GRAND CHALLENGES, GRAND IDEAS

Ideas for surmounting the biggest challenges facing the judiciary and the legal profession today

In delivering the Lloyd D. George Lecture on the Judicial Process at UNLV William S. Boyd School of Law last year, **Duke Law School Dean David F. Levi** laid out "The Grand Challenges for the Legal Profession and the Judiciary." Following are his lecture and a roundtable discussion among judicial leaders who are responding to the call for new ideas and solutions for these Grand Challenges.

Thank you for inviting me here as the first Lloyd George lecturer* on the judicial process. It is quite an honor to give a lecture named for Judge George. I am speaking today about the Grand Challenges that face the legal profession and the judiciary. You may wonder about the term "Grand Challenges." Perhaps it sounds a bit self-important. It did to me when I first heard the term.

The Grand Challenges wording comes from the U.S. National Academies, consisting of the National Academy of Sciences, the National Academy of Engineering, the Institute of Medicine, and the National Research Council.

A few years ago the National Academies set for themselves the task of identifying the Grand Challenges in various disciplines within the sciences from environmental science to engineering. The Engineers have taken the lead and recently announced 14 Grand Challenges of Engineering including such goals as making solar energy affordable, developing carbon sequestration methods, and providing access to clean water.

Some of the identified engineering challenges we might say are not just for engineers or even particularly for them. Preventing nuclear terror is one such example. But it is an ambitious list, and the accomplished committee that put the list together apparently worked hard to develop a consensus around these topics.

What if the National Academies turned to us and asked us as lawyers and judges to develop a list of the Grand Challenges for the legal profession including the judiciary? What would we put on the list? And what might we learn from developing that list?

Here is the beginning of a possible list offered humbly in the hope that the discussion itself could be useful in identifying the big topics of law reform and also some potential solutions or approaches.

But before I go to my list, let's consider some ground rules. First, a Grand Challenge for the legal profession should be something that is more or less in our jurisdiction, expertise, and responsibility. Many of the problems that seem so difficult within the legal system are the result of deep social ills and the human condition. Poverty, disrupted families, addiction, violence, and mental illness are powerful generators of problems and challenges in the legal system. Yet we would not say that conquering mental illness is a problem for the legal profession. But I say "more or less" in our jurisdiction because lawyers are such good problem solvers and institutional designers, and claim a unique leadership role in the public sphere, that we should not narrowly limit our portfolio.

Second, problems of our own making are fair game. We know that sadly many of today's Grand Challenges are yesterday's grand solutions to other challenges. Examples of this abound. The phenomenon of the unrepresented litigant is in part the product of simplified procedures and the waiver of filing fees. The high cost of litigation is the result of virtually unlimited discovery which itself was thought to be an advance in its day toward a level playing field. The large number of drug offenders in prison for very long periods is in part the result of an effort to address the violence and devastation associated with crack cocaine when the drug was first introduced into American cities in the late 1980s. The list goes on and on.

Perhaps lawyers might be more comfortable calling these challenges "intractable," rather than "grand." But in the spirit of the judge for whom this lecture is named, let us be hopeful today even as it is important to remember that so much that seems broken now was once regarded as a reform or a possible solution.

Third, because we are hopeful, and because we want to make a difference, the list should be geared to aspects of the system that are amenable to improvement. Similarly, we should operate in the real world as we find it, not as we would wish it. I will urge that we employ a heavy dose of realism so that we aim at real improvement in the shorter term for problems that have been with us for many years, certainly for the entire time that Judge George and I have been lawyers and judges.

You might not agree with these ground rules, and then your list would be different than mine.

I have identified five such challenges, many of which are interrelated and some of which could easily be broken down into many separate challenges at a more specific level. My list includes access to justice for the poor and unrepresented; the cost of justice for everyone, which is also an issue of access; keeping our judiciary independent and neutral; improving the criminal justice system; and maintaining a sense of mission and purpose for the legal profession at a time when the profession and legal education are segmenting. Perhaps you would add finding the right balance between national security and privacy; or reforming the patent and copyright laws to achieve a better balance between the property interests of the creator or owner and the needs of the public. I would not object to those additions and several others, or a recasting of my own.

