

SPEECHES

WHO NEEDS A LAWYER ANYWAY?

The Honorable Deanell Reece Tacha^{*1}

Judge Leonard I. Garth² is far too kind in his introduction. Judge Garth is one of the real greats of the federal bench. He is the symbol of my topic this evening: who needs a lawyer, anyway? Why are we lawyers? What should we be educating lawyers for? Indeed, the core question—is a legal education valuable? Sarah and Leonard Garth are outstanding examples of public servants who bring to the legal profession a true commitment to excellence—to their communities, to their law school, to their law clerks, to so many people—that models the great lawyer and the great judge, and the families that support and sustain them.

I would be remiss if I did not take this opportunity to say happy birthday to Judge Garth. Yesterday, Judge Garth turned, dare I say it, ninety-two years old.³ I thank the law clerks and Judge Garth's former law firm for this opportunity. I do not think I fully appreciated while I was on the bench how important it is for a school of law to keep a connection with its alumni and friends who are so deeply committed to legal education, generally and specifically, in their institutions.

This lecture was scheduled initially for last fall. I have felt the weight of the effects of the hurricane for all of you and the people of

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1. A substantial portion of this lecture was taken from a previously published article. See Deanell Reece Tacha, *Don't Eat Your Seed Corn: A Call to the Legal Profession*, DWIGHT D. OPPERMAN FOUND. (Nov. 5, 2012), <http://oppermanfoundation.org/news/dont-eat-your-seed-corn-call-legal-profession>.

2. Judge Garth (married to Sarah Garth) was appointed to the United States Court of Appeals for the Third Circuit by President Nixon in 1973. *Biographical Directory of Federal Judges: Garth, Leonard I.*, FED. JUD. CTR., <http://www.fjc.gov/servlet/nGetInfo?jid=823&cid=999&ctype=na&instate=na> (last visited Feb. 19, 2014). He currently serves as a Senior Judge on the Third Circuit. *Id.*

3. See Abby Rogers and Erin Fuchs, *These 13 Oldest Federal Judges—All in Their 90s—Are Still Hearing Cases*, BUSINESS INSIDER (Aug. 5, 2012, 11:30 AM), <http://www.businessinsider.com/20-oldest-federal-judges-2012-7?op=1> (listing Judge Garth's birthday as April 7, 1921).

this community very heavily.⁴ In the wake of that tragedy, the nation has watched how remarkably well these communities have rebuilt.⁵ Coming in today, I looked for the signs of that disaster. I know difficulties persist in many parts of this city, but people are smiling and going about their business. Those acts of normalcy are a testament to the resilience and courage of this community. It was not a hardship at all to put this lecture off—except that I had to change the topic! When Judge Garth heard what I intended to talk about last fall, he called me and, assuming his mentor-leader role, said, do not talk to me, or about me, and do not talk about judges. Justice Samuel Alito⁶ already talked about judges and I do not want you to talk about me. So that speech went into the waste paper basket. Thus, I have changed course.

Today I have chosen to talk to you about legal education – a topic that preoccupies me and many in this room. It is a topic, that has drawn the attention of absolutely everyone, from the *New York Times* down.⁷ Is a law degree worth it? Do we need lawyers anyway? Who are the lawyers of the future? I came back to legal education during what most would call a perfect storm. The legal employment market is changing dramatically.⁸ Traditional legal jobs are in decline,⁹ and, I am sorry to tell you, probably will never come back at the level at which they once flourished. Tuition is high.¹⁰ Student debt loan is crushing.¹¹ Without embarrassing individuals, I am confident there is significant debt on the financial statements of many people in this

4. Hurricane Sandy made landfall near Atlantic City, New Jersey on October 29, 2012, causing “once-in-a-generation” flooding, widespread damage and devastation, and claiming dozens of lives. See James Barron, *Storm Picks Up Speed and Disrupts Millions of Lives*, N.Y. TIMES, Oct. 30, 2012, at A1.

5. See Scott Rumana, *Opinion: Jersey Shore Communities Have Shown Remarkable Determination to Rebound*, NJ.COM (July 26, 2013, 5:30 AM) http://www.nj.com/times-opinion/index.ssf/2013/07/opinion_jersey_shore_communiti.html.

6. From 1976 to 1977, Justice Alito served as a law clerk to Judge Garth on the Third Circuit. See JAN CRAWFORD GREENBURG, *SUPREME CONFLICT: THE INSIDE STORY OF THE STRUGGLE FOR CONTROL OF THE UNITED STATES SUPREME COURT* 290 (2007).

