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Lawyering for a New Age

Judith S. Kaye

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FORDHAM LAW REVIEW

VOLUME LXVII OCTOBER 1998 NUMBER 1

CONTENTS

REMARKS

LAWYERING FOR A NEW AGE ..... *Chief Judge Judith S. Kaye* 1

ARTICLES

PROSECUTION AND RACE: THE POWER AND PRIVILEGE OF DISCRETION ..... *Angela J. Davis* 13

FAMILY VALUES AND THE BANKRUPTCY CODE: A PROPOSAL TO ELIMINATE BANKRUPTCY BENEFITS AWARDED ON THE BASIS OF MARITAL STATUS ..... *A. Mechele Dickerson* 69

PINNING THE BLAME & PIERCING THE VEIL IN THE MISTS OF METAPHOR: THE SUPREME COURT'S NEW STANDARDS FOR THE CERCLA LIABILITY OF PARENT COMPANIES AND A PROPOSAL FOR LEGISLATIVE REFORM ..... *Lucia Ann Silecchia* 115

NOTE

WORKFARE WAGES UNDER THE FAIR LABOR STANDARDS ACT ..... *Walter M. Luers* 203

FORDHAM LAW REVIEW

VOLUME LXVII NOVEMBER 1998 NUMBER 2

CONTENTS

SYMPOSIUM
THE LEGAL PROFESSION: THE IMPACT OF LAW AND LEGAL THEORY

FOREWORD ..... *Geoffrey C. Hazard, Jr.* 239

FEMINIST LEGAL THEORY, FEMINIST LAWMAKING, AND THE LEGAL PROFESSION ..... *Cynthia Grant Bowman & Elizabeth M. Schneider* 249

WHEN LAW AND ECONOMICS MET PROFESSIONAL RESPONSIBILITY ..... *George M. Cohen* 273

THE LAWYER AS AGENT ..... *Deborah A. DeMott* 301

THE CRIMINAL REGULATION OF LAWYERS .... *Bruce A. Green* 327

THE IMPACT OF PARTNERSHIP LAW ON THE LEGAL PROFESSION ..... *Robert W. Hillman* 393

THE IMPACT OF ANTITRUST LAW ON THE LEGAL PROFESSION ..... *Thomas D. Morgan* 415

THE LAW OF LAWYERS' CONTRACTS IS DIFFERENT ..... *Joseph M. Perillo* 443

BANKRUPTCY LAWYERS AND THE SHAPE OF AMERICAN BANKRUPTCY LAW ..... *David A. Skeel, Jr.* 497

"NICE WORK IF YOU CAN GET IT": "ETHICAL" JURY SELECTION IN CRIMINAL DEFENSE ..... *Abbe Smith* 523

THE INTERSECTION OF FREE SPEECH AND THE LEGAL PROFESSION: CONSTRAINTS ON LAWYERS' FIRST AMENDMENT RIGHTS ..... *Kathleen M. Sullivan* 569

RULE 11 AND THE PROFESSION ..... *Georgene Vairo* 589

LEGAL MALPRACTICE AND THE STRUCTURE OF NEGLIGENCE LAW ..... *Benjamin C. Zipursky* 649

REPORT

ETHICS: BEYOND THE RULES

HISTORICAL PREFACE ..... *Lawrence J. Fox, Nancy McCready Higgins, & Donald B. Hilliker* 691

INTRODUCTION: BRINGING LEGAL REALISM TO THE STUDY OF ETHICS AND PROFESSIONALISM ..... *Douglas N. Frenkel, Robert L. Nelson, & Austin Sarat* 697

THE ETHICAL WORLDS OF LARGE-FIRM LITIGATORS: PRELIMINARY OBSERVATIONS ..... *Robert W. Gordon* 709

AMBIVALENCE, CONTRADICTION, AND AMBIGUITY: THE EVERYDAY ETHICS OF DEFENSE LITIGATORS ..... *Carla Messikomer* 739

THE DISCOVERY PROCESS AS A CIRCLE OF BLAME: INSTITUTIONAL, PROFESSIONAL, AND SOCIO-ECONOMIC FACTORS THAT CONTRIBUTE TO UNREASONABLE, INEFFICIENT, AND AMORAL BEHAVIOR IN CORPORATE LITIGATION ..... *Robert L. Nelson* 773

ENACTMENTS OF PROFESSIONALISM: A STUDY OF JUDGES' AND LAWYERS' ACCOUNTS OF ETHICS AND CIVILITY IN LITIGATION ..... *Austin Sarat* 809

WORKING WITHOUT A NET: THE SOCIOLOGY OF LEGAL ETHICS IN CORPORATE LITIGATION ..... *Mark C. Suchman* 837

ETHICS: BEYOND THE RULES— QUESTIONS AND POSSIBLE RESPONSES ..... *Douglas N. Frenkel* 875

APPENDIX: PROBLEMS PRESENTED TO STUDY PARTICIPANTS .. 885

NOTE

TRADEMARK REGULATIONS AND THE COMMERCIAL SPEECH DOCTRINE: FOCUSING ON THE REGULATORY OBJECTIVE TO CLASSIFY SPEECH FOR FIRST AMENDMENT ANALYSIS ..... *John V. Tait* 897

FORDHAM LAW REVIEW

VOLUME LXVII DECEMBER 1998 NUMBER 3

CONTENTS

LECTURE
THE ROBERT L. LEVINE DISTINGUISHED LECTURE SERIES

COLOR AT CENTURY'S END: RACE IN LAW, POLICY, AND POLITICS ..... *Christopher Edley, Jr.* 939

ARTICLES

LABOR LAW OBSTACLES TO THE COLLECTIVE NEGOTIATION AND IMPLEMENTATION OF EMPLOYEE STOCK OWNERSHIP PLANS: A RESPONSE TO HENRY HANSMANN AND OTHER "SURVIVALISTS" ..... *Jeffrey M. Hirsch* 957

LEGAL-WARE: CONTRACT AND COPYRIGHT IN THE DIGITAL AGE ..... *Michael J. Madison* 1025

