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## The Challenge of Change: The Practice of Law in the Year 2000

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# The Challenge of Change: The Practice of Law in the Year 2000

James W. Jones\*

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## I. INTRODUCTION

The past two decades have witnessed extraordinary changes that will have a lasting impact on the structure of the legal profession and the ways in which lawyers approach their practices. Some twenty years ago the legal profession was remarkably stable, having changed little in the preceding 100 years. The bar was relatively small, fairly homogeneous, mostly male, and overwhelmingly white anglo-saxon Protestant. The profession was, in the main, a close-knit fraternity of like-minded practitioners who shared a strong sense of common values and a general disdain for any efforts to commercialize the profession. The American Bar Association's 1908 *Canons of Ethics* best expressed this view with the solemn pronouncement that "the profession is a branch of the administration of justice and not a mere money-getting trade."<sup>1</sup>

The word that perhaps best characterized the bar of twenty years ago was "loyalty." Most lawyers were intensely loyal, not only to the profession in general, but also to the other lawyers with whom they practiced. In those halcyon days, a young lawyer quite commonly joined a firm right out of law school (or perhaps after an appropriate clerkship) and remained there for his entire professional career. Although lateral movements from one firm to another did occur from time to time, they were uncommon and were viewed as unprofessional if undertaken merely to enhance compensation. A lawyer leaving his firm was analogized to getting a divorce—and divorce in those days was not a

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1. CANONS OF ETHICS Canon 12 (1908).

respectable choice.

The notion of loyalty also permeated most lawyers' relationships with their clients. Clients generally selected single firms to service all of their legal needs and developed relationships which, despite occasional changes, were remarkably stable. Close relationships of ten or twenty years were common between law firms and their major corporate clients. Most large clients found the concepts of "shopping around" for lawyers or dividing their legal business among several law firms both unattractive and unacceptable.

Clients trusted their lawyers to a degree that is difficult to understand today. For example, many firms billed clients only once or twice a year with a one-line statement—"For legal services rendered—\$72,000." Remarkably, clients usually paid these statements by return mail without question or complaint. Most clients readily deferred to their lawyers' knowledge of how particular problems should be handled, and only rarely did clients try to second guess the judgments made or the costs incurred.

These elements characterized the profession twenty years ago, but the past two decades have been a time of unprecedented change. To be sure, the law has continuously evolved (as does any profession), but the past twenty years have been far more significant. Indeed, nothing short of a major restructuring of the legal profession is underway. As the head of a large legal recruiting firm remarked: "[L]awyers, both in firms and corporations, have been living what will be seen as a period of redefinition—that is, the redefinition of lawyers, law firms and lawyering. . . . [A]t no other time have the changes been so dramatic—changes that are affecting the entire nature of practice."<sup>2</sup>

## II. THE CAUSES OF CHANGE

Obviously, the causes of the substantial changes that have occurred in the legal profession over the past two decades are complex and related to changes occurring generally in American society. Nonetheless, it is possible to identify at least four causes that have been particularly important. First, and most significant, has been the increasing complexity of the matters that lawyers must handle on behalf of their clients. The lawyer's role used to be fairly well defined, and one could distinguish with relative ease between "legal" matters on which the lawyer focused and "business" matters that were the province of the client. Increasingly, however, the distinction between what is a "strictly legal" issue and what is not is often quite blurred. Today's lawyer is almost as

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2. Alexander, *Charting a Course of Change: Firms in Transition*, Nat'l L.J., Jan. 18, 1988, at 34, col. 1.

likely to be focusing on economic, scientific, financial, or political questions as on strictly legal issues. The increasingly complex universe of legal issues reflects, of course, the growing complexity of the world around us. This complexity has led to more specialization within the practice of law and has spawned an interdisciplinary approach to problem solving that would have been rare twenty years ago.<sup>3</sup>

A second factor that has significantly affected the practice of law in recent years has been the growth of a new spirit of entrepreneurship, which has literally swept the country in the past decade. Particularly in the so-called "high tech" fields, entrepreneurs have started thousands of new business enterprises—some of them in entirely new industries. In 1985, for example, American entrepreneurs created 700,000 new companies, 400,000 new partnerships, and 300,000 new self-employment situations for a total of 1.4 million new businesses in that year alone.<sup>4</sup> By contrast, in 1950 only 90,000 new businesses were formed.<sup>5</sup>