7. See, e.g., David Segal, *Is Law School a Losing Game?*, N.Y. TIMES, Jan. 8, 2011, at BU1.

8. Tacha, *supra* note 1.

9. *Id.*

10. See *id.* (noting how tuition has increased at an “unprecedented” rate since entering the 21st century).

11. See Segal, *supra* note 7; see also Debra Cassens Weiss, *Average Debt of Private Law School Grads Is 125K*, ABA JOURNAL (Mar. 28, 2012, 4:29 AM), http://www.abajournal.com/news/article/average_debt_load_of_private_law_grads_is_125k_these_five_schools_lead_to_m/ (“[T]he average education debt for private law grads at private schools last year was nearly \$125,000, while the average for grads of public law schools was more than \$75,700, according to new figures released by the ABA.”).

room. Thus, the questions: Are the jobs there? Is law school worth it?

The larger society is in serious debate about the value of a legal education—whether it is a good career choice for young people, or mid-career people, for that matter?¹² The question appropriately focuses on whether students get what they pay for. Indeed, what is a good legal education? This topic has dominated the legal education landscape for this past three or four years resulting in a veritable blizzard of articles,¹³ books, and newspaper columns.¹⁴ Regrettably, I do not think there have been very thoughtful answers to it. Further, the various critiques rely on purely short-term economic metrics and ignore subtle, subjective values that are the hallmark of great lawyers and good legal education.¹⁵ Thus, I decided to use what is left of my law-related career to bring the hindsight of twenty-five years on the federal bench, translate these intangible values, and consider the implications in the legal education context. I readily admit to sheer conjecture as I speculate about the future of legal education. The threshold hurdle that must be addressed is whether educating a future generation of lawyers is a value worth preserving. I am horrified that the question must be asked. I am appalled that I would raise it in a serious lecture. The very notion that anyone would legitimate that question exposes two equally pernicious underlying areas of ignorance.

On the one hand, the inquiry screams of a stunning lack of public knowledge of the role that lawyers and judges play in preserving the rule of law, and indeed, in preserving civilized society as we know it. Moreover, lurking in the question is the inescapable possibility that the legal profession itself has failed to prove its worth to twenty-first century doubters—doubters in the larger society. Perhaps we may not have proved it even to ourselves. The greater risk is that we have not proved it to those that we might inspire, teach, and encourage as the lawyers of the future. Thus, before tackling the tough questions being asked about the value of a legal education, we must step back and ask ourselves honestly, with laser-

12. Tacha, *supra* note 1 (discussing applicants).

13. See BRIAN Z. TAMANAHA, FAILING LAW SCHOOLS 107-25 (2012) (discussing the rising tuition and debt affecting law students); see also Steven J. Hanpen, THE LAWYER BUBBLE: A PROFESSION IN CRISIS 28 (2013) (discussing the tensions created by recent law graduates owing large debts).

14. See Jennifer Smith, *Legal Education on Trial: Is the Third Year Necessary?*, WALL STREET J. (last updated Aug. 25, 2013, 8:15 PM), <http://online.wsj.com/news/articles/SB10001424127887324906304579035040993030928>; see also Steven M. Davidoff, *Debating, Yet Again, the Worth of Law School*, N.Y. TIMES DEALBOOK (July 18, 2013, 11:44 AM), http://dealbook.nytimes.com/2013/07/18/debating-yet-again-the-worth-of-law-school/?_php=true&_type=blogs&_r=0.

15. See, e.g., TAMANAHA, *supra* note 13, at 109 (discussing the change in law school debt from the 1980s to 2010).

like professional introspection, about the perceived value of lawyers to those in the world around us. Answering this question requires us to see the legal profession from the viewpoint of members of the non-lawyer public who have watched the evolution of the profession over the last half-century or so. In observing from this vantage point I confess upfront to gross oversimplification, generalization, and yes, even exaggeration to make the point. Despite the flaws and anecdotal nature of these observations, I am convinced that there is an underlying ring of truth that speaks both to the public perception of the legal profession and to our own understanding of who we are as legal professionals.

There was a day in this country when the lawyers and judges in every community were like Leonard Garth. They were respected people whose names were known, reputations defined them, and whose integrity and excellence were known to the people of Newark, Philadelphia, and the places where they lived and worked. Their spouses—the Sarah Garths—were heavily involved in the community and deeply committed to worthy endeavors in many fields. Your lawyer was known by his name (and it was *his* name) in those days, and not by the name of a firm. Similarly, the judge, the prosecutor, and the defense attorneys, were all local. They worked together on case after case. Lawyers were elected to school boards, city councils, and legislatures. Regular folks expected they could afford common legal services like deeds, divorces, wills, and contracts—the work that lawyers do for the community. The people in those communities largely trusted those lawyers and judges because they knew them personally or knew their reputations. Those models persist to this day, especially in smaller or rural marketplaces,¹⁶ but the model threatens to recede from the landscape of the legal profession.

