

to act on that judgment, even when it leads to unpopular decisions. Walter Lippmann once wrote that a statesman emerges whenever a politician "stops trying merely to satisfy or obfuscate the momentary wishes of his constituents, and sets out to make them realize and assent to those hidden interests of theirs which are permanent. . . . When a statesman is successful in converting his constituents from a childlike pursuit of what seems interesting to a realistic view of their interests, he receives a kind of support which the ordinary glib politician can never hope for. . . . [O]nce a man becomes established in the public mind as a person who deals habitually and successfully with real things, he acquires an eminence of a wholly different quality from that of even the most celebrated caterer of the popular favor. . . ."⁵

Ultimately, the political profession will not redeem itself in the public's eyes until a larger number of its representatives begin to heed the call of their conscience over the call of the polls.

III. ETHICS AND THE LEGAL PROFESSION

Unlike the political realm, the legal profession has not always been viewed with the scorn reserved for it today. In words that may seem strange to us now, Alexis de Tocqueville wrote that "people in democratic states do not mistrust the members of the legal profession, because it is known that they are interested to serve the popular cause; and the people listen to them without irritation because they do not attribute to them any sinister designs."⁶ During the last century, however, this picture of the legal profession has too often been replaced by an entirely different one—a picture of lawyers as parasites, hired-guns of large corporations or grasping clients, motivated by greed and neglectful of the public good. The legal industry—and it is an industry—has become increasingly commercialized, with too much emphasis on profits and the bottom line.

Paralleling this development has been the growth of a new ideology within the legal culture itself, which one observer has called the "ideology of adversarial zeal."⁷ It is more prevalent than it should be. This ideology tells lawyers that they need not concern themselves with the public good or the ordinary obligations of justice. Rather, their ethical obligations are simply to serve their clients' desires and commands.

When unrestrained, this ideology puts few ethical burdens on the legal profession. Simply stated, it affirms that: "[l]awyers should not commit crimes or help clients to plan crimes. They should obey only such ethical instructions as are clearly expressed in rules and ignore vague standards. Finally, they should not tell outright lies to judges or fabricate evidence. Otherwise, they may, and if it will serve their clients' interest must, exploit any gap, ambiguity, technicality, or loophole, any not-obviously-and-totally-implausible interpretation of the law or facts."⁸

Like the norm of constituent service through polling in the political realm, the ideology of adversarial zeal panders to the lawyer's own self-interest. It enables lawyers to ignore the effects of their work on the rest of society—considerations that may detract from their profits but should bother their conscience.

To be fair, the ideology of adversarial zeal may have value in some contexts. For example, in criminal trials, there is a strong temptation to pre-judge a defendant who stands before the court of law, who often is a marginalized member of our society, and who faces the awesome power of the state's legal machinery. Public norms that encourage a fervent defense may help to counteract this pressure and ensure that the defendant

has at least one committed defender. That defender may be all that stands between the innocent individual and the loss of his or her liberty.⁹

The finest legal traditions are followed when attorneys use their zeal and skills in pro bono work, but today the combination of federally assisted legal aid and pro bono work still leaves far too many unserved or under served. In all cases, there is a strong ethical argument for encouraging lawyers to weigh the broader implications of their work for society. Just as the politician must balance his constituent's interests with the public interest, so too must a lawyer balance client service with public service.

I do not know precisely how that balance should be drawn today in the legal profession. But it certainly means that lawyers—like candidates and office-holders—should hold themselves to a higher standard of conduct than they sometimes do now. It often means that lawyers should resist the temptation to exploit loopholes in the law and instead seek to ensure compliance with the spirit of the law. It certainly means that a lawyer should not engage in a scorched earth approach to discovery in order to overwhelm a less resourceful opponent, even if that means sacrificing a strategic edge in litigation. And it surely means working with the political branches to improve and strengthen our legal system, even if that effort may temporarily work to the detriment of existing clients or the attorney's pocketbook. Self-restraint is essential for a free society to function effectively. We as a society should set our ethical goals high, even the likelihood that many will inevitably fall short.