This surge in entrepreneurial activity, which has had broad ramifications throughout our economy, has also affected the legal profession. The substantial increase in commercial activity not only has generated additional legal business, but the entrepreneurial spirit reflected in these activities has also given rise to the "lawyer-entrepreneur"—a new breed of professional who, like the venture capitalist, is prepared to broker new technologies and other new ventures as a full partner of his clients. Although such lawyer-entrepreneurs do not make up a significant portion of the overall legal community, their impact has far exceeded their numbers.

A third factor that has contributed to the changing nature of legal practice is the increasing complexity and instability of corporate America. Today, mergers and acquisitions practice dominates the work of corporate lawyers. Most corporations spend inordinate amounts of time and money dealing with the current wave of takeover attempts. In 1986 American industry spend some \$177 billion in hostile takeover bids, a sum that, for the first time in our history, exceeded the amount spent on acquisitions of new plants and equipment.<sup>6</sup> These vast corporate upheavals have significantly affected the legal profession, not only by generating additional legal work, but also by casting a pall of uncertainty over traditional client relationships. Unfortunately, new corporate owners often operate their acquired enterprises under the spoils

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3. See *infra* notes 20-25 and accompanying text.

4. Tibbetts, *Avoiding the Entrepreneurial Trap of the '80s*, 31:3 PRICE WATERHOUSE REV., 1987, at 34, 36.

5. *Id.*

6. Proxmire, *The M&A "Game" Is Not a Productive Enterprise*, Nat'l L.J., Nov. 9, 1987, at 21, col. 1.

system, and the law firm that assisted the former owners in resisting the takeover is inevitably the first to go.

Fourth, any assessment of the factors effecting change in the legal profession would be incomplete without acknowledging the impact of growing consumer consciousness in the United States. Ever since Ralph Nader challenged the safety of General Motors' Corvair automobile, consumers increasingly have asserted both their rights to information and their rights to make informed decisions about goods and services offered to them. Consumers of legal services are no different from other consumers in this respect.

An interesting side effect of this rise of consumer consciousness has been the demystification of professional services. Just as physicians are no longer regarded as omniscient, so too do lawyers find themselves increasingly called to task for their strategies and judgments. This increased scrutiny by clients, especially when coupled with the skepticism of the post-Vietnam, post-Watergate era, has led to a general erosion of public trust and confidence in lawyers. Heightened consumer consciousness has also sparked increased competition over legal fees and fueled such radical departures from traditional professional practice as advertising for legal services.<sup>7</sup>

### III. THE EFFECTS OF CHANGE

These four factors—the increasing complexity of legal matters and issues, the surge of entrepreneurial activities, the growing complexity and instability of corporate America, and the rising wave of consumer consciousness—have combined in complex ways with many other factors to cause fundamental changes within the legal profession. Although the implications of these changes are familiar, a summary of their major effects illustrates their broad impact.

First, and perhaps most noticeable, is the simple matter of scale. For starters, America has more lawyers today than ever before, and the numbers continue to increase at impressive rates. In 1950 there were 220,000 attorneys in this country. Currently American lawyers number 640,000, and by 1995 there will be an estimated 925,000.<sup>8</sup> These lawyers also practice in firms that are rapidly increasing in size.<sup>9</sup> In 1978 the average size of a firm listed in the *National Law Journal's* survey of the nation's 200 largest law firms was 105 lawyers.<sup>10</sup> By 1987 that *average*

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7. See Calvani, Langenfeld & Shuford, *supra* 41 VAND. L. REV. 761, 762-74 (1988).

