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Yale Law School Commencement Address by Professor John H. Langbein

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Yale Law School Commencement Address

May 24, 2004

John H. Langbein
Sterling Professor of Law and Legal History

Ladies and gentlemen of the Class of 2004: Thank you for inviting me to speak on this occasion. It has been a privilege to have taught so many of you, and it is a special pleasure to be allowed to get in one further word before you depart these halls.

The graduation speech is a difficult genre. One of my colleagues told me that he recollects only one graduation speech that was truly memorable. The speaker told the students quite forthrightly that most of them were already corrupt, and that any of them who were not yet corrupt would become corrupt as soon as they had to start paying their own dentists' bills.

I plan to have a slightly more cheerful message.

I want to talk with you today about the legal profession that you are entering, and in particular, about the growing tensions in large-firm practice. I should say at

the outset that I am well aware that many of you have chosen or will choose other branches of the profession. Members of this class will enter government service at all levels. Some will go to work for nonprofits, others for international organizations, corporations, investment houses, and consulting firms. Some of you will become scholars and teachers. Not all of you who go into private practice will be in large firms: Some of you will start with smaller firms, and others who start with large firms will move to careers in smaller firms, as well as to house counsel positions and to the bench.

Because so many of you will spend at least some time in large-firm practice, I thought it might be useful to reflect briefly today about the tumultuous changes that are occurring within that branch of the legal profession. I am pleased to have your parents and family members within my hearing as well, because, if you are wise, you will draw upon their counsel in deciding how to navigate the shoals that I will be describing.

Working for a large firm has many attractions: the chance to develop frontier skills, to work on important matters, and to work for important clients. Large firms facilitate specialization of the sort that is essential as the quantity and complexity of legal regulation grows. Although large law firms are less stable than they used to be, the typical firm still tends to have a well-diversified client base, which provides considerable employment security. And large-firm careers are commonly quite well-paid.

Large-firm practice has been changing, however, in ways that are very

troubling from the standpoint of a young person asking, "Should I lead my life in the law in this way?"

Growth in size of large firms. The most visible manifestation of the changing character of large-firm practice is the astounding growth in the size of these entities. Large law firms are growing much larger. The increasing size and prominence of the firms reflects a shift in the relative demand for legal services, away from individual clients and toward institutional clients, that is, corporations, governments, and non-profits. This trend mirrors the ever-greater role that institutions play in our daily lives. More and more of our goods and services, from hamburgers to health care, come from large national and transnational organizations, in place of the local mom-and-pop providers on which we once relied.

Like the clients it serves, the large law firm is becoming an ever-more national and global institution. As late as the 1930s, when the Sterling Law Building opened and graduation ceremonies were first held in this courtyard, the trend toward institutional law practice was in its infancy. The handful of large law firms had no more than 70 lawyers. Most were in New York City. Into the late 1950s fewer than forty law firms had 50 lawyers or more. As of 1960, less than a dozen firms had 100 or more lawyers. By 1986 there were more than 250 such firms. By 1995 there were 700 such firms, and they employed 105,000 lawyers, representing 16.5 percent of all the lawyers in private practice. In the year 2000, the top 25 firms (top in terms of revenue generated) employed some 23,000 lawyers and had gross revenues of \$13.4 billion.

National practice. A generation ago, law firms were highly place-specific. Even if you went into large-firm practice, you went with a local firm--a Chicago firm, a Los Angeles firm, a New York firm. Your firm had a single office. The trend toward branching, hence toward nation-wide rather than place-specific practice, got underway seriously in the 1970s and has accelerated ever since. I'll take as an example the Jones Day firm, which played an important role in starting the trend. Into the 1970s Jones Day was a Cleveland firm with a small Washington office. Today it also has offices in Atlanta, Chicago, Columbus, Dallas, Houston, New York, Pittsburgh, and five California cities, together with foreign branches in a further dozen European, Middle Eastern, and Asian cities. This megafirm employs more than 2200 lawyers.

Dozens of other firms have experienced comparable branching and growth. The stupendous size of these organizations has come in part from internal growth, and in part from merger. As national practice becomes the new benchmark, regional firms feel ever greater pressure to combine: Witness last month's announcement of the merger of two prominent 500-lawyer firms, the Boston-based Hale and Dorr and the Washington firm, Wilmer Cutler. I regard that merger as a notable event: when firms as well-established and secure as these conclude that they should combine, it is a strong signal that in the large-firm world, the older style of locally-based practice that these two firms exemplified is not likely to survive. The nation-wide law firm is becoming the large-firm norm.