A REQUIEM FOR BLOCKBUSTING: LAW, ECONOMICS, AND RACE-BASED REAL ESTATE SPECULATION ..... *Dmitri Mehlhorn* 1145

NOTES

THE RELEVANCE OF "EXECUTION IMPACT" TESTIMONY AS EVIDENCE OF CAPITAL DEFENDANTS' CHARACTER .... *Darcy F. Katzin* 1193

DEFINITE AND SUBSTANTIAL RELIANCE: REMEDYING INJUSTICE UNDER SECTION 90 ..... *Gerald Griffin Reidy* 1217

THE CONSTITUTIONAL BASIS FOR A BAN ON SOFT MONEY ..... *Daniel M. Yarmish* 1257

FORDHAM LAW REVIEW

VOLUME LXVII MARCH 1999 NUMBER 4

CONTENTS

LECTURE
THE 1998 DONALD C. BRACE MEMORIAL LECTURE

FAIR USE ..... *Lloyd L. Weinreb* 1291

COLLOQUIUM
CONSUMER BANKRUPTCY

EDITORIAL INTRODUCTION 1311

PANEL DISCUSSION: CONSUMER BANKRUPTCY 1315

DENIAL OF DISCHARGE FOR SUBSTANTIAL ABUSE:
REFINING—NOT CHANGING—
BANKRUPTCY LAW ..... *Carl Felsenfeld* 1369

ESSAY

WELFARE DEVOLUTION AND STATE
CONSTITUTIONS ..... *Helen Hershkoff* 1403

ARTICLES

WHEN THE STATE STEALS IDEAS:
IS THE ABROGATION OF STATE
SOVEREIGN IMMUNITY FROM FEDERAL
INFRINGEMENT CLAIMS CONSTITUTIONAL
IN LIGHT OF *SEMINOLE TRIBE*? ..... *Christina Bohannan & Thomas F. Cotter* 1435

MANEUVERING THROUGH THE LABYRINTH:
THE EMPLOYERS' PARADOX IN
RESPONDING TO HOSTILE ENVIRONMENT
SEXUAL HARASSMENT—A PROPOSED
WAY OUT ..... *Estelle D. Franklin* 1517

NOTES

INDEMNIFICATION OR COMPARATIVE FAULT: SHOULD A TORTFEASOR'S RIGHT TO RECEIVE "RYAN INDEMNITY" IN MARITIME LAW SINK OR SWIM IN THE PRESENCE OF COMPARATIVE FAULT? ..... *George K. Fuiaxis* 1609

TAKE MY ARBITRATOR, PLEASE: COMMISSIONER "BEST INTERESTS" DISCIPLINARY AUTHORITY IN PROFESSIONAL SPORTS ..... *Jason M. Pollack* 1645

FORDHAM LAW REVIEW

VOLUME LXVII APRIL 1999 NUMBER 5

CONTENTS

SPECIAL ISSUE
CONFERENCE ON THE DELIVERY OF LEGAL SERVICES TO LOW-INCOME PERSONS: PROFESSIONAL AND ETHICAL ISSUES

FOREWORD: RATIONING LAWYERS: ETHICAL AND PROFESSIONAL ISSUES IN THE DELIVERY OF LEGAL SERVICES TO LOW-INCOME CLIENTS ..... *Bruce A. Green* 1713

PROCEEDINGS OF THE CONFERENCE ON THE DELIVERY OF LEGAL SERVICES TO LOW-INCOME PERSONS: PROFESSIONAL AND ETHICAL ISSUES

RECOMMENDATIONS OF THE CONFERENCE 1751

REPORTS OF THE WORKING GROUPS 1801

RENDERING LEGAL ASSISTANCE TO SIMILARLY SITUATED INDIVIDUALS 1801

THE USE OF NONLAWYERS 1813

LIMITED LEGAL ASSISTANCE 1819

CLIENT/MATTER/CASE SELECTION 1833

THE INFLUENCE OF THIRD PARTIES ON THE LAWYER-CLIENT RELATIONSHIP 1841

REPRESENTATION BY PRIVATE LAWYERS 1853

REPRESENTATION WITHIN LAW SCHOOL SETTINGS 1861

ASSESSMENT OF SYSTEMS FOR DELIVERING LEGAL SERVICES 1869

ARTICLES

ACCESSING JUSTICE: ARE PRO SE CLINICS A REASONABLE RESPONSE TO THE LACK OF PRO BONO LEGAL SERVICES AND SHOULD LAW SCHOOL CLINICS CONDUCT THEM? ..... *Margaret Martin Barry* 1879

A CALL TO CONTEXT: THE PROFESSIONAL CHALLENGES OF CAUSE LAWYERING AT THE INTERSECTION OF RACE, SPACE, AND POVERTY ..... *John O. Calmore* 1927

EVALUATING EFFECTIVE LAWYER-CLIENT COMMUNICATION: AN INTERNATIONAL PROJECT MOVING FROM RESEARCH TO REFORM ..... *Clark D. Cunningham* 1959

AND JUSTICE FOR ALL—INCLUDING THE UNREPRESENTED POOR: REVISITING THE ROLES OF THE JUDGES, MEDIATORS, AND CLERKS ..... *Russell Engler* 1987

FACE-ING THE OTHER: AN ETHICS OF ENCOUNTER AND SOLIDARITY IN LEGAL SERVICES PRACTICE ..... *Marie A. Failinger* 2071

COLLABORATION BETWEEN LAWYERS AND SOCIAL WORKERS: RE-EXAMINING THE NATURE AND POTENTIAL OF THE RELATIONSHIP ..... *Paula Galowitz* 2123

FROM REPRESENTING "CLIENTS" TO SERVING "RECIPIENTS": TRANSFORMING THE ROLE OF THE IV-D CHILD SUPPORT ENFORCEMENT ATTORNEY ..... *Barbara Glesner Fines* 2155

