

BOOK REVIEW

BACK TO THE FUTURE: RECLAIMING OUR NOBLE PROFESSION

THE BETRAYED PROFESSION: LAWYERING AT THE END OF THE TWENTIETH CENTURY, SOL M. LINOWITZ WITH MARTIN MAYER, Charles Scribner's Sons, New York (1994) (273 pages) (\$25.00).

*Reviewed by Paula A. Franzese**

PRELIMINARY REFLECTIONS

The soul of the law is suffering.¹ Symptoms of this systemic malaise are found in the oft-cited decline in civility among lawyers, in various lapses of appropriate ethical and professional conduct, and in the ever rising win-at-all-cost, winner-take-all battles fought in courtrooms, boardrooms and even within law firms. The overcrowded dockets of these extraordinarily litigious times render "swift justice" an oxymoron.² Public leaders and commentators warn that we are suing ourselves into economic and institutional disaster.³ Well-established firms are disintegrating, the victims of vanishing client loyalties and the attendant (as well as troubling)

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¹ This point is made well in *THE SOUL OF THE LAW*, a provocative new book by lawyer and psychotherapist Benjamin Sells. BENJAMIN SELLS, *THE SOUL OF THE LAW* (1994). In this book, Sells poignantly explores the loss of meaning in the law as well as the feelings of alienation and depression experienced by many attorneys. In *THE LOST LAWYER*, a very different but similarly compelling book, Professor Anthony T. Kronman begins his critique of the American legal profession by noting that it "now stands in danger of losing its soul." ANTHONY T. KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* 1 (1993).

² See, e.g., Robert R. Hatten, *An Appropriate Solution to the Asbestos Litigation Crisis*, TEX. LAW., Aug. 9, 1993, at 10 (noting that Virginian asbestos contamination victims were forced to bring claims in Texas because of Virginia's overcrowded dockets).

³ See, e.g., Joseph A. Baum, *Letter to the Editor: If Government Protected Us, We'd Sue Less*, N.Y. TIMES, Sept. 4, 1992, at A20 (noting that then Vice President Dan Quayle remarked before the American Bar Association that the legal profession was to blame for the nation's financial woes and overcrowded court calendars.); Steven B. Menack, *Where Mediation Fits in a Litigation Practice*, N.J.L.J., Dec. 6, 1993, at 11 (noting the "institutional and societal burdens wreaked" by crowded courts and high litigation costs).

view of lawyers as mere vendors selling a commodity, with "business" going to the lowest bidder. Within firms, partner and associate defections have become commonplace, as long-forged alliances and allegiances yield to individual interests, which are frequently associated with personal profit motives.⁴

The individual lawyer is also showing considerable signs of strain. Studies conducted nationwide reveal that at least one-third of all attorneys suffer from depression or substance abuse.⁵ Alcohol or drug abuse is so systemic that some attorney disciplinary groups estimate that upwards of seventy percent of all proceedings brought against lawyers involve substance abuse.⁶

While some of us continue to derive pleasure and meaning from our work, many lawyers report strong dissatisfaction with their career choice.⁷ Significantly, more than sixty percent of attorneys indicate that they would not recommend to their children the pursuit of a legal career.⁸ The results of two surveys of women attorneys, the first conducted in 1967 and the second in 1992, are especially telling. The poll asked female lawyers whether they would still pursue a legal career if they had known ten years ago what they knew now. In 1967, a striking ninety-four percent of the respondents had said yes; in 1993, only fifty four percent responded affirmatively. The accompanying analysis of the findings attributed the present and pervasive dissatisfaction to "the competitive and acrimonious atmosphere of many law firms."⁹

A 1991 Johns Hopkins study found a high incidence of depres-

⁴ See, e.g., Ronald J. Fleury, *The Worst May Be Yet to Come*, N.J.L.J., July 18, 1994, at 28 (chronicling partner and associate defections at major New Jersey law firms).

⁵ SELLS, *supra* note 1, at 17; see also *Lawyers Under Stress in Record Numbers*, N.J. LAW., May 2, 1994, at 7 (citing a study by Johns Hopkins University finding that "[l]awyers are four times more likely to suffer from clinical depression than other professionals"); Laura Duncan, *More States Offering to Help Lawyers Overcome Mental Health Problems*, CHI. DAILY L. BULL., Sept. 29, 1989, at 1 (explaining that bar and substance abuse groups are increasing their efforts to assist attorneys suffering from depression).

