

*The Leon Jaworski
Public Program Series*

Program I

Representing the American Lawyer as Reformer

Reform is at the heart of our legal culture because it represents the intersection of reason and will, which are thought to be the twin sources of a legitimate legal order.

Paul Kahn

May 1, Law Day 2001

5:00 p.m. – 7:30 p.m.

Library of Congress



Program I

Representing the American Lawyer as Reformer

FRAMING QUESTIONS

- ❖ *How, specifically, has *lega*/reform been understood in the American context? What is its dynamic? What are its guiding principles and values?*
- ❖ *How has legal reform been understood and represented as expressing popular will, exercising reason, or realizing justice?*
- ❖ *Where does “lawyers’ reform” take place (e.g., litigation, adjudication, legislation, public opinion and media, ethics, legal practice and technology)?*
- ❖ *What are the fundamental attributes that characterize the American lawyer as reformer? Who are exemplary models? Why?*
- ❖ *How have representations of the lawyer as reformer changed throughout American history?*

Program of the Evening

Presiding

Hon. William S. Sessions, National Law Day Chair

Welcomes

Allan J. Tanenbaum

Chair, ABA Standing Committee on Public Education

Rubens Medina

Law Librarian of Congress

Gail Leftwich

President, Federation of State Humanities Councils

Tedson J. Meyers

Chair, ABA Standing Committee on the Law Library of Congress

Moderator

Bernard Hibbits

Professor of Law, University of Pittsburgh School of Law

Panelists

Maxwell Bloomfield

*Professor of History and Law Emeritus,
Columbus School of Law, The Catholic University*

Lani Guinier

Professor of Law, Harvard Law School

Ronald Rotunda

Albert Jenner Jr. Professor of Law, University of Illinois College of Law

The Leon Jaworski Public Program Series
Representing the American Lawyer as Reformer
Program I

Moderator

Bernard Hibbitts is Professor of Law at the University of Pittsburgh School of Law and Director of Jurist: the Legal Education Network <http://jurist.law.pitt.edu/>, the nonprofit public portal to legal learning on the Internet. He also holds an appointment in the Program for Cultural Studies. A recipient of several teaching awards, Prof. Hibbitts teaches courses in legal history and in the legal application of new technologies. In his classes he takes an interdisciplinary approach, exploring the philosophical and social contexts of law and legal change. His research interests include media and cultural studies, and he has written on the language, images, and “modal metaphors” of law (such as those of sight and sound). Prof. Hibbitts has published in *Law and History Review*, the *International Journal for the Semiotics of Law*, *American Ethnologist* and *Wired* magazine. He clerked for Justice Gerald LeDain of the Supreme Court of Canada. Prof. Hibbitts received a BA in Jurisprudence from Oxford University, where he was a Rhodes Scholar, and LL.M. degrees from both the University of Toronto and Harvard Law School.



Panelists

Maxwell Bloomfield is Professor Emeritus of History and Professor Emeritus of Law at the Columbus School of Law at Catholic University in Washington, D.C. He has published widely in American legal and cultural history, including books on American lawyers in a changing society (1776–1876), law and American literature, and, most recently, *Peaceful Revolution: Constitutional Change and Culture from Progressivism to the New Deal* (2000). Prof. Bloomfield has also written numerous articles and book chapters on such topics as the historical development of the legal profession and the bar, roots of legal reform, the self-image of the American bar, constitutional values and the literature of the early republic, “Atticus Finch,” and popular images and architecture of the Supreme Court. He was twice elected to the Board of Directors of the American Society for Legal History. Prof. Bloomfield received his undergraduate degree from Rice University, law degree from Harvard University, and PhD in American history from Tulane University.

Lani Guinier is Professor of Law at Harvard Law School. Prof. Guinier’s fourth book, *The Miner’s Canary*, is forthcoming this year. Her primary teaching and writing interests include voting rights, democratic theory, law and social change, and the legal profession and the responsibilities of public lawyers. She co-founded the Racetalks Initiative, a research and public education project that seeks to develop new interdisciplinary paradigms for linking racial and gender justice to the project of building more inclusive institutions. Prof. Guinier was Assistant Counsel for the NAACP Legal Defense Fund in the 1980s and worked in the Civil Rights Division of the U.S. Justice Department in the late 1970s. She was on the faculty of the University of Pennsylvania Law School for ten years before coming to Harvard in 1998. Prof. Guinier received her BA from Radcliffe College and JD from Yale Law School.