8. Alexander, *supra* note 2, at 34, col. 3.

9. *Id.*

10. Rosen, *The Large-Firm Boom Continues: A 10-Year Look*, Nat'l L.J., Sept. 28, 1987, at S-2, col. 1.

had increased to 216 attorneys—a growth rate of 105 percent in less than ten years.<sup>11</sup> In 1978 only fifteen firms in the United States had 200 or more lawyers. By 1982 that number had increased to thirty-six, and by 1987, 105 United States law firms had 200 or more attorneys.<sup>12</sup> Moreover, with the largest firm in the nation now topping 900 lawyers, almost certainly the 1000-attorney firm will be a reality within the next year or so.<sup>13</sup>

A concomitant growth in revenues has accompanied this extraordinary growth in firm size. In 1985, upon completion of its first survey of revenues and profits in the nation's 100 largest firms, *The American Lawyer* found only five firms with gross revenues in excess of 100 million dollars.<sup>14</sup> In the 1987 survey, twenty-one of the top 100 firms had passed the 100 million dollar milestone.<sup>15</sup> Law firms clearly have become, at least in terms of size and revenues, big businesses.

The nature and location of this growth is also important. Most major law firms are growing not only in their own hometowns but also through branch offices. In a recent survey, *The National Law Journal* found that the 100 largest U.S. law firms have a median number of four branch offices, and that a fair number of those branches include international offices.<sup>16</sup> Today, more than one-third of all of the lawyers in the nation's 100 largest firms work in branch offices—both domestic and foreign.<sup>17</sup> These data suggest that the profession is moving toward not only the "megafirm" but also the national firm.

As significant as the branching phenomenon has been to the restructuring of law firms, the rise of lateral hiring has had a greater emotional impact on the profession as a whole. Although, as previously noted, lateral hiring of associates and partners was fairly rare ten or twenty years ago, lateral acquisitions rapidly are becoming the rule rather than the exception. In a 1987 survey of the nation's 500 largest law firms, *Of Counsel* magazine discovered that very few firms did no lateral hiring. The overwhelming majority of surveyed firms reported that they acquire significant numbers of both associates and partners through lateral hiring.<sup>18</sup>

As the rise of lateral hiring illustrates, the concept of firm loyalty is

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11. *Id.* The 1987 survey included the nation's 250 largest law firms.

12. *Id.*

13. *Id.* at S-26.

14. Brill, *The Gaps Widen*, 9 *Am. Law.*, Jul.-Aug. 1987, at S-6, col. 1 (found in *The Am. Law. 100: Pullout Management Report*).

15. *Id.* at S-12.

16. See Rosen, *supra* note 10, at S-4 to S-21.

17. Rosen, *supra* note 10, at S-26, col. 1.

18. Nelson, *Lateral Hiring Established as Major Component of Recruiting Process*, *OF COUNSEL*, May 18, 1987, at 8.

increasingly on the wane. A lawyer may now change firms two, three, or even four times in the course of a career. The concept of the "portable practice" and the increasing willingness of lawyers to leave their current firms to work for the highest bidding competitors have created a whole new growth industry in legal recruitment services. A recent survey identified 161 professional recruiting firms now involved actively in these "head hunting" activities.<sup>19</sup> Increasing attorney mobility has created a fiercely competitive, historically unparalleled, market for legal talent. This competition has pushed starting associate salaries ever higher and has resulted in an across-the-board increase in the cost of delivering legal services. Intense salary competition, coupled with an active trade press which makes comparative information about firms readily available, has helped create a climate in which the traditional attorney-firm loyalty has suffered a noticeable decline.

A similar decline in the traditional attorney-client loyalty mirrors the decline in attorney-firm loyalty. Increasingly, clients, especially major corporate clients, choose not to hire a single firm or even a small group of firms. These clients prefer, instead, to bid out their legal business, often in relatively small increments, to firms that appear to have the particular specialties required. Typically, these "bidding" processes are extremely price competitive; clients often require participating firms to submit detailed budgets that the firms must observe during the course of projects even if the matters involve litigation. Moreover, clients carefully scrutinize statements submitted by the firms. The days of the annual one-line statement are gone for good.

In sum, the legal profession today is a profession of rigorous competition—competition for clients and competition for legal talent. Law firms are becoming larger; they are becoming national in scope through branching and increased marketing efforts; they are also becoming increasingly specialized. Finally, law firms are becoming increasingly multidisciplinary. This last development is particularly important because it signals a significant new direction in which the legal profession is moving. Consequently, the increasingly multidisciplinary nature of legal practice is worth addressing in some detail.