RESTRICTIONS BY FUNDERS AND THE ETHICAL PRACTICE OF LAW ..... *Alan W. Houseman* 2187

NONLAWYER LEGAL ASSISTANCE AND ACCESS TO JUSTICE ..... *Alex J. Hurder* 2241

POSITIONAL CONFLICTS IN THE PRO BONO CONTEXT: ETHICAL CONSIDERATIONS AND MARKET FORCES ..... *Esther F. Lardent* 2279

PROFESSIONAL AND ETHICAL ISSUES IN LEGAL EXTERNSHIPS: FOSTERING COMMITMENT TO PUBLIC SERVICE ..... *Lisa G. Lerman* 2295

LEGAL SERVICES LAWYERS AND THE INFLUENCE OF THIRD PARTIES ON THE LAWYER-CLIENT RELATIONSHIP: SOME THOUGHTS FROM SCHOLARS, PRACTITIONERS, AND COURTS ..... *Samuel J. Levine* 2319

MULTIPLE COMMUNITIES OR MONOLITHIC CLIENTS: POSITIONAL CONFLICTS OF INTEREST AND THE MISSION OF THE LEGAL SERVICES LAWYER ..... *Peter Margulies* 2339

IN-HOUSE LIVE-CLIENT CLINICAL PROGRAMS: SOME ETHICAL ISSUES ..... *James E. Moliterno* 2377

ARE ORGANIZATIONS THAT PROVIDE FREE LEGAL SERVICES ENGAGED IN THE UNAUTHORIZED PRACTICE OF LAW? ..... *Wayne Moore* 2397

CULTURES OF COMMITMENT: PRO BONO FOR LAWYERS AND LAW STUDENTS .. *Deborah L. Rhode* 2415

COLLECTIVE REPRESENTATION FOR THE DISADVANTAGED: VARIATIONS IN PROBLEMS OF ACCOUNTABILITY ..... *Ann Southworth* 2449

ACTING "A VERY MORAL TYPE OF GOD": TRIAGE AMONG POOR CLIENTS ..... *Paul R. Tremblay* 2475

CONTEXT AND COLLABORATION: FAMILY LAW INNOVATION AND PROFESSIONAL AUTONOMY ..... *Louise G. Trubek* 2533

EVALUATING SYSTEMS FOR DELIVERING LEGAL SERVICES TO THE POOR: CONCEPTUAL AND METHODOLOGICAL CONSIDERATIONS ..... *Gregg G. Van Ryzin & Marianne Engelman Lado* 2553

SPECIALLY TAILORED LEGAL SERVICES FOR LOW-INCOME PERSONS IN THE AGE OF WEALTH INEQUALITY: PRAGMATISM OR CAPITULATION? ..... *Lucie White* 2573

RESPONSES TO THE CONFERENCE

NONLAWYERS AND THE UNAUTHORIZED PRACTICE OF LAW: AN OVERVIEW OF THE LEGAL AND ETHICAL PARAMETERS ..... *Derek A. Denckla* 2581

I DON'T WANT TO PLAY GOD—A RESPONSE TO PROFESSOR TREMBLAY ..... *Justine A. Dunlap* 2601

HAVING ONE OAR OR BEING WITHOUT A BOAT: REFLECTIONS ON THE FORDHAM RECOMMENDATIONS ON LIMITED LEGAL ASSISTANCE ..... *Mary Helen McNeal* 2617

COMMENTS REGARDING THE RECOMMENDATIONS OF THE FORDHAM CONFERENCE ON ETHICAL ISSUES IN THE DELIVERY OF LEGAL SERVICES ..... *Don Saunders* 2651

RE-CONCEPTUALIZING THE RELATIONSHIP BETWEEN LEGAL ETHICS AND TECHNOLOGICAL INNOVATION IN LEGAL PRACTICE: FROM THREAT TO OPPORTUNITY ..... *Richard Zorza* 2659

NOTE

ETHICAL AND PROCEDURAL IMPLICATIONS OF "GHOSTWRITING" FOR PRO SE LITIGANTS: TOWARD INCREASED ACCESS TO CIVIL JUSTICE ..... *John C. Rothermich* 2687

BIBLIOGRAPHY

BIBLIOGRAPHY OF THE CONFERENCE 2731

FORDHAM LAW REVIEW

VOLUME LXVII MAY 1999 NUMBER 6

CONTENTS

PANEL DISCUSSIONS

HUMAN RIGHTS AND HUMAN WRONGS: IS THE UNITED STATES DEATH PENALTY SYSTEM INCONSISTENT WITH INTERNATIONAL HUMAN RIGHTS LAW? 2793

THE TOBACCO LITIGATION AND ATTORNEYS' FEES 2827

ARTICLES

THE BURDEN OF PROVING JURISDICTION UNDER THE FEDERAL TORT CLAIMS ACT: A UNIFORM APPROACH TO ALLOCATION ..... *Ugo Colella & Adam Bain* 2859

TIME, UNCERTAINTY, AND THE LAW OF CORPORATE REORGANIZATIONS ..... *John M. Czarnetzky* 2939

NOTES

ETHICS, LAW ENFORCEMENT, AND FAIR DEALING: A PROSECUTOR'S DUTY TO DISCLOSE NONEVIDENTIARY INFORMATION ..... *David Aaron* 3005

THE NEXT STEP IN THE EVOLUTION OF THE IMPLIED WARRANTY OF HABITABILITY: APPLYING THE WARRANTY TO CONDOMINIUMS ..... *Christopher S. Brennan* 3041

THE USE OF ARBITRATION TO SETTLE TERRITORIAL DISPUTES ..... *Carla S. Copeland* 3073

RETHINKING THE TOUGH SENTENCING OF TEENAGE NEONATICIDE OFFENDERS IN THE UNITED STATES ..... *Christine A. Fazio & Jennifer L. Comito* 3109

IMPOSING DUTIES ON WITNESSES TO CHILD SEXUAL ABUSE: A FUTILE RESPONSE TO BYSTANDER INDIFFERENCE ..... *Jessica R. Givelber* 3169

HAVE YOU HEDGED TODAY?
THE INEVITABLE ADVENT OF
CONSUMER DERIVATIVES ..... *Carolyn H. Jackson* 3205

JURISPRUDENCE AND JURISDICTION:
TOWARD A MORE FLEXIBLE
APPROACH TO BANKRUPTCY
INTERLOCUTORY APPEALS ..... *Kristin D. Kiehn* 3261