We need, in other words, to revive an old ideology that once permeated the legal profession, which Dean Kronman of Yale Law School called the ideology of the "lawyer statesman."¹⁰ The lawyer statesman understands that professional obligations extend far beyond the client's interests to those of the nation at large, and that the Bar's enormous power in American society comes with a great responsibility to protect the common good. This is vital, in part, because the legal profession plays such a basic role in maintaining the nation's ideals. Professor George Anastaplo has rightly spoken of the Bar's obligation: "to mediate between popular passions and informed and principled men, thereby upholding republican government. Unless there is this mediation, intelligent and responsible government is unlikely. . . . The bar is, in short, in a position to train and lead by precept and example the American people."¹¹ Similarly, Justice Louis Brandeis, who lived the noble ideal of the lawyer statesman in his own life, spoke of lawyers "holding a position of independence, between the wealthy and the people, prepared to curb the excesses of either."¹²

Not least of all, a resurgence in the ideal of the lawyer statesman is important to our nation's future because, in the United States, the legal profession has traditionally been a training ground for many political aspirants. We will have little hope of finding statesmen in the political arena, if we are unable to cultivate statesmen in the legal sphere.

This is an extraordinarily difficult challenge. To change the culture of the legal and political professions will require a partnership among law schools, bar leaders, schools of political science, and the public at large. But before we can begin this task, we need to understand the reasons an ideology of self-interest has too extensively replaced a commitment to the public interest in both of our professions. We need creative suggestions about how to reverse that trend. For this reason, a symposium issue such as this one is so timely and important to our national wel-

fare. I congratulate the Loyola University of Chicago Law Journal for taking on this fundamental issue.

FOOTNOTES

- ¹The Federalist No. 10 (James Madison).
- ²Edmund Burke, Election Speech at Bristol (Nov. 3, 1774), reprinted in Burke's Politics 115 (Ross J.S. Hoffman et al. eds., Alfred A. Knopf, Inc. 1949).
- ³For example, Burke also declared in his election speech at Bristol that: Parliament is a deliberative assembly of one nation, with one interest, that of the whole—where, not local purposes, not local prejudices, ought to guide, but the general good, resulting from the general reason of the whole. You choose a member, indeed; but when you have chosen him he is not a member of Bristol, but he is a member of Parliament. If the local constituent should have an interest or should form a hasty opinion evidently opposite to the real good of the community, the member for that place ought to be as far as any other from any endeavor to give it effect.
- ⁴Id. at 116 (emphasis in original).
- ⁵David Super, et al., Center on Budget and Policy Priorities, The New Welfare Bill 17-23 (1996).
- ⁶Walter Lippmann, The Essential Lippmann 457 (1963).
- ⁷Alexis de Tocqueville, Democracy in America 275-76 (Phillips Bradley ed., 1987) (1835).
- ⁸See David Luban & Michael Millemann, "Good Judgment: Ethics Teaching in Dark Times," 9 Geo. J. Legal Ethics 31, 57 (1995) (stating that "the ideology of adversarial zeal—the professional religion of a great many lawyers—tells them that they are morally required to push the edge of the envelope").
- ⁹Robert W. Gordon, "The Independence of Lawyers," 68 B.U.L. Rev. 1, 20 (1988).
- ¹⁰For a broadly similar point about the ethics of criminal defense work, see Daniel Luban, Lawyers and Justice. An Ethical Study 62-63 (1988).
- ¹¹Anthony T. Kronman, The Lost Lawyer: Failing Ideals of the Legal Profession 11 (1993) (quoting Chief Justice Rehnquist).
- ¹²In re Anastaplo, 366 U.S. 82, 110 (1961) (Black, J., dissenting) (quoting Anastaplo's statement to the Bar Committee).
- ¹³L. Brandeis, "The Opportunity in the Lands" in Business—A Profession 329, 337-39 (1933), quoted in Robert W. Gordon, The Independence of Lawyers, 68 B.U.L. Rev. 1, 3 (1988).

