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THIS SPEECH REFLECTS THE VIEWS
OF THE AUTHOR AND DOES NOT
NECESSARILY REFLECT THE VIEWS
OF THE SECRETARY OF THE NAVY
OR THE DEPARTMENT OF THE NAVY

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LAWYERS VERSUS SOCIETY
BY
ADMIRAL H. G. RICKOVER, USN
BEFORE THE
NEW YORK PATENT LAW ASSOCIATION, INC.
NEW YORK, N.Y.
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SEVERAL WEEKS AFTER I AGREED TO ADDRESS THIS GROUP,
OFFICIALS OF YOUR ASSOCIATION BEGAN EXPRESSING INTEREST IN
THE TOPIC OF MY SPEECH. THEY URGED ME TO TALK ABOUT MY CAREER,
NATIONAL DEFENSE, HISTORY, PHILOSOPHY, MY PERCEPTION OF THE
FUTURE--ANYTHING BUT PATENTS. THEY SAID FEDERAL JUDGES AND
CORPORATE EXECUTIVES WOULD BE PRESENT AND THAT THE MEMBERS AND
GUESTS WOULD WANT TO ENJOY THEMSELVES.

I DO NOT HAVE THE SLIGHTEST INTEREST IN PROVIDING ENTERTAIN-
MENT FOR DINNER PARTIES OR FOR ANYONE ELSE. I HAVE ALWAYS LIVED,
AMONG OTHER RULES, BY THE ONE "HEAVEN IS BLEST WITH PERFECT REST,
BUT THE BLESSING OF EARTH IS HONEST TOIL." MY SOLE REASON FOR
COMING HERE IS TO IMPRESS UPON YOU THE NEED AND IMPORTANCE FOR
THE LEGAL PROFESSION TO START PLAYING A TRULY RESPONSIBLE ROLE
IN OUR SOCIETY.

IN THE LEGAL COMMUNITY AND ELSEWHERE, THE PEDESTAL OF PROFESSIONALISM IS NOW SHAKY. ABUSES OF POWER BY BUSINESSMEN, ACCOUNTANTS, DOCTORS, AND LAWYERS--MAKE IT OBVIOUS THAT SOMETHING IS WRONG. INSTEAD OF WORKING FOR THE BENEFIT OF SOCIETY, MANY PROFESSIONALS SEEM TO BE WORKING FOR THE BENEFIT OF A FEW OR FOR THEMSELVES. PROFESSIONAL ORGANIZATIONS APPEAR UNABLE OR UNWILLING TO POLICE THEIR MEMBERS. PUBLIC CONFIDENCE IN THEM HAS DECLINED. ALTHOUGH OTHER PROFESSIONS ARE ALSO AT FAULT, LAWYERS ARE THE BRUNT OF THE CRITICISM.

IT HAS BEEN MY EXPERIENCE THAT MEMBERS OF THE LEGAL PROFESSION ARE CONTRIBUTING SUBSTANTIALLY TO THE EROSION OF VALUES AND INSTITUTIONS ON WHICH OUR SOCIETY IS BASED. IN THEIR QUEST FOR MONEY AND POWER MANY LAWYERS SEEM TO HAVE FORGOTTEN THEIR OBLIGATIONS.. BY SO DOING, THEY ALIENATE THEIR COUNTRYMEN; BREED DISTRUST OF OUR INSTITUTIONS AND THOSE WHO RUN THEM; AND UNDERMINE THE TRADITIONAL VALUES OF HONOR, HUMILITY, AND HONEST DEALING.

THE PROBLEM STEMS LARGELY FROM THE GROWING OBSESSION WITH MONEY IN OUR SOCIETY. PREOCCUPATION WITH PROFIT CREATES INCENTIVES AND PRESSURES ON INDIVIDUALS TO ACT IN WAYS THEY WOULD NOT OTHERWISE CONSIDER.

LAWYERS ARE SUPPOSED TO BE OFFICERS OF THE COURT; IT IS TO THEM THAT SOCIETY HAS ENTRUSTED THE ADMINISTRATION OF JUSTICE. THE AMERICAN PEOPLE EXPECT OUR SO-CALLED OFFICERS OF THE COURT TO BE MORE THAN MERCENARIES. YET IN PURSUIT OF THEIR OWN INTERESTS, MANY LAWYERS HAVE LOST SIGHT OF THE PUBLIC GOOD.

INSTEAD OF HOLDING BACK THE ATTACK ON OUR INSTITUTIONS AND VALUES, MANY HAVE INSTEAD LED IT.

