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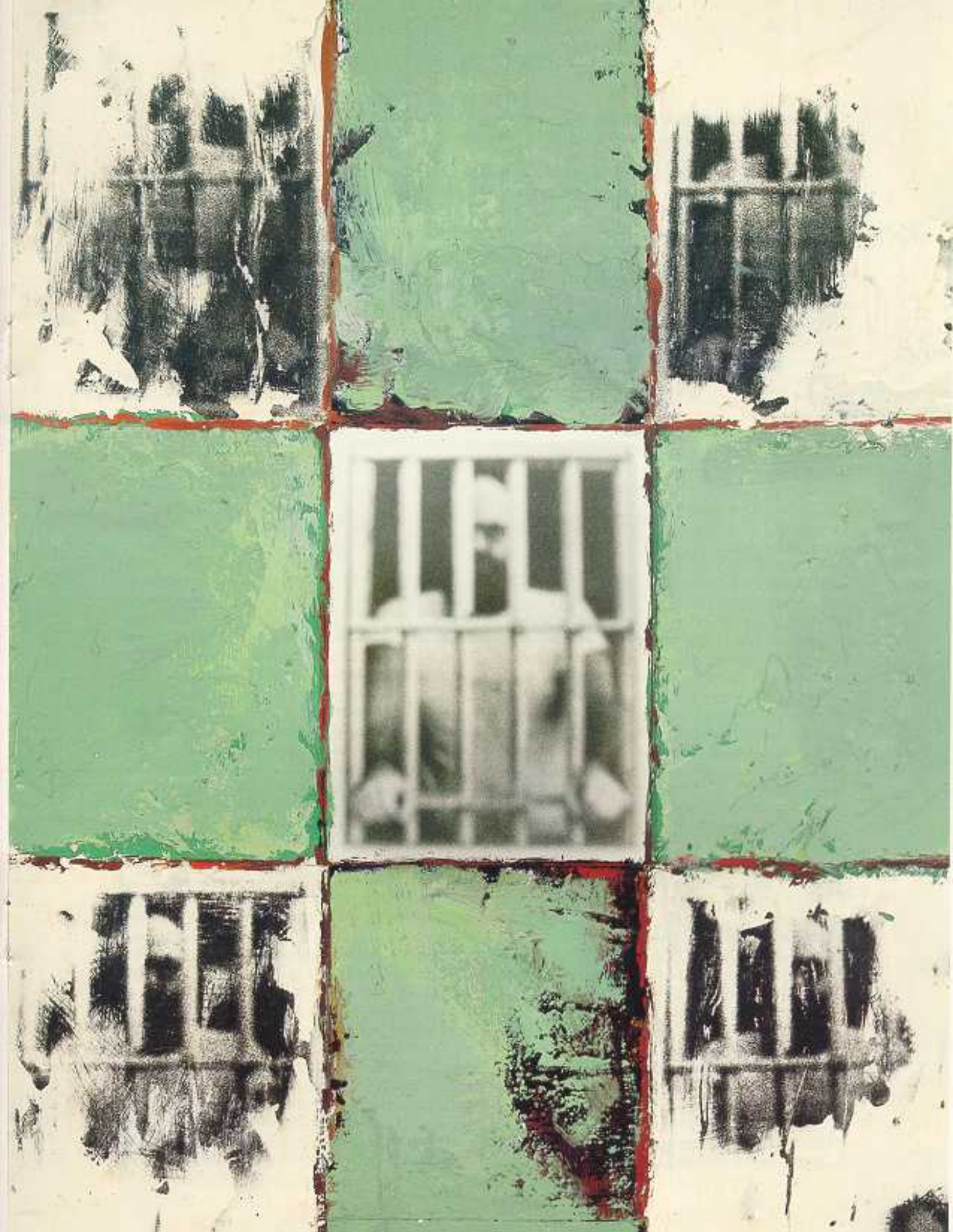
*This address was given at the Law School Awards Assembly, March 25, 1993*

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TONIGHT I WOULD LIKE TO DISCUSS TWO DISTURBING DEVELOPMENTS IN THE LEGAL PROFESSION—DEVELOPMENTS I BELIEVE TO BE RELATED THEY HAVE BEEN MUCH DISCUSSED DURING RECENT YEARS, BUT FEW PEOPLE SEEM TO SEE ANY CONNECTION BETWEEN THEM

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The first development is the ever-increasing emphasis on the commercial and economic side of law practice and a corresponding decrease in lawyer public service. One need only pick up a copy of any modern legal magazine to see the commercial emphasis. It is trumpeted in articles and surveys that measure professional success almost exclusively in terms of income and status.