In the past few years, numerous firms around the country have begun experimenting with a wide variety of arrangements structured to provide their clients with the services of nonlawyer professionals. To provide these nonlegal services to law firm clients, law firms have both hired nonlawyers directly and formed subsidiary or affiliated firms. A recent survey by the National Association of Law Firm Marketing Administrators found a considerable number of such arrangements in

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19. Alexander, *supra* note 2, at 34, col. 4.

firms of all sizes across the nation. The diversity of these activities is quite impressive. The survey found, for example, law firms engaging in the following practices either directly or through affiliated entities: investment banking in Atlanta and Memphis; energy and environmental consulting, management services, and employer benefits consulting in Atlanta; advertising in Arizona; labor relations consulting in Philadelphia; real estate brokerage in Los Angeles; office support services, seminars, and videos in Pittsburgh; real estate development services nationwide; and business consulting services dealing with international trade in New York. Furthermore, the survey found that in Washington, D.C., law firms have spawned a great variety of nonlegal affiliates—ranging in specialization from energy and environmental consulting to health care consulting and management, from educational consulting to economic research and legislative services.<sup>20</sup>

My own firm, Arnold & Porter, has had extensive experience with both the use of in-house nonlawyer specialists and with the creation of affiliated firms. Currently, Arnold & Porter has twelve in-house specialists working in such diverse areas as tax, corporate transactions, public contracts, environmental matters, food and drug regulation, products liability, and international trade. These persons are highly trained professionals who work in specialized fields and are distinct from the firm's staff of regular paralegals.

Arnold & Porter also has at present three affiliated firms, all of which grew out of and are closely related to traditional areas of the law firm's practice. The three affiliates are: APCO Associates, a general consulting firm; MPC & Associates, a real estate development consulting firm dealing principally with nonprofit institutions; and The Secura Group, a full-service consulting firm for the financial industry, principally serving commercial banks and thrift institutions. Arnold & Porter's involvement in these non-traditional areas of business may be instructive because it may typify the experience that other firms have had and demonstrate the ways in which the legal profession is changing.

APCO and MPC, both formed in 1984, grew out of an extensive practice that Arnold & Porter had developed in the nonprofit area. Over the preceding fifteen years, the firm had provided a full range of legal services to a growing number of nonprofit institutional clients, including foundations, colleges and universities, community development corporations, and state and local governments. The projects on which Arnold & Porter attorneys worked were innovative and diverse: from structuring industrial development to building subsidized housing; from

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20. Haserot, *Multiprofessional Mixes Are Proliferating*, Nat'l L.J., Oct. 19, 1987, at 18, col. 1.



financing communications satellites to creating models for inner-city redevelopment; and from fostering the development of rural farm cooperatives to providing the framework for the creation of closed captioned television for the hearing impaired.

Despite their apparent dissimilarities, these projects had much in common. Many of them were large, most of them were exceedingly complex, and all of them had tight budgets. Moreover, the clients in all of the projects required a full range of professional services of which legal services, though essential, were only a part. These undertakings demanded a multidisciplinary approach, a team effort in which lawyers worked closely with other professionals—engineers, architects, land planners, agronomists, market analysts, financial specialists—to achieve the clients' goals in the most direct and cost effective way. The attorneys increasingly found themselves in charge of these multidisciplinary teams, and came to realize that they could provide the full range of client services more economically, with better quality control, and in a more timely fashion if they could bring a number of these nonlawyer professional services in-house.

As attractive as the idea of in-house nonlawyer professional services seemed, however, it faced certain obstacles. For example, to attract quality nonlawyer professionals required the firm to structure highly desirable compensation and benefits packages that were difficult to put together within the confines of the law firm itself. For example, Arnold & Porter wanted to preserve the right to offer key employees of the new ventures eventual participation in the ownership and profits of the enterprises. The existing canons of ethics, however, prohibit nonlawyers from participating in the ownership or profits of law firms.<sup>21</sup> Thus, the firm decided to form new companies, affiliated with but not identical to the law firm. The results were APCO Associates and MPC & Associates.

