CHALLENGES THAT AMERICAN LAWYERS WILL CONFRONT IN THE TWENTY-FIRST CENTURY

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THE JUDGE STERRY WATERMAN LECTURE AT VERMONT LAW SCHOOL

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I cannot think of or even imagine a more appropriate role model for the students at Vermont Law School than the late Judge Sterry Waterman. He always exemplified for me the distinguished and devoted attorneys who have brought dignity and respect to the bench and the bar of America. I hope that someone will write a book about the life and career of Judge Waterman—especially about his jurisprudence when he was for many years on the Second Circuit Court of Appeals.

Judge Waterman was a veteran of the work of the Uniform Commissioners of Laws where he labored for years to bring consistency to the laws that govern our states. He enhanced his career and his illustrious service to the judicial system by his devotion as one of the founders and president of this evermore prestigious law school.

What Judge Waterman sought to bring to Vermont Law School has been realized and was expressed eloquently in the following moving words by the fifth Dean of Vermont Law School, Max Kempner. Listen to these words uttered on the occasion of the investiture of Dean Kinvin Wroth: "This is a place where the rule is cooperation not destructive competition, where personal integrity still counts, where people care for and help each other, where individuals are not swallowed up in urban anonymity, and where the genuine joy of disciplined learning prevails."[1]

I want to talk with you about three things. First, what radical and astonishing changes will come in the next several years; second, what lawyers must do in the coming century; and third, what we as American attorneys can do to fulfill the historic role which American law has always had in the development of the modern world.

I. THE END OF THE TWENTIETH CENTURY

In a very brief time a new millennium will be upon us. It is almost like the end of the Roman Empire or the Middle Ages. Spectacular and unprecedented changes will completely alter our way of looking at the

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1. Maximilian W. Kempner, *Legal Education in Vermont*, 21 VT. L. REV. 375, 376 (1996).

universe. We will be faced with almost six billion people, one-half of whom will be living in poverty and indeed in degradation. At least thirty-five thousand children will die each day of preventable causes. There will be chaos in many nations, even worse than what we now behold in Bosnia, the former Zaire, and Rwanda.

For over forty years Americans have lived with the illusion of stability as we maintained a fortress state armed against forces which we imagined could only be destroyed by weapons of mass destruction. This illusion has disappeared, although we continue to arm ourselves as if twenty thousand nuclear weapons could bring world peace.

Today the American people have to wake up to the sober reality that Americans, although we constitute only four percent of the world's population, consume some forty percent of its resources and tend to dominate the world in economics, technology, and influence. The United States still spends over $250 billion on the military although the Warsaw Pact has been dissolved and there are no nations that threaten the security of the United States.

Illusions of isolationism still haunt and sometimes dominate the American psyche. Surrounded by two vast oceans, America—a country that has never been invaded—dreams that it can somehow return to its status after World War II and its place in the universe when the Cold War dominated the global scene. The advent of the next century will destroy all of these unrealistic fantasies. For better or worse, the United States must face the awesome responsibilities of being one of the world's oldest stable democracies and the richest country in the history of the world.

The responsibilities that have been thrust upon us have been evident in the recent past with the emergence of a consensus among developed nations that land mines should be abolished. Senator Patrick Leahy of Vermont has led the struggle to bring about that marvelous development. At this time the Clinton administration, along with a few other nations, is not prepared to make a commitment to ban anti-personnel weapons. But the world has made an unparalleled commitment to abolish one of the most hideous ways of conducting war.

The abolition of land mines is hopefully one of many similar renunciations of violence which we will see in the century to come. Unfortunately, the twentieth century has been one of the bloodiest in history. Over thirty-five million persons were killed in World War II. The invasions and the persecutions of the Communists and the Fascists have taken the lives of countless others.

The triumph over land mines should give us courage as we enter the new century. Perhaps we are on the threshold of an era of peace, a time when war

will be abolished and we will welcome a century in which the scourges of famine, illiteracy, and disease will be finally wiped out.

II. A FOREIGN POLICY FOR THE NEXT CENTURY

One of the most constructive initiatives aimed at the development of a new foreign policy was taken by President Carter in 1979. He appointed a presidential commission chaired by Sol Linovitz, the former ambassador to OAS (Organization of American States). The final report of that distinguished group recommended that the elimination of hunger—especially among children—be the top priority of U.S. foreign policy. The 250-page report of the commission made it clear that the phasing out of hunger is achievable.

Tragically, that report was never heeded in the 1980s. Imagine the gratitude and admiration that would be coming to the United States—and its allies in the United Nations—if we had undertaken the abolition of hunger!

A second initiative that could be taken by the United States is to support and enlarge the mission of UNICEF (United Nations International Children's Education Fund). One of the most dedicated and self-fulfilled lawyers I have ever known was James Grant, an American attorney who was the leader of UNICEF for twenty years. Because of Mr. Grant's leadership and importunate efforts, UNICEF was able to give the five basic immunizations to millions of infants throughout the world. As a result, countless children who otherwise would have died now live. Unfortunately, there are still countless children who die each year because they have not received basic immunizations which children in America receive routinely.

A third way by which the United States could improve its foreign policy in the next century is to radically curtail the number of weapons it exports. In the last seven years the U.S. arms industry took over most of the clients of the massive arms trade in which the U.S.S.R. was engaged for many years. As a result, the United States is now the top merchant of death in the world. We sell sophisticated and dangerous weapons to nations that do not need them and cannot afford them.