THERE HAS BEEN A BREACH OF FAITH BY LAWYERS--AND THE PUBLIC KNOWS IT. A RECENT NATIONAL POLL FOUND THEM RANKED BELOW GARBAGE COLLECTORS IN PUBLIC ESTEEM AND THAT BUT A SMALL PART OF THE PUBLIC HAS CONFIDENCE IN LAW FIRMS. THE CHIEF JUSTICE OF THE SUPREME COURT RECENTLY CONCLUDED THAT A MAJORITY OF LAWYERS PRACTICING IN COURT ARE NOT PROPERLY EQUIPPED TO DO SO. THE PRESIDENT HIMSELF HAS STATED PUBLICLY THAT WE ARE "OVER-LAWYERED AND UNDER-REPRESENTED." A FOREIGN OFFICIAL HAS COMMENTED: "YOU HAVE LAWYERS LIKE OTHER PEOPLE HAVE MICE."

IT IS ARGUED THAT OUR ADVERSARY SYSTEM OF LAW DEMANDS THAT ATTORNEYS LITIGATE VIGOROUSLY, REGARDLESS OF THE MERITS OF THEIR CLIENT'S CASE. THIS VIEW HAS BECOME A RATIONALIZATION FOR PRACTICING THE LAW IN A WAY THAT FREQUENTLY OFFENDS JUSTICE AND DEBASES THE INTEGRITY OF OUR JUDICIAL SYSTEM. TOO OFTEN THE FINANCES, PATIENCE, AND TIME AVAILABLE TO A LITIGANT HAVE BECOME MORE IMPORTANT TO THE OUTCOME OF A CASE THAN ITS LEGAL MERITS. LAWYERS SHOULD INSTEAD STRIVE TO FOCUS THE COURT'S ATTENTION ON THE LEGAL OR FACTUAL ISSUES IN DISPUTE QUICKLY AND EFFICIENTLY. BUT MANY OF THEM DO THE OPPOSITE. LAW PRACTICED IN THIS MANNER DOES NOT AIM TO RECONCILE THE PARTIES AND RESOLVE THE DISPUTES. IT STRIVES TO BENEFIT THOSE WHO HAVE THE RESOURCES TO DOMINATE THE COURT BY DISTRACTING IT.

ONE OF THE MOST FRUSTRATING AND WASTEFUL PRACTICES IN SOCIETY TODAY, AND ONE THAT CONTRIBUTES MOST TO THE BREAKDOWN IN OUR SYSTEM OF JUSTICE, IS THE DELIBERATE OBFUSCATION OF ISSUES BY LAWYERS. FACED WITH A WEAK CASE, MANY SEEK TO

REDIRECT ATTENTION TO IRRELEVANT MATTERS AND TECHNICALITIES. BY SO DOING THEY CAN DELAY OR ALTOGETHER AVOID UNFAVORABLE DECISIONS ON THE LEGAL MERITS OF A CASE.

ALTHOUGH COMPLAINTS ABOUT DELAYS IN THE JUDICIAL PROCESS ARE WIDESPREAD AND OFTEN DISCUSSED IN LEGAL CIRCLES, I WONDER HOW MANY LAWYERS EVEN CARE, OR HAVE A REALISTIC APPRECIATION OF THE DETRIMENTAL EFFECTS FRIVOLOUS LITIGATION, LEGAL MANEUVERING, MASSIVE DISCOVERY CAMPAIGNS, AND DELAYING TACTICS HAVE, NOT ONLY ON THE JUDICIAL PROCESS, BUT ON OTHER WORTHWHILE HUMAN ENDEAVORS. CAUGHT UP IN THE HEAT OF THEIR LEGAL BATTLES, AND WITH AN EYE TOWARDS THE REWARDS, MANY LAWYERS SEEM INDIFFERENT TO THE EFFECT THEIR LITIGATIVE TACTICS HAVE ON THEIR VICTIMS.

I HAVE HAD FIRST HAND EXPERIENCE WITH THESE EFFECTS AND I DOUBT THEY ARE UNIQUE. I AM RESPONSIBLE FOR THE DESIGN, CONSTRUCTION, AND SAFE OPERATION OF 152 OPERATING NUCLEAR REACTORS IN NAVAL SHIPS AND ASHORE--MORE THAN THE TOTAL OF ALL OTHER OPERATING COMMERCIAL REACTORS IN THE U.S. TODAY. LIKE MANY OTHER PROJECTS IN GOVERNMENT AND INDUSTRY, THIS WORK REQUIRES METICULOUS ATTENTION TO DETAIL AND LONG HOURS BY MANY DEDICATED PEOPLE. EVERY YEAR IT BECOMES HARDER AND HARDER FOR THEM TO DO A PROPER JOB. THEIR EFFORTS AND ATTENTION MUST INCREASINGLY BE REDIRECTED TO EXTRANEIOUS MATTERS. IN THIS RESPECT, THE LEGAL PROFESSION IS MAKING A GREAT NEGATIVE CONTRIBUTION TO OUR DEFENSE.

AS ONE MINOR EXAMPLE, FIFTEEN YEARS AGO, THE GENERAL ACCOUNTING OFFICE REPORTED THAT A LARGE DEFENSE CONTRACTOR HAD OVERCHARGED THE GOVERNMENT \$500,000 ON ONE OF MY CONTRACTS. LAST DECEMBER THE ISSUE FINALLY CAME TO TRIAL. I EXPECT A

RULING IN ABOUT A YEAR. THE ISSUE IS SIMPLE. YET THE LAWYERS REPRESENTING THE CONTRACTOR HAVE MANAGED TO DRAG IT OUT. MEANTIME, THEIR CLIENT HAS USE OF THE MONEY IN DISPUTE.