These patterns of law-firm expansion and merger are not confined to the

United States. In Canada, in the U.K., in much of Europe, and now in the Far East, we see increases in the size and in the geographic reach of law firms.

Understanding the rise of the megafirm. Behind this vast change in the scale of law firms are three dominant forces: technological change, the triumph of market economies, and the growth of legal regulation. Let me say just a word about each.

(1) Modern communications and information technology has allowed the coordination that makes possible such complex and far flung law firms. Technological change also lies behind many of the legal problems of the clients whom the firms serve.

(2) The expansion of market economies has also shaped the advance of great law firms. Over the last quarter century, there had been an historic world-wide spread of market-based economic and political organization. Part of what we mean when we speak of globalization is this phenomenon of a world-wide consensus that private ordering is the superior way to produce goods and services. Private ordering requires private lawyers. Markets work by means of deals, and it is lawyers who both shape deals and litigate the ones that go sour.

(3) The single greatest driver in the growth of the firms has been the vast increase in government regulation over the past two generations. Just a generation ago, many industries ranging from automobiles to universities--industries that are today highly regulated--were then still largely unregulated. The example that

resonates with me, because I teach the field, is pension and employee benefit law, now a huge field of federal regulatory law that effectively did not exist until Congress enacted ERISA in 1974.

In the American setting, the trend toward more regulation contains another trend, toward federal, hence national regulation. The shift from local to national law firms is intimately related to the growth of federal law and the atrophy of state authority in so many fields. Likewise, the movement to global law firms reflects not only the rise of global markets, but also the growing importance of transnational legal regimes, such as the European Union and the World Trade Organization.

Thus, the burgeoning of law-firm size mirrors the burgeoning of law itself, just as the national and global reach of the firms increasingly reflects the national and international reach of the clients that the firms are serving.

An internal dynamic also has also been fueling law-firm expansion: Law-firm finance makes it profitable for partners to lever themselves against ever-larger numbers of associates. Leverage entails partners charging clients more for the work of associates than the partners pay the associates; the partners pocket the spread (after overhead). But to incentivize associates under that system, associates must have a reasonable prospect of advancement to partnership, which pressures the firms to make more partners, who then need to lever themselves against more associates, and on and on.

Organizations as successful as the great law firms are obviously doing a lot of things right. The firms are delivering services that their clients want, and in the process, they are facilitating the rule of law. Law does not work unless it is obeyed, and most clients have powerful incentives to obey. Much of what law-firm lawyers do is to help their client institutions ascertain, understand, and obey the law. In this way, the private practice of law plays a vital role in our greatest public achievement, which we call the rule of law. It is not surprising, therefore, that so many of our graduates find that a career with one of the great law firms provides a deeply gratifying life.

Drawbacks: Commercialism and overwork. But I must now turn to the dark side of the rise of the megafirm. When you join a 2000-lawyer law firm, you enter a situation whose interpersonal dynamics are quite different from a small-town law office. A little over a decade ago Dean Kronman published an important book in which he spoke about the struggle between older values of professional service and the pressures toward commercialism in large-firm practice. In a large, hierarchically organized, profit-making institution, the sense of personal mission recedes. Commercialism tends to prevail, in part because things like billable hours and profits per partner supply an easy, objective metric of success. The sense that lawyers are officers of justice, with a responsibility to seek and serve the public good, becomes much harder to sustain in that environment.

The most worrisome change in big-firm practice has been the lengthening of the work day and the work week, manifested in the pressure to increase billable hours. In some firms this pressure has undercut the training responsibilities that

senior lawyers have traditionally assumed when hiring beginners. Working night and weekend hours has become ever more a routine, rather than an exceptional response to a case that is on trial or to a deal that is in the final stages.

It is hard to disentangle the causes of the growing time demands of big-firm practice. The cynical view is that sheer greed is what drives the firms--the harder everybody works, the more money there is for the bosses. But there are other factors. Law-firm hours are affected by the 24/7 pace of modern commerce. When your clients are in Hong Kong and Hamburg as well as in New York, and when their affairs are so consequential, the pressure to serve those clients long and hard inheres in the nature of the practice.