A fourth way to bring America's foreign policy into the realities of the new century is to make our country's military posture accord with reality. There are several features of U.S. military posture which are crying out for a re-examination. The expansion of NATO (North Atlantic Treaty Organization) is surely one of them. Another consideration is the billions of dollars spent on Star Wars. These are surely a waste. Do we need to continue a large number of submarines with nuclear weapons? Who proved that the United States must be prepared for one and a half wars at the same time—the basic assumption of America's present military stance? Why does the United States resist helping the eighteen United Nations peace-keeping missions?

A fifth way by which the United States could update its foreign policy is to bring its policies into harmony with the realities of a world which is being transformed by the green revolution. The United States has not adjusted its policies to take into account the startling truths about global warming, the ozone layer and endangered species which are now known throughout the world.

In my years in the Congress I saw the wonders of the EPA (Environmental Protection Agency) unfold. But the United States has miles to go before it can say that it has policies which will hand the planet to succeeding generations in a substantially undamaged way.

There are many other ways to make America's foreign policy credible and realistic. One is to work for a permanent Nuremberg so that dictators and those who practice genocide will be warned of the certainty of punishment. Additional efforts to form a world military force under the direction of the United Nations would fulfill a long-held dream—one that is actually contained in the U.N. Charter. America's commitment to the fulfillment of human rights proclaimed by the world community on December 10, 1948 in the Universal Declaration of Human Rights could also be reasserted and implemented.

Some may wonder whether all of these things are dreams. One reply is that the U.S. Constitution and the entire American experiment is admittedly a dream. The 5200 words of the U.S. Constitution were a dream in 1787. It is a dream that has worked in marvelous ways. But it needs constant attention and unending updating.

III. THE ROLE OF LAW AND LAWYERS IN THE NEXT CENTURY

Law and lawyers have been more important in the history of the United States than in any other nation. There are now some eight-hundred thousand practicing lawyers with thirty-five thousand added each year.

What can they do? What should they do?

Lawyers have been the architects, the symbol makers, the craftsmen of what America aspires to be. Lawyers helped to write the Emancipation Proclamation, the Thirteenth, Fourteenth, and Fifteenth amendments. Lawyers devised life tenure for judges and the independence of the bench and the bar.

Lawyers guided this nation in the 1930s with the enactment of the Securities and Exchange Law, the National Labor Relations Act, and similar much needed legislation. Lawyers wrote the U.N. Charter along with the twenty-three covenants on human rights that have emerged from that organization. Lawyers wrote the Civil Rights Act and the Voting Rights Act

in the 1960s. They also claimed the regulations of the EPA and the environmental revolution that we have experienced in the last twenty years.

Why do the best and the brightest of America's young people elect to go to law school? It is clear that they want to bring equality and fairness to the entire human family. They see that law liberated African Americans and equalized the condition of women. Lawyers want to use law to advance the struggle for freedom and equality for all.

The one-hundred thousand law students in America see that eight hundred million people are chronically malnourished in the global village. They also see that American tobacco companies are poisoning the bodies of fifty million Americans each day and that hundreds of millions more will be contaminated in Asia and elsewhere unless the United States gives moral direction to this terrible menace.

American lawyers and law students today are agonizing over the destiny of our country in the century to come.

Our mind tonight goes back to Runnymeade and Magna Carta in the year 1215. The people then were angry and proclaimed their rights. That protest became the Bill of Rights in the 1600s in England and was the thesis of the ten amendments to the U.S. Constitution.

Those rights proclaimed at Runnymeade are now the basis of the U.N. Charter and the covenants of that organization on the rights of women, children, the indigenous, and the disabled.

Anglo-American law echoes what the Code of Hammurabi said two thousand years before Christ: "The role of law is to protect the powerless from the powerful."

CONCLUSION

So, today we stand in the memory of Judge Sterry Waterman and the dream of Vermont Law School which has achieved so much in only one generation.

The days and years ahead are going to be possibly more difficult than any period in American history. Part of the moral consensus of this nation is eroding. We are uncertain about our role in the world. And we are frightened that America this time could fail in understanding and fulfilling its role in the world.

But Americans have always been crusaders on pilgrimages. We are like the pioneers who came to Vermont two hundred years ago. We expect to be people with a mission. We *are* dreamers. We are the people who wrote the Declaration and the Constitution and have exported that to the six billion people in the universe.

Now we are at the center of the forces that control the development of the Third World, the multi-national corporations, and the international banks. We must make the decisions in the years to come which will dictate whether millions will live or die or live in sub-human poverty and degradation unworthy of the human family.

The next century—the next thousand years begin only a few months from now. We have awesome and inescapable responsibilities. Divine providence guided our forefathers to Plymouth and then to Philadelphia for the Constitutional Convention, which shaped the entire future of the world.

May divine providence guide and inspire all of us as we grope to find our role in the next century. We are destined to bring the moral revolution of democracy and human rights to the world. It is a difficult task, but in God's providence it is the destiny of the American people and particularly of the legal profession in the United States.

A most fitting way to close the Sterry Waterman Lecture would be to quote the compelling words of President John F. Kennedy: "Those who make peaceful revolution impossible make violent revolution inevitable."