IN ANOTHER CASE, A LARGE CONGLOMERATE REFUSED TO HONOR ITS CONTRACT, CONTENDING IT WAS INVALID AND SHOULD BE REPRICED. FOUR YEARS OF MASSIVE DISCOVERY AND LEGAL MANEUVERING HAVE NOW ELAPSED, AND VALIDITY OF THE CONTRACT HAS YET TO BE TRIED IN COURT. MEANWHILE, THE TIME OF MANY KEY NAVY PERSONNEL IS DIVERTED FROM THEIR PRIMARY DUTIES.

IN THIS CASE I HAVE BEEN SUBJECT TO MORE THAN 40 HOURS OF DETAILED INTERROGATION UNDER THE GUISE OF DISCOVERY BY A TEAM OF EXPERIENCED LAWYERS OVER A PERIOD OF SEVERAL WEEKS. HAD THEY BEEN INTERESTED ONLY IN GATHERING INFORMATION ABOUT THE CASE, THEY COULD HAVE COMPLETED THE QUESTIONING IN ONE TO TWO HOURS. OF COURSE, THE LONGER THEY TAKE, THE MORE MONEY THESE HIGH-PRICED LAWYERS MAKE. A FEW DAYS AGO, I RECEIVED WORD THAT THE LAWYERS WANT TO RESUME MY DEPOSITION.

HOW IS THE COMMON GOOD SERVED WHEN LAWYERS OBFUSCATE ISSUES, DELAY AND HARASS THE OPPOSITION, AND ATTEMPT TO ABROGATE CONTRACTS? HOW IS JUSTICE SERVED BY FRUSTRATING THE LEGAL INSTITUTIONS AND PROCEDURES THAT HAVE BEEN ESTABLISHED AND ARE AVAILABLE TO THE PUBLIC FOR RESOLUTION OF DISPUTES? EVEN WHEN BOTH PARTIES CAN AFFORD THE LEGAL COSTS, THE DELAY AND HARASSMENT NOW TYPICALLY INVOLVED IN LITIGATION MAKE IT INCREASINGLY UNATTRACTIVE TO ALL EXCEPT THE LAWYERS. MOREOVER, THROUGH DELAY, ONE PARTY CAN EFFECTIVELY DENY HIS ADVERSARY'S RIGHT TO A JUDICIAL DETERMINATION.

LAST SUMMER, THE SECRETARY OF THE NAVY DECIDED TO GRANT THE NAVY'S THREE LARGEST SHIPBUILDERS EXTRA-CONTRACTUAL RELIEF

TOTALING MORE THAN \$500 MILLION UNDER A SPECIAL LAW CONGRESS HAD ENACTED TO COVER EXTRAORDINARY ACTIONS DETERMINED TO BE NECESSARY TO FACILITATE THE NATIONAL DEFENSE. THE SECRETARY SAID THAT NOT GRANTING SUCH RELIEF WOULD INEVITABLY MEAN LONG YEARS OF LITIGATION AND A DISRUPTIVE RELATIONSHIP WHICH WOULD UNREASONABLY JEOPARDIZE THE NATIONAL DEFENSE.

LARGE CONTRACTORS AND THEIR WELL-PAID LAW FIRMS HAVE THUS MADE LITIGATION UNPALATABLE AND DIFFICULT FOR THEIR ADVERSARIES. IN SUCH A CLIMATE THE CONCEPT OF JUSTICE IS LOST; VICTORY WILL USUALLY GO TO THOSE IN THE STRONGEST NEGOTIATING POSITION.

THE TACTICS OF DELAY AND OBFUSCATION WHICH SERVE SOME LAWYERS WELL IN COURT HAVE NOW PERMEATED THE GOVERNMENT PROCUREMENT PROCESS. BY DRAGGING OUT DISPUTES, LAW FIRMS MAKE IT POSSIBLE FOR THEIR CLIENTS TO DEFER OR PERHAPS AVOID REPORTING LARGE LOSSES TO STOCKHOLDERS. SEVERAL LARGE SHIPBUILDERS WERE FOR MANY YEARS ABLE TO AVOID REPORTING SUCH LOSSES, SIMPLY BY PREDICTING OPTIMISTIC RECOVERIES FROM PENDING LITIGATION, AND THE LONGER A CASE DRAGS ON, THE GREATER THE LIKELIHOOD OF GOVERNMENT PEOPLE LEAVING FOR OTHER JOBS, MEMORIES FADING, AND THE CASE BEING FINALLY SETTLED INDEPENDENT OF THE LEGAL MERITS.