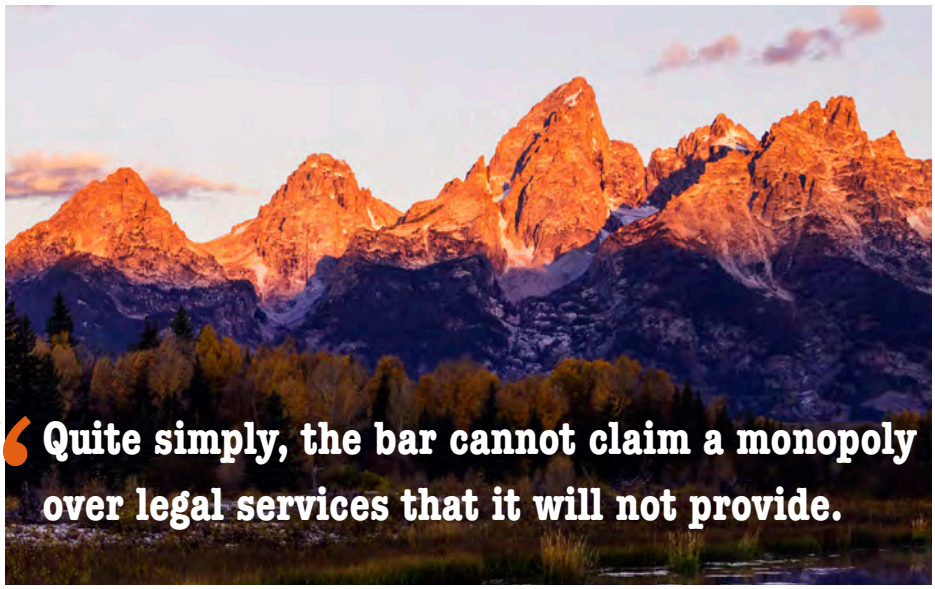
** I thank Dean Daniel Hamilton, Professor Thomas Main, the UNLV Law faculty, and Judge Lloyd George for their kindness and for giving me this opportunity.*

1 ACCESS TO JUSTICE

My first challenge would be access to justice for those who cannot afford a lawyer. It is a "grand" challenge because access to justice is so very important in a democracy like ours. And it is "grand" because, indeed, it is a big challenge.

But we need to be very precise in this discussion as to what we mean by "access to justice," which is a powerful phrase like "rule of law." By this phrase, I mean access to lawyers and to courts for cases that present colorable claims and which require a neutral, fair decision-maker. I do not mean access to "legal services" more broadly. Let me explain.

We have a legal system that is in a time of transition from serving those who can afford lawyers, elaborate procedures, and complex substantive rules, to a time of serving, or trying to serve, a much larger part of the population. And in this transition, technology and nonlawyer paraprofessionals seem to hold great promise for that considerable portion of legal services which has nothing or little to do with going to court or being adverse to someone. It seems likely that the whole range of transactional and advisory services that lawyers provide to clients, including wills, preparation of tax returns, real estate transactions, adoptions, contracts, and applications before myriad government agencies can often be routinized, handled by interactive computer programs with the assistance of paraprofessionals at little cost. That day is coming and we see signs of it already, for example, in the efficient way in which consumer bankruptcy offices handle many cases at low cost with paralegals and computerized forms. The different state bars will be on the wrong side of history if they attempt to obstruct this development. Quite simply, the bar cannot claim a monopoly over legal services that it will not provide. There are said to be well over 60 million Americans who qualify for legal services because of poverty, many of whom have legal needs. But this startling number includes everyone who needs legal services for any reason.