Lest I be accused of romanticizing and idealizing that model, I fully recognize that there were many flaws in that community-based legal model. Some of those flaws led to state and federal sentencing guidelines¹⁷ because, yes, prosecutors can be political actors; judges can be tyrants; and local norms can vary wildly resulting in region-to-region, or even case-by-case unfairness. Ethnic minorities and women were largely excluded from the profession and even from legal

16. See, e.g., *McCarter & English, Hartford Attorneys Honored with Pro Bono Partnership's Outstanding Nonprofit Project Award for 2011* (last visited Nov. 19, 2013), <http://www.mccarter.com/McCarter--English-Hartford-Attorneys-Honored-By-Pro-Bono-Partnership-For-Its-Work-With-Bethsaida-Community-Inc-03-23-2012/> (recognizing two labor and employment attorneys who were honored for providing business and transactional legal services to non-profit organizations).

17. See, e.g., The Sentencing Project, *Reducing Racial Disparity in the Criminal Justice System: A Manual for Practitioners and Policymakers*, at 62, available at http://www.sentencingproject.org/doc/publications/rd_reducingracialdisparity.pdf (stating how racial disparity influenced the passage of sentencing guidelines).

services.¹⁸ So the model then, that I idealize, was very much “trust your own white grandfather lawyer.” Nonetheless, the inescapable fact remains that, at least for large segments of society, the public trusted lawyers because they knew us and we served their local legal needs.¹⁹ Lawyers volunteered their time and represented people in numerous elected, appointed, and nonprofit capacities.

It is, quite simply, the trust of the people that is the bedrock of obedience to the rule of law. Lawyers and judges are the standard bearers for the rule of law. The people must trust us. We must understand them. Above all, we must serve them. Despite all the sentimentality, I firmly believe that there was a time when legal professionals in this country proved themselves, community-by-community, to be worthy of the respect they earned. Many still earn that respect, but they are much less visible to the public at large.²⁰

Something happened on the way to the twenty-first century: the legal profession and the nation changed dramatically and fundamentally. I witnessed that change first hand from the rarified air of the federal bench. But only with the enhanced vision of hindsight, and the much less rarified air of my dean’s office, do I now understand what was unfolding. Law firms got larger and larger, and billable hours and rates ratcheted up with stunning acceleration.²¹ In order to make the financial model work, partners became rainmakers and associates became worker-bees.²² Clients were increasingly large corporations or high worth individuals for whom the legal fees were not a financial impossibility, or even a sacrifice.²³ A veritable blizzard of discovery in all cases added to the cost of litigation.²⁴ Court caseloads exploded, and as Judge Garth and I can tell you, piles of boxes of discovery came in for every appeal, but the number that

18. Brief for Coalition of Bar Associations of Color et al. as Amici Curiae Supporting Respondents at 18, *Fisher v. Univ. of Tex.*, 132 S. Ct. 1536 (2012) (No. 11-345).

19. See, e.g., Edmund Bon Tai Soon, *Final Report on IBA Conference*, MALAYSIAN BAR (Oct. 6, 2005, 11:59 PM), http://www.malaysianbar.org.my/bar_news/berita_badan_peguam/final_report_on_iba_conference.html.

20. See *supra* note 1.

21. Douglas R. Richmond, *The New Law Firm Economy, Billable Hours, and Professional Responsibility*, 29 HOFSTRA L. REV. 207, 207-08 (2000).

22. See generally Harper, *supra* note 11, at 70-71 (discussing law firms’ transition to operation under a “business model”).

23. See *id.* at 67 (“Virtually all of the nation’s largest corporations rely upon lawyers in big firms for advice and representation—and they pay handsome sums. Most firms have full-service capabilities: corporate counseling, mergers and acquisitions, litigation, tax advice, lobbying, and estate planning for the wealthy.”).

24. See Nicola Faith Sharpe, *Corporate Cooperation Through Cost-Sharing*, 16 MICH. TELECOMM. & TECH. L. REV. 109, 110 (2009) (discussing the rising litigation costs for corporations due to “the advent and rapid growth of electronic document discovery”).

related to the issue on appeal took about five seconds to identify. The judge knew that despite what represented millions of dollars of hours, the issue to be decided was very narrow and much of the discovery unnecessary or even irrelevant.

An entire system of alternative dispute resolution developed. That system saved the courts, but had the effect of removing thousands of cases from the public eye.²⁵ Mediated and arbitrated cases were no longer transparent, no longer seen by the public, and no longer precedential.²⁶ The courts became less central to the community.²⁷

During that same time, criminal law migrated, to a substantial degree, from state-based prosecution, defense, and judicial determination to federal prosecution, defense, and determination. Since I was confirmed in 1985, the number of federal crimes in the United States Code has increased substantially.²⁸ The onset of the national plague of guns and drugs and the era of federal criminal law and sentencing was followed by the horror of international terrorism. Prosecutors and judges of these crimes are far away. They are largely unknown. Many defense attorneys, if they can be afforded or subsidized, and, in most states now, if they even exist, are still local, but they have little ongoing relationship with the prosecution or the court. The situation breeds, at best uncertainty, and at worst, mistrust and ineffective representation. Prisons are far away; public trust is eroded.