INTELLECTUAL PROPERTY, CONTRACTS,
AND REVERSE ENGINEERING AFTER *PROCD*:
A PROPOSED COMPROMISE FOR
COMPUTER SOFTWARE ..... *Anthony J. Mahajan* 3297

THE POST-SALE CONFUSION DOCTRINE:
WHY THE GENERAL PUBLIC SHOULD
BE INCLUDED IN THE LIKELIHOOD OF
CONFUSION INQUIRY ..... *Anne M. McCarthy* 3337

A TITLE I DILEMMA: MAY DISABLED
FORMER EMPLOYEES SUE FOR
DISCRIMINATION REGARDING
POST-EMPLOYMENT BENEFITS? ..... *Jason D. Myers* 3371

NICE TIE: TRADE DRESS PROTECTION
FOR VISUAL ARTISTIC STYLE
WHEN COMPETITORS OFFER
ARTIST-INSPIRED PRODUCTS ..... *Andrew J. Noreuil* 3403

THE CIVIL REGULATION OF
PROSECUTORS ..... *Lesley E. Williams* 3441

REMARKS

LAWYERING FOR A NEW AGE*

*Chief Judge Judith S. Kaye***

FIRST and foremost, I thank you for the privilege of participating in this distinguished lecture series. The Sonnett Lecture, for me, signals a provocative talk centering on lawyer professionalism, advocacy, and other issues touching on the great trust we have to deliver justice to the citizens of this State and nation. It is a formidable challenge to measure up to my predecessors at this podium.

While I have attended many of the Sonnett Lectures, one in particular stands out for reasons only indirectly related to lawyer professionalism and the delivery of justice. It was the year my husband and I attended the lecture given by then-Chief Judge Sol Wachtler. By coincidence, that same evening we had tickets for a performance of Wagner's *Valkyrie* at the Metropolitan Opera, and we had neglected in advance to pass them on—or put more accurately, pass them off—to friends. While we were longtime, devoted opera-goers, even we had our limits. In fact, it was our practice to pass off *all* Wagner tickets. We just had neglected to do so that evening.

After Judge Wachtler's lecture, we found ourselves across the street from the Met, our tickets still in hand. So we wandered over to the Opera House—just in time for Act Three, which proved to be one of the most moving, most dramatic, most spectacular acts in all of opera. We have been avid Wagnerians ever since. So we thank the Fordham Law School for that life-altering experience. The lecture was pretty good too.

That experience happens also to be highly relevant to my subject tonight—and not simply because of the proximity of the Law School to the Opera House. *Valkyrie* is the second of the four operas that make up Wagner's *Ring* cycle—and the *Ring* is above all a "Hymn to the Law."[1] The *Ring* glorifies the Rule of Law, in particular the importance of honoring contract obligations. This was amply demonstrated that fateful night when I saw Wotan banish his beloved daughter, Brunnhilde, from the Land of the Gods because she failed to keep a promise to him.

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* Chief Judge Kaye delivered these remarks on April 8, 1998, as part of the Sonnett Lecture Series, an annual lecture series at Fordham Law School.

** Chief Judge of the State of New York; Chief Judge of the Court of Appeals of the State of New York. I am most grateful to my Counsel, Susan Knipps, for her superb assistance in preparing this article.

1. Charles Fletcher-Cooke, *Counsel's Opinion: The Ring and the Law*, 12 About the House 1 (1965), *reprinted in* Penetrating Wagner's Ring: An Anthology 135, 135 (John Louis DiGaetani ed., 1978).

Scrupulous enforcement of the law is, of course, important, but I have often reflected on how things might have turned out had Wotan been a bit more attentive to other influences and a just a little more open to change. After watching his precious Valhalla—the home of the gods, where all dead heroes were brought—go up in flames at the *Ring*'s end, I have speculated on what intermediate steps might have prevented that catastrophe. That, of course, brings me right to tonight's subject: change, and how we in the law must adjust to it.

Lawyering in a new age means, above all, lawyering in a time of innovation and flux. Tonight, I just want to sketch out some of the ways we in the courts are responding to emerging realities and talk as well about how these changes may affect the practicing bar.

Lawyers, of course, are completely comfortable with the notion that the substantive law must change and adapt to meet changing social conditions. But they are distinctly less comfortable with the idea that the structures of the justice system may also need to evolve to meet current demands. I suppose this should not be too surprising: my work uniform has not changed for centuries, and I do my job in a building smack out of ancient Athens. You do not need a degree in semiotics to conclude that ours is a profession that values formal stability and continuity.

But if we hope to be able to deliver swift and effective justice in the years ahead, the way we run our courts simply has to change, Ionic columns notwithstanding. Just consider a few of the challenges facing our court system today.

First, there is the sheer volume of cases. Our relentlessly kinetic culture spins off myriad disputes—and increasingly these are brought to the courts for resolution. Last year, the New York State courts received close to four million new filings—more than ten times the number of cases that the federal District Courts received nationwide.[2]

This press of filings compels us to expedite and innovate. Almost thirty years ago, Chief Justice Burger said that we could not afford to continue using cracker-barrel corner grocer methods to operate the courts in a supermarket age.[3] Today, even supermarket methods may be inadequate given the advent of on-line shopping. We must use every tool available to keep up with these enormous demands. We have finally gotten rid of all the rotary telephones in New York City courthouses—now it is on to interactive kiosks, wired benches, and video conferencing.

Huge numbers are only part of the story. The changed substance of today's cases is also a challenge. New technologies and new social mores create legal questions that no one even dreamed of when I

2. Data provided by the New York State Office of Court Administration and the Statistics Division of the Administrative Office of the United States Courts.