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It is a big enough, indeed grand, challenge to focus on just that number of unrepresented litigants who want to and should be heard in a court proceeding. There were 4.3 million pro se litigants in California alone last year. The collective numbers of unrepresented litigants in the larger states are staggering. The state court systems cannot handle this load without some significant new approaches. Otherwise there is the likelihood that these court systems will be unable to provide speedy justice to those who have the most pressing need and the strongest cases. And, perhaps, it is the dedication of resources to handle this load that explains, in part, the rise of private adjudication and compulsory arbitration systems for commercial litigants, consumers, and others.

How might we address this challenge of the unrepresented litigant?

First, we need a shift in attitude. Lawyers and judges have aspired to perfect the procedures that are used in litigation. This makes sense in the criminal arena; we do not want innocent people convicted for crimes that they didn't commit and we should aim at perfection. But taking that same attitude into the civil arena has proven unworkable. Over the past 50 years or so we have seen a constantly expanding set of procedures that makes litigation more reliable but fiercely expensive and time consuming. I will say more about this when I address the second Grand Challenge. For now, let's be reasonable. We aren't going to have perfection in truth seeking. We don't actually want it. We need something that is good and fair for most circumstances and litigants.

Second, and along the same lines, we should keep in mind that our concern is access to justice — not access to lawyers or to courts or to social services. It is not a problem that litigants represent themselves in certain kinds of cases if they can do so adequately to a just result. Family, traffic, and small claims court might be just such places, particularly with the assistance of self-help centers that some of the states are pioneering. For these kinds of cases, triage is possible with simplified procedures, computerized forms, and helpful rules and guides that are readily available to users. Lawyers are not so much needed as experienced personnel in clerks' offices or interactive computer programs and forms. Many of those who are said to ▸

need legal services actually need social services. They should be redirected to the agency that provides those services and not to a judicial officer, or even a lawyer, at least not in the first instance. Someone who needs a restraining order because of an abusive relationship should be able to go to the police or the district attorney, deal with a trained person in that office, and make application to a court without a lawyer. Someone who is having difficulty getting benefits from a state or federal agency should be able to seek assistance at that very agency. It seems likely that most of these individuals don't need a lawyer at the initial phases of their request for relief. And even later in the process, they could be helped, and probably often are, by a paralegal who has specific experience and training in the particular field.

By the time we winnow away the numbers of pro se and unrepresented persons who can be helped by nonlawyers, do not need help once they are pointed in the right direction outside the courthouse, or can effectively help or represent themselves without lawyers, perhaps with modest assistance, we get to a much more manageable number of persons who have colorable claims that can and should be resolved in some kind of fair adversary proceeding. And even with this last group of cases, depending on the numbers, we should be open to proceedings that involve simplified procedures and nonprofessional judges selected from the bar or in some other way. This further winnows down the numbers that will and should come before a member of the judiciary. And as to this now smaller group of cases, where the claims seem to have some color of merit, there will often be lawyers who accept the case, particularly where there is the possibility of attorney's fees as there is in much litigation involving government agencies. Where there are not private lawyers, we must look to legal services organizations to step in and provide legal representation.

We find ourselves in a period when many young lawyers are looking for work and experience. And there are many older lawyers who are retiring in good health and looking for projects that will serve the community. We need to connect these lawyers, make full use of available technology, and put them to work helping the unrepresented who really need a lawyer and whose claims deserve a hearing or trial before a neutral magistrate.

In short, as to Grand Challenge No. 1, my contention is that if we keep the perfect from being the enemy of the good, if we rigorously knock out the "cases" that are not cases or don't require lawyers and professional judges, and if we provide other types of assistance, the number of persons seeking access to justice, who need and deserve representation and a hearing before a judicial officer, becomes a number we may be able to address with voluntary and government-sponsored legal service organizations.