To make matters worse for the legal profession, lawyers have been in the middle of the most public scandals of our time. From Watergate to the Wall Street collapse, the faces of lawyers appeared in the papers of the nation. The fingerprints of lawyers were on masses of documents, evidencing their client's evasion, or, at least, ignorance of ethical and legal requirements.²⁹ The medical profession blamed the legal profession for rapidly escalating medical costs.³⁰ When a local mother loses her obstetrician before her baby is born,

25. See Richard C. Reuben, *Constitutional Gravity, A Unitary Theory of Alternative Dispute Resolution and Public Civil Justice*, 47 UCLA L. REV. 949, 1014 (2000).

26. See *id.*

27. *Id.*

28. See John S. Baker, Jr., *Revisiting the Explosive Growth of Federal Crimes*, THE HERITAGE FOUND., D.C. (June 16, 2008), <http://www.heritage.org/research/reports/2008/06/revisiting-the-explosive-growth-of-federal-crimes> (estimating that there were approximately 4,450 federal crimes within the United States Code as of 2007).

29. See Steven L. Schwarcz, *The Role of Lawyers in the Global Financial Crisis*, 24 AUSTL. J. OF CORP. LAW (2010).

30. Chris Rizo, *Medical Malpractice Litigation Blamed for Rising Health Care Costs*, SOUTHEAST RECORD (Oct. 13, 2009, 1:00 PM), <http://setexasrecord.com/news/221600-medical-malpractice-litigation-blamed-for-rising-health-care-costs>.

and the doctor blames the lawyer, it is just not a good day for the legal profession.³¹

Almost none of what I have just described was illegal, unethical, or wrong. Most of it might have been inevitable, given a period of relative prosperity. Nevertheless, it has had an indelible impact on the legal profession and the public's understanding of, and respect for, the role of lawyers and judges. The person on the street, in Newark and everywhere, simply does not grasp that lawyers and judges are the front line in preserving liberty, in problem solving for the folks in their communities, in serving the nation, and in modeling the rule of law at work. As the cost of legal services escalated, more people were (or at least believe they were) excluded from legal services.³² I just finished serving on the national Legal Services Corporation Rural Task Force that addressed the unmet legal needs of the people of this country.³³ My friends, there are two huge chasms in this country. One chasm is the gap between the availability of legal services and all those folks who cannot afford, or believe they cannot afford, legal services.³⁴ These are not just low-income people. The people who are deprived, or believe they are deprived, of legal services include middle-income people and small businesses.³⁵ The other chasm is all of those lawyers—especially law students and young lawyers—seeking employment and seeking to provide legal services.³⁶ Somehow we must find a model that will bridge these two chasms in ways that impact both constructively and powerfully.

This history, however simplified, suggests that in the last few decades the legal profession may not have proved its worth to the public. In this parade of horrors, one hears a clarion call for the profession to reassert its high professional calling to be the stewards of ordered liberty. We must prove that we will serve the public and thereby earn the public trust. To trust us, yes, they must know us. At

31. See *id.* (discussing the changes to the health profession due to lawsuits).

32. L. SERV. CORP., REPORT OF THE PRO BONO TASK FORCE 1 (Oct. 2012), *available at* http://www.lsc.gov/sites/default/files/LSC/lscgov4/PBTF_%20Report_FINAL.pdf (“[M]illions of Americans cannot access [the justice system] because they cannot afford to do so.”); *id.* at 32 n.1 (noting that the U.S. justice system “remains inaccessible to disadvantaged groups,” and ranks poorly in terms of relative cost compared to other nations).

33. *Id.* at 1-2; see also L. SERV. CORP., DOCUMENTING THE JUSTICE GAP IN AMERICA: THE CURRENT UNMET CIVIL LEGAL NEEDS OF LOW-INCOME AMERICANS (Sept. 2009), *available at* http://www.lsc.gov/sites/default/files/LSC/pdfs/documenting_the_justice_gap_in_america_2009.pdf.

34. John J. Farmer Jr., *To Practice Law, Apprentice First*, N.Y. TIMES, Feb. 17, 2013, www.nytimes.com/2013/02/18/to-practice-law-apprentice-first.html?ref=opinion&_r=2&.

35. See *id.*

36. *Id.*

the altar of the billable hour, we have sacrificed significant public service, volunteer, and pro bono work. Judges are not exempt. In the name of worrying about ethical or other conflicts, many judges have stepped back or withdrawn from philanthropic, charitable, and educational endeavors.³⁷

Not Judge Garth. He has taught. He has been a part of his community and his law school, as have many of my colleagues on both the state and federal benches. My anecdotal impression, however, is that there has been an erosion in the involvement of judges in legal education and in community service endeavors.