3. *See* Paul B. Wice, *Court Reform and Judicial Leadership: A Theoretical Discussion*, 17 Just. Sys. J. 309, 309 (1995).

went to law school. Over the past few years, the Court of Appeals has, for example, grappled with the issue of who should make decisions about prolonging or ending life for the terminally ill,[4] and more recently, the issue of determining the fate of frozen pre-embryos created by a couple now divorced.[5] We have recently considered whether faxes satisfy the Statute of Frauds,[6] whether wire funds that circle the globe twenty-four hours a day can be seized in New York,[7] and when claims accrue for that quintessentially post-modern trauma, computer keyboard-caused repetitive stress injury.[8]

Even when the legal issues are simple, the social realities underlying our cases can be extremely complex. As community institutions increasingly fail to influence individual behavior, and other branches of government gridlock and stall, more and more of society's most difficult problems are being outsourced to the courts. Drug addiction, homelessness, family violence—these are the issues that drive the dockets of our frontline urban trial courts. Adjudicating a parent neglectful due to drug abuse is easy. Crafting a disposition that will do something meaningful about it is not as easy.

As if the numbers and substance of today's cases were not enough, a final new challenge is the public's attitude toward the courts. Courts today face a public that, by and large, is cynical and distrustful of all government, including the judicial system. Courts can no longer just assume they enjoy the public's trust and respect. We have to achieve it a new-fashioned way: we have to earn it.

All of these factors have led the New York State court system to undertake an ongoing program of court reform to make sure that we do what we do efficiently and, where appropriate, that we do it differently. Efficiency is a key value—but it is not the only value. When an ocean liner starts taking on water, you can devote a lot of your resources to efficient bailing operations. You might also, however, want to look around for where the leak is, or keep a closer watch for icebergs in the first place. Yes, we want to process cases faster—but we also want to process them better. A well-run court system does not just count its cases. It makes sure every case counts.

Slowly but surely, we are changing the way we deliver justice in this State. If I had to describe a methodology for our reforms, it would be this: we are looking at the substantive outcomes that our procedures actually achieve, and we are looking at our operations from the per-

4. *See* Grace Plaza v. Elbaum, 82 N.Y.2d 10, 623 N.E.2d 513, 603 N.Y.S.2d 386 (1993); *In re* Westchester County Med. Ctr., 72 N.Y.2d 517, 531 N.E.2d 607, 534 N.Y.S.2d 886 (1988).

5. *See* Kass v. Kass, 91 N.Y.2d 554, 696 N.E.2d 174, 673 N.Y.S.2d 350 (1998).

6. *See* Parma Tile Mosaic & Marble Co. v. Estate of Short, 87 N.Y.2d 524, 663 N.E.2d 633, 640 N.Y.S.2d 477 (1996).

7. *See In re* Liquidation of New York Agency & Other Assets of Bank of Credit and Commerce Int'l, S.A., 90 N.Y.2d 410, 683 N.E.2d 756, 660 N.Y.S.2d 850 (1997).

8. *See* Blanco v. AT&T, 90 N.Y.2d 757, 689 N.E.2d 506, 666 N.Y.S.2d 536 (1997).

spective of the public we are trying to serve. Let me give you an example of each approach in action.

I have mentioned drug abuse as an issue confounding the State courts, and its impact on our criminal justice system cannot be overemphasized. In recent years, drug offenses have consistently accounted for over forty percent of all felony indictments in New York State.[9] The effect goes far beyond these tens of thousands of cases. For many offenders, substance abuse fuels a pattern of criminal recidivism that causes them to cycle and recycle through the criminal justice system. They go into jail as substance-abusers and thirty, sixty, or ninety days later they come out of jail as substance-abusers, and not surprisingly are often soon re-arrested.

We can—and we do—work on processing these cases as efficiently as possible. But we also need to take a step back and ask, is there a better way to do this? Where is the leak here?

Once you start asking these kinds of questions, you start thinking about developing a court structure that will break, not merely interrupt, this destructive cycle of drugs-crime-jail, drugs-crime-jail. One model that we have been working on—like many jurisdictions around the country—is the Drug Treatment Court.

Treatment Courts look like ordinary criminal courts. When you first enter the Treatment Court in Brooklyn Supreme Court, for example, you will see a judge in a robe sitting at an elevated bench and counsel at their tables and so on. But if you look again, you will see that something fundamentally different is going on here—namely, a definite shift away from the traditional adversary model toward a team-based, problem-solving approach.

The basic idea behind these new tribunals is to use the coercive power of the court to get non-violent offenders off drugs and out of the criminal justice system's revolving door. You do not see a lot of litigating in this court—in fact almost all of the defendants plead guilty. The focus in the Treatment Court is not on adjudicating past facts, it is on changing future behavior. The main tool is strict judicial supervision of the defendants' progress in drug treatment.[10]

That means the judges in these courts have a new role. No longer remote umpires of legal disputes, Drug Treatment Court judges play an active role in the treatment process: monitoring compliance, rewarding progress, and sanctioning infractions.[11]

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9. Jason Scott, New York State Division of Criminal Justice Services, New York State Crime and Justice Trends 1992-1996 (1996).

10. For a detailed description of the Drug Treatment Court operating in Brooklyn Supreme Court, see New York State Unified Court System, Brooklyn Treatment Court Report (1998); Jennifer Gonnerman, *Justice for Junkies*, Village Voice (New York), June 3, 1997, at 50.

11. Judge Jo Ann Ferdinand, Presiding Judge of the Brooklyn Treatment Court, explained that:

The lawyers also have new roles. The prosecution and defense are not sparring champions, they are members of a team with a common goal: getting the defendant off drugs.[12] When this goal is attained, everyone wins. Defendants win dismissal of their charges—not to mention improvement of their lives—and the public wins safer streets and reduced recidivism.

Indeed, the preliminary results are promising. Unlike many participants in voluntary treatment programs, defendants in our Drug Treatment Courts overwhelmingly remain in treatment. While long term impacts are still being studied, early figures show that recidivism rates in Treatment Courts are significantly lower than those in traditional courts.[13]

Having attended several Drug Court graduation ceremonies, I can tell you they are extremely moving events. Each graduate's personal achievement is recognized by applause and sometimes a few tears from family and court staff. "I didn't just get arrested," one recent graduate observed, "I got saved."