Ronald Rotunda is Albert E. Jenner Jr. Professor of Law at the University of Illinois College of Law. His teaching and writing have been in the areas of constitutional law, legal ethics, professional responsibility, the politics of language, law and popular culture, and the public image of lawyers. Prof. Rotunda has written more than 200 articles on diverse legal, political, and cultural issues in newspapers, journals, and law reviews and has frequently been interviewed on radio and television. He has served as a legal consultant to emerging democracies, was advisor to Independent Counsel Kenneth Starr, and was Assistant Majority Counsel to the Senate Watergate Committee. Prof. Rotunda has been a member of various ABA committees on professional responsibility and ethics and is a graduate of Harvard College and Harvard Law School.



Representing the American Lawyer as Reformer: A Prospectus

Prof. Bernard J. Hibbitts

University of Pittsburgh School of Law

Americans have represented lawyers in many ways: lawyers have been “hired guns” and “heroes,” “tricksters” and “champions,” “servants” and “shysters,” “protectors” and “parasites,” “counselors” and “ambulance chasers,” “villains” and “healers.”

All of these terms are metaphors—words that define lawyers, in this instance, by identifying them with supposedly analogous occupations or activities literally undertaken by others. Metaphors are extremely powerful vehicles of thought and expression. They help us understand by highlighting aspects of things that evoke meaningful and memorable mental images. Equally, however, they can distort meaning and undermine understanding by distracting us from other aspects of things not captured or suggested by a particular metaphorical expression.

The focus of this short essay is the lawyer as “reformer,” as presented and represented in American professional and popular culture. A reformer is literally someone who takes something already in existence, re-shapes it, and thereby theoretically enhances it. He or she is not someone who creates something from whole cloth or alternatively obliterates something, although certain measures of creation and destruction are necessarily implied in the process of reformation. At the same time, to reform something implies more than innocently adjusting it—the change effected is in some way intended to be for the better.

“Reform” itself has had an interesting etymological history. The term appears for the first time in written English in the late 17th century, but even at this relatively late stage it has a somewhat ambiguous connotation. Certainly in the Middle Ages and for some time afterward, reform was not

necessarily a good thing, as it involved departing from past traditions and practices, which to one degree or another had stood the test of time. As European culture entered the 18th century, however, social attitudes to change became more positive—philosophers and scientists began to talk approvingly, even enthusiastically, of “progress” and “improvement,” and as they did so, “reform” was seen as much more benign. Not coincidentally, the term began to crop up in the titles of an increasing number of books, where it was clearly intended to attract rather than repel potential readers.

Lawyers as Reformers in American History

In this environment, it comes as no surprise to discover that since the beginnings of the Republic, a number of American lawyers have certainly regarded, presented, and conducted themselves as reformers. They have been drawn to legal reform by a sincere interest in and commitment to justice and equity: law, they have held, can always be made fairer. They also have been drawn to reform by their fundamental belief in democracy, holding that law by the people and for the people should be accessible and understandable to the people. Finally, they have been drawn to reform by a professional appreciation of efficiency, holding that law works best when it works quickly, easily, and cheaply.

These attractions to legal reform are all altruistic. We must also acknowledge, however, that American legal reformers have also been lured by self-interest, recognizing the benefits that legal reform could bring them as members of a professional class. A law that was more just and equitable could by association enhance their own social status and significance. A law that was more accessible and usable could potentially bring them more business. A law that was less encumbered by long and awkward procedures could be easier for them to operate and administer. Moreover, the enterprise of reform as pursued by attorneys could have salutary political and moral benefits for the legal profession. Legal reform by lawyers might pre-empt legal reform by legislators motivated by different concerns and sensitive to different issues; the bar’s power would be preserved and even magnified, while that of elected officials would be diminished. Legal reform could keep lawyers on an elevated moral plane by distracting them from crass commercialism, ensuring that legal practice remained a public service and did not become a slave to commercialism. Last, but certainly not least, legal reform could disarm the bar’s critics, by being what one perhaps cynical commentator has called “a banner of rectitude waved in the public eye.”