Of course, lawyers must make a living. However, being a legal professional is so much more than earning a fair wage or counting hours in increments, verdicts, or piecework. Being a professional is about standing in the shoes of those great lawyers and judges who came before us. The lawyers of classical times moved civilizations and created governments through their oratory and treatises. The lawyers of the Enlightenment forged new understandings of inalienable rights that form the foundation of our national story. The lawyers of the founding period refined our understanding of those rights and created a nation that was so stunningly idealistic that we thought we could govern ourselves—amazing! The lawyers of recent decades stepped forward to define basic civil and constitutional rights of all people, regardless of race, gender, or religion.

Indeed, the last few decades in the legal profession have in no way been confined to that gloomy landscape I have just described. These have been years that made me able to be a lawyer and a judge. They have been years in which we began to see the broad array of possibilities for all human beings. The lawyers of my time began to give meaning to “equal justice for all.” How often have you personally been one of the stewards, one of the very important guarantors, of that legacy? The lawyer heroes of this time are the Leonard Garths, whose roles transcended particular titles and stood for service to the common good. They were the legally trained professionals who stepped forward to say, “I am a part of my court; I am a part of my school district; I am a part of my Sunday school class; I am a part of my community; I am a part of my family.” They were, in short, valuable and well-known to the public.

The public also does not understand us for yet a more destructive reason. The public does not understand government. They certainly do not understand the role of courts. In Philadelphia, here in the Third Circuit, the National Constitution Center can tell you that Americans can name the Three Stooges more often—adults, these are

37. See Dep’t Ethics Office, *Do It Right Handbook*, U.S. DEPT. OF JUST., www.justice.gov/jmd/ethics/general.htm (last visited Apr. 4, 2014) (explaining ethical limitations on outside activities of federal employees).

not kids, these are adults—and more rapidly than they can name a member of the U.S. Supreme Court.³⁸ They do not know the three branches of government.³⁹ The lack of public knowledge about government is stunning. Justice Sandra Day O'Connor is a tireless spokesperson for the necessity of broad-based and rigorous civic education for all Americans.⁴⁰ I applaud her work around the nation in advocating for civic education in the schools.⁴¹

We cannot just leave it to the schools. We cannot blame the media. We, the lawyers, are the stewards of ordered liberty. This lack of trust and understanding begs for vigorous attention. Who will step forward? We must do so—the lawyers and judges whose very professional lives have been staked on understanding and giving life to the genius of this constitutional system of government that we were bequeathed by those colleagues who went before us. Each of us must be the lawyer patriots of our time. We must be the educators, the articulators, the working models of the rule of law. We must go into every venue that we can find—school rooms, civic clubs, neighborhood gatherings, houses of worship—with the zeal and humility of great teachers who know that the task is enormous and the stakes are very high. We cannot, however, reassert our presence in our communities with the air of the arrogant litigator or the aura of professional privilege. We must model the highest ideals of the legal profession. We must return as fellow citizens who care deeply about each other and about preserving liberty and giving of ourselves for the good of this nation, this world, and our children and grandchildren. That is the only way to rebuild basic public trust.

Our task is to prove that this nation cannot survive any future without a flourishing legal profession, an independent bench and bar, and lawyers who care about their communities and their nation. Those new lawyers throughout the nation, and those who have not yet been attracted to law school will be the Leonard Garths of the future. The entire legal profession must become evangelists for the value of a legal education. It falls to us to convince future lawyer leaders of the value of training as a lawyer. Bring them into the law schools of the nation and make sure the law schools are worth it.

38. *More Teens Can Name Three Stooges Than Can Name Three Branches of Government*, NAT'L CONST. CENTER (Sept. 2, 1998), <http://www.constitutioncenter.org/media/files/survey-1999-stooges.pdf>.

39. Michelle Healy, *Americans Don't Know Civics*, USA TODAY (Nov. 11, 2001, 11:56 AM), http://usatoday30.usatoday.com/news/education/2008-11-19-civics_N.htm?csp=34 (explaining that an Intercollegiate Studies Institute study found “that half of U.S. adults can name all three branches of government”).

40. See Kerry Hannon, *Rebooting Civil Education With Sandra Day O'Connor*, FORBES (Dec. 2, 2011, 10:26 AM), <http://www.forbes.com/sites/kerryhannon/2011/12/02/rebooting-civic-education-with-sandra-day-oconnor/>.

41. *Id.*

So, what of legal education? As I have noted, law schools are under attack everywhere.⁴² As with everything, there is probably a shred of truth to what is being said. But, if I am right about what I fully confess is a patently idealistic and patriotic view of the role of the lawyer for the future, the discussion cannot get mired in the details of curricular reform—that would be a drama or sideshow of its own. The curricular discussions will continue to be the subject of countless debates, faculty deliberation, and bar admission requirements. A motley cast of characters will vie for the prestige and dollars of the professional market for legal educational providers.