⁶ Charles J. Santangelo & Donald W. Morrison, *Alcohol Abuse on the Rise Among Lawyers*, N.Y.L.J. Apr. 5, 1993, at 5 (noting that in New York and California, fifty to seventy percent of all complaints against lawyers involve substance abuse). In fact, Amiram Elwork, director of the law-psychology graduate program at Widener University, speculated that nearly one third of the nation's lawyers suffer from depression, alcohol, or substance abuse. Carol Innerst, *Many lawyers suffer from stress; Psychologist to show students how to deal with pressures of job*, THE WASHINGTON TIMES, July 26, 1993, at A3.

⁷ See, e.g., KRONMAN, *supra* note 1.

⁸ SELLS, *supra* note 1, at 17.

⁹ Laura Manserus, *Why Working Women are Leaving the Law*, WORKING WOMAN, April 1993, at 64, 66.

sion among lawyers. The leading researcher commented that lawyers constantly operate in "moral ambiguity," sometimes representing clients or issues that "they might not like or believe in."¹⁰ In *The Lost Lawyer*,¹¹ Professor Anthony Kronman speaks poignantly to the legal profession's "crisis of morale,"¹² noting the "growing sense, among lawyers generally, that their yearning to be engaged in some lifelong endeavor that has value in its own right can no longer be satisfied in their professional work."¹³

Compounding as well as reflecting the profession's own internal struggle is society's ever-growing disdain for the whole lot of us. The good that is accomplished by lawyers all too often tends to be overlooked by many observers, the popular media principal among them. Instead, from the glib to the poignant, jabs aimed at attorneys and the legal system have become routine in a remarkably diverse array of contexts.¹⁴ The profession with such a noble and venerable history is now fodder for criticism, ridicule and joke after joke after joke.

Against this bleak landscape, the temptation is to succumb in beleaguered resignation or defer to the lures of some quick, easy fix. Neither response will do. Soul cannot be regained without hope, and hope will not spring from superficial palliatives. As contemporary writer Thomas Moore¹⁵ noted, soul "returns only when deep vision has been restored, when imagination revivifies, and when we allow ourselves to feel the soul's complaints so that we can

¹⁰ *Excerpts: The Betrayal of the Lawyering Profession*, NAT'L L.J., February 28, 1994, at 36 (quoting lead researcher on Johns Hopkins University study finding lawyers most depressed group of 12,000 persons surveyed); see also Benjamin L. Sells, *Depression in the Legal Environment*, MASS. LAW. WKLY., Jan. 10, 1994, at 40 (giving examples of how attorney depression manifests itself in daily practice).

¹¹ KRONMAN, *supra* note 1.

¹² *Id.* at 2.

¹³ *Id.* at 3.

¹⁴ In the course of a public debate on "lawyer bashing," former Arizona Congressman Sam Steiger quipped, "Only ignoramus tell ethnic jokes. Sophisticates, like me, do lawyer jokes." Brent Whiting, *Heard a Good Joke About Lawyers? Bar 'Debates' Bashing*, ARIZ. REPUBLIC, Jan. 14, 1994, at A21. Hollywood brought us, among other less than flattering portrayals of attorneys, the film REGARDING HENRY, showing how an aggressive, morally bankrupt, lewd, and wildly successful (no doubt, in the script writers' minds, because of those unpalatable attributes) lawyer becomes gentle, sensitive, and principled only after being shot in the brain. Advertisers also fuel the fires of public ridicule. See, e.g., THE GREAT LAWYER ROUNDUP (Miller Brewing Co., 1993) (showing rodeo cowboys lassoing lawyers); REEBOK (Reebok, Inc. 1993) (commenting that on a "perfect planet" there would be no lawyers).

¹⁵ See, e.g., THOMAS MOORE, CARE OF THE SOUL (1992), and THOMAS MOORE, SOUL MATES (1994).

find our way back to necessary sensitivities.”¹⁶

Finding our way back to the virtue, passion, integrity, principle and sacred trust that represents the very best of what the law and its practitioners could be, sometimes are, and perhaps once were, requires first that we take the time to imagine such an ideal. It is incumbent upon us, individually and collectively, to very deliberately think about the kind of profession that we wish to serve and about the kind of professional that we wish to be, mindful that what we think about most we move towards. As the philosopher Eric Heller once remarked, “Be careful how you define the world; it’s just like that.”¹⁷

Thus, we can choose to view our context and our work as something to endure, a necessary evil, a rat race.¹⁸ But in that process we lose ourselves and give up on the very profession that once, maybe too long ago, sparked our spirit and piqued our imaginations. We cannot let that happen. Too much remains good and just about the law and many of its practitioners, and too many worthy causes and clients are waiting for us and counting on us - yes, us, the lawyers. The challenge is to recognize this, accepting once more responsibility for the privilege as well as the power that has been entrusted to us. To make the contributions that only we can make to the future of this country and this world, we must take a stand for, and thereby create (or recreate), that which represents the very best of our craft.