2 JUSTICE AT REASONABLE COST

My second Grand Challenge builds on the first but with a somewhat different focus. Again, the challenge is how to adapt a justice system designed for individual litigants of means to one that can efficiently deal with the needs of mass society. This challenge might also be called access to justice, but not in the sense that we normally use that term. Most Americans, from the average person to the largest corporation, quail at the prospect of litigation. They can afford to talk to a lawyer, but they cannot afford to engage in the process of litigation from beginning, through discovery, through motion practice, through trial, and then appeal. Ask any group of judges how they would feel about being caught up in a litigation themselves and you will see a look of panic cross their faces.

In any era of our history we find much criticism of the legal system's delay and expense. This is pretty much a constant. But we have seen some recent developments that have exacerbated the situation. For example, discovery was quite limited in most courts until the 1960s. Law professors, rule makers, and civil justice advocates succeeded in opening up the discovery rules so that the playing field of information would be more level as between the parties. They sometimes sought through the civil litigation process access to corporate or government information that they could not otherwise obtain through regulation or legislation. No other modern developed country has the kind of extensive discovery that we make available. And what is the result? A dramatic drop in the number of jury trials, the flight of cases from the public system, and a general sense that the litigation system is too expensive for everyone, including the well to do.

Often one side or the other will see a strategic advantage in delay or cost and attempt to use those transaction costs to coerce a favorable settlement.

At the high end of the litigation market two developments have made the situation worse. One is the class action and the other is electronic discovery. The class action is one of those devices that solves one problem but creates others. It solved the problem of how to litigate very small but very numerous claims, typically in the consumer area. A phone company overcharge of a few dollars imposed on millions of customers is a good example. But what served a need in the consumer area has been expanded to others, including mass torts and securities litigation in which some individual damages are sufficiently high to warrant individual actions and where the law and facts may be uncertain and of first impression. There are efficiencies in bringing thousands of cases together in joint actions, but we have yet to solve the problem that once an action is permitted as a class action, the defendant comes under overwhelm-

ing pressure to settle. The plaintiffs' lawyers also have a strong financial interest in settlement, and the global settlement that results may or may not be fair to individual litigants and lacks the authority that comes when multiple cases are resolved individually in different jurisdictions. There is a general sense of unease around these cases that casts doubt on the integrity of the legal system.

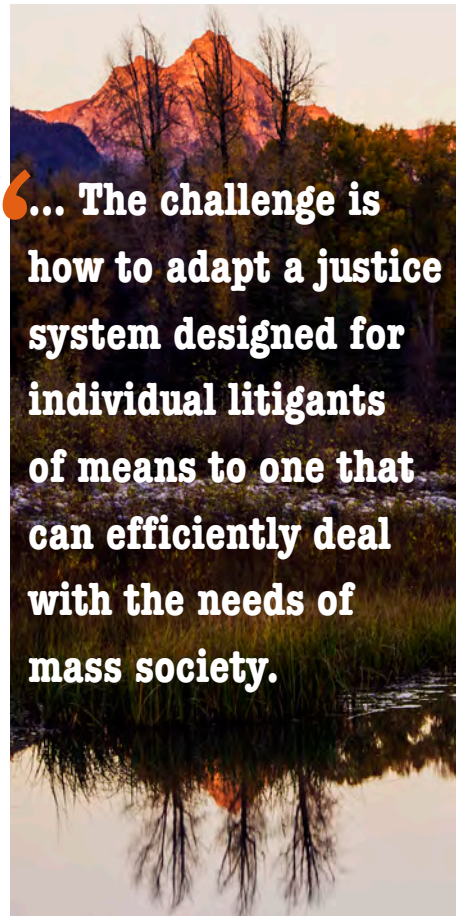
Electronic discovery might be in the same category of a good solution gone bad. How great to be able to push a button, do a word-search, and have all relevant documents assembled immediately and with no cost. Unfortunately, despite significant advances such as predictive coding, the reality is so different that many firms and companies have special units whose sole function is the management of e-discovery. The costs of maintaining electronic records that are stored and kept over many and changing systems and devices is very considerable. Microsoft conservatively estimates that over the past 10 years it spent at least $600 million in fees to outside counsel and vendors to manage e-discovery. The irony is not lost on us.