Looking at actual outcomes has led us to move away from a purely process-driven model of criminal adjudication to a problem-solving model. We now have eight such courts up and running across the State,[14] and hope soon to have twelve. We are piloting the same model in the Family Court of New York and Suffolk Counties, where the courts' coercive power is not incarceration but removal of children from parents whose substance abuse causes neglect.[15]

> The challenge of working in the Treatment Court is to figure out a role for the judge in the treatment process. It is very important that I be viewed as a judge—not a counselor, not a probation officer, not a friend. Defendants have to understand that if they fail to fulfill the treatment mandate, it will be a judge that responds. It is equally significant that their success is rewarded by a judge; it can be extraordinarily meaningful when a judge stands up and applauds.

Perspectives from the Bench, Treatment: News from the Brooklyn Treatment Court (Fund for the City of New York), Winter 1998, at 2, 2.

12. For a discussion of the teamwork approach in the Buffalo Drug Treatment Court, see Jane Nady Sigmon et al., American Prosecutors Research Institute, Adjudication Partnerships: A Guide to Successful Cooperation 78-80 (1997). *See also* Sam Torres & Elizabeth Piper Deschenes, *Changing the System and Making It Work: The Process of Implementing Drug Courts in Los Angeles County*, 19 Just. Sys. J. 267, 285 (1997) (finding that "[a]s intended, drug courts in Los Angeles County are operating in a non-adversarial manner with courtroom members, e.g., judge, district attorney, public defender, and treatment provider, functioning as a team").

13. *See* Drug Court Clearinghouse and Technical Assistance Project, Summary Assessment of the Drug Court Experience 2 (1997).

14. *See* Judith S. Kaye, *Changing Courts in Changing Times*, N.Y. L.J., Jan. 27, 1998, at S1 (describing New York's eight Drug Treatment Courts).

15. The Family Treatment Courts are discussed in my article *Changing Courts in Changing Times: The Need for a Fresh Look at How Courts Are Run*, 48 Hastings L. J. 851, 859-62 (1997), *available at* <http://www.communitycourts.org/downloads/tobriner.rtf> (visited Aug. 3, 1998).

At this point, Drug Courts may only be one small step for court operations, but they are a giant leap for our conception of how we can deliver effective justice.

Looking at court operations from the perspective of the public we serve can also cause small revolutions. My second example is a good illustration of this: jury reform.

We all know the rhetoric about our jury system—the bulwark of our democracy, protector of our liberties—but when we looked at it from the citizen's perspective, we noticed that jury duty was about as cherished as a tax audit or a root canal. And rightly so. The system worked well for lawyers and judges—but for the jurors? We summoned the same people over and over again, made them wait in appalling assemblyrooms, subjected them to unsupervised *voir dire* on the civil side and mandatory sequestration on the criminal side, never told them what was going on, never asked them what they thought about it, and paid them fifteen dollars a day for their time and trouble. This is how we treated the protectors of our liberty. This is how we dealt with one half million members of the public on whose trust and respect the Least Dangerous Branch depends.

Obviously, when you start looking at the system from the public's perspective, a few things needed to change—like our entire summoning system, exemptions from service, jury facilities, and more than a few attitudes on the part of the bench and the bar. Change of this magnitude—I am really talking about a cultural revolution—is not accomplished by just amending a few rules. It takes education and collaboration and years of effort. We have accomplished a lot in the four years that we have been at it.[16] But we have much, much more to do. Our goal is to build a system that lives up to the glorious rhetoric used to describe it.

Drug Treatment Courts and jury reform are two examples of what the New York State courts are doing to provide justice that is responsive to today's realities and public expectations. I could give you many others: domestic violence parts, the Commercial Division of the State Supreme Court, judicial case management initiatives, and our Midtown Community Court.

As lawyers in a new age, you can expect further court initiatives of this nature. You can, if you wish, wait until you bump into one to begin to thinking about the practice of law in an age of change and innovation. I want to encourage you, however, to take a more pro-

16. Major achievements to date include elimination of all statutory exemptions from jury service, reduction of average terms of service by more than fifty percent, improved juror facilities, increased juror compensation, elimination of mandatory sequestration in all but the most serious criminal trials, a "juror hotline," and juror exit questionnaires. *See* New York State Unified Court System, Jury Reform in New York State: A Second Progress Report on a Continuing Initiative (1998), *available at* <http://ucs.ljx.com/jury2.htm> (visited Aug. 3, 1998).

active approach. I want to challenge you to take a step back and think now about what models of lawyering make sense for this new era.

Changes in the courts themselves will not be the only thing affecting the practice of law in the future. With numbers of lawyers now nearing the one million mark,[17] the size and structure of the American bar has changed dramatically in recent years.[18] Some mega-firms are growing;[19] other firms have imploded.[20] In-house departments are expanding.[21] Competition is fierce as corporate clients zero in on the bottom line.[22] Government funds for legal services have been severely restricted.[23] All of this activity is taking place against a backdrop of increased public skepticism—warranted or not—about the value and integrity of our noble profession.

These changes, I believe, undercut that extreme model of lawyering—so ingrained in popular culture and the public's mind—that involves knee-jerk reliance on highly adversarial tactics to advance every client's cause. Put another way, Rambo litigators cannot all count on making it to Valhalla any more. This is not to say that there is still not a place for zealous advocacy—heart thumping, mind stretching, weekend ruining client representation. But a mindset that

17. *See* Scott Carlson, *Attorneys Who Specialize in Patents, Corporate Deal-Making In Big Demand: Law Firms Nationwide Are Scrambling to Find Experienced Lawyers*, Milwaukee J. & Sentinel, Aug. 26, 1998, at 12 (reporting that the United States has an estimated 722,000 practicing lawyers, which is up ten percent from four years ago).

18. *See* Edward Frost & Margret Cronin Fisk, *The Profession After 15 Years*, Nat'l L.J., Aug. 3, 1993, at 1 (stating that the past fifteen years "have seen an astonishing evolution in the legal profession"); James Podgers, *Model Rules Get the Once-Over*, A.B.A. J., Dec. 1997, at 90, 90 (observing that "the landscape of legal practice has continued to change drastically" in the previous fifteen years).