VETERANS DAY 1997

• Mr. BURNS. Mr. President, as a veteran of the U.S. Marine Corps, I rise today to pay tribute to our Nation's veterans, their families, and to those who died in defense of our great land.

On November 11, 1997, we will again pay tribute to our Nation's veterans. There will be parades, ceremonies, and in my home State of Montana, where I served as Yellowstone County commissioner, a dedication of a veterans wall will take place in Billings.

One must stop and wonder on Veterans Day 1997, if our Government is doing all we can for our country's veterans. For the many men and women who rely on Uncle Sam to provide the benefits they earned by putting their lives on the line, the answer is a resounding "No." We must do more to ensure that veterans and their families are looked after and afforded every opportunity to receive the health care and the benefits they so rightly deserve. The veteran stepped forward when the Nation called; it is time the Government stepped up to the plate and delivered the benefits the veterans deserve.

Today, I would like to say "thank you" to the veterans for the sacrifices you made defending our country. Thank you for the time you spent away from your home and families to heed the call of our great Nation.

Mr. President, we must never forget those brave men and women who paid

the ultimate sacrifice by giving their lives for the United States of America.

As the saying goes, "If you love your freedom, thank a vet." I urge our Nation to reach out and shake the hand of a veteran today and say "thank you" for a job well done.●

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. LOTT. Mr. President, I ask unanimous consent that the Senate immediately proceed to executive session to consider the following nominations on the Executive Calendar: Nos. 269, 270, 287, 308, 309, 310, 314, 317, 321, 322, 325, and 330. I further ask unanimous consent that the nominations be confirmed, the motions to reconsider be laid upon the table, and any statements relating to the nominations appear at this point in the RECORD, the President be immediately notified of the Senate's action, and the Senate immediately return to legislative session.

The PRESIDING OFFICER. Without objection, it is so ordered.

The nominations considered and confirmed en bloc are as follows:

DEPARTMENT OF STATE

Brian Dean Curran, of Florida, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Mozambique.

Timberlake Foster, of California, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Islamic Republic of Mauritania.

Thomas M. Foglietta, of Pennsylvania, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Italy.

SECURITIES AND EXCHANGE COMMISSION

Paul R. Carey, of New York, to be a Member of the Securities and Exchange Commission for the term expiring June 5, 2002.

Laura S. Unger, of New York, to be a Member of the Securities and Exchange Commission for the term expiring June 5, 2001.

NATIONAL TRANSPORTATION SAFETY BOARD

George W. Black Jr., of Georgia, to be a Member of the National Transportation Safety Board for a term expiring December 31, 2001. (Reappointment)

NATIONAL TRANSPORTATION SAFETY BOARD

John Arthur Hammerschmidt, of Arkansas, to be a Member of the National Transportation Safety Board for a term expiring December 31, 2000.

NATIONAL TRANSPORTATION SAFETY BOARD

James E. Hall, of Tennessee, to be a Member of the National Transportation Safety Board for a term expiring December 31, 2002.

DEPARTMENT OF STATE

Alphonse F. La Porta, of New York, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Mongolia.

Stephen W. Bosworth, of Connecticut, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Korea.

THE JUDICIARY

Richard Conway Casey, of New York, to be United States District Judge for the South-

ern District of New York vice Charles S. Haight, Jr., retired.

THE JUDICIARY

Dale A. Kimball, of Utah, to be United States District Judge for the District of Utah vice David K. Winder, retired.

STATEMENT ON NOMINATIONS OF DALE A. KIMBALL TO BE U.S. DISTRICT JUDGE FOR THE DISTRICT OF UTAH AND RICHARD C. CASEY TO BE U.S. DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK

Mr. LEAHY. Mr. President, I am delighted that the Senate majority leader has decided to take up the nomination of Dale A. Kimball to be a U.S. district judge for the District of Utah. Mr. Kimball has been engaged in the private practice of law for 30 years and is currently the senior partner in the Salt Lake City law firm, Kimball, Parr, Waddoups, Brown & Gee. The ABA unanimously found him to be well-qualified for this appointment.