My central concern is much more general and much broader than any particular curricular choices. I implore the profession to ask whether legal education has in fact promoted the model of the lawyer patriot outlined here. Have we as a profession, or as legal educators, modeled for a new generation that component of our professional calling that requires us to go beyond, far beyond, just doing the job? Training as a professional—be it as a lawyer, doctor, or clergy person—comes from the word “profess”.⁴³ It means that we call others to the profession. It means that we train aspiring lawyers in higher ideals. We pattern our professional lives upon oaths that are far above the letter of the law, and respond to ideals that are beyond the individual and personal gain.

Surely, a part of transmission of the identity of the lawyer goes beyond, “What are we going to teach in this class? How much information can we impart? How many subjects can we put in the bar exam?” We have fallen prey to “teaching to the test” and believing that a legal education is about a particular body of information. A good legal education equips newer lawyers to confront an ever-changing body of information. Such an education imparts transferrable skills that will equip the lawyer to adapt to a rapidly evolving legal landscape. A good legal education inspires a sense of working on behalf of civic values and service to community, nation, and world.

The revelation that I should not have been surprised about when I returned to legal education is how far legal professionals have removed themselves from legal education. As the demands for skills-building courses in law school curricula become a national drumbeat,⁴⁴ I hear echoes of a profession reluctant to be part of the

42. David A. Kaplan, *The Vanishing Law Degree*, CNN (Apr. 18, 2012, 5:00 AM), <http://www.management.fortune.cnn.com/2012/04/18/law-degree-jobs/>.

43. See Definition of Profession, ONLINE ETYMOLOGY DICTIONARY, <http://www.etymonline.com/index.php?term=profession> (last visited Apr. 1, 2014). The words “profession” and “profess” both derive from the Latin *profiteri*, meaning “[to] declare openly.” *Id.*

44. See Katherine Mangan, *Law Schools Revamp Their Curricula to Teach Practical Skills*, CHRON. HIGHER EDUC., Mar. 4, 2011, at 2 (describing Washington and

educational endeavor of forming new lawyers and transmitting professional norms, identity, and values. Financial imperatives drive law firms to say they will not hire new lawyers without experience.⁴⁵ Even my revered judicial colleagues, say, “Oh, I don’t want to train them, let somebody else do that.” That, my friends, is selling out. For if we are to be successful transmitting professional norms, we must be like Leonard Garth; we must be professionals who view as part of our responsibility training our law clerks, working with our young associates, inviting people into bar associations, and all the activities that bring the law schools back together with the legal profession.

Legal education, in the wake of the call for more experiential learning, is responding in remarkable ways! I just saw the Rutgers clinical offices upstairs. They are state of the art! If they are gone tomorrow, I have probably transported them to Pepperdine! I applaud Rutgers Law School for the quality of its clinical offerings.⁴⁶

Unfortunately, clinical education is not the full answer, nor are externships. The task of training new lawyers is a much more ambitious job. We all must be in it together—judges, practicing lawyers, and legal educators. I came back to a legal education environment where academic work that supports the practicing bar is not valued nearly as much in the legal academy as traditional law review-type scholarship. I think Justice Alito referred to that in his remarks last year. It was very telling to me that when law schools approached me inquiring whether I would consider returning to academic life, my work as a judge was not valued by traditional legal scholarly norms. A very distinguished scholar from a very good law school said to me “Well, the problem with your candidacy is you don’t have any scholarship.” So twenty-five years of appellate opinions and published articles are chopped liver!

It is not just the bar that has pulled away. Legal education has separated itself from the profession. In trying to respond to rankings or other measures of academic status, law schools have withdrawn, in some measure, from relevance to the practicing bar and bench. In my view, it is this disconnect between the profession and the academy that provokes the chorus of voices demanding more skills training in the law schools. Reports recommending more experiential

Lee University of Law’s decision to change third year curriculum in light of national organizations’ push for less theoretical teaching methods).

45. See Laura Lorenzetti, *Law Graduates Face Declining Salaries as Big Firm Jobs Drop Off*, ISSUE NUMBER ONE (Apr. 6, 2013, 6:34 PM), <http://issuenumberone.journalism.cuny.edu/2013/04/06/law-graduates-face-declining-salaries-as-big-firm-jobs-drop-off/> (“[M]any of the larger firms shifted to hiring experienced attorneys and less new graduates.”).