These various urges to reform have tended to ebb and flow into each other more than they have played out in any kind of coherent historical sequence,

although circumstances have at times thrown one or another into higher relief. Concern with democracy, for instance, tended to animate lawyer-reformers in the Jacksonian era, while reform as a refuge from commercialism surfaced in lawyers' rhetoric in the post-World War II boom.

Of course, none of this implies that every American lawyer has held himself or herself out as a reformer. Many have preferred to present themselves in other ways, explicitly or implicitly relying on other metaphors that are more fulfilling or compelling. This says something about the attractiveness of those metaphors and how they—as opposed to the model of “reformer”—mesh with important and even essential elements of the lawyer's self-image, a subject that I'll return to later. The less-than-universal attraction of the reformer label also says something about the continued ambivalence of “reform” in a legal profession that is historically notorious for its devotion to tradition and its instinctive dependence on precedent and past practice as guides to future behavior. Last but not least, American lawyers may have rejected the epithet of “reformer” for themselves because of ongoing professional and public uncertainty about the precise meaning of “reform.”

“Law Reform”

Indeed, over the past 200 years in the United States, legal reform has meant many things. First of all, it has—for lawyers at least—meant “law reform” in the narrow sense of that term: organized professional initiatives to change the law defining and affecting the operation of the legal system itself. Lawyers advanced this kind of legal reform almost immediately in the wake of the Revolution. After the break from Britain, the American legal system needed to be set on its own feet, and that provided, in theory, an opportunity to remedy some of the traditional deficiencies of the English common law system. Among those deficiencies were the common law's uncertainty and inaccessibility, resting as it did in relatively unavailable volumes of hard-to-read law reports. Men such as William Sampson in the 1820s and David Dudley Field in the 1840s argued that broad codification of American law would make law available and comprehensible to all Americans. Codification would also afford an opportunity to rationalize and systematize a law that had, in its English form, been built up piecemeal over centuries and that, in the process, has produced awkwardly redundant structures, such as the dual courts of law and equity.

These initial proposals for overhauling the American legal system were not, however, embraced by the majority of the American bar. Many lawyers, trained to respect and even worship the common law, were hesitant to convert it to a comprehensive code that they feared would be too brittle, too nar-

row, and, perhaps, even politically suspect, drawing deeply as it did from the fount of European jurisprudence. Waxing poetic, one early 19th-century American attorney expressed his reservations in a Shakespearean idiom:

A code, or not a code—that is the question!
Whether 'tis better in the law to suffer
The flaws and defects of numerous practiques,
Or to take arms against a sea of troubles,
And, by revising, end them!—To Prune—to change—
No more! And by a code to say we end
Abuses and the thousand natural pests
That law is heir to: 'tis a consummation
Devoutly to be wished—To prune—to change—
To change, and perhaps destroy! Ay, there's the rub!
For in that sleep of law what ills may come,
When we have shuffled off the dreadful plague,
Must give us pause ...

Rather than rejecting the project of “law reform” out of hand, however, reformers such as Sampson and Field rhetorically disarmed the codifiers by representing the common law as inherently reformative. This they accomplished by emphasizing the common law’s ability to adjust to changing circumstances and by creating substitutes, in the form of treatises or limited codifications of, say, procedural law, that, while useful means to rationalize and democratize law, were less politically or intellectually threatening.

With the steam taken out of it in this fashion, narrow law reform became somewhat less ambitious, becoming an exercise of tidying up the law at its margins rather than reforming it from the inside out. Large-scale codification exercises were abandoned; instead, law reformers in the later 19th century were more interested in improving the law by improving the character and education of the profession and by making diverse laws uniform. The American Bar Association was established as an exercise in self-improvement in 1878; in 1892, the ABA established a National Commission on the Uniformity of State Laws. Mini or model codifications meanwhile continued apace, culminating in the 20th century in the American Law Institute’s Restatements, the Uniform Commercial Code, and the Uniform Probate Act.