Finding our way back to the nobler, and even visionary, elements of the legal practice and profession has never been more urgent. As we usher in the twenty-first century, the communities and settings that we serve, locally, nationally, and globally, are in crisis. It is about time for a healing, a healing which is, in significant measure, up to us.

Thankfully, Mr. Sol Linowitz has written a fine book to help guide the way. *The Betrayed Profession: Lawyering at the End of the Twentieth Century*,¹⁹ provides an absorbing, eminently readable and insightful diagnosis of many of the profession’s ills. Even more significantly, its author, who has by no means given up on the profession that he continues to care deeply for, presents a series of meaningful prescriptions for positive change. This is a book for all

¹⁶ Thomas Moore, *Forward*, in SELLS, *supra* note 1, at 9.

¹⁷ E. HELLER, *THE DISINHERITED MIND* (1959).

¹⁸ As Lily Tomlin is said to have observed, “The problem with the rat race is that, even if you win, you’re still a rat.”

¹⁹ SOL M. LINOWITZ WITH MARTIN MAYER, *THE BETRAYED PROFESSION: LAWYERING AT THE END OF THE TWENTIETH CENTURY* (1994).

members of the legal profession, law students, and prospective law students, as well as those who find themselves involved, in one way or another, with the law. In other words, this book is for everyone.

A PROFESSION BETRAYED FROM WITHIN?

Surely, of late, the law and lawyers have been the subject of numerous critiques, some of them quite compelling. In *The Lost Lawyer*,²⁰ Professor Anthony T. Kronman offers insightful commentary on how impoverished the ideals of American lawyers have become. Deploring the near-disappearance of the "lawyer-statesman ideal,"²¹ which exalted wisdom and independence above technique, he reaches the gloomy conclusion that it cannot be revived. Instead, he posits, the profession will continue to drift further and further away from its historically more noble aims and aspirations, refusing to awaken to the emptiness of its condition.²²

Professor Geoffrey Hazard, who was head of the American Bar Foundation before he became a professor of legal ethics, sets forth a similarly pessimistic view of the profession's present identity and place in the social system.²³ To suggest that lawyers are or can be independent is, in his estimation, a fantasy that ignores what most lawyers do in their work most of the time.²⁴

Mr. Linowitz's book stands out and apart, both because of his unique vantage point, born of a remarkable career that has spanned more than five decades, and because, notwithstanding his formidable criticisms, he dares to see hope for the future. He wrote this book not simply to air his grievances, but also to offer several meaningful suggestions "as to how we lawyers might rekindle pride in our profession and restore the practice of law to the respected position it once occupied."²⁵ This comes as a most welcome addition to the literature, particularly to those of us, myself included,²⁶ who, like Mr. Linowitz, still love our profession²⁷ and believe that a renewed commitment to its ethic of public service and moral purpose is possible as well as attainable.

Mr. Linowitz, now retired from a senior partnership at

²⁰ KRONMAN, *supra* note 1.

²¹ *Id.* at 354.

²² *Id.* at 380-81.

²³ Geoffrey Hazard, *The Future of Legal Ethics*, 100 YALE L.J. 1239, 1239-40 (1991).

²⁴ *Id.* at 1279.

²⁵ LINOWITZ, *supra* note 19, at xii.

²⁶ See Paula A. Franzese, *Reclaiming Our Noble Profession*, 22 SETON HALL L. REV. 307 (1992).

²⁷ LINOWITZ, *supra* note 19, at 5.

Coudert Brothers, previously served as chairman and general counsel of Xerox and as ambassador to the Organization of American States under Presidents Johnson and Nixon. He negotiated the Panama Canal Treaties and acted as President Carter's representative to the Middle East peace talks. Presently, he is honorary chair of the Academy for Educational Development, a nonprofit organization that implements projects in more than one hundred countries.²⁸

Ironically, this important book is one that its author hoped he would not have to write.²⁹ The idea arose as a consequence of a talk that Mr. Linowitz gave in 1988, at the hundredth anniversary of Cornell Law School.³⁰ In that speech, he expressed his disappointment with the current state of the legal profession. To Mr. Linowitz's surprise, his remarks elicited widespread response, much of it attesting to the prevalence of attorney dissatisfaction.³¹ Significantly, Mr. Linowitz received streams of correspondence from young attorneys seeking to share their own tales of disenchantment. This book, he says, is for these disillusioned young lawyers.³²

Mr. Linowitz argues that what was once an esteemed and independent profession has been transformed into an often unprincipled, emotionally unfulfilling and profit-driven business.³³ The fault for this decline, the author writes, rests "not in our stars but in ourselves."³⁴ In other words, the legal profession has betrayed it-

²⁸ *Excerpts, supra* note 10, at 36 (detailing Mr. Linowitz's credentials).