THERE ARE NOW LAW FIRMS WHICH SPECIALIZE IN OMNIBUS CLAIMS AGAINST THE GOVERNMENT. THESE CLAIMS HAVE DISTINGUISHING CHARACTERISTICS. THEY OFTEN GO FROM TENS TO HUNDREDS OF MILLIONS OF DOLLARS. THEY ARE GROSSLY INFLATED, SO THAT SETTLEMENT AT A FRACTION OF THE CLAIM WILL STILL YIELD THE DESIRED AMOUNT. THEY ARE BASED ON UNSUBSTANTIATED ALLEGATIONS THAT THE GOVERNMENT IS AT FAULT. THEY DO NOT SHOW A CAUSE AND EFFECT RELATIONSHIP BETWEEN ALLEGED GOVERNMENT RESPONSIBLE ACTIONS AND THE AMOUNT CLAIMED.

SOME DRAW AN ANALOGY WITH OTHER TYPES OF LITIGATION, SUCH AS PERSONAL INJURY SUITS WHERE A LAWYER MIGHT ASK FOR \$1 MILLION IN DAMAGES IN THE HOPE OF RECOVERING \$25,000. IN SUCH CASES, NO ONE TAKES THE INITIAL AMOUNT SERIOUSLY. THE JUDGE OR JURY ARRIVES AT A FIGURE INDEPENDENTLY, BASED ON THE TESTIMONY OF WITNESSES.

BUT CONTRACT CLAIMS AGAINST THE GOVERNMENT ARE DIFFERENT. SINCE PUBLIC FUNDS ARE AT STAKE, EVERY ELEMENT OF THESE CLAIMS MUST BE SCRUTINIZED FOR LEGAL ENTITLEMENT AND THE COST AUDITED AND EVALUATED. LARGE CLAIMS OF THIS SORT TIE UP MANY KEY PEOPLE FOR MANY YEARS WHO MUST EVALUATE THE VALID AND INVALID PORTIONS OF THE CLAIM. THOSE ON WHOM THE GOVERNMENT MUST RELY FOR CLAIMS ANALYSES ARE THE VERY ONES WHO ARE ALSO RESPONSIBLE FOR OTHER ON-GOING WORK.

ONE CONGLOMERATE SUBMITTED CLAIMS TOTALING ABOUT \$1 BILLION AGAINST THE NAVY. THE CLAIMS COMPRISED 64 VOLUMES, EACH TWO INCHES THICK, AND COVERED MANY YEARS OF PERFORMANCE UNDER VARIOUS CONTRACTS.

GOVERNMENT TEAMS UNDER THE DIRECTION OF A SPECIAL INDEPENDENT BOARD REQUIRED A YEAR AND A HALF TO EVALUATE THESE CLAIMS. THEY WERE EVENTUALLY SETTLED FOR LESS THAN ONE-FOURTH THE AMOUNT CLAIMED. TO JUSTIFY EVEN THIS FIGURE, THE GOVERNMENT HAD TO INCLUDE LARGE SUMS TO COVER LITIGATIVE RISK AND LITIGATIVE COST--THAT IS, THE LIKELIHOOD OF UNFAVORABLE DECISIONS BY A COURT, AND THE ESTIMATED COST FOR THE GOVERNMENT TO SPEND YEARS LITIGATING.

ABUSE OF THE DISCOVERY PROCESS, HARASSMENT, OBFUSCATION, AND DELAY ARE NOT PRACTICES UNIQUE TO CLAIMS LAWYERS.

WIDE RANGING INTERROGATORIES AND EXTENSIVE DISCOVERY REQUESTS HAVE BECOME A STANDARD LEGAL TACTIC. I UNDERSTAND SOME LAW FIRMS HAVE THOUSANDS OF QUESTIONS STORED IN COMPUTERS, AVAILABLE AT THE PRESS OF A BUTTON. THUS, EVEN THE LIMITS OF AN ATTORNEY'S IMAGINATION OR TIME NEED NO LONGER BE A CONSTRAINT ON THE MISCHIEF HE CAN CAUSE.

ANOTHER EXAMPLE OF LAWYER MISCHIEF INVOLVES THE FREEDOM OF INFORMATION ACT. THE ACT WAS DESIGNED TO ENSURE PUBLIC ACCESS TO GOVERNMENT INFORMATION.

NOW, LAW FIRMS ARE USING IT TO CONDUCT, IN EFFECT, UNILATERAL DISCOVERY PROCEEDINGS IN DISPUTES WITH THE GOVERNMENT, AND AT TIMES WHEN THE LATTER HAS NO COMPARABLE RIGHT TO THE CORPORATE DATA. THE LAW FIRMS ARE ABLE TO USE THE ACT TO GIVE THEIR CLIENTS AN UNFAIR ADVANTAGE OVER THE GOVERNMENT IN LITIGATION.