APCO was organized as a Delaware limited partnership with Arnold & Porter as the sole limited partner. MPC was formed as an S corporation, with Arnold & Porter having certain contractual rights to its profits. Arnold & Porter partners control the boards of directors of both entities. The CEO of APCO is a senior partner at Arnold & Porter, but the president is a nonlawyer. The president and CEO of MPC is a senior partner at Arnold & Porter. APCO currently has twenty-eight professionals, all located in the company's offices in Washington, D.C. MPC has twenty professionals, located principally in Washington, but with outposts in New York and Los Angeles as well. In the three years

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21. MODEL RULES OF PROFESSIONAL CONDUCT Rule 5.4 (1983); MODEL CODE OF PROFESSIONAL RESPONSIBILITY DR 3-102, 3-103, 5-107(C) (1981).

since its formation, MPC has continued its original focus as a real estate development consulting firm with a concentration on serving the development needs of nonprofit institutions around the country—primarily colleges and universities. APCO, however, has developed in unexpected ways.

Soon after the establishment of APCO, many practice groups within Arnold & Porter realized that use of an in-house consulting firm could be an enormous asset to their particular clients. Consequently, APCO grew rapidly beyond its initial limited purpose and today serves as an important supplement to many areas of the firm's practice. Aside from its ongoing work in the nonprofit sector, APCO practices actively in the international trade and joint venture areas, works in public relations and related activities, and provides a full range of legislative and politically oriented services. APCO is, in short, a full-service consulting firm designed to augment and complement the traditional legal services provided by Arnold & Porter by filling the growing need for nonlawyer professionals in a broad spectrum of areas.

The third affiliated firm, The Secura Group, was formed in 1986 to complement Arnold & Porter's substantial banking practice. The formation of this company enabled Arnold & Porter to take advantage of an unique opportunity—the availability of William M. Isaac, former Chairman of the FDIC, who was interested in creating a new consulting firm to service the growing needs of the nation's commercial banks and thrift institutions. Secura has a staff of highly skilled professionals with experience in banking operations and regulation. Secura's services for the banking and thrift industries include development and implementation of strategic plans; review of operating performance; preparation for examination; assistance in developing new products; and assistance in restructuring and acquisitions and mergers. Secura currently has seventeen professionals located in three offices—the main office in Washington, D.C., and branch offices in Dallas and Los Angeles.

Like APCO, Secura is organized as a Delaware limited partnership, with Arnold & Porter as the sole limited partner. The company is governed by a board of directors, a majority of which are partners at Arnold & Porter. The Chairman of the Board of Secura is a senior partner at Arnold & Porter, and the president of the company is also a senior partner in the law firm.

Arnold & Porter's experience with these three affiliated firms and the nonlawyer professionals brought in-house has been an unqualified success. The affiliates and the nonlawyer professionals have added richness and diversity to Arnold & Porter's practice. They have enabled the firm to better serve the needs of its clients. They have expanded Arnold & Porter's horizons and forced the attorneys to think in much broader

terms about the most effective and efficient ways to deal with client problems.

The legal profession, however, has not greeted with uniform enthusiasm many of the sweeping changes previously described, including the growing use of nonlawyer professionals. Indeed, many lawyers today firmly believe that they are surrendering their status as a profession, becoming instead what the 1908 *Canons of Ethics* referred to as "a mere money-getting trade."<sup>22</sup> Many of these strongly held views were presented to the American Bar Association's Commission on Professionalism as it prepared its 1986 report entitled *In the Spirit of Public Service: A Blueprint for the Rekindling of Lawyer Professionalism*.<sup>23</sup> Some urged the Commission to recommend limitations on lawyers' fees and total incomes. Others advocated that the bar should restrict law firm growth and should strictly regulate specialization within the profession. Then-Chief Justice Warren Burger asserted that lawyer advertising was corrupting the bar and should be regarded as unethical.<sup>24</sup> Although in the end the Commission produced a useful and thoughtful report that the ABA House of Delegates adopted, the report did reflect a certain nostalgia for the "good old days." In some ways a longing for more stable times and a desire to resist the changes sweeping the legal profession are not difficult to understand. As the French poet Paul Valery observed, however, "[t]he trouble with our times is that the future is not what it used to be."<sup>25</sup>