Law, Reform and Social Change

As the goals of professional law reformers changed, a new type of lawyer—the academic lawyer—stepped into the breach created by the professionals’

retreat to craft and technique. The academics began to advocate legal changes that had wider implications. They certainly shared some of the altruism that had animated the first generations of professional law reformers, but they also had their own reasons for gathering under a reform banner. First of all, legal reform was a way in which they could define themselves—after all, they were a new class of lawyer and they needed to present themselves to each other and to the public as having a distinct mission. Legal reform and the public service that it overtly constituted provided that mission, and in the process served to distinguish the legal academics from the professionals against whom they were to a significant extent competing. Recall that during this period law students could get training either from the law schools or in lawyers’ offices under the old apprenticeship system. In 1906, the University of Pennsylvania’s William Draper Lewis bemoaned the “total absence of any idea that there exists any obligation on the part of the Bar towards the community.” Yale’s William Vance contended that the willingness of law teachers to adapt law to social need led practitioners to “fear the college professor as a reformer.”

Academic legal reform—or at least academic law reform—might in some sense be traced all the way back to Harvard Law School Dean Christopher Columbus Langdell, who after 1870 took a somewhat haphazard system of academic legal instruction and made it more rigorous by introducing case-books and the case method, written examinations, and the modern three-year law school term. In both his teaching and his writing, he worked hard to re-categorize American law on the basis of a limited number of principles identifiable through induction from specific precedents. In a sense, this was codification by other means, although it is rarely discussed as such. The academics who are most commonly identified with more overt and wide-ranging reform came after Langdell and rose to prominence in the early 20th century: Roscoe Pound, Felix Frankfurter, Benjamin Cardozo, and Karl Llewellyn, all of whom used the law school as a platform from which to agitate for some degree of legally induced social change.

Despite the bar’s narrowed perspective on traditional law reform, the academics’ interest in using law to accomplish potentially wide-ranging social change was shared by at least a few lawyers. Individuals such as Belva Lockwood, the first woman to be admitted to practice before the United States Supreme Court, campaigned aggressively for women’s rights; her progressive social ambitions were shared in the early decades of the 20th century by men such as Louis Brandeis, Clarence Darrow, and Charles Hamilton Houston, who favored workers, championed social reform, and fought systemic discrimination inside and outside the courtroom. Brandeis

pioneered a new style of brief (“the Brandeis brief”) that allowed him to make background statistics and sociological information part of his legal arguments. Darrow took on religion in the name of modern science by defending John Scopes in the famous “Monkey Trial” on the teaching of evolution. Houston mounted a legal assault on the South’s Jim Crow laws. After World War II, their legacy was carried on by civil rights lawyer Thurgood Marshall, “movement” lawyer William Kunstler, consumer activist Ralph Nader, poverty law attorney Morris Dees, and others.

These men and women, however, were exceptional. Even more so than when it had looked askance at the agenda of traditional law reform, the majority of the American bar effectively opted out of social reform, even at the height of Progressivism and, later, the radical 1960s. Even in the law schools, reformist agenda went out of fashion or at least failed to survive long past reformist moods in society as a whole.

Reform and the American Public

Why? What “went wrong”? Perhaps social reform was too much of a professional “reach” for lawyers: not only were social circumstances of less immediate concern to legal practitioners and law teachers than the condition of the legal system, but those circumstances were further from their immediate control. Moreover, in pressing for reform, lawyers of all sorts had to work with other groups and deal with other problems. This made the needed effort greater and the chances of success less. Direct incentives to get and stay involved in reform were therefore lacking. The more radical reform enterprise attracted only the most ambitious and socially conscious individuals. Even if they made high-profile progress towards reform, a number of them displayed maverick characters and perspectives that sometimes made it hard for their fellow professionals to work with them, ironically limiting the very success they were beginning to enjoy. This point may apply to Nader today, has recently been made about Brandeis, and, going back into the 19th century, might even say something about David Dudley Field, reputed by some contemporaries to have been combative and self-righteous.

The relative failure of more socially ambitious legal reform should give us pause, however, for it may reveal a number of under-recognized truths about lawyers and their social role. After all, why should lawyers think that they—an unelected, perhaps over-educated professional class—should or can shape society as they wish? Doesn’t this reflect an overweening arrogance about their own role in, or significance to, society? Or does it mean that to some extent lawyers, as creatures of society, can’t help it—that some of them turn into reformers because they absorb the ethos of the society around

them, and they happen to have their hands on a lever that might plausibly make a difference (although many sociologists would testify that law may in fact make a bad or at least an inefficient mechanism for social change)?