²⁹ *Id.*

³⁰ See *Speeches from the Cornell Law School Centennial Celebration, April 15-16, 1988: Keynote Address*, 73 CORNELL L. REV. 1255 (1988) (containing Mr. Linowitz's keynote address).

³¹ In a letter to Mr. Linowitz, Justice Blackmun noted rhetorically:

Do you share with me a concern about our standards, professional and otherwise these days? Are you bothered at all by the current emphasis in the legal profession upon the "bottom line", on billable hours, on advertising and on a reluctance in many quarters to engage in pro bono work?

Harry A. Blackmun, *I Do Not Like Very Much The Feel of Things Today*, WASHINGTON POST, April 10, 1994, at C7.

³² Linda Greenhouse, *At the Bar: A pillar of the law laments that a 'noble profession' has become just another business*, N.Y. TIMES, Apr. 8, 1994, at B9.

³³ For a disheartening discussion of the law as a service industry see *Survey: The Legal Profession, "The Rule of Lawyers"*, The Economist, July 18, 1992, at 54-1 (noting that "the fact is inescapable: the law is indeed a business"); *Survey: The Legal Profession, "The client is sometimes right"*, The Economist, July 18, 1992, at 54-2 (quoting White & Case managing partner James Hurlock, "[a]ny lawyer who hasn't always known that he was working in a service industry has really missed the boat").

³⁴ LINOWITZ, *supra* note 19, at 245.

self from within.

LESSONS FROM THE PAST

The crisis confronting us, Mr. Linowitz maintains, is the consequence of the demise of an older set of values that helped define lawyers' aspirations while also prescribing governing norms of acceptable conduct. At the core of these values was the belief that the model attorney possessed independent, deliberative and honest judgment as a fiduciary as well as a servant to client, court and law.³⁵ Those who sought the honor of leadership in the profession "prized their reputation above all."³⁶

Then, lawyer and law firm had the ability to say no to a given client or case, refusing to represent the client whom the attorney did not trust or whose stories he did not believe.³⁷ Today, by contrast, "there are too few lawyers who see it as part of their function to tell clients (especially new clients) that they are damned fools and should stop: Any such statement would interfere with the marketing program."³⁸

Mr. Linowitz notes that in the past, attorneys embraced a cooperative spirit, rejecting the winning-at-all-costs or winning-is-everything ethic that has tainted and distorted modern practice. Civil discourse and oftentimes mutually beneficial exchange, he writes, tended to be the norm in years gone by. By contrast, litigation today represents "a war of attrition, where the loser is the one whose assets have been exhausted."³⁹

The author depicts the runaway "war games" of these litigious times graphically and effectively, illustrating the point with potent anecdotes and examples. For instance, Mr. Linowitz recounts the following statement, made in 1988 by a lawyer for R.J. Reynolds Co. who was describing the tactics that his firm used to compel plaintiffs to drop tobacco suits: "The aggressive posture we have taken regarding depositions [makes] cases extremely burdensome and expensive for plaintiffs' lawyers. To paraphrase General Patton, 'the way we won these cases was not by spending all of Reynolds' money, but by making that other son of a bitch spend all of his.'"⁴⁰

In years past, an attorney who resorted to such tactics might

³⁵ *Id.* at 9.

³⁶ *Id.* at 18.

³⁷ *Id.* at 31.

³⁸ *Id.* at 4.

³⁹ *Id.* at 14. (citing Ellen J. Pollock, *Divorce Lawyers Often Shortchange, Overcharge Women Clients, Study Finds*, WALL ST. J., March 13, 1992, at B3).

⁴⁰ *Id.* at 14 (citation omitted).

have been feared, but was certainly not admired. "It was a cliché of the profession in those days that a so-so settlement was better than a good lawsuit."⁴¹ Abraham Lincoln's advice to new lawyers represented a common creed: "'Persuade your neighbors to compromise whenever you can. Point out to them how the nominal winner is often a real loser - in fees, expenses and waste of time. As a peacemaker a lawyer has a superior opportunity of being a good man.'"⁴²

Notwithstanding its many finer impulses, however, our profession's past certainly was not all glory and goodness. Its history had its despicable aspects as well, including, most glaringly, its racial, gender and religious exclusivity. The author himself, as a Jewish lawyer, was a victim of some of these ugly biases.⁴³ Mr. Linowitz realistically tempers his enthusiasm for the good old days with recognition of their limitations and shortcomings. His tacit point is that those inadequacies should not blind us to the more noble aspects of the profession's traditions and history - most importantly, the richness and allure of its lost ideals.