46. *Award-winning Program*, RUTGERS SCH. L.—NEWARK, <http://law.newark.rutgers.edu/clinics/award-winning-program> (last visited Apr. 1, 2014).

learning abound.⁴⁷ The current debate is not just about skills training. That moniker trivializes a deep concern throughout the profession about a perceived lapse in the formation of new lawyers, whether in law school or in the early years of their professional careers. Traditional law schools do very well teaching doctrinal courses. Law schools ground students effectively in the rigors of subject matter information. But, increasingly, the inquiry about the adequacy of legal education focuses on whether traditional legal education excludes components that are central to the success of young lawyers.⁴⁸ The question is whether law school curricula include training in the competencies that characterize great lawyers. Professor William Henderson of the University of Indiana is engaged in ground-breaking work attempting to identify those predictors of success in the legal profession that are not captured by traditional objective measurements such as LSAT scores and grades.⁴⁹ Such subjective personal skills as effective counseling with clients, negotiating acceptable resolutions, problem solving, working in teams, bringing together a mass of facts to focus on a particular problem that a client is confronting, and communicating effectively, are among the attributes that characterize great lawyers.⁵⁰ Traditional legal education excels at teaching students to think like a lawyer. The question is whether traditional models train law students to act like a lawyer who is a problem solver for the community.

To put the issue into the most common sense terms, law schools

47. See, e.g., AM. LAW INST. AM. BAR ASS'N & ASS'N FOR CONTINUING LEGAL EDUC., EQUIPPING OUR LAWYERS: LAW SCHOOL EDUCATION, CONTINUING LEGAL EDUCATION, AND LEGAL PRACTICE IN THE 21ST CENTURY 3 (Charles C. Bingaman ed., 2009), available at http://www.equippingourlawyers.org/documents/summit_final09.pdf.

48. See Mangan, *supra* note 44.

49. See William D. Henderson, *The Client-Focused Lawyer*, NAT'L JURIST, Jan. 2011, at 62 (discussing that the "ability to connect with clients by earning their trust" is a key "lawyer success factor[]" and noting that such trust is created when, "[b]efore giving any advice, or taking any action, [practicing lawyers] need to understand the true nature of the problem. This requires [them] to ask open-ended questions, to listen, to gather missing facts, to put [themselves] in the client's shoes, to find an appropriate and effective way to convey to the client that [they] understand the problem, to listen some more and then to prescribe a course of action, or alternatively, to candidly admit that we cannot provide a cost-effective solution.") [hereinafter Henderson, *The Client-Focused Lawyer*]; see also William D. Henderson, *Course Portfolios: The Legal Profession*, EDUCATING TOMORROW'S LAWYERS (Feb. 20, 2014, 2:07 AM), <http://educatingtomorrowlawyers.du.edu/course-portfolios/detail/the-legal-profession> [hereinafter Henderson, *Course Portfolios*] (providing a course description and portfolio of Professor Henderson's legal profession course and noting, in the course description that "lawyers who have achieved great success possess not only a deep understanding of substantive law, but also traits such as character, judgment, integrity, communication, and empathy" and that the course "focuses on active listening, empathy, self-awareness, asking questions, presentations, and resilience.").

50. See Henderson, *The Client-Focused Lawyer*, *supra* note 49.

have a duty to nurture the success factors that make lawyers good counselors, good officers of the court, and good public educators. These are the skills the public needs. Combined with ethical and thoughtful business practices, the skills needed are the personal manifestations of the lawyer patriot. Skills training cannot be trivialized.

Legal education shares an important part of the responsibility for the disconnect between the academy and the profession. For many years law schools and universities had the luxury of a seemingly endless supply of applicants and revenue.⁵¹ In that climate there was little incentive for reevaluation and change to adapt to changes in the profession and legal services market. The reckoning, of course, came when the traditional legal job market constricted.⁵² Demand for new lawyers changed dramatically. The recession and its effect on the economy accounts for a portion of this change.⁵³ The recession sparked or was accompanied by a changing demand for legal services.⁵⁴ The market for legal services, and for new lawyers, is adjusting rapidly. Technology makes that adjustment easier and may be facilitating a move to very new and different models.⁵⁵ The new legal reality is that students seeking employment will not, largely, be employed in traditional law firms. Big Law, as it is euphemistically known, has downsized.⁵⁶ Law school graduates however are ubiquitous throughout the economy. They are around the world in NGOs and nonprofits. They are in government as evidenced in the most high profile occurrences around the world where lawyers are attempting to bolster the rule of law in challenging political environments. Lawyers are in-house in corporations and traditional law firms, large and small. Entirely new legal services employers emerge out of increasing technology, restructuring the profession,

51. See Rebecca R. Ruiz, *Recession Spurs Interest in Graduate, Law Schools*, N.Y. TIMES, Jan. 10, 2010, at A18, available at http://www.nytimes.com/2010/01/10/education/10grad.html?_r=0.

52. Adam Cohen, *Just How Bad Off Are Law School Graduates?*, TIME (Mar. 11, 2013), <http://ideas.time.com/2013/03/11/just-how-bad-off-are-law-school-graduates/> (“In 2007, 91.2% of law school graduates got jobs and salaries were soaring. . . . In 2009, just 65.4% of law school graduates got jobs for which they needed to pass the bar.”).