If American lawyers have not always enthusiastically engaged in reform or represented themselves as reformers, the American public has concomitantly tended to ignore or deprecate most lawyers' reform efforts and has tended almost by default to reject lawyers' self-representation as reformers. Why has this happened? In the first place, legal reform in the sense of "law reform" has traditionally had very little to do with the public—it has involved lawyers talking about improving aspects of the legal system that are primarily lawyers' concerns. Faced with legal agitation to systematize or codify the law, the American public has generally been acquiescent, but hardly enthusiastic. At the same time, law reform has been damned by many members of the public as not going far enough—in contemporary American culture, populist law reformers (generally not lawyers themselves) have rejected the term "law reform" in favor of a "legal reform" that is more wide-ranging, challenging the practical monopoly of the legal profession over legal practice. As for social or political reforms advocated and even organized by lawyers, they have been more interesting to the public. In many instances, however, the public does not see the lawyers leading those charges as lawyers. Working for change within government, they are regarded as legislators or public servants (such as the many lawyers who served the New Deal and Great Society), or, outside the government, as civic activists (such as Ralph Nader).

Lawyers in Popular Culture

In the meantime, lawyers are generally seen by the public in other terms, through other metaphors. Somehow those are more persuasive: the lawyer as gladiator, hired gun, hero, trickster, champion, etc. Just look at how lawyers are represented in American popular culture: television, film, and literature. In writing this essay, I have in fact been struck by the relative absence of representations of the lawyer as reformer in these environments. Is Raymond Burr's Perry Mason a lawyer-reformer? What about the legal protagonists in the work of John Grisham, Scott Turow, or Lisa Scottoline? Not really. Certainly in books, TV, and movies, lawyers are frequently cast as courtroom crusaders for the innocent or the oppressed, and they use law to right wrongs committed against their clients by corporations, the state, or a corrupt or oppressive "system." They are, however, individuals largely campaigning for other individuals, and their courtroom bravado tends to accentuate their technical prowess rather than some overarching or fundamental

commitment to change. Having said this, a number of productions over the years have attempted to draw more attention to the social and, at least potentially, reformative aspects of lawyering—in the 1960s, for example, E.G. Marshall grappled with the death penalty, abortion, and blacklisting on “The Defenders,” and, in the 1980s and early 90s, the lawyers of “L.A. Law” handled cases involving surrogate motherhood, euthanasia, police racism, and other controversial issues then in the news. Both shows inspired generations of would-be law students. Even in them, nonetheless, the attorneys played very limited, largely technical roles, and their struggles were not so much to achieve reform, as such, as they were to protect their clients or (in the case of “L.A. Law”) remain ethical and self-fulfilled in a law firm.

What does this say about legal reform? Does it mean that it—and especially its “law reform” variant—tends to make bad drama, bad television, or bad film because it is too rarefied, too specialized, too technical, too limited—or too often focused outside of the courtroom? Probably. The movie *The Making of the Uniform Commercial Code*, starring Robert Redford as Professor Karl Llewellyn, will not be playing in theaters anytime in the near future. At the same time, the figure of the lawyer as reformer dedicated to social change arguably lacks the popular verisimilitude necessary for it to work easily or consistently—except perhaps during periods when the cause of reform is embraced by a significant segment of society at large, and society wants to see lawyers in its own image—sometimes accurately, and perhaps sometimes, not.

In the face of these unfortunate or somewhat discomfoting realities, what is to be done? Perhaps the answer is nothing. Perhaps we should be unconcerned about the disconnect between professional and public representations of lawyers and even go so far as to suggest that successful, workable legal reform is best carried out by lawyers committed to the enterprise who are able to work unencumbered by what the public may or may not think of them.

If, however, we say that the disconnect between professional and public perceptions does matter, and we reject the somewhat defeatist suggestion just made, how do we reconcile the representations of these two different constituencies? I suppose reconciliation could work both ways. We could, for example, use the weakness of the lawyer as reformer model in popular culture to take lawyers down a peg or two, perhaps saying that the public, more than attorneys, realizes the limitations on lawyers’ ability, as a class, to accomplish meaningful legal and social change. There may be something to this, although the medicine might be somewhat unpleasant for a group that is used to feeling empowered rather than disempowered.