However, it is important that these ideals be perceived and understood as something more than historical relics or mere curiosities of a simpler place and time. To be vital as well as attainable in the very complicated contexts that we live and practice in, these ideals need to be defined and explored within those very contexts with greater precision and care than before. Given the wisdom and savvy that Mr. Linowitz so clearly evidences, one might be disappointed that he did not do more of this.

Clearly, however, this book is not some abstract, philosophical exposition that fails to appreciate the practical nature of its subject. On the contrary, Mr. Linowitz's work is most appealing and refreshing because it bears the mark of one who has been in the trenches as well as the tower. Having seen it all from up close and from on high, he is able to tell about much of our profession in a very real and most engaging way, peppering his comments and critique with interesting anecdotes, poignant reminiscences and topical news items. The result is a veritable page-turner.

THE HEART OF THE MATTER

Without pulling any punches, the author identifies several of the primary causes for the deficiencies that he chronicles. While

⁴¹ *Id.*

⁴² *Id.* (citation omitted).

⁴³ *Id.* at 5-7.

he brings to task law schools, bar associations, judges, and lawyers as a group, Mr. Linowitz directs his strongest criticisms toward the less desirable elements of the law firm as a business. Here, he concludes, "[m]oney is, of course, at the heart of the problem."⁴⁴ In Mr. Linowitz's estimation, the profession's excessive preoccupation with profit-maximization and wealth accumulation renders collegial relations within firms second to financial return, such that "the young are inducted into a business rather than a mystery."⁴⁵ Partner and associate defections from well-forged firm alliances, excessive advertising, attorney overbilling and accepting business that should be refused are but a few of the consequences.⁴⁶

Embracing the conclusion that "the practice of law changed forever when lawyers decided they should be making as much money as their clients,"⁴⁷ the author indicts the principal means used by many firms to achieve such a result for their partners - the leveraging of associates' time. In what he describes as a "Marxist-like" system predicated on making profits by exploiting labor, the large law firms pay their associates a set salary and then bill their clients per unit of time during which the given associate worked on that client's business. The partners generate increased profits for themselves by requiring the associates to work long hours.⁴⁸

This schema of exploitation would be defensible, Mr. Linowitz asserts, if the firms were mentoring their junior associates and training them for careers at the bar while facilitating their intellectual and moral development as professionals. Sadly, he correctly suggests that for the most part this simply does not happen. A system that places a premium on the billable hour does not leave much time for the sort of mentoring that nurtures and nourishes the mind and spirit.

AN AGENDA FOR REFORM

Change for the better is a collective responsibility. By calling upon law schools, bar associations, law firms, judges, lawyers, and society, Mr. Linowitz's agenda for reform intrinsically embraces this basic, yet vital precept. Too often, the debate on ways to re-

⁴⁴ *Id.* at 31.

⁴⁵ *Id.* at 32.

⁴⁶ Mr. Linowitz insists that "good lawyers don't have to take bad clients," and that the decision whether or not to accept a given client should be, at bottom, a moral one. *Id.* at 31.

⁴⁷ *Id.* at 105 (attributing this quotation to an unnamed junior partner in a mid-sized firm).

⁴⁸ *Id.* at 106.

dress the inadequacies and deficiencies of our profession deteriorates into a finger-pointing, "us against them" diatribe, with each respective group within and outside the law blaming the other. Lawyers fault the law schools, law schools in turn inculcate the lawyers, judges cite the lawyers, lawyers respond that the duty owed to their clients made them do it. Finally, everyone blames society at large, and the ever-increasingly contentious, hostile, ethically-impaired culture that we serve. In actuality, all of these sources have contributed to our collective malaise, and all have a role to play in our restoration.

LAW SCHOOLS

I was most interested in Mr. Linowitz's reflections on the role in the scheme of reform to be played by legal education, a role which, I believe, is crucial. Our profession's future depends in significant measure on our developing, nurturing and sustaining in law school (and then beyond) much of the idealism and generosity that so many of our students bring to us.

In my estimation, the legal method of inquiry too often hardens hearts and fosters cynicism. The Socratic method of teaching, as strictly practiced, tends to do little to inculcate a sense of how the attributes of justice, virtue, fairness and morality are and should be relevant in daily practice. Too frequently, the people and human problems behind the cases remain there, with moral and professional concerns yielding to abstractions.