SOME LAW FIRMS TRY TO OBTAIN FOR THEIR CLIENTS, THROUGH THE FREEDOM OF INFORMATION ACT, INFORMATION THEY COULD NOT OTHERWISE GET ABOUT THEIR COMMERCIAL COMPETITORS, SUCH AS LABOR AND OVERHEAD RATES, ESTIMATING PRACTICES, AND SO ON-- INFORMATION THAT IS FURNISHED TO THE GOVERNMENT IN THE PROCUREMENT PROCESS.

IN SUCH INSTANCES, THE GOVERNMENT OFTEN ENDS UP IN THE MIDDLE. UNDER THE FREEDOM OF INFORMATION ACT, GOVERNMENT EMPLOYEES CAN BE DISCIPLINED FOR IMPROPERLY WITHHOLDING SUCH

INFORMATION. YET UNDER ANOTHER STATUTE, THEY CAN BE FINED AND IMPRISONED FOR RELEASING A COMPANY'S PROPRIETARY DATA. ONE COMPANY SUES THE GOVERNMENT TO DISCLOSE DATA ABOUT A COMPETITOR; THE COMPETITOR THEN SUES TO FORBID ITS RELEASE. THIS IS AN EXAMPLE OF THE CHAOS PRODUCED BY THE FERTILE MINDS OF OUR LAWYERS. IT IS ALSO AN EXAMPLE OF THE ADVANTAGE LAWYERS ARE TAKING OF THE SYSTEM TO PROMOTE THE INTERESTS OF THEIR CLIENTS--AND THEMSELVES. I DOUBT THAT THOSE WHO ENACTED THE FREEDOM OF INFORMATION ACT ENVISIONED THE USES TO WHICH IT HAS BEEN PUT BY LAWYERS.

THE PATENT LAWYERS HERE TONIGHT MAY HAVE BEEN WONDERING WHY SO FAR I HAVE NOT ALLUDED TO THEM. YET PATENT LAWYERS EXHIBIT THE SAME TENDENCIES THAT PERVADE OTHER SEGMENTS OF THE PROFESSION. THEY TOO ARE SKILLED IN THE TACTICS OF OBFUSCATION AND DELAY. MOREOVER, I BELIEVE THAT MANY PATENT LAWYERS DO HARM TO THE ECONOMY AND TO THE CREDIBILITY OF THE PATENT SYSTEM. FREQUENTLY THEY REPRESENT THE NARROW ECONOMIC INTERESTS OF THEIR CLIENTS, TO THE DETRIMENT OF THE PUBLIC, BY USING SUCH TACTICS AS INDISCRIMINATE PATENTING OF MINOR DESIGN DETAILS.

MEMBERS OF THE PATENT BAR, WHILE PURPORTING TO BE LOOKING OUT FOR THE PUBLIC INTEREST, FREQUENTLY PROMOTE CONCEPTS WHICH FAVOR THEIR LARGE CLIENTS. THE DOGMA OF THE PATENT LAWYERS IS CONTRADICTORY. ON THE ONE HAND, THEY CONTEND THAT GOVERNMENT CONTRACTORS SHOULD GET EXCLUSIVE RIGHTS TO INVENTIONS DEVELOPED AT GOVERNMENT EXPENSE. YET RARELY,

IF EVER, HAVE I HEARD PATENT LAWYERS CRITICIZE THESE CONTRACTORS FOR REQUIRING THEIR EMPLOYEES TO GIVE UP ALL RIGHTS TO INVENTIONS DEVELOPED AT CONTRACTOR EXPENSE.

THE PATENT LOBBY SPEAKS ELOQUENTLY OF FREEDOM, THE FREE ENTERPRISE SYSTEM, AND COMPETITION, IN CONNECTION WITH PATENT ISSUES. IN PRACTICE, HOWEVER, THEY HELP LARGE COMPANIES FENCE OUT COMPETITION BY BLANKETING FIELDS OF TECHNOLOGY WITH PATENTS AND PATENT APPLICATIONS ON IDEAS AND ITEMS NOT WORTHY OF A PATENT. SMALL FIRMS THAT CANNOT AFFORD THE DELAY AND COST OF INFRINGEMENT LITIGATION DO NOT ENTER THE MARKET.

THE PATENT LOBBY IS ACTIVELY PROMOTING THE CONCEPT THAT THE GOVERNMENT SHOULD PROVIDE BUSINESSMEN GREATER INCENTIVES TO INVEST IN TECHNOLOGY IN ORDER TO COMBAT A PERCEIVED DECLINE IN THIS COUNTRY'S TECHNOLOGICAL GROWTH. THE RECOMMENDED INCENTIVES TAKE THE FORM OF INCREASED GOVERNMENT SPENDING FOR RESEARCH AND DEVELOPMENT AND GRANTING CONTRACTORS EXCLUSIVE RIGHTS TO PATENTS DEVELOPED AT GOVERNMENT EXPENSE.

I AM NOT CONVINCED THAT THERE IS ACTUALLY A DECLINE IN TECHNOLOGY OR THAT THE INFUSION OF GOVERNMENT FUNDS WOULD BE AN APPROPRIATE SOLUTION. IN ANY EVENT, SHOULD THE GOVERNMENT SPEND MORE, LARGE COMPANIES WILL PROBABLY GET THE LION'S SHARE OF THE INCREASE--AS THEY ALWAYS DO.