#### IV. THE CHALLENGE OF CHANGE

The legal profession is undergoing a period of change caused in large part by factors outside and largely beyond the control of the profession. The challenge for the bar is not, somehow, to try to sweep back the tidal wave of change that has engulfed it, but rather to engage in a reasoned and thoughtful dialogue about how the profession can adapt to new circumstances in ways that preserve the best of its professional traditions and heritage. And it should be emphasized that only the "best" of the bar's traditions and heritage should be preserved. Attorneys should not forget that the "good old days" of the profession were not so good for everyone. In the not so distant past blacks, women, political dissidents, Catholics, and Jews all found themselves systematically excluded from the legal profession. Those "good old days" are

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22. See *supra* text accompanying note 1.

23. ABA Comm'n on Professionalism, ". . . *In the Spirit of Public Service: A Blueprint for the Rekindling of Lawyer Professionalism*, reprinted in 112 F.R.D. 243 (1986).

24. Hazard, 'Good Old Days' Not Always So Good for All, Nat'l L.J., Dec. 14, 1987, at 13, col. 3.

25. THE PORTABLE CURMUDGEON 105 (J. Winokur ed. 1987).

gone—and none too soon. How then, does the profession begin to face the challenges that confront it and to open a constructive dialogue about these important issues? The bar can begin by focusing its attention on at least three areas in need of re-evaluation.

The first area relates to lawyers' perceptions of themselves. A few years ago, in his highly acclaimed book *Megatrends*,<sup>26</sup> John Naisbitt described the "Law of the Situation,"<sup>27</sup> a term coined in 1904 by Mary Parker Follett, the country's first management consultant.<sup>28</sup> Ms. Follett was called in to help a window shade company that had experienced an economic downturn. She discovered that the problem was not the company's structure or its market—the problem was the company's perception of its business. Ms. Follett suggested to her client that, in fact, the company was not in the "window shade" business at all, but rather in the business of "light control." That realization enormously expanded the firm's business opportunities. This example demonstrates the Law of the Situation—a process in which one asks the question, "What business are you really in?"<sup>29</sup> Another of Naisbitt's particularly good examples illustrating the importance of this process is the experience of American railroads. Had the railroads realized some years ago that they were not in fact in the railroad business, but rather in the business of transporting goods and people, more railroads might exist in the country today.<sup>30</sup> Another good example, although not cited by Naisbitt, is the extraordinary success of Federal Express, a company that correctly perceived itself not as a package delivery business but rather as a business providing "peace of mind" to its customers.

Building on this concept, the time has come for lawyers to ask themselves the question, "What business are we in?" As the year 2000 approaches, the answer to this question may no longer be a simple one for many lawyers and the firms in which they work. Many lawyers today might find that traditional definitions of "lawyering" no longer fit either their own activities or the demands that their clients place upon them. Indeed, in many of the large law firms described in this Article, for example, the range of client services and the roles often played by the firm's attorneys in client affairs might lead the attorneys to visualize themselves more accurately as "professional problem solvers" operating on a nationwide, or even a worldwide basis. Now one obviously can push this notion too far. As the 1990s approach, however, lawyers and law firms, if they expect to maintain the integrity and quality of

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26. J. NAISBITT, *MEGATRENDS: TEN NEW DIRECTIONS TRANSFORMING OUR LIVES* (1982).

27. *Id.* at 85.

28. *Id.*

29. *Id.*

30. *Id.*

their legal practice, must develop a clear understanding of the services they provide and the factors that have, in recent years, significantly changed the delivery of those services.