High-stakes litigation will be costly. But I think we can make real progress if, again, we do not aim at perfection. The more perfect we attempt to make the system, in the sense of permitting the litigants to obtain perfect knowledge or explore every legal issue, the more expensive and time consuming and — here is the point — less accessible we make the overall process. This is hard to accept particularly for those who see private litigation as doing the work of enforcing public goals, particularly civil rights or the regulation of business practices. I ask them to consider that there are other ways to get a fair level of enforcement without making the private litigation process so expensive and long that it chokes itself.

Here are some suggestions:

First, we need to limit discovery drastically and shorten up the time between filing and trial. We had a pretty good justice system before the litigation explosion of the 1970s. Let's go back to the time when discovery and motion practice was not such a laborious and expensive process. There are a few cases that might merit different treatment, perhaps because of the public interest in the case, such as civil rights cases, or those in which the litigants elect such treatment. Our judges can identify those cases and put them on a longer track. But once we see that efficiency and justice are joined at the hip, we can be fairly ruthless in moving the cases from inception to resolution.

I also suggest that we expand what is known as "disclosure," the sharing of information without a discovery request and a discovery battle, including so-called "civil Brady," discovery that is injurious to one's position. This is the system used in England.



It requires a trial bar of great integrity. When this reform was proposed in the early 1990s by Judge William Schwarzer the bar associations around the country opposed it. But I wonder if the time is not right to reconsider, particularly because in-house general counsels may well take a different view than their outside lawyers on this subject.

Second, as to electronic discovery in particular, we need to use the latest technology and accept that not everything can be reviewed by human eyes. The possibilities in this field are very promising especially through a process known as predictive coding in which the computer does the work of deciding what is relevant. Perhaps the engineers can join with us on this Grand Challenge.

Third, state attorneys general should be taking more of the lead in the case of consumer class actions and similar kinds of widespread claims. Perhaps we could give the attorneys general a right of first refusal on these cases. This would permit the small individual recoveries to go to the state and would resolve many of the integrity questions around these cases.

Finally, unlike most academics and probably many judges, I am somewhat favorable to heightened pleading standards. Requiring a plaintiff to state facts that make the claim at least plausible, perhaps after a little bit of discovery, and getting those cases out of the system that cannot clear this low bar, is one way to guard the precious resources we expend in the judicial system and reserve them for cases that have some color of merit and deserve our attention. I recognize that this means that the civil justice system, and the right to discovery, would not be available as a kind of private Freedom of Information Act to uncover, expose, and then civilly prosecute civil wrong doing. I see this kind of investigation as more appropriate to governmental entities and regulators, of which there are many.

3 AN INDEPENDENT, TRANSPARENT JUDICIARY

My third Grand Challenge deals with the intersection of law and politics, specifically judging and politics. The challenge is to keep judging above the political fray. Here is the problem in a nutshell: We desperately need a neutral place where our fellow citizens can have their disagreements resolved, whether with each other or with the government, and they need the confidence that the judicial officer is fair and unbiased. This is why judicial independence is so important. Judicial neutrality is one of the cornerstones of our democracy, indeed of our entire system, including our economic life. But our judges are selected through political processes. And there's the rub. We have elected state court judges, and these elections have become expensive and hotly contested with significant amounts of outside money coming in from political action groups. Our federal judges are appointed by the President through a political process which is designed by our Constitution but which has become more and more partisan.

How to deal with this challenge of maintaining a neutral judiciary that is not beholden to any group?

First, all judges and lawyers should attempt to maintain our strong legal culture, which traditionally has expected and insisted upon a neutral judiciary. We do not want to lose that culture. We know that judges can be partisan, they can run divisive campaigns, make promises about how they will handle certain cases, align themselves with certain groups, express themselves immoderately in ways that suggest that they are invested in the outcome or have partisan allegiances. Or they can choose not to. We must help them choose not to. This takes the entire legal village.