PATENT LAWYERS WELL KNOW THAT INCREASED GOVERNMENT RESEARCH AND DEVELOPMENT SPENDING AND GIVING GOVERNMENT CONTRACTORS EXCLUSIVE RIGHTS TO GOVERNMENT FINANCED INVENTIONS, WILL PROMOTE GREATER CONCENTRATION OF ECONOMIC POWER IN LARGE CONGLOMERATES, AND AT PUBLIC EXPENSE. SUPPOSE, WITH VAST SUMS OF GOVERNMENT MONEY, A LARGE COMPANY MAKES A MAJOR DISCOVERY IN ENERGY.

WHAT WOULD AN ORDINARY TAXPAYER THINK IF THAT COMPANY COULD, FOR 17 YEARS, LEGALLY CONTROL THE DISSEMINATION, USE, AND PRICING OF THIS INVENTION? YET THIS IS WHAT THE PATENT LOBBY ADVOCATES.

MOST PROFESSIONS HAVE A GROUP THAT SETS STANDARDS OF CONDUCT FOR ITS MEMBERS, AND IS SUPPOSED TO DISCIPLINE TRANSGRESSORS--AN ORGANIZATION WHOSE CHARTER PLACES PROFESSIONALISM ABOVE MONEY CONSIDERATIONS. IN THE LEGAL COMMUNITY, THIS GROUP IS THE AMERICAN BAR ASSOCIATION.

UNFORTUNATELY, THIS ORGANIZATION SEEMS TO BE FURTHER UNDERMINING RESPECT FOR THE LEGAL PROFESSION. BY RESPONDING WITH A COUNTER ATTACK TO THOUGHTFUL CRITICISM BY OUR PRESIDENT AND OUR CHIEF JUSTICE, THE ABA SHOWED IT IS MORE INTERESTED IN PRESERVING ITS CUSTOMS, THAN IN BEING A PROFESSIONAL ORGANIZATION. PERHAPS IT SHOULD BE RENAMED THE AMERICAN BAR PROTECTIVE ASSOCIATION, OR ABPA.

THE ABA'S DISCIPLINARY PROCEDURES ARE WIDELY RECOGNIZED AS A TOKEN EFFORT, WITH DISBARMENT RESERVED PRIMARILY FOR THE RARE MEMBER WHO IS OCCASIONALLY CONVICTED OF A FELONY. EVEN WHERE MISCONDUCT IS FOUND, PUNISHMENTS ARE OFTEN LIGHT. A PENNSYLVANIA ATTORNEY, FOUND GUILTY OF EMBEZZLING \$10,000 FROM A CLIENT'S INHERITANCE, WAS MERELY SUSPENDED FROM THE ABA. A NEW YORK ATTORNEY REFUSED TO ALLOW HIS CLIENT TO BE BROUGHT TO TRIAL UNTIL HIS FEE HAD BEEN PAID. HE THEN DEDUCTED THE FEE FROM THE BAIL MONEY, WHICH HE INTERCEPTED. THE ABA CALLED THE INCIDENT A MERE FEE DISPUTE AND TOOK NO DISCIPLINARY ACTION.

THE ABA HAS DONE NOTHING TO SOLVE THE REVOLVING DOOR PROBLEM--WHERE LAWYERS GET EXPERIENCE IN GOVERNMENT, AND THEN JOIN PRIVATE FIRMS WHICH REPRESENT CLIENTS AGAINST THEIR FORMER GOVERNMENT AGENCY. ONE WASHINGTON LAW FIRM THAT SPECIALIZES IN CLAIMS AGAINST THE NAVY IS HEADED BY A FORMER NAVY GENERAL COUNSEL. ANOTHER SUCH FIRM WAS HEADED BY A FORMER MEMBER OF THE DEFENSE DEPARTMENT'S ARMED SERVICES BOARD OF CONTRACT APPEALS. AND ONLY LAST MONTH THE CHAIRMAN OF THIS VERY SAME BOARD RESIGNED TO BECOME A PARTNER IN THIS VERY SAME FIRM. THERE HE WILL JOIN AN EX-NAVY DEPUTY COUNSEL WHO WAS RESPONSIBLE FOR DEFENDING THE GOVERNMENT AGAINST SHIPBUILDING CLAIMS.

SEVERAL MONTHS AGO, THE WALL STREET JOURNAL CARRIED AN ADVERTISEMENT BY A FORMER NAVY ATTORNEY WHO TOUTED HIS EXPERIENCE WITH CLAIMS WHILE EMPLOYED BY THE NAVY. HE SOLICITED CLIENTS WHO DESIRED TO SUBMIT CLAIMS AGAINST THE GOVERNMENT. DESPITE YEARS OF DEBATING THIS SUBJECT, THE LEGAL PROFESSION AND THE ABA HAVE YET TO ENFORCE THEIR OWN RULES AGAINST LAWYERS SWITCHING SIDES.