A second challenge confronting the legal profession relates to its rules of self-government—the canons of ethics. The bar should closely examine the *Rules of Professional Conduct*—rules for the most part developed in a former era when the nature of legal practice was substantially different than it is today. The legal profession must ask whether the *Rules* continue to provide adequate and helpful guidance to today's lawyers. The purpose of this inquiry is neither to initiate a repeal of the canons of ethics nor to suggest that the profession today is in any less need of ethical guidelines than in former days. Modifications of the Rules of Professional Conduct, however, may be necessary to keep pace with the substantial changes that have occurred within the profession.

Two examples may illustrate the need for a re-examination of the *Rules of Professional Conduct*. First, the present *Model Rules*, although briefly addressing the subject of nonlawyer assistants,<sup>31</sup> simply have not contemplated the vastly expanding use of nonlawyer professionals by law firms both in-house and through affiliates. As this trend continues, the profession must achieve a consensus on the ethical rules that should govern these relationships. Second, the current *Model Rules* prohibit nonlawyers from participating in the ownership or profits of law firms.<sup>32</sup> Although the concerns underlying the rule are perhaps understandable, compliance with this restriction will become increasingly difficult for many firms in the future. The expanding use of talented nonlawyer professionals—persons who increasingly expect to be rewarded for their efforts with direct participation in the profits of the enterprise—combined with the increasing need for capital to finance the expansion and diversification of law firms, will cause increasingly serious problems for the profession unless the *Model Rules* are modified to permit nonlawyers to participate in the ownership of law firms.<sup>33</sup>

Finally, the third challenge confronting the profession in the closing decade of this century concerns the philosophy and methods of legal education. Ever since 1870, when Harvard Law School hired Christopher Columbus Langdell as its professor and first dean,<sup>34</sup> legal educa-

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31. MODEL RULES, *supra* note 21, Rule 5.3; MODEL CODE, *supra* note 21, DR 4-101(D), 7-107(J).

32. MODEL RULES, *supra* note 21, Rule 5.4.

33. The proposed *Model Rules of Professional Conduct* submitted to the Board of Governors of the District of Columbia Bar in September 1985 expressly authorize lawyers to enter into partnerships with nonlawyers.

34. A. SUTHERLAND, *THE LAW AT HARVARD: A HISTORY OF IDEAS AND MEN, 1817-1967*, at 159-

tion in this country has followed a largely consistent and unchanging pattern. Using the "case method" established by Professor Langdell,<sup>35</sup> law schools have carefully drilled generation after generation of law students in the belief that the students will best learn the rudiments of the profession by reading appellate court cases. Law schools have designed their curricula to instill a strong faith in the adversary system and to mold their students into hardened advocates. Although finely honed advocacy skills are an important tool for all lawyers in our society, the law schools' almost single-minded devotion to the principles of advocacy may also be a bane to the legal profession.

In their zeal to teach the virtues of our adversary system, the law schools may have overlooked the equally important skill of compromise and negotiation. Many judges and common citizens alike certainly share this view as they witness the slowdown of our judicial system by massive and costly litigation. In a time when lawyers need more than ever to view their clients' problems broadly and to achieve innovative solutions that may well exceed the narrow limits of traditional lawyering, the profession must consider whether law schools are adequately preparing their students to accept such responsibilities. As the profession has changed and continues to change, legal education quite possibly has not kept pace. Remedying this deficiency is one of the professional challenges attorneys face over the next decade.

## V. CONCLUSION

Notwithstanding all of the changes that the legal profession has experienced and all of the challenges that it faces, lawyers should remain optimistic about the profession. Today is an exciting time to be a lawyer. Today's lawyers have the opportunity to reshape the legal profession at a crucial time in its history. I am optimistic that we will succeed, for our goals as attorneys are what they have always been—to serve our clients more effectively and, through that service, to make our society a better place for all. As the great constitutional lawyer, John W. Davis, stated:

True, we build no bridges. We raise no towers. We construct no engines. We paint no pictures—unless as amateurs for our own principal amusement. There is little of all that we do which the eye of man can see. But we smooth out difficulties; we relieve stress; we correct mistakes; we take up other men's burdens and by our efforts we make possible the peaceful life of men in a peaceful state.<sup>36</sup>

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67 (1967).

35. *Id.* at 174.

36. M. MAYER, *THE LAWYERS* 3 (1966).