19. *See* Frost & Fisk, *supra* note 18, at 1 (observing the "explosion in the size and scope of many big firms"); Martha Neil, *Biggest Firms Growing Fastest, Survey Shows*, Chicago Daily L. Bull., Aug. 5, 1998, at 1 (stating that the "overall growth rate for large- and medium sized United States law firms doubled last year").

20. *See, e.g.*, *'94 Ends on Downbeat Note for Some in the Law*, N.Y. L.J., Jan. 3, 1995, at 1 (reporting that the "demise of major law firms continue[s] as such stalwarts as Shea & Gould, Lord Day & Lord, Barrett Smith and Bower & Gardener went out of business"); David Segal, *From Allies to Adversaries: The Fall of Nussbaum & Wald*, Wash. Post, Aug. 25, 1997, at F7 (discussing the aftermath of the implosion of Nussbaum & Wald).

21. *See* James S. Kakalik et al., *Discovery Management: Further Analysis of the Civil Justice Reform Act Evaluation Data*, 39 B.C. L. Rev. 613, 630-31 (1998) (reporting that "many large corporations have begun restructuring their relationships with legal service providers" and "have brought more of their legal work in-house in recent years"); Podgers, *supra* note 18, at 90 (observing the "proliferation of in-house counsel").

22. *See* Roger J. Dennis, Commentary, *The Epistemology of Corporate-Securities Lawyering: Beliefs, Biases and Organizational Behavior*, 63 Brook. L. Rev. 677, 682-83 (1997) (reporting a significant escalation of economic competition among lawyers).

23. *See generally* Gary Spencer, *New State Bar Head Pinpoints Issues*, N.Y. L.J., June 24, 1998, at 1 (stating that government funding for legal services is under attack at the state capitol).

all disputes must be litigated and all litigation is war may prove to be about as useful as a 286 computer in the years ahead.

This is not because everyone is supposed to be nice in the new millennium. Rather, clients are now realizing that arms manufacturers and lawyers are probably the only ones who gain by policies of mutually assured destruction. It is very expensive to scorch the earth. As the increasingly competitive global economy grows, the market for this style of lawyering shrinks.[24]

Even if some clients still crave rampant adversarialism, courts are becoming less willing to tolerate it. Faced with enormous caseloads on the one hand and a public clamoring for swift justice on the other, more and more judges are becoming actively involved in case management issues—setting limits and time frames for discovery and motion practice. Differentiated case management—DCM, to the initiated—is one approach we are trying in the New York courts to keep cases on a sensible track for resolution in a timely manner.[25]

Furthermore, there is a final reason to think twice about the Rambo model: personal dissatisfaction within the legal profession. More and more we read reports of discontent and defection, lawyers from the newest to the most experienced are unhappy, unfulfilled, and looking to greener pastures outside the law.[26] For some, extreme adversarialism is one of the roots of their unhappiness.[27] That makes sense: how much joy can a steady diet of acrimony bring? Rethinking Rambo is therefore good for clients, good for courts, and ultimately, good for ourselves.

But what does that leave for New Age Lawyers to do? Plenty. Some of it may well be even more interesting than Old Age tasks like examining warehouses of documents. The forces of change are compelling lawyers, like courts, to look beyond process to the product.

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24. *See, e.g.*, *What Inhouse Attorneys Are Doing to Hold Down Costs*, Metropolitan Corp. Couns. (Mountainside, NJ), Dec. 1997, at 24 (discussing ADR as a means of cutting costs); *If You're Not Budgeting, You're Out: Corporate Clients Beef About Law Firm Billing*, Ill. Legal Times, Apr. 1996, at 1 (discussing strategies to contain litigation costs).

25. *See generally* Judith S. Kaye, *Changing Courts in Changing Times: The Need for a Fresh Look at How Courts Are Run*, 48 Hastings L.J. 851, 853 (1997) (mentioning differentiated case management as a better way to process cases); Carl Tobias, *Nearing the End of Federal Civil Justice Reform in Montana*, 59 Mont. L. Rev. 95, 97 (1998) (noting that the Federal Judicial Center has recognized the benefits of differentiated case management).

26. *See, e.g.*, Mary Ann Glendon, A Nation Under Lawyers: How the Crisis in the Legal Profession is Transforming American Society 85 (1994) (reporting that a recent poll of New Jersey attorneys revealed that nearly one quarter were planning to leave the practice of law before retirement and that a Maryland Bar Association study showed that almost a third of the attorneys surveyed were not sure they wanted to keep practicing law).

27. *See, e.g.*, Sam Benson, *Why I Quit Practicing Law*, Newsweek, Nov. 4, 1991, at 10, 10 (arguing that an adversarial system makes being ethical inherently difficult for lawyers).

What is the substance of what is achieved? What value does it add? Success for New Age Lawyers cannot be measured by inches of papers filed. It is measured by the concrete difference the lawyering makes for the client.

John Feinblatt, Director of the Center for Court Innovation and New Age Lawyer extraordinaire, tells a story that illustrates this different outlook. As he tells it:

> When I was a 28 year old lawyer fresh out of law school, I was assigned a case involving a man who was accused of brandishing a knife. Willie lived on the Bowery in New York City, was an alcoholic and was homeless. There was something else about Willie—he had some great legal issues, which as a newly minted lawyer I relished.
>
> Willie's case traveled through the courts for months as I challenged the legality of the search the police conducted and the admission of guilt he gave to the police.
>
> After motions, hearings and oral argument, I finally won the case. I say I won and not Willie because I was never quite sure Willie really needed me or that I had really helped him. I have often asked myself whether Willie needed a vigorous attorney or whether what he really needed was the help of an alcoholism counselor and the safety of a roof over his head.
>
> Some 15-plus years later, I have concluded that what Willie really needed was both.[28]

A focus on product, not just process, means a lawyer needs to think creatively about the best way to solve a client's problem. That may lead some New Age Lawyers to think about different court structures—like our Drug Treatment Courts—that can better address the complex issues presented to them.