THE ABA OFTEN OPERATES MORE LIKE A TRADE ASSOCIATION THAN A PROFESSIONAL SOCIETY. FOR EXAMPLE, ITS PUBLIC CONTRACT LAW SECTION REPRESENTS THE ASSOCIATION IN MATTERS RELATING TO GOVERNMENT PROCUREMENT, YET IT HAS BECOME A FRONT FOR THE CLAIMS LAWYERS WHO DOMINATE ITS MEMBERSHIP AND ACTIONS.

LAST YEAR, THE ABA WAS ACTIVELY LOBBYING CONGRESS IN FAVOR OF A BILL GOVERNING DISPUTES UNDER GOVERNMENT CONTRACTS. THE VIEWS OF THIS ORGANIZATION CARRY GREAT WEIGHT IN SUCH ARCANE SUBJECTS.

BURIED IN THEIR PROPOSED LEGISLATION WERE NUMEROUS LOOPHOLES, ALL OF WHICH FAVORED CLAIMS LAWYERS AND THEIR CONGLOMERATE CLIENTS. FOR EXAMPLE, THE BILL SET A DOUBLE STANDARD WHICH INVARIABLY WORKED AGAINST THE GOVERNMENT, ALSO, AGENCIES WOULD, FOR THE FIRST TIME, BE GIVEN AUTHORITY TO HORSE-TRADE CLAIM SETTLEMENTS WITHOUT REGARD TO THEIR LEGAL MERITS. BUT THIS WAS NOT CLEARLY SPELLED OUT IN THEIR PROPOSAL; IT WOULD BE APPARENT ONLY TO THOSE WELL VERSED IN THE CLAIMS BUSINESS.

I POINTED THIS OUT IN CONGRESSIONAL TESTIMONY, AND THE BILL WAS CHANGED TO ELIMINATE THESE LOOPHOLES. IN ADDITION, THE BILL WAS MODIFIED TO REQUIRE CERTIFICATION OF CLAIMS AND TO PROVIDE STIFF PENALTIES FOR SUBMISSION OF FALSE CLAIMS. AS YOU MAY BY NOW SURMISE, THE ABA DID NOT ENDORSE THESE MODIFICATIONS.

LATER I LEARNED THAT THE ABA LOBBYISTS WHO WORKED ON THIS BILL WERE SENIOR PARTNERS OF PROMINENT, CLAIMS ORIENTED LAW FIRMS. CLAIMS LAWYERS, LIKE OTHER CITIZENS, ARE ENTITLED TO LOBBY MEMBERS OF CONGRESS IN THEIR OWN BEHALF. BUT FOR THEM TO DO SO BY USING THE AMERICAN BAR ASSOCIATION AS THE UMBRELLA DEGRADES THE ENTIRE PROFESSION. WHY DOES THE ABA TOLERATE SUCH ACTIONS TAKEN IN ITS NAME?

TODAY, OUR NATION FACES IMPORTANT PROBLEMS OF UNPRECEDENTED DIFFICULTY--DECLINING ENERGY RESERVES, THE ECONOMY, THE ENVIRONMENT, FOREIGN AFFAIRS, SLOWING PRODUCTIVITY GROWTH. FACED WITH THESE PROBLEMS WE CANNOT AFFORD SO MANY WHO, IN THE PURSUIT OF MONEY, EXACERBATE THE DIFFICULTIES OF THESE PROBLEMS.

LAWYERS OCCUPY KEY POSITIONS AND EXERT GREAT INFLUENCE IN OUR SOCIETY. MANY OTHER CITIZENS, ALSO SEEKING SUCCESS, EMULATE THEM. IS THE EXAMPLE BEING SET BY MANY IN THE LEGAL PROFESSION OF BENEFIT TO OUR SOCIETY, OR IS IT HARMFUL? WHAT HAPPENS TO TRADITIONAL VALUES WHEN SIGNED CONTRACTS ARE BROKEN WITH NO MORAL STIGMA ATTACHED TO THOSE WHO BREAK THEM; WHEN PEOPLE ARE DRIVEN, UNDER THREAT OF LITIGATION, TO PAY SUMS THEY MAY NOT OWE; WHEN THOSE SKILLED IN THWARTING JUSTICE ARE CONSIDERED SUCCESSFUL MEN?

I DO NOT MEAN TO INDICT ALL LAWYERS. MANY DEDICATED ONES SERVE IN GOVERNMENT, ON THE BENCH, AND IN PRIVATE PRACTICE. NEVERTHELESS, THE PRACTICE OF LAW IS TODAY REplete WITH PROBLEMS THAT DEMAND CORRECTION. AND LAWYERS ARE THE ONES WHO MUST DO THE JOB.