We received Mr. Kimball's nomination on September 5, 1997. He participated in a confirmation hearing on September 30 and was unanimously reported by the committee on October 9. Now, less than 7 weeks after receiving his nomination, the Senate has confirmed this nominee. Had the Senate not taken a recess last week, I suspect this nominee would have been confirmed in less than 6 weeks. Nonetheless, 7 weeks is a good benchmark against which to consider our progress on other judicial nominations.

I congratulate Mr. Kimball and his family and look forward to his service on the U.S. district court.

I also congratulate Richard C. Casey on his confirmation as a district judge for the Southern District of New York. Mr. Casey is both an accomplished legal practitioner and a true inspiration. He has been associated with, and a partner of the law firm of Brown & Wood in New York City since 1964. Remarkably, he has been practicing law without his eyesight since the early 1980's—a congenital disease stripped him of his ability to see. Dedicated to serving the blind community of New York City, Mr. Casey is a member of the board of directors for organizations such as Guiding Eyes for the Blind, Catholic Guild for the Blind, and Ski for Light.

I congratulate Mr. Casey and his family and anticipate his outstanding service on the U.S. Federal Court.

We have experienced 115 judicial vacancies over the course of this year. These are only the 20th and 21st nominees that the Senate has confirmed. More than 50 additional nominees remain pending in committee and before the Senate. The Senate is not even keeping pace with attrition for since the adjournment of Congress last year, judicial vacancies have increased by almost 50 percent.

Another of the well-qualified nominees who has been delayed far too long is Margaret Morrow. Her nomination has been pending before the Senate for over 16 months. Last year this nomination was unanimously reported by the

Judiciary Committee and was left to wither without action for over 3 months. This year, the committee again reported the nomination favorably and it has been pending for another 4 months. There has been no explanation for this delay and no justification. This good woman does not deserve this shameful treatment.

Senator HATCH noted in his recent statement on September 29 that he will continue to support the nomination of Margaret Morrow and that he will vote for her. He said: "I have found her to be qualified and I will support her. Undoubtedly, there will be some who will not, but she deserved to have her vote on the floor. I have been assured by the majority leader that she will have her vote on the floor. I intend to argue for and on her behalf."

I have looked forward to that debate since June 12 when she was favorably reported to the Senate for a second time. This is a nomination that has been pending for far too long and that has been stalled here on the floor twice over 2 years without justification.

Meanwhile, the people served by the district court for the Central District of California continue to suffer the effects of this persistent vacancy—cases are not heard, criminal cases are not being tried. This is one of the many vacancies that have persisted for so long that they are classified as judicial emergency vacancies by the Administrative Office of the United States Courts. There are four vacancies in the court for Los Angeles and the Central District of California. Nominees have been favorably reported by the Judiciary Committee for both of the judicial emergency vacancies in this district but both Margaret Morrow and Christina Snyder have been stalled on the Senate calendar.

This is a district court with over 300 cases that have been pending for longer than 3 years and in which the time for disposing of criminal felony cases and the number of cases filed increased over the last year. Judges in this district handle approximately 400 cases a year, including somewhere between 40 and 50 criminal felony cases. Still these judicial vacancies are being perpetuated without basis or cause by a Republican leadership that refuses to vote on these well-qualified nominees.

I am told that last week a Republican Senator announced at a speech before a policy institute that he has a hold on the Morrow nomination. The Senator's press release stated that he had placed a hold on Margaret Morrow's nomination because he wants to "be able to debate the nomination and seek a recorded vote." I too want to debate the nomination of Margaret Morrow and have been seeking Senate consideration of this outstanding nominee for many months. After being on the Senate calendar for a total of 7 months, this nomination has been delayed too long.

I believe all would agree that it is time for the full Senate to debate this