HARVARD LAW SCHOOL
Center on the Legal Profession

"Lawyers as Professionals and as Citizens: Key Roles and Responsibilities in the 21st Century" Commentary

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In "Lawyers as Professionals and as Citizens: Key Roles and Responsibilities in the 21st Century," Ben W. Heineman, Jr., William F. Lee, and David B. Wilkins seek to revive the role of lawyers not just as expert technicians but as wise counselors and effective leaders in the face of growing pressures on the profession to weigh short-term gains more heavily than long-term contributions. The authors identify obligations that attorneys owe to their clients and stakeholders, to the legal system, to their institutions, and to society at large. The analysis focuses on leading companies, law firms, and law schools based on their stature and influence in shaping the profession's identity and image.

This project is a brave and important one that could not be timelier as we confront growing concerns about the legal profession's appeal as a destination for bright, motivated young people who want intellectually satisfying work, a degree of autonomy and discretion, and the chance to make a difference in the world. Increasingly, law is portrayed as a seductive trap, one that begins with lofty rhetoric and an expensive professional school education, then provides only limited opportunities for engaging careers, and ultimately forces attorneys to pursue an unseemly professional "rat race" to generate business and lateral job offers through relentless self-promotion and endless networking.

Any attempt to counter this depressing portrait of a diminished profession should be welcomed, indeed applauded. As noble as these efforts are, though, we should question the exclusive focus on the most elite sectors of law practice and legal education. Heineman, Lee and Wilkins contend that large companies, big law firms, and top law schools are home to opinion leaders who can successfully push for new norms of professional excellence. The paper acknowledges that elite legal institutions are far from representative of the profession as a whole, that the profession has grown increasingly segmented and hierarchical, and that lawyers who work in other sectors still have much to contribute.

These caveats offer at best modest reassurance, given historical precedent and present conditions. Past experience shows that segmentation and stratification can enhance the privileged status of elites but weaken their relevance as a bully pulpit for the profession. In the late 1800s and early 1900s, successful corporate lawyers worked with prominent law professors to enhance the legal profession's standing. These initiatives met with resistance from small-town lawyers who suspected them of being nothing more than self-serving power grabs. Only after elite corporate lawyers worked tirelessly to help with the war effort did they gain the credibility needed to persuade other members of the profession that the calls for reform were truly public-spirited.

With today's widening divide between "big law" and other private practitioners, there is every reason to be concerned that elite proposals for change will meet with a certain

degree of skepticism. In the past, the American Bar Association (ABA) sought to act as a convener to bring the profession together around shared goals, but with declining membership, especially among younger lawyers, and with less engagement by large law firm lawyers, it is not clear that the organized bar is well-positioned to play this role today. The problem of "access to justice" only exacerbates divisions within the profession. Lawyers in public service who struggle with the challenges of limited resources may feel that they have little, if anything, in common with their counterparts who practice in large corporations or big firms.

If the practice of law has grown increasingly fragmented, there should be real doubts about whether elites in private practice can lead by example or whether their initiatives will be dismissed as "trickle-down professionalism." The commentary on this paper by William C. Hubbard, President of the American Bar Association, describes a number of laudable initiatives that the ABA has undertaken to ensure that the profession remains robust. At the same time, though, he notes the very fissures within the legal community that could limit the impact of these efforts. Although it is possible that a task force will generate ideas powerful enough to transcend professional segmentation and stratification, the odds seem long without a clear plan for outreach and mobilization that can motivate the many lawyers who are not active members of the ABA.

Even if elite attorneys and law professors can influence the rest of the profession, are they the ones most likely to spearhead changes in the lawyerly ideal? Let us begin with lawyers at large companies. Because in-house counsel serve one client in a comprehensive way, some believe that they are better situated to see the "big picture" than outside lawyers are. As a result, general counsel may be more willing and able to offer wise counsel and effective leadership to their corporate clients. Yet, some considerations cut the other way. As the role of in-house lawyers grows in significance, their ranks are expanding, sometimes dramatically. The result is likely to be a more impersonal, increasingly specialized practice that largely emphasizes technical expertise. In addition, the totalizing features of the lawyer-client relationship leave in-house counsel vulnerable to capture. These attorneys are embedded in and subordinate to the company and its aims, and there is nothing in legal training that immunizes lawyers from the dangers of dependency and groupthink. In fact, to effectively change the professional role of general counsel, it would seem essential that business executives be part of the solution. If so, one wonders how business schools might best structure their curricula to prepare fledgling and experienced CEOs to work with in-house lawyers and treat them as something other than the department of "no."

As for large law firms, again there are reasons for concern. In "The Lost Lawyer," Professor Anthony Kronman noted that these firms inhabit "an increasingly commercial culture" that has led to enormous growth in the size of their workforce, heavier caseloads for individual attorneys, and an ever more urgent preoccupation with the bottom line. All of these factors, which arguably have only intensified in recent years, are antithetical to any thorough-going transformation of the lawyerly ideal. The commentary on this paper by Roger Meltzer, Global Co-Chairman at DLA Piper LLP, makes these difficulties all too apparent. He openly questions whether major law firms have any unique public or

ethical obligations, and he reminds us that profitability has been and will remain a powerful force in defining the behavior of partners and associates at large law firms, particularly in an increasingly competitive global market.