Nevertheless, patterns of overwork of the sort that have become common in many large law firms over the past two decades strike me as transparently wrong. These patterns cause grievous disruption to family and personal life, they foreclose opportunity for lawyers to participate in public and community affairs, and they intrude upon the potential for religious and cultural fulfillment. In short, these workloads diminish the lives of those who lead them.

Feminization as the counterforce. The excessive time demands characteristic of large-firm practice weigh disproportionately on women, who tend to be the primary caregivers for children and sometimes for elderly parents. The struggle to get the firms to rethink these hours is largely being led by women. Indeed, the growing feminization of the legal profession is the most important counterforce that is coming to bear against the ethos of overwork that pervades so many large

firms. I think that a legal profession that is 40 to 50 percent female, which is where we are headed, is not going to tolerate 55- and 60-hour work weeks. But we need to understand that this is not a gender issue, it's a quality-of-life issue. The simple point is that the extra revenue generated by such work patterns is not worth the human toll.

Yale Law School graduates are enormously talented people, you have much to give in all the dimensions of your life. I urge you to be forthright with yourself and with prospective employers about your determination to live a multifaceted life, a life that includes devotion to family and to public service. If you keep your heart and your soul, you will be a much better lawyer.

Career foreshortening. There is one other dimension of large-firm practice that you should begin to think about at the outset of your career. We are just beginning to understand that large-firm practice is producing an astonishing foreshortening of the professional career. A generation back, law firm partnerships were genteel, life-long positions. Today, the presumptive retirement age in large-firm practice is about age 55. According to data gathered by Marc Galanter of the University of Wisconsin, the foremost empirical scholar of the legal profession, in firms of 100 or more lawyers, only 1 partner in 8 is over age 55.

"Increasingly," says Galanter, "large-firm practice has become a young person's game." The reasons for this trend to early retirement are by no means well understood, but three factors stand out: (1) the intensity of the workloads cause people to burn out; (2) the pyramidal structure of the firms puts pressure on senior

partners to make way for successors; and (3) the financial rewards of large-firm practice facilitate these early departures.

There thus arises the question which we are only now beginning to confront: What will these able and experienced lawyers do with the second half of their lives? If the time demands of large-firm practice become so extensive that they isolate the lawyer from developing interests and responsibilities outside of practice, how will the lawyer be able to make constructive use of his or her talents across a decades-long retirement?

The danger, in other words, is that we are developing a large-firm career pattern in which you are expected to work yourself to exhaustion for 25 to 30 years, in order thereafter to experience an arid idleness for a further 25 or 30 years.

My message to you, my purpose in troubling you about these trends on this happy occasion, is to caution you that in the career choices that lie ahead, you must be clear-headed and determined about what is right for you. I hold the practice of law in the highest regard. It is a noble calling, full of opportunity to make a difference for the better. As the current law firm mergers underscore, the ultimate shape and character of the large law firm is still very much a work in progress. Your generation will have much to say about how the firms strike the balance among the competing values of commercial reward, professional service, and the integrity of personal and family life. There are hundreds of large firms and tens of thousands of smaller ones. Here as elsewhere, competitive markets work. If you insist on a career in which commercialism is tempered by regard for other values,

you will achieve it.

The evidence of experience from our graduates who have preceded you in law practice is that becoming a master of some vital area of the law will prove as interesting and exciting and gratifying as anything you have ever done. Some of the thrill of mastering difficult real-world law is quite akin to the fun side of law school--the sheer intellectual challenge of working at the frontier. But there is another dimension to being a master lawyer: that your career can provide you with so many ways to live a life of consequence for others.

Lives of service. We celebrate your achievements today, your hard work and personal accomplishment. But you must also acknowledge that you are enormously privileged people--privileged in your choice of parents, privileged by intellect and education, by good health, by love and friendship, and by so much more. The price of privilege is duty. The Yale Law School expects of you that as you shape your career in or near the law, you will bear in mind the needs and the troubles of those upon whom fortune has not smiled. You are the ablest of your generation. Do not leave this courtyard without resolving in your heart that yours will be a life that transcends selfishness, a life in which your talents are brought to bear incessantly to improve the lot of others and the world around you.

We send you forth with enormous pride. May the blessings of Providence abide with you, and may you walk in the paths of righteousness all the days of your lives.