Second, we will see what the Supreme Court does about state law limits on state court election campaigns. But however this develops, most states will have elected judges for the foreseeable future and those elections need to be conducted fairly, without last-minute hit pieces and other kinds of improper electioneering. Bar groups around the country can have a significant effect in keeping these elections fair and responding rapidly when they see improper tactics. Finally, the ecology of judging is essential to a fair judicial-selection process. When the legal system works well, when citizens understand what their courts do, and when the courts are open about the job that they are doing, we can expect or hope that members of the public will not be swayed by hit pieces and extreme advertising. They will know better. This kind of civic education is year-round work and a great opportunity for members of the bar to make a difference. Judges themselves should be less fearful of telling the story of the courts through open access to court reports, proceedings, and data; the judiciary has a great story to tell, and should encourage scholars and others to tell it by providing as much open access to court data as is consistent with the privacy needs of the litigants.

4 CRIMINAL JUSTICE REFORM

My fourth Grand Challenge, and this might be the mother of all Grand Challenges, is the criminal justice system, which seems to have so many problems. This could be broken down into many challenges and maybe should be. Our approach to sentencing is in flux; our prison population is large compared to other industrialized countries; we have over 3,000 inmates on death row, the vast majority of whom will die of old age; we are on a path toward legalization of previously illegal drugs, with uncertain consequences; and we have a loss of confidence in the overall fairness of the system. The number of African Americans, particularly men, in prison is disproportionate as compared to other groups and is a very large number approaching 1 million.

To be fair, this assessment leaves out some of the progress that has been made. One reason there are so many people in prison is that we are so much more effective at solving crimes than we were in the past. The crime rates for serious crimes, including murder, have gone down steeply from a high in the 1990s.

Moreover, some of the troubling disparities are diminishing. For example, the incarceration rate for African Americans is falling while the incarceration rate for other groups is rising. In part this represents a reduction in the sentences given for crack cocaine.

But we have many problems, and the list I gave moments ago just scratches the surface.

I have a few somewhat controversial suggestions to make as a very preliminary cut on this challenge.

First, on the matter of capital punishment, we have had enough experience since *Furman* to understand that we will never have a reliable, just, and swift application of the death penalty in anything like the numbers that our district attorneys would like. They are out of step with reality and need to stop imposing this terrible cost on the system, on judges and juries, and on society. It is a wrenching experience for jurors to participate in these trials. It is wrong to put them and others, including victim families, through this ordeal when the result is simply to house defendants on a death row for the rest of their natural lives.

Notice that I am not taking a position on the rightness or wrongness of the death penalty. That is an old debate, an important debate, and it stops everything in its tracks. I am asking us to deal with the facts as we all know them to be.

Those states that have capital punishment should implement a review of all pending cases giving authority to the attorney general or governor, or some other body, to reduce

the sentence to life without parole. If this were done in California, for example, the state could identify which of its hundreds of death row cases, many of which have been pending for over 20 years, are worth pursuing because the evidence is so overwhelming, there is no question of identity or guilt, the crime was particularly egregious, and there are no significant legal issues. The number should be very small, as in 5 or 10, and not in the hundreds.

Then, looking forward, no local prosecutor should be permitted to seek the death penalty without prior approval of the state attorney general or an independent review board of career prosecutors appointed by the attorney general. There should be a presumption against the death penalty that can only be overcome in the most straightforward and brutal of cases.

Second, as to drug legalization, we can see that it is picking up steam and may become the norm. It seems possible that eventually, in some states, any drug will be legalized that is widely used and available and not obviously life threatening or immediately addictive.

Having spent a good part of my life as a judge and prosecutor putting drug dealers and manufacturers in prison, I will confess that I am sorry to see this trend. I would have much preferred that Americans responded to the threat of prosecution and steep penalties by turning away from drug use. But now it is my turn to face up to reality. Many Americans are using and will use drugs, particularly marijuana. We have not stopped them despite the harshest penalties and the most aggressive and costly interdiction, investigatory, and prosecution efforts. We have not even driven up the price in any significant way. And we have not changed the culture because many Americans obviously see nothing wrong in drug use.