While courses in ethics and professional responsibility are now required at many (if not most) law schools, they are sometimes taught, in the author's words, by "people for whom the law is a succession of hypotheticals - for whom the life of the law has been logic, not experience."⁴⁹ Moreover, even the best of legal ethics' professors cannot and should not have to carry the burden alone. Theoretical as well as practically applied considerations of right and wrong, of prudence and fairness, and of what the law *should* be, must play a role in all course offerings.⁵⁰

While Mr. Linowitz makes several of these points, some of his discussion of legal education today rings hollow, relying too heavily

⁴⁹ *Id.* at 122.

⁵⁰ Linowitz notes that the idea of incorporating ethics into the law school curriculum has not met universal acceptance. For example, speaking to a reporter from the ABA Journal, Supreme Court Justice Antonin Scalia remarked, "I never thought it was the professional responsibility of law schools to teach people not to lie or steal." *Id.* at 121 (citation omitted).

on generalizations and oversimplifications. He offers little by way of suggestions for reform in this particular context, focusing instead on what he perceives to be law schools' chief deficits. Central among those, laments the author in a view shared by much of the bar, is that most young lawyers come to the practice ill-prepared for its actual rigors. This leaves them in a precarious and uncomfortable (to say the least) predicament, since most law school graduates "do not get jobs with institutions or firms which have the time, resources, talent or inclination to develop systematically their knowledge and skills."⁵¹ Attendant, and alarmingly, the new lawyer often lacks the ability to deal with the ethical quandaries, let alone the potential minefields that await.

Mr. Linowitz effectively makes the point that law schools must be more in touch and more concerned with these unfortunate realities. In an especially compelling excerpt, he sets forth the following comments, attributed to Professor Gary Bellow:

In most instances, the new lawyer is simply introduced to "the way we do things here" and is expected to act accordingly. If "the way we do things here" incorporates high standards, systematic consideration of alternatives, adequate models, and appropriate ethical norms, the young lawyer may well learn what is worth learning. If the opposite is the case, the young lawyer will learn the opposite.⁵²

Mr. Linowitz observes that law schools cannot by themselves make law a great profession and make lawyers great people.⁵³ In the most effective chapters of the book, the author tells what bar associations, judges, lawyers and society, respectively, can do to help to restore the integrity and reputation of the profession.

BAR ASSOCIATIONS

First, Mr. Linowitz asserts, those elected to leadership positions in the bar associations must be "tough-minded people who are strong enough to bear the unpleasantness of enforcing ethical standards for the good of the community as a whole."⁵⁴ While the author approvingly recognizes various *pro bono* initiatives under-

⁵¹ *Id.* at 125 (citation omitted).

⁵² *Id.*

⁵³ *Id.* at 138.

⁵⁴ *Id.* at 144. Thankfully, a number of states, New Jersey among them, can boast of such leadership. See, e.g., William B. McGuire, *The President's Perspective: Civility in the Profession*, N.J. LAW., July 1994, at 4 (wherein William B. McGuire, Esq., president of the New Jersey State Bar Association, presents a compelling agenda for the "revival of the professionalism and civility that were once the hallmark of New Jersey practice.").

taken by the bar, he adds that its claimed concern of justice for all must be substantiated further with a renewed commitment to such activities.⁵⁵

In this context, Mr. Linowitz makes the important point that in addition to helping the poor, bar associations must find ways to improve services provided to those of moderate-income. The still-unsatisfied market for moderately priced legal services could be better met, he suggests, by increasing the numbers of employer-sponsored prepaid legal services plans as well as establishing enhanced bar association referral services.⁵⁶ Referral services run by bar associations throughout the country typically interview lawyers who wish to be listed, verify their claim to a specialty, and refer callers free of charge. Charges for the subsequent consultation and provision of services are kept at or below designated fixed rates. The author sets forth a carefully thought out plan for bolstering and improving such programs, so that they might become "vigorous, well-promoted alternative[s] to the advertised legal clinics, with the needs of the client computer-matched to the competencies of the lawyers who have signed up for the panel."⁵⁷

JUDGES

Judges also have a formidable role to play in promoting and effectuating significant reform. For example, Mr. Linowitz asserts, trial judges must take a more active and decisive role in the litigation process, ensuring that cases advance promptly and ruling scornfully against lawyers out to abuse the rules of discovery.⁵⁸ The author adds that, "[a]mong the ways that judges could regain their power over their courts (and their control of behavior by lawyers) would be an assertion of their right to police lawyers' fees."⁵⁹ For example, through pre-trial orders, judges could limit the number of lawyers participating in depositions and appearing before the court in oral arguments.⁶⁰ Mr. Linowitz also approvingly cites conclusions of the American Bar Association Committee on Professionalism, which endorse consideration of fee arbitration procedures to which clients could turn as a matter of right if they believe that they have been overcharged.⁶¹

⁵⁵ *Id.* at 145.