That said, Meltzer also argues that law firms must stand "shoulder-to-shoulder" with their clients rather than holding them at arms' length to preserve professional independence. Meltzer appears to have in mind a commercial partnership that does not necessarily map neatly onto the larger obligations to the legal system and society that Heineman, Lee and Wilkins identify. Still, this idea of a partnership with clients does resonate well with one of the most intriguing examples in the paper, Intel's protocol for dealing with preferred law firms to deepen their relationships. Intel holds periodic meetings to acquaint outside counsel with the company's overall business plan so that they understand how their legal work fits into Intel's overall operations, strategies, and goals. In addition, the company's in-house lawyers work with outside counsel on pro bono and bar association matters to create a sense of shared purpose and to solidify working relationships. Finally, Intel supports a pipeline of talent by insisting on roles for younger attorneys that allow them to develop leadership skills as well as loyalty to the client.

This model makes good business sense for companies like Intel, which have a steady stream of legal work and can develop long-term relationships with a number of high-quality law firms. Intel's story offers a way to think about how committed corporate clients can leverage their influence to alter the workplace culture of large firms. However, it is not clear from Heineman, Lee and Wilkins' paper whether Intel is unusual in having such a well-developed strategy for sustaining relationships with outside lawyers. If it is an outlier, it would be interesting to know what is special about Intel's culture that prompted this approach. For instance, does the company have a general way of managing projects that it transferred to its outside legal work? Or was this approach generated by the in-house counsel department itself, perhaps based on prior experience in representing Intel at large law firms? The commentary by Steve Rodgers, Senior Vice President and General Counsel of Intel, sheds further light on the selection criteria for law firms, but it does little to explain the institutional origins of Intel's strategy.

With respect to law schools, the legal academy has long preferred abstraction and theory, a tendency with roots in Christopher Columbus Langdell's call for "scientific reform" of pedagogical methods. Today, professors at leading law schools still aspire to grand narratives and are far less interested in the grist of daily practice, which typically requires case-by-case decision-making and prudential judgment. Although the clinical education movement has altered these commitments somewhat, the most eminent faculty members at leading law schools remain those who can offer theoretical insights rather than practical training.

The question is how much this culture will change in the face of evolving challenges in the world of legal education and the legal profession. Because necessity is the mother of invention, innovation often happens at the law schools most vulnerable to shifts in the market. These are tuition-driven institutions with small endowments and modest reputations, places that must distinguish themselves in other ways to attract students and

get them placed. Leading law schools, by contrast, are more insulated from these concerns because of the substantial endowments and enviable rankings that sustain them.

Should top law schools be willing to pursue new pedagogical approaches, the impact could be enormous if the reforms were economical enough to be adopted at a wide range of institutions. Leadership at the top is especially important now because as Judith Areen, the Executive Director of the Association of American Law Schools and Paul Regis Dean Professor of Law at Georgetown University Law Center, notes in her commentary, "the highest scoring college graduates [are] turning their backs on law as a profession in record numbers." This trend clearly harms the most highly regarded law schools, which compete for the best and the brightest students, but it also undermines the prestige of legal education and the legal profession as a whole.

Heineman, Lee, and Wilkins' paper proposes a wide range of curricular reforms that require varying degrees of institutional investment. Whatever a law school's pedagogical commitments, there are likely some reforms that can be adapted to its mission and circumstances. The implementation of these changes will prove critical in determining whether they reinvigorate ideals for good lawyering or entrench the problems. For example, one proposed reform would allow third-year law students to concentrate on a particular area of law. Depending on how specializations are structured, they can reinforce an emphasis on technical expertise rather than alert students to their role as wise counsel or effective leaders. Under these circumstances, a concentration could exacerbate concerns that law practice, particularly at large firms, has grown increasingly narrow, precluding attorneys from developing a "big picture" perspective on clients' needs. Any proposal for a third-year concentration therefore must explain how it would prepare law students to counter those tendencies rather than replicate them.

Another suggestion designed to revitalize the third year of law school calls for year-long externships that permit students to have an intensive and immersive experience in practice. This approach summons up images of old-style apprenticeships, which in an earlier era represented the conventional method of training lawyers. The quality of those apprenticeships varied widely, depending on the attorney who served as a mentor. In the face of such inconsistency, law schools became a way to ensure that a student's educational experience was academically rigorous and sufficiently standardized. Law school training elevated the profession and reassured clients that minimum standards of professionalism would be satisfied.

Because externships "outsource" the training process, Heineman, Lee and Wilkins must explain how these placements will promote a renewed vision of lawyering rather than reproduce the current shortcomings of professional life. Most importantly, what are the pedagogical objectives for these externships, how will they be supervised, and how will success be measured? Externships may have as their primary goal the acquisition of technical expertise. If so, how will the more subtle roles of wise counsel and effective leadership figure into these training opportunities? How can supervision ensure that students move beyond chronicling their day-to-day experiences so that they reflect on the deeper implications of their role as lawyers? How can the impact of these placements be

evaluated, not just on the students but on the attorneys who guide them? The answers to these questions will be critically important if externships are to advance new lawyerly ideals.

Heineman, Lee, and Wilkins have made a valuable contribution by reminding us that law is a calling with consequences that go far beyond particular lawyer-client transactions and the bottom line. Aware that inspirational rhetoric is not enough to effect change, the authors craft a conceptual framework for realizing the full promise of the lawyer's role. Concrete examples of success, like Intel's collaborative approach to working with outside counsel, give us reason to be hopeful. The ambitious reach of the project reveals how much remains to be done but also affords us a sense of the possibilities for reinvigorating the legal profession if we are bold enough to seize them.

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