So why is this phenomenon a challenge for the legal profession? We might say that by definition, if we legalize, then it is off our plate and simply becomes a social or medical problem like alcoholism. It is not that easy, unfortunately. First, illegal drugs won't be legal in every sense and context. It will still be illegal to sell drugs to young people. It will still be illegal to grow marijuana on public lands. It will still be illegal to make methamphetamine in unregulated laboratories that use dangerous chemicals.

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Moreover, if the experience with alcohol is any guide, there will be a surge of drug use and abuse after legalization. It will be tough to keep legalized drugs out of the hands of young people. I predict that we will also see a surge in other crimes — property, white collar, and violent crimes, not to mention driving under the influence — as a result of the increase in drug use. And so, sorry to say, the decrease we experience in the numbers of prisoners convicted solely of drug offenses will be offset at least in part by an increase in prisoners convicted of other crimes, some of which will be related to heavy drug use.

In short, judges and the legal profession will be dealing with the problem of drug use for many years to come and we need better tools and understanding to do so. We will need more resources in drug treatment and we will need a better flow of information — data — about what kinds of drug treatments work and in what settings.

Third, and as an expansion of this last thought, one of the themes of this talk is that there are various Grand Challenges for which part of the solution is better use of technology and better mobilization and sharing of knowledge from one group, like academic researchers, to others, like judges and policymakers. We have a lot of people in prison in this country. With our better understanding of brain science, of what motivates and deters people, we should make some effort to see if we have better and new techniques for deterring crime and rehabilitating prisoners. Our judges should be able to use social science data and studies in devising sentences and post-release supervision systems that

are based on data, experimentation, and evaluation. This is where academic researchers can contribute so much. We also have much better monitoring technology. We can use this technology to get people out of prison sooner but with extensive kinds of technological reporting and monitoring so that public safety is not compromised. We can shift our resources from prison to programs at least to some degree. With crime rates falling, this is the time to try if we are ever going to. With better data causing a somewhat different approach to incarceration, and with a different approach to drug offenses, perhaps our criminal justice system will not sit so heavily on minority communities, causing distrust and alienation, nor be such a prop to the "school-to-prison" pipeline for juvenile offenders. These two topics undoubtedly deserve their own extended treatment.

Fourth, we have a tendency to seek criminal justice solutions anytime something goes badly wrong. I am thinking particularly of the financial meltdown that occurred in 2008, but there are many such examples. Our financial system very nearly collapsed, and this was a regulatory and institutional design failure of huge proportions. Most people who seem to understand the system will tell you that the problems have not yet been solved. The main problems are too much leverage, overly generous lending practices, flawed risk assessment by rating agencies and others, executive, and employee compensation systems that encouraged excessive risk taking, inadequate government controls and oversight, a housing bubble caused by prolonged monetary policies, and the interdependence of financial institutions through derivatives and other devices which created what is known as systemic risk. In a system as big and with as many transactions as our financial system, there will always be some level of false statement and fraud. And it is not at all hard to believe that as the house of cards began to fall, deliberate false statements and fraud occurred even at high levels. And these people should be prosecuted. But this is not the guts of the problem, and to think of it mostly as a problem of deliberate criminal wrongdoing and malicious behavior focuses on some of the symptoms without getting at the real illness, which is the result of legal activity and known incentives.

Moreover, many of the most prominent criminal actions have been brought against corporations, rather than individuals, and these cases seem unlikely to serve most of the purposes of criminal prosecution such as deterrence, retribution, shame, and incapacitation. Some of these cases are brought against successor corporations for crimes committed by a predecessor — a modern-day bill of attainder. Paying off the government in these situations seems to be the price of doing business levied on current shareholders and employees for crimes allegedly committed by wrongdoers who are long gone. We will have a better criminal justice system if we don't use it for show or political compromise, particularly a show that obscures deeper and more difficult regulatory or economic issues or which permits individual wrongdoers to shift blame and sanctions to the entity. There is not much deterrence in this. Moreover, we will have a better criminal justice system if we don't use it to address the overall budget deficit and the Department of Justice's needs. Whether drug-related forfeitures or corporate fines, bounty hunting by the government creates distortion and overreaching.