⁵⁶ *Id.* at 150-52.

⁵⁷ *Id.* at 152.

⁵⁸ *Id.* at 171-74.

⁵⁹ *Id.* at 177.

⁶⁰ *Id.* at 178.

⁶¹ *Id.* at 177 (citation omitted).

LAWYERS

"What is needed from all lawyers," says Mr. Linowitz, "is a change of attitude, simple but subtle and profound."⁶² First, attorneys must own up to the fact that not everybody needs a lawyer all the time. "Nothing in the 'marketing' attitude has been more demoralizing to the practice of law than the self-promotion that suggests to prospective clients that lawyers can do more for them than lawyers can, in fact, accomplish."⁶³ For that matter:

Like doctors, lawyers are best employed keeping people out of trouble. The lawyer who wins the case in court is the publicized hero, *but the lawyer who draws up the contract so carefully that the parties never wind up in court has performed a far greater service.* Like the medical profession, unfortunately, the legal profession has organized itself to give the greatest rewards to the specialists, the people who handle the biggest troubles. And in the legal profession, great rewards are also allocated to those who *make* trouble. Perhaps this is one of the reasons doctors have a higher standing than lawyers when the pollsters make their polls.⁶⁴

Particularly in these recessionary times, the author notes, when clients are far less apt to tolerate runaway legal bills, lawyers and law firms must carry out effective cost-reduction measures.⁶⁵ Attorneys must become more concerned with dispassionate problem-solving and less preoccupied with winning at all costs. Recreational litigation and wasteful motions must yield to the higher ground of cooperative peacemaking and conciliation procedures.

Mr. Linowitz places an added onus on the senior partners of the larger firms, who, in his view, "bear a special responsibility both for the public reputation of the bar and for the acculturation of the young lawyers who come to them."⁶⁶ These new recruits, who are vulnerable and salary-dependent because of the typically huge debts that they have incurred to finance their college and law school educations, will have their view of the practice of law determined in large part by their early experiences in the firm. As important role models, firm elders must "be generous with their time, accept the obligations of community service, and recognize a law-

⁶² *Id.* at 193.

⁶³ *Id.* at 194.

⁶⁴ *Id.* at 189 (emphasis added).

⁶⁵ *Id.* at 191. Citing an article in THE WALL STREET JOURNAL, Mr. Linowitz notes with disappointment that nowhere within the canons of ethics are attorneys required to represent clients in the "most cost effective way." *Id.* (citing Richard B. Schmitt, *An Insurer's Sleuth Sniffs Out Lawyers Inflating Their Bill*, WALL ST. J., July 21, 1991, at A1).

⁶⁶ *Id.* at 195.

yer's responsibility as a citizen."⁶⁷

Mr. Linowitz makes several important suggestions for reform of firm management and policy, many of which are aimed at enhancing associates' professional development while facilitating their maturation into broad-based, community-minded people. First, firms must change how they charge for legal services. As long as time devoted to *pro bono* work is considered money out of pocket for the firm, the tendency will exist for some partners to question "wasting" the firm's money in this manner.⁶⁸

Moreover, the hourly fee system can motivate the law firm to overwork matters while forcing the client to become a "policeman." This time system represents a sore source of resentment among many young lawyers, as described aptly in the following findings of the Maryland Bar Association which are cited by the author:

It appears to be the sense of nearly all young attorneys that their emerging value as professionals should simply not be measured by so linear a yardstick as that of hours billed. . . . The utilization of a time system was thought by nearly everyone to be wholly inconsistent with a sensitive evaluation of the worth of professional services provided.⁶⁹

Mr. Linowitz suggests contingent fee arrangements, flat fees, and discounted rates with built-in bonuses as some of the alternatives to traditional billing methods.⁷⁰

The author rightly notes that "young people still come out of law school wanting to be helpful, then go into law firms and see how the 'successful' lawyers operate."⁷¹ If the sole criteria for success are points scored and money made, associates are encouraged to become one-dimensional billing machines. Rather, law firms can and should organize themselves to take care of people in need, and firm leadership should make it clear "that time put into *pro bono* work, and the quality of that work, will be taken into full consideration in the ultimate decision as to whether or not someone will be made a partner in the firm."⁷² For that matter, to inspire more law students to take advantage of clinical course offerings that bolster advocacy skills and inculcate an important sense of community service, firms should make it known that expe-

⁶⁷ *Id.* at 196-97.