The decrease in public service is more difficult to detect, but nonetheless real. It was highlighted in February when the ABA House of Delegates found it necessary to pass an amendment to the Model Rules of Professional Responsibility. The amendment states that lawyers should render at least 50 hours of pro bono legal services each year (see *Fifty Hours for Pro Bono*, ABA Journal, Apr. 1993, 32). Forty hours should be spent providing legal services to the poor, with another ten devoted to improving the law, the legal system, or the legal profession. The remarkable aspect of this amendment is not that it occurred, but that it was deemed necessary by the leaders of our profession. Delegates from around the nation concluded that modern lawyers need an ethical imperative if they are to spend the equivalent of one hour per week providing legal assistance to the poor. Equally concerning is the fact that significant lawyers and groups of lawyers opposed the new rule. They apparently thought it improper or ill-advised to require lawyers to provide pro bono services to the poor.

The second development—one that probably should not be mentioned during an awards ceremony for third-year law students—is the widely documented dissatisfaction modern lawyers feel with their profession. A 1990 survey by the *National Law Journal*, for example, found that only 31 percent of all lawyers were “very satisfied” with their professional lives (*National Law Journal*, May 28, 1990, S2). Nearly two-thirds complained that law has become less of a profession and more of a business. More than half view other lawyers as obnoxious. Seventy percent dislike the long hours and tension of practicing law.

I believe there is a relationship between the increasing unhappiness of lawyers on one hand and our profession’s modern emphasis on economics, with its corresponding de-emphasis on public service, on the other hand. I see this connection largely because of several experiences our firm has had in pro bono practice and the effect those experiences have had on my own happiness as a lawyer.

Twelve years ago our firm agreed to undertake the pro

bono representation of John Henry Knapp, a well-known inmate on Arizona’s death row. Knapp had been convicted seven years earlier of deliberately setting a fire that had killed his two daughters in the bedroom of their home. As you can imagine, a crime so repulsive had received widespread publicity in Arizona. By the time our firm was approached about the case, Knapp had exhausted his appeals and lost several petitions

for post-conviction relief. Several times the Arizona Supreme Court had issued warrants for his execution, only to have them stayed by yet another judicial challenge. Worst of all, Knapp had confessed to committing the crime, making his plight all the less sympathetic.

Knapp had been charged and convicted largely because of a state arson investigator’s conclusion that the Knapp fire was not accidental—that it had been started with a combustible liquid. Suspicions that initially arose from the rapid growth, intense heat, and

unusual burn patterns of the fire were confirmed, at least in the investigator’s mind, when he found an empty can of Coleman fuel in the front hall closet of the Knapp home.

Having concluded the fire was caused by arson, Arizona officials turned their suspicions to the only two adults in the house at the time of the fire—John Knapp and his wife, Linda. Several nights after the fire, under close and vigorous interrogation at the police station, John Knapp confessed that he had started the fire deliberately. John recanted the confession almost immediately, but the confession was enough to convict him of first-degree murder and secure for him the sentence of death—a result applauded by outraged citizens of Arizona.

When our firm entered the case seven years later, there was little hope for John Knapp, and few people who cared to help him. Initially we agreed to look at the case simply as a favor to an overworked and thoroughly frustrated criminal defense lawyer who believed John Knapp to be an innocent man but who had exhausted all of his time and energy for the case. Lawyers in our firm who looked closely into the facts and met John Knapp soon also concluded that he was an innocent man. Time does not permit me to recount all of the efforts undertaken during the next eleven years, but let me mention a few of the high points.

At John Knapp’s murder trial, the defense had argued that the Knapp girls set the fire themselves. John was unemployed at the time of the fire, the heat in the house had been turned off by the electric company, and John and his

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wife had resorted to Coleman lanterns and stoves for lighting, heating, and cooking. The girls had been seen playing with matches more than once. The defense theorized that the girls awoke on the cold morning of the fire and started playing with matches in their cluttered bedroom, inadvertently setting the fire that caused their deaths.

The prosecution debunked this theory, arguing that an accidental fire would have burned slowly, leaving the girls and their parents ample time to detect the fire and either extinguish it or escape from the house. Prosecution experts testified that the rapid and intense heat of the fire simply was inconsistent with the progression of a slow-burning accidental fire. It had to have been aided by some form of combustible liquid such as Coleman fuel.

By the time we became involved in the case seven years later, fire science had made great strides, particularly with respect to a phenomenon known as flashover. Flashover occurs when a fire in a confined area causes heated gases to collect at the ceiling level. The gases quickly become superheated, reflecting intense heat back down on objects in the room. This reflected heat causes the room literally to burst into flames, and the confined space quickly becomes a raging inferno. Tests at Harvard University had shown that even a small fire, through flashover, can quickly cause an entire room to burst into flames. The flashover phenomenon was not generally understood when John Knapp was tried for the murder of his daughters in 1974.