5 A RENEWED SENSE OF PURPOSE

My fifth Grand Challenge relates to the legal profession itself — maintaining a sense of mission and purpose for the legal profession, particularly in the face of seemingly inevitable changes in legal education and the legal economy that will cause continued segmentation of the profession.

The last few years have been hard on the legal profession and many law schools. Under the stress of a shrinking quantity of premium work, the legal profession has been segmenting more visibly. To some extent this segmentation has been true for quite some time. At least for 50 years there have been the major international corporate firms, regional firms, sole practitioners, and government law offices, such as district attorneys and public defenders. These lawyers think about different

legal issues and their working environments, cultures, aspirations, and compensation are very different from one another. This segmentation became more marked and visible during the economic downturn and then the contraction of the legal economy in the period from 2008-2011. Some of the corporate firms came through this period in fine shape, as did some of the law schools whose graduates could expect to go to the top firms. But for other firms and for other schools, there has been a process of realignment that has been very painful. Schools charging high tuition and students taking on large student loan debt are not sustainable when the job prospects and compensation for new graduates of these schools contract. Looking forward, we can expect that some schools will close or shrink, although not much of this has happened to date. Other schools will offer a shorter two- or even one-year degree in an effort to hold down the cost. Given the first Grand Challenge of access to justice, this development could be a benefit to the legal system. We can imagine that there may be graduates with just one year of training, perhaps somewhat similar to that offered to paralegals. Others with a two-year degree, perhaps comparable to the LL.B. that students formerly received as graduates of predominantly undergraduate law programs with an additional year of graduate school. These graduates without a JD may not be permitted to practice on their own or do certain kinds of work. They will be less well-trained than the graduates of the three-year programs. But the work they will do will be less complex and varied, and they will not be carrying the same high debt load as the graduates of three-year programs. At some point they may wish to go back to school and pick up the JD degree.

This differentiation of schools and graduates cannot succeed, however, unless the legal profession continues to segment and embraces that segmentation as a way of addressing both student loan debt, the reality of the legal economy, and the legal services needs of the bulk of our population.

There seems a kind of inevitability around this change because it is driven by powerful market forces. And so, one might ask, what is the challenge?

I think the challenge is, within the context of this segmentation and change, to maintain a sense of a legal profession in the United States as a whole, a profession with a mission and a historic place in American life. This challenge has been a long time in the making. Perhaps there was a golden age of the lawyer-statesman or the citizen-lawyer, the Lincolns and the Atticus Finches. In a different time, in a more rural America, a less-educated and less-literate America, lawyers were the only ones who could draft a contract or a will, speak truth to power, and connect the county seat to the urban centers.

Can we build a new vision for the legal profession that connects to the reality that the profession is segmented and is no longer the unchallenged training ground for our political leadership?

I do think this is an important challenge and not simply romantic blather about professional ideals in a time when law practice is all about the bottom line. For example, I doubt that judicial independence is sustainable in the long run unless there is a unified legal profession ready to stand up for that hard-won principle of our democracy. Perhaps, as a starting point, the profession could at least rededicate itself to getting its own house in order. There are these Grand Challenges, after all, and the full list is a long one. There is plenty to do, and progress will call upon the good will and the leadership and problem-solving ability of many lawyers and others. We still have wonderful role models of citizen lawyers and statesman-like judges. We can strive to maintain some sense of unity and shared culture, values, and expectations. All of us will benefit if we do it, and the country will be the better for it.

With the thought that the very discussion of our Grand Challenges can keep the profession together, I happily turn the floor over to my "brothers and sisters" in the law. How do you see our Grand Challenges for the justice system? And how will we make visible progress?