A focus on product, not just process, may lead other New Age Lawyers to consider alternative dispute resolution ("ADR") techniques to resolve their clients' problems. Increasingly, corporate clients are finding that ADR can make good business sense. Few cases end up being tried through to verdict.[29] ADR can help advance the "moment of truth" in the case—and save time, trouble, and money in the bargain. ADR does not obviate the need for lawyers by any means. It is still essential that lawyers investigate facts, develop arguments, and present their case.[30] The difference is that with ADR, lawyers and

28. John Feinblatt, Making Communities Safe, Speech at the Enterprise Institute (Oct. 28, 1995).

29. *See generally* Edwin J. Wesely, *Reflections on Court-Annexed ADR in the Eastern and Southern Districts of New York*, 37 Judges' J. 33, 33 (1998) (stating that ADR serves the interests of the courts by reducing their civil caseloads and backlog).

30. To help lawyers hone the necessary skills in this new area, the Association of the Bar of the City of New York recently offered a program on "Representing Clients in Mediation: There's More to It Than You Think." *See Corporate Counsel Organiza-*

clients work in partnership to solve a legal problem in a business-like manner.

In light of the growing interest in ADR for business cases, the New York State Supreme Court Commercial Division—hailed as a model for business courts around the country—includes a court-annexed ADR component, and the feedback we have been getting is good.[31]

ADR can also have a role beyond the business setting. In cases that have an element of interpersonal relations—matrimonial cases or neighbor disputes, for example—a less adversarial setting can allow the parties to work through emotional issues that may be driving the legal case. All the discovery in the world will not reveal that the client's main concern is that the husband not live in the former marital residence with his new girlfriend. Additionally, if the relationship is to be ongoing, such as a child custody dispute, uncovering and addressing the non-legal conflicts may save everyone costly, painful future trips to the courthouse.

The New York State courts offer a number of programs in this area as well. Some programs are well-established—like our Community Dispute Resolution Centers that have been in operation since the early 1980s. Last year, these Centers handled more than 23,000 matters, ranging from custody and visitation issues to Lemon Law arbitrations.[32] We have also recently begun piloting court-annexed ADR in matrimonial cases in selected counties, and we included a mediation program for landlord-tenant matters in our recent administrative overhaul of the New York City Housing Court.[33]

The new focus on creative problem solving may lead New Age Lawyers to seek out further alternatives to litigation. A number of examples of this approach were discussed at the symposium held here at Fordham last Fall on Lawyering for Poor Communities in the 21st Century. One particularly striking example, featured in the video "So Goes a Nation" that was shown at the conference, was the work of Brooklyn Legal Services Corporation A in developing a public health

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tion Highlights, Metropolitan Corp. Couns. (Mountainside, NJ), Apr. 1998, at 39 (describing the program).

31. *See* Robert C. Meade, Jr., *Commercial Division ADR: A Survey of Participants*, N.Y. L.J., Oct. 17, 1997, at 1; *A Case Study in Successful Judicial Administration: Commercial Division, New York State Supreme Court*, N.Y. Litigator, Aug. 1997, at 24. An on-line guide to the Commercial Division and its Alternative Dispute Mediation Program can be found at <http://ucs.ljx.com/nycdlr/nycdhome.htm> (visited Aug. 5, 1998).

32. New York State Unified Court System, Community Dispute Resolution Centers Program Annual Report 1-5 (1997). An on-line listing of the New York's Community Dispute Resolution Center Programs can be found at <http://ucs.ljx.com/cdrcp/index.html> (visited Aug. 5, 1998).

33. *See* New York State Unified Court System, Housing Court Program: Breaking New Ground 11 (1997), *available at* <http//ucs.ljx.com/hctprg.htm> (visited Aug. 5, 1998).

clinic for the Brownsville community.[34] To improve access to appropriate health care in that underserved neighborhood, the Legal Services attorney looked not to the courts but to intricacies of the state public finance system. The result: a seven million dollar bond offering to finance the transformation of an abandoned supermarket into a full service family health care clinic. This is a new conception of the poverty lawyer—one who uses skills of a corporate transactional attorney to build community-based institutions for poor clients.

Finally, a New Age focus on product, not just process, can also mean looking for ways to prevent disputes from arising in the first place. Rather than operating exclusively in a crisis management mode, lawyers can also function in a planning mode—designing policies and programs that reduce the chance of conflict. In a corporation, the lawyer might help set up mechanisms to deal with employee grievances before they morph into lawsuits. In a community, the lawyer might help develop student dispute resolution programs—like peer mediation—so that schoolyard spats do not escalate into armed conflicts.

Lawyering in the New Age means lawyering in a time of challenge and a time of opportunity for improving the delivery of justice in society. That also means lawyering in a time of some risk—there is no such thing as a challenge or opportunity that is risk-free.

Do our several court innovations raise questions and issues that we need to be concerned with for the future? Of course they do. Our less adversarial problem solving courts cast both judges and attorneys in new roles—what impact will that have on ethical rules premised on an adversarial model? If a client's insistence on efficient resolution conflicts with a lawyer's notion of professional representation—sort of a managed care conflict, legal style—what then?

I raise these questions not to answer them, but to illustrate the kinds of issues that await us. What better setting than a law school to begin raising them? I have talked about what the courts have done, what lawyers can do. Let me not overlook the crucial role of law professors in preparing the next generation for these changing times and in helping us sort out which changes are helpful, which are unhelpful, and where to go next.

I began these remarks by discussing the relevance of an opera across the street more than a decade ago to my general topic of dealing with change. Being a great believer in meaningful coincidence, I naturally checked out the Met before coming into this auditorium today—and I was not disappointed.

34. Videotape: So Goes a Nation: Lawyers and Communities (Sight Effects 1997). This video will be available to the public on CD-Rom as an attachment to 25 Fordham Urb. L.J. (forthcoming Nov. 1998).

I have spoken this evening about the risks of extreme adversarialism, the virtues of thinking "outside the box," and about new ways of resolving disputes. If you need further convincing on these points, I suggest you adjourn to the Opera House. Tonight's bill? *Roméo and Juliette.* If my words have not moved you, I guarantee that Shakespeare's story and Gounod's music will.