Our firm ultimately hired several fire experts from around the country to examine the evidence from the Knapp fire. These experts concluded that all of the indicators relied on by the Arizona arson expert were consistent with an accidental flashover fire. Our defense team even built a replica of the small bedroom, down to the placement of furniture and other objects in the room, and ignited a small amount of paper to show how quickly a flashover fire could spread. Within minutes the small room became the raging inferno that the arson experts had testified could only have been caused by a combustible liquid.

In 1987, after six years of attempting to obtain a hearing on post-conviction relief, we were permitted to place this flashover evidence before an Arizona superior court judge. After reviewing the evidence, the judge found that it "would probably change the [guilty] verdict," and granted John Knapp a new trial.

At Knapp's original trial prosecutors had placed in evidence the Coleman fuel can found in the closet of the Knapp's home after the fire. They referred to it as "the death can." The prosecutors told defense counsel and the court that they had tested the can for fingerprints but that all prints on the can were smudged. While preparing for the new trial years later, we insisted upon the disclosure of all

information in the state's files. To our surprise, we learned that the fingerprints on the Coleman fuel can were not smudged as the prosecutors had asserted during the first trial. Eleven clearly identifiable prints had been found on the can before the first trial, and none of them belonged to John Knapp. All of them belonged to Linda Knapp—John's wife. This evidence suggested that John Knapp had not used the can to start the fire and then returned it to the hall closet, as the prosecution claimed. Linda Knapp apparently had

been the last person to touch the can, and she told investigators she had placed the empty can in the closet several days before the fire occurred.

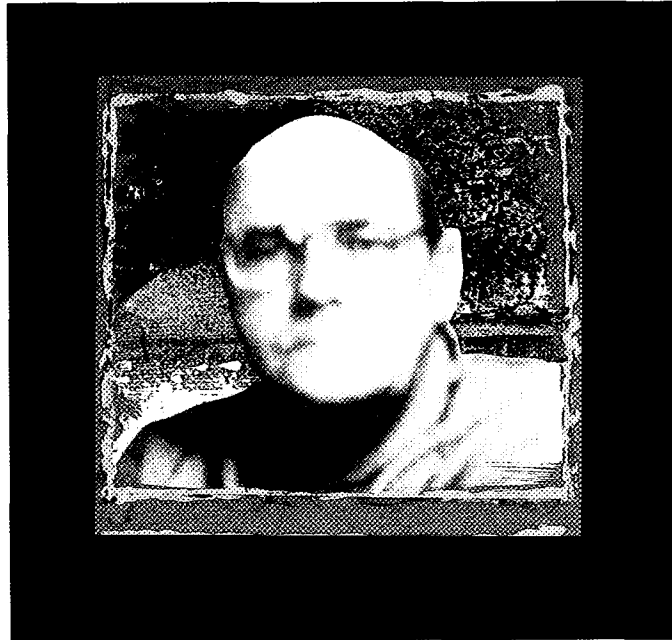
But we still were faced with the very troubling fact that John Knapp had confessed to committing the crime. We learned several significant facts about the confession.

On the night of the confession John Knapp was suffering from a severe migraine headache—a recurring condition for which he had been receiving medical care. The detectives who questioned Knapp later testified that his pain was so severe during the interrogation that he literally was pulling hair from his head. The confession, given in a nine-foot-by-nine-foot room under close questioning by two investigators, and while John Knapp was suffering a migraine headache, was at least suspect.

John Knapp recanted his confession almost immediately, saying that he had confessed to protect his wife. Knapp later claimed that he told his wife, in a phone conversation from jail the day after the confession, that he had confessed to protect her because the police had told him the fire was set deliberately and he did not want her to be charged with the crime. At trial the prosecution rebutted this explanation by noting that Knapp had spoken with his father-in-law shortly after the confession but had not stated to him that the confession was false.

Seventeen years later, as we were approaching Knapp's newly won retrial, the prosecutors finally revealed that the telephone conversation Knapp had claimed to have with his wife in 1974 had in fact been tape-recorded by the State and

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never disclosed to defense counsel. We obtained a copy of the tape. As lawyers from our firm listened to the recording for the first time, they heard the voice of a tearful John Knapp, 17 years younger, telling his wife that he did not set the fire that took the lives of his children and that he had confessed because he feared she would be charged with the crime if he did not take responsibility for the fire. The tape, of course, strongly corroborated Knapp's explanation of the confession.

There is much more I could tell you about this case. John Knapp is now a free man, living in Pennsylvania and working at a full-time job. In more than two years of freedom, as in the years before the fire, John Knapp has had no difficulty with the law. After spending 13 years on death row—at one point coming within 36 hours of execution—John Knapp has become a contributing and responsible member of society.

