, in short, does not focus on justice or fairness or morality but on conflict.

Law schools have, therefore, experimented with legal ethics courses, but the teaching has been mostly left to people for whom the life of the law has been logic and not experience. The heart of the matter is that the law schools must find a way to do a much better job of teaching legal ethics as an essential part of being a good lawyer. And our law firms must not only press them to do it but must in our own offices set a standard of ethical behavior for the young lawyers to follow. This, unfortunately, too many law firms do not do.

Another major law school concern is or should be the educational background of law students today. The legal system of the Western world rests on a large body of philosophical, social and literary history. It is important for young law students to learn that history so they can be people of breadth and learning. It is important for lawyers to recognize that our system of law and justice grew out of our own past and that we are custodians and not owners of that past, including our laws and institutions. Perhaps the best thing the law schools might do to improve the legal profession would be to launch a crusade to improve the liberal arts education of lawyers. Law students should be encouraged to take courses in science, philosophy and even psychiatry as part of their training.

The leaders of the bar used to be people who believed that a lawyer should know accounting but needed philosophy; that for understanding the idea of a contract, anthropology is apt to be more valuable than case law; that you can often learn more about people from great novels than you can from studying the law books. They recognized that a good lawyer, almost by definition, should be a person of breadth who has a grasp of what yesterday teaches us about today and tomorrow.

As Felix Frankfurter once wrote to a young man interested in becoming a lawyer: "No one can be a truly competent lawyer unless he is a cultivated man . . . The best way to prepare for the law is to come to the study of law 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 truly liberal education can give.”

I submit that those words should be engraved on the walls of every law school in the country.

As a basic principle, lawyers and non-lawyers alike must recognize that in a very real sense, law is what America is all about. In no other system of government do the law and the courts play so large a role. No other country has so many lawyers and in no other country have lawyers been so influential. Elsewhere, the totem of the society is a crown or a mausoleum or a spot of sacred land. In the United States, it is a document under glass at the National Archives. The greatest responsibility to assure that that document remains alive and strong lies with the lawyers.

The most frightening measure of what the legal profession has lost over the years is that most Americans don't even remember the faith and trust this society once placed in its lawyers. If Alexis de Tocqueville came to America today to study its laws and customs, he would never come up with the idea that the lawyers were the country's natural aristocrats. Who is responsible for this?

Lawyers blame the law schools; the law schools blame the lawyers; the judges blame the lawyers; the lawyers say the clients made them do it; still others blame the culture itself. Why, they say, single out lawyers for the loss of ethical fiber at a time when ethical decline is so widespread?

I think the answer is simple: because lawyers are supposed to be the custodians of a community's legal and ethical sense. To a significant extent, the loss of self-respect in the profession and the loss of public respect both reflect the failure of our schools to convey to the young what law and lawyers have meant in the history of this country.

If the profession wishes to retain its privileges, lawyers above all others must understand why we have been granted exclusive access to the judicial processes of government and why the public has the right to expect that lawyers will be vigilant not only in the interest of clients but also for the

rule of law that protects us all.

What does all of this mean? What does it come down to?

If it calls for anything, it is a call to lawyers to reaffirm their independence and their ethical commitment, to make clear their willingness to sacrifice money for pride, and their eagerness to play their proper role as guarantors of rights. But to make the contribution that only lawyers can make to the future of our country and the world, I believe we lawyers will have to do much more than simply declaim our commitment and responsibilities.

We are going to have to prove that our profession stands ready to serve not only the rich and the powerful, but also the poor and the powerless.

We will have to demonstrate that our concern as lawyers is with the human and the humane -- that we are truly committed to the principle of equality of access to the law -- that lawyers accept the obligation to serve all of the people in our society and to do so fairly and ethically.

Then -- and only then -- will we lawyers find that we have won and deserve the appreciation and respect of those we seek to serve. Then -- and only then -- will we once again be able to say with dignity and honor, "I am truly proud to be a lawyer."

THE BEDELL LECTURERS

David Boies	1986
Hon. Parker L. McDonald	1987
Robert W. Meserve	1988
Benjamin R. Civiletti	1989
Brendan V. Sullivan	1990
Julius LeVonne Chambers	1991
Roxanne B. Conlin	1992
Joe Stamper	1993
William Steele Sessions	1994
Lord William of Mostyn QC	1995

The Chester Bedell Memorial Lecture on "The Independence of the American Lawyer" is an annual event at the Trial Lawyers' Section luncheon meeting at the Convention of The Florida Bar. The Bedell Foundation, which receives tax-deductible contributions for support of the Lecture, was created by the Jacksonville Bar Association in 1981, to help preserve the independent bar and to extend that sense of history, duty and destiny that Bedell exemplified in more than 50 years of practice in the courtrooms of Florida.