⁶⁸ *Id.* at 198.

⁶⁹ *Id.* (citation omitted).

⁷⁰ *Id.* at 199.

⁷¹ *Id.*

⁷² *Id.* at 202.

rience in a clinic represents a significant factor in the hiring decision-making process.⁷³

SOCIETY

Mr. Linowitz observes that "[t]he most frightening measure of what the legal profession has lost is that most Americans do not even remember the trust this society once placed in its lawyers."⁷⁴ One of the causes for this lapse, he asserts, is the neglect of the law as a topic for study in our schools and colleges. "The loss of self-respect in the profession and the loss of public respect both reflect the failure of the schools to convey to the young what law and lawyers have meant in the history of this country."⁷⁵

I wholeheartedly concur with the author's conclusion that creative and collaborative educational programs are a principal means to redress these shortcomings and curricular deficiencies. Historians, lawyers and teachers, working together, must make the history of American law "a bright, continuous thread through the sixteen years of elementary, secondary, and college education."⁷⁶ The great triumphs as well as disasters of our legal history must be shared to cultivate an appreciation for the role of law and lawyers in the political, economic, and social development of this nation. In a moving passage, the author notes that:

History is not always pretty, and it does not teach just one lesson. Our goal must be that Americans come to understand the tone and climate of our legal rules of fair play, the reasons self-incrimination under oath is odious, the difference between evidence one may feel is good enough for deciding whether to buy this car rather than that one and evidence that is really good enough to place the weight of law on the side of one party to a dispute rather than the other. We wish a community devoted to justice, and we need citizens who know they need law to guide perception. This means we need an understanding of the forces that have shaped and nourished our legal system.⁷⁷

Mr. Linowitz recommends that at each level of education students be presented with age-appropriate units of course work that teach law with history. Teacher-training programs should offer teachers summer-long courses at law schools. Talented filmmakers should produce tapes and mini-documentaries, chronicling some

⁷³ *Id.*

⁷⁴ *Id.* at 208.

⁷⁵ *Id.*

⁷⁶ *Id.* at 209.

⁷⁷ *Id.*

aspect of a case or topical, controversial legal issue.⁷⁸

The author's suggestions are good ones, and, in fact, are not unprecedented. Mr. Linowitz seems unaware of the several successful efforts already waged by law schools and the bar to bring law-related education into primary and secondary schools. For example, the Mentor Program was founded in New York City in 1983 and implemented at Seton Hall Law School in 1987. The program, now in place throughout the state of New Jersey as well as in more than one dozen other states, establishes a unique educational partnership through which attorneys, judges, law faculty, and law students enrich the high school curriculum.⁷⁹ The program includes attorney and law student-taught classes at the high schools, class observations of trials, role-playing and simulation of seminal cases, a moot court competition, and various "law days" at the law school. To better equip public school teachers to integrate the law and its history and importance into their curricula, the Justice Resource Center in Manhattan has implemented a series of intensive summer training sessions for teachers, taught by law professors and lawyers.⁸⁰

Efforts such as these are worthy of replication. Moreover, their proven effectiveness suggests that new, expanded, and alternative educational endeavors ought to be tried and tested. Mr. Linowitz's endorsement of such efforts, together with his sound ideas, is most welcome.

CONCLUSION

The time has come for us to see, and therefore to create, the promise of a legal profession able and willing to reclaim its role as the guarantor of rights, willing to forego money for honor and self-promotion for self-respect. As the custodians of the larger community's ethical and moral sense, and as its greatest hope for the attainment of equal access to justice, it is our professional imperative to do more than is required and less than is allowed. When we gauge each other's measure, integrity, leadership, independence and community service should count for more than hours billed or hourly rate.

⁷⁸ *Id.* at 221.

⁷⁹ In 1992, the New Jersey State Bar Foundation established a centralized, state-wide Mentor Program, reaching high schools throughout the state of New Jersey. See Paula A. Franzese, *The Mentor Program: Building Bridges to the Community*, 22 SETON HALL L. REV. 1366, 1366 (1992).

⁸⁰ *Id.*

Mr. Sol Linowitz's wonderful book is most valuable because it helps us imagine this possibility and believe that it is attainable. His words challenge and inspire us to accept our power, realize again our finest traditions and reshape the destiny of our profession. If we take the time to listen and to heed his call, then the very best, for our craft and the world we serve, is yet to be.