The Model of the Lawyer as Reformer

But accepting for the moment that the self-representation of American lawyers as reformers is valid and useful to both lawyers and the public (at least potentially), what can and should be done by lawyers to encourage citizens to pay more attention to this model of lawyerly conduct and give it more credence?

Ultimately, this is a question that every lawyer should consider for herself or himself; here I merely wish to suggest, as “food for thought,” a few possible strategies that come to my own mind. First of all, lawyers should not only talk the talk of reform, but walk the walk. In other words, if lawyers’ representation of themselves as reformers is to be persuasive, their actions and activities must support their protestations that they are reformers and should be regarded and supported as such. Maybe this means that lawyers should refrain from public actions and activities—from crasser types of advertising to courtside grandstanding—that lead citizens to embrace other less favorable models of lawyering. The process of conceptualizing the lawyer is not a zero-sum game, but what lawyers do outside the reform context significantly affects how they are seen within that context.

Even the giants of the American law reform tradition have arguably suffered from the side-effects of their other less-reform-oriented legal work. The epitaph on the tomb of David Dudley Field declared that

He devoted his life to the reform of the law;
To codify the common law;
To simplify legal procedure;
To bring justice within the reach of all men.

and yet, as historian Arthur Schlesinger Jr. has pointed out, Field was an “unusual reformer” who in his regular practice was a “mouthpiece for Jubilee Jim Fisk, Jim Gould and Boss Tweed,” individuals who came to symbolize corruption and graft and everything that *needed* reform in late 19th-century America. Should Field have been more circumspect in his clientele—or is this tension between roles inevitable for professionals who must at certain points defend unpopular people and causes?

More positively, maybe entrenching the model of lawyer as reformer in the public psyche means moving beyond narrow law reform to legal reform with a more obviously social edge, which is easier for the public to identify with and is less likely to be seen as self-serving. And maybe it also means giving such larger exercises more of an institutional push. Perhaps law firms should broaden the definition of “pro bono” work to include more out-of-

court activity in the public interest, while at the same time rewarding that activity within firms by more than just a nod. Perhaps law schools should take the traditional triumvirate of “teaching, scholarship, and service” and put some real weight on the last of those components, as opposed to paying lip service to it while focusing on the other two (or, some would say, on the second one).

There is also something to be said for bridging the current gap between lawyers as reformers and non-lawyers as reformers. After all, lawyers are not and never have been the only people interested in reforming the American legal system or using American law to accomplish social change. Yet lawyers have had an uneasy relationship with non-lawyer reformers—largely because of the generally critical, even occasionally abolitionist stance the latter has taken toward the American legal profession. But that should not preclude a dialogue that might help to educate American legal professionals, while it might allow lawyers to appear to civic exponents of legal reform as something more than simple bogeymen. Or maybe supporting and promoting the model of the lawyer as reformer means doing a better job of explaining what lawyers already do by way of promoting legal and social change.

This leads us directly to the challenge of public legal education, not in the formal sense of classes, lectures, and grades, but in the informal sense of outreach. This essay and the ABA event associated with it are one form of that outreach. In this day and age, however, outreach is something that members of the bar at large are increasingly capable of doing individually—if not personally, at least virtually. The Internet and the World Wide Web provide public platforms where lawyers can not only engage in business development, but shape and re-shape the way in which citizens regard them. Never has it been so easy for so many to find out so much about what lawyers do and who lawyers are. We should take advantage of this technological opportunity to provide reliable information and needed services, to interact with clients and citizens so as to make law less remote and threatening, and to use our electronic presence and, dare I say it, power in this age of the “digital divide” to organize and lead initiatives that have the potential of making a real difference in people’s lives. Then the title of reformer will be one that lawyers not only claim on public occasions, but will truly be seen to deserve.