I HAVE SOME SPECIFIC RECOMMENDATIONS:

1. TAKE STEPS TO DISCOURAGE FRIVOLOUS LITIGATION. IN THIS REGARD, THE PRESENT REQUIREMENTS TO CERTIFY PLEADINGS IN CIVIL LITIGATION NEEDS STRENGTHENING-- THESE REQUIREMENTS ARE FULL OF LOOPHOLES, AND ARE NO DETERRENT TO THOSE WHO WOULD BRING FRIVOLOUS CHARGES BEFORE THE COURTS. CRIMINAL PENALTIES SHOULD BE ESTABLISHED AND STRICTLY ENFORCED FOR ATTORNEYS WHO CERTIFY PLEADINGS THEY KNOW OR HAVE REASON TO KNOW ARE FALSE.
2. ESTABLISH WITHIN THE LEGAL COMMUNITY A TRULY PROFESSIONAL FORUM FOR DEALING WITH THE PROBLEMS OF LAW AND JUSTICE--A FORUM THAT WOULD PLACE PROFESSIONAL RESPONSIBILITY ABOVE COMMERCIAL

CONSIDERATIONS; EFFECTIVELY DISCIPLINE MEMBERS;
AND RECOMMEND WAYS OF REDUCING LITIGATION AND
STREAMLINING JUDICIAL PROCEDURES.

JUDGES AND OTHERS RESPONSIBLE FOR THE ADMINISTRATION OF
JUSTICE SHOULD ACT MORE FIRMLY THAN THEY NOW DO IN POLICING
OUR COURTS. SOME JUDGES SEEM TO EQUATE JUSTICE WITH ENSURING
THAT EACH SIDE TAKES AS MUCH TIME AS IT WISHES TO MAKE ITS
CASE. WHERE WOULD WE BE IF THE SUPREME COURT OPERATED ON
THAT BASIS?

A FREE SOCIETY CANNOT EXIST UNLESS THE PUBLIC HAS
CONFIDENCE THAT JUSTICE THROUGH THE LEGAL SYSTEM IS
AVAILABLE EQUALLY TO ALL; THAT COURTS CAN AND WILL DELIVER
JUSTICE IN A TIMELY MANNER WHICH PEOPLE OF ORDINARY MEANS
CAN AFFORD; AND THAT LAWYERS, AS OFFICERS OF THE COURT,
ARE MEN OF INTEGRITY, WELL TRAINED, AND DEDICATED TO
RESOLVING DIFFERENCES IN SOCIETY FAIRLY. FURTHER, THE
RESPONSIBILITY MUST REST WITH EACH MEMBER OF THE BAR.

RESPONSIBILITY IS A UNIQUE CONCEPT: IT CAN ONLY RESIDE
AND INHERE IN A SINGLE INDIVIDUAL. YOU MAY SHARE IT WITH
OTHERS, BUT IT IS STILL WITH YOU. EVEN IF YOU DO NOT
RECOGNIZE IT OR ADMIT ITS PRESENCE, YOU CANNOT ESCAPE IT.
IF RESPONSIBILITY IS RIGHTFULLY OURS, NO EVASION, OR
IGNORANCE, OR PASSING THE BLAME CAN SHIFT THE BURDEN TO
SOMEONE ELSE.

AT ALL LEVELS OF OUR SOCIETY, THERE IS TODAY MUCH TALK
OF RIGHTS AND TOO LITTLE OF DUTIES. HERE IS A GREAT
OPPORTUNITY FOR LAWYERS, FOR MEN WHO HAVE BENEFITED GREATLY
FROM THE LAW AND FROM A BENIGN AND BOUNTEOUS LAND. HERE IS

THE OPPORTUNITY TO CONTRIBUTE SOMETHING IN RETURN.

THE FREEDOM AND PRIVILEGE YOU PRESENTLY ENJOY WILL NOT LAST, NOR WILL IT BE AVAILABLE TO FUTURE GENERATIONS, UNLESS YOU DO SO; UNLESS YOU ACT AS RESPONSIBLE PROFESSIONALS AND CITIZENS; UNLESS YOU TREAT THOSE WHO ACT IRRESPONSIBLY AS THEY DESERVE TO BE TREATED.

IN COMING HERE I FEEL A BIT LIKE EURYSTHEUS OF GREEK MYTHOLOGY. THE AUGEAN STABLES HOUSED THREE THOUSAND OXEN AND HAD NOT BEEN CLEANED FOR THIRTY YEARS. EURYSTHEUS DID NOT HAVE THE WHEREWITHAL TO CLEAN THE STABLES HIMSELF. BUT HE DID POINT OUT THE PROBLEM TO HERCULES, WHO CLEANED THEM BY DIVERTING TWO RIVERS.

IN SIMILAR VEIN, I CAN ONLY HOPE THAT SOME OF YOU WILL TAKE ON THE HERCULEAN TASK OF CLEANSING THE LEGAL PROFESSION. THIS IS WELL WORTH THE EFFORT, EVEN IF YOU HAVE TO DROWN A FEW OXEN IN THE PROCESS.