There is a remarkable corollary to this story. Shortly after John Knapp was released from prison, our firm received a

letter from a young man named Ray Girdler, who was serving two consecutive life sentences for the arson deaths of his wife and child in a mobile home fire near Prescott, Arizona. Girdler wrote, "I too am innocent," and asked our firm to help him. We chuckled about the new specialty we apparently were developing and responded with a polite letter declining to become involved.

In short, Ray Girdler persisted, and we eventually agreed to look at his case. What we found was astonishing. Ray Girdler had been convicted of the arson deaths of his wife and daughter on the testimony of the same investigator who testified at John Knapp's murder trial. Lawyers from our firm quickly determined that the arson conclusions in the Girdler fire were even more doubtful than those in the Knapp fire. And in the Girdler case there was no confession, no motive, no Coleman fuel can—only the testimony of an arson investigator who concluded that the fire had not been accidental.

After an extended evidentiary hearing, the Yavapai County judge who had sentenced Ray Girdler to two con-

secutive life sentences ordered that a new trial be held. We then convinced the court to hire an outside expert to examine the evidence of arson. The expert quickly concluded that the Girdler fire had been entirely accidental. He found the Arizona investigator's conclusions of arson to be professionally negligent and morally unforgivable, and recommended in the strongest terms that the charges against Ray Girdler be dropped. The prosecutor agreed.

Ray Girdler, like John Knapp, is now a free man. After spending eight years in prison under consecutive life sentences, Ray now lives in Phoenix, where he is resuming his college studies and recently was promoted to manager of a retail store.

I suspect you would not be surprised if I told you that our firm's defense of John Knapp and Ray Girdler have been among the most satisfying aspects of my law practice. And I did not work on either case. They were handled by other lawyers in our firm. As a partner in the firm I helped to finance the effort, and even that meager contribution has been very rewarding.

I am not here tonight to urge you to take up the cause of death-row inmates. I recount the Knapp and Girdler cases as examples. I have found similar satisfaction from other, less dramatic pro bono projects, such as helping a poor mother of three to fend off an unscrupulous debt collector, assisting another woman in retaining her trailer home, and helping the Arizona state bar in closing down some lawyers who were engaging in patently misleading advertising. What little pro bono work I have done has been enormously rewarding—more so than any other aspect of my litigation practice.

That is why I believe there is a connection between the two developments I described at the beginning of my remarks. It is not a coincidence that dissatisfaction with the profession is reaching its peak at a time when lawyers must, by ethical requirement, be forced to spend even one hour per week helping those in need. Lawyers who lament to the *National Law Journal* that law is becoming more a business than a profession ought to remember these words of Roscoe Pound:

*Historically, there are three ideas involved in a profession: organization, learning, and a spirit of public service. These are essential. The remaining idea, that of earning a livelihood, is incidental. [What Is a Profession? 19 Notre Dame Law. 203, 204 (1944)]*

These words seem out of place, even antiquated, to our modern legal profession—a profession that focuses more attention on earning money than on public service. But remember, that is the same modern profession that lawyers now find quite unsatisfying.

You law students might not recognize it, but as a lawyer you will have marvelous powers. You can open locked doors, break down walls, find solutions to impossible problems. The plights of John Knapp and Ray Girdler illustrate that there are people in our society who find themselves helpless before the law. Without the assistance of a lawyer, these people often are incapable of helping themselves. In today's world of legal complexities, even a simple landlord-tenant problem can become an insurmountable barrier to one untrained in the law. Honest people of modest means often find themselves at tremendous disadvantage in their personal, family, and business dealings when they lack

legal counsel. Those of us who have a monopoly on legal services must provide the assistance if it is to be provided at all.

Thus, whether you're heading for private practice, government service, or an in-house position in business, I believe you will find your greatest professional fulfillment in doing for others what they cannot do for themselves. Charles Dickens once wrote that "any Christian spirit working kindly in its little sphere . . . will find its mortal life too short for its vast means of usefulness" (Dickens, *A Christmas Carol*, 51 (Washington Square Press, 1963)). That truth applies as fully to the practice of law as it did to Scrooge's counting house.

It is my hope that you will undertake your life in the law as Woodrow Wilson counseled, "with a view to the amelioration of every undesirable condition that the law can reach, the removal of every obstacle to progress and fair dealing that the law can remove, the lightening of every burden the law can lift, and the righting of every wrong the law can rectify" (Wilson, *The Lawyer and the Community*, 35 A.B.A.R. 419, 435 [1910]). If that is too tall an order, then I challenge you to accept the ABA's goal of devoting 50 hours per year to helping others with your legal skills. Such devotion will find for you much happiness in the law.

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