53. See Daniel Thies, *Rethinking Legal Education in Hard Times: The Recession, Practical Legal Education, and the New Job Market*, 59 J. LEGAL EDUC. 598, 599 (2010).

54. See *id.*

55. See Reynolds Holding, *Law Site's IPO Evokes a Future Beyond Dying Firms*, REUTERS (May 16, 2012, 10:15 PM), <http://blogs.reuters.com/breakingviews/2012/05/16/law-site%E2%80%99s-ipo-evokes-a-future-beyond-dying-firms/>.

56. See Peter Lattman, *Mass Layoffs at a Top-Flight Law Firm*, N.Y. TIMES, June 25, 2013, at B1, available at <http://dealbook.nytimes.com/2013/06/24/big-law-firm-to-cut-lawyers-and-some-partner-pay/>.

and even re-ordering legal services tasks.⁵⁷

So, the time is right. Clearly, the current debate has dissuaded many applicants to law school from the view that law is a way to get rich fast. Thus, the people that choose to go to law school today do so with great seriousness and attention to what it means to be a lawyer, and what they hope to accomplish in their professional lives. Ask any lawyer anywhere why they went to law school and the answer is, each one aspired to make a difference. That aspiration clearly continues to animate today's law students.

That lofty idealistic reason for choosing law as a career must reinvigorate the discussion with potential applicants to law school. There is reason to worry. All involved in legal education know the anxiety that attends each spring application period.⁵⁸ Applicants nationally over the last two years have gone down upwards of forty percent.⁵⁹ Forty percent of the people who might have gone to law school are choosing other paths. That is a reason to be worried because it may be that one of those people is the Leonard Garth of the future. So I call on you. You are the people who must be the spokespersons for the enduring and essential need for well-trained lawyers who can guide the nation and the world through the challenging and exciting issues and disputes that lie ahead. The lawyers' ability to focus on germane issues, negotiate reasoned practical resolutions, and settle and litigate disputes, will be in high demand in this complex society. The debate about the value of legal education goes to the core of our understanding of what it is to prepare legal professionals for a world we cannot see with any particularity. That is what lawyers do. What we must foresee clearly, is that the legacy of freedom and of people governed by the rule of law is our highest calling and the source of our professional responsibility. The modes of delivering legal services, and even the

57. See Ethan Bronner, *A Call for Drastic Changes in Educating New Lawyers*, N.Y. TIMES, Feb. 10, 2013, at A11, available at <http://www.nytimes.com/2013/02/11/us/lawyers-call-for-drastic-change-in-educating-new-lawYers.html>.

58. See Shawn P. O'Connor, *Weighing Multiple Law School Admission Offers*, U.S. NEWS & WORLD REP. (Apr. 8, 2013), <http://www.usnews.com/education/blogs/law-admissions-lowdown/2013/04/08/weighing-multiple-law-school-admission-offers> ("As thousands of law school applicants receive their decision letters or emails this spring, they face an often difficult decision regarding which school to attend. Whether you applied to five or 15 law schools, the decision can cause anxiety as you search for the best fit.").

59. Ethan Bronner, *Law Schools' Applications Fall as Costs Rise and Jobs Are Cut*, N.Y. TIMES, Jan. 31, 2013, at A1, available at <http://www.nytimes.com/2013/01/31/education/law-schools-applications-fall-as-costs-rise-and-jobs-are-cut.html> (explaining that law school applications are down thirty-eight percent since 2010).

understanding of what is a legal service, will change.⁶⁰ What will not change is the need for lawyers who are problem solvers, client servers, articulators of the American ideal of self-government, models of the rule of law, and servants of the common good.⁶¹ We will always need lawyer-patriots. We will need the Thomas Jeffersons, the Abraham Lincolns, and the Leonard Garths—yes, all of those people who have sacrificed much of their self-interest to train a new generation of lawyer-patriots. We must join together, all of us—lawyers, judges, legal educators—to attract and train a new generation. Whether a particular subject matter in the curriculum is obsolete is a legitimate debate, but whether we need this republic is not subject to such debate. We are the stewards of that legacy. Let us commit ourselves to the calling that Leonard Garth modeled for so many years on the federal bench. I thank you for this opportunity.

60. Ethan Bronner, *To Place Graduates, Law Schools Are Opening Firms*, N.Y. TIMES, Mar. 8, 2013, at A14, available at <http://www.nytimes.com/2013/03/08/education/law-schools-look-to-medical-education-model.html?pagewanted=all>.

61. See Lincoln Caplan, Editorial, *An Existential Crisis for Law Schools*, N.Y. TIMES, July 15, 2012, at SR10, available at <http://www.nytimes.com/2012/07/15/opinion/sunday/an-existential-crisis-for-law-schools.html> (discussing the need for law schools and the legal profession to adapt to changes).