The Leon Jaworski Public Programs

Representing the Lawyer in American Culture

SERIES OVERVIEW

The series is devoted to an examination of how lawyers are, and have been, represented in American culture. The premise and orientation of the series is that, because of the seminal role that law and lawyers play in American culture, exploring fundamental legal identities and attributes will help elucidate who we are as Americans. In considering “law” culturally as an integral part of the humanities, the series focuses on how we can better understand these representations and the meaning they have for us. Ultimately, the frame of reference is how these subjects explicate American mores—what Tocqueville characterized as the habits of heart and mind that represent “the whole moral and intellectual state of a people.” With respect to the five different attributes explored by the series, each of the public programs will consider how the American lawyer has been represented in art, literature, legal and other texts, artifacts, and media culture. The panelists will reflect on legal identities and attributes drawn from both historical and contemporary cultural practices.



Forthcoming Programs

Program II: Representing the American Lawyer as Celebrity

(August 4, 2001)

How have we represented and understood the American lawyer as celebrated? How do publicly recognized—“celebrated”—lawyers act? How are they perceived by others? *Which* lawyers are “celebrated,” e.g., lawgivers, trial lawyers, judges, civil rights lawyers, “TV” lawyers? How has this changed historically? What has been the impact of media culture on our representations and understandings of the “famous” lawyer? How have lawyers represented and understood themselves as celebrated? Who exemplifies the American lawyer as celebrity—as famous? What do our various representations of the lawyer as celebrity tell us about lawyers’ professional identity, our legal culture, and, more broadly, ourselves as Americans?

Program III: Representing the American Lawyer as Judge

How have we represented the American judge as embodying the democratic rule of law, the relationship between law and governance when the people are sovereign? How have we represented and understood judges in the process of becoming—and being—judges? How have we represented their essential qualities? How has this changed historically? How are our representations of the judge and adjudication dependent on those of the lawyer and of lawyerly qualities? On the judge’s independence from the lawyer in particular and “independence” from—what and whom—more generally? Who exemplifies the lawyer as judge in American culture?

Program IV: Representing the American Lawyer as Rhetor

How have we understood, in a cultural and historical sense, the law as rhetorical and lawyers as rhetors? How has this been depicted in specific cultural practices? How have we understood—variously, if not ambivalently—the relationship between language and truth expressed through legal rhetoric? Who is the model for the American lawyer as rhetor, a master of persuasion?

Program V: Representing the American Lawyer as Citizen

Thomas Jefferson argued that the American lawyer must aspire to be a “public citizen.” This phrase is echoed today in the language of the profession’s ethics codes, such as in the preamble to the ABA Model Rules of Professional Conduct. Is the American lawyer as citizen simply aspirational? How does the American lawyer’s legal identity relate to her civic identity—and vice versa? What are the ties that bind—or separate—the “lawyer” and the “citizen” in our law-based democracy? Who exemplifies the American lawyer as citizen? How has the American lawyer as citizen been represented culturally?



Representing the American Lawyer as Reformer

PROGRAM PARTNERS

ABA Standing Committee on Public Education mobilizes the resources of the American Bar Association to promote public understanding of law and the legal profession.

Law Library of Congress, established in 1832, provides research and legal information to the U.S. Congress, federal courts, and executive agencies and offers reference services to the public.

ABA Standing Committee on the Law Library of Congress supports efforts to maintain and enhance the collection, functions, and services of the Law Library of Congress and helps it to best meet the needs of the legal community.

Federation of State Humanities Councils is the membership and advocacy organization of the 56 state and territorial humanities organizations.



About Leon Jaworski

As president of the ABA in 1971, Leon Jaworski established the special committee that was the genesis of the Association's Division for Public Education. In 1983, a bequest from his estate generously established the Leon Jaworski Fund for Public Education, which continues to support annual public programs, such as this one, devoted to furthering public understanding of law and the legal system.

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Reform is at the heart of our legal culture because it represents the intersection of reason and will, which are thought to be the twin sources of a legitimate legal order. The legal order should satisfy a standard of reason; irrationality in legal rules and procedures always appears as a deficiency in need of correction. The legal order should also satisfy a standard of will; law should be a product of popular consent. Law that appears to make no contact with popular will, either past or present, is as problematic as law without reason. The ambition of law's rule in a democratic polity is to reach a coincidence of will—popular consent—and reason. Because this ambition is never fully and finally achieved, at every moment law stands in need of reform.

*Paul Kahn, *The Cultural Study of Law**



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