

**WILLIAM REECE SMITH, JR.
DISTINGUISHED LECTURE
IN LEGAL ETHICS**

**CAN CLIENT CONFIDENTIALITY SURVIVE
ENRON, ARTHUR ANDERSEN, AND THE ABA?***

Lawrence J. Fox**

Thank you, Reece. That far-too-generous introduction doesn't leave me speechless, but it does leave me embarrassed. It's a shame my mother is over in Palm Beach. If we could have invited her over here, she wouldn't have been embarrassed at all. She would have believed every word you said.

I, on the other hand, think that Reece has gone overboard. But I thank him and I thank the Stetson University College of Law, and I thank the Dean, because I have been welcomed here with open arms in the most generous way.

I have found an institution, a law school, that's full of life and full of spirit and full of the characteristics of professionalism that

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we're all striving for. And I am gratified to be here and honored to give this first lecture.

I have a connection to the Stetson University College of Law. It's rather attenuated, but I have to share it with you nonetheless. John B. Stetson had something to do with the Stetson University College of Law. And notwithstanding some people's mistaken view of John B. Stetson, he was not a Texan, he was a Philadelphian. And he had an estate just north of Philadelphia, with a grand mansion and a summer house all on the same property. This he built in the days when men still wore hats and the Stetson Company was still making money—lots of money.

The Stetson family fell on hard times, and slowly this 250-acre estate, that was surrounded entirely by this gigantic stone wall, was sold off into little suburban parcels for people like my parents to purchase. And so we had a piece of the Stetson wall running right along the front of the property my parents bought back in 1947. It was one of the first lots that the Stetson family sold. And I got to know many members of the family and shared many good times with them. I particularly remember Christmas celebrations in the "summer house" with a Christmas tree so tall the top was decorated from a balcony above.

As a result I always knew there was a Stetson University because this was the school that was endowed in some way or another by John B. Stetson, the man whose grandchildren I grew up with. And now it's wonderful to be here, a place as glorious as the original Stetson mansion.

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I'm sorry I'm not going to talk exactly on the topic. It's not litigation ethics that I want to address tonight, but it is ethics, and it is ethics that applies to litigators. It's also ethics that applies to all lawyers, and I submit it applies to all clients. So, if there are any nonlawyers in this room, I hope you'll pay attention because there's a lot more at stake for you in what I'm about to discuss than there is even for the lawyers.

Now I should start off by saying that in a way you can blame me for all that I'm going to talk about. I should blame myself. Not

me alone, but everybody on Ethics 2000.¹ The American Bar Association (ABA) established this commission. We decided we were going to review the Model Rules of Professional Conduct (Model Rules). We were going to go from stem to stern. We were going to have an open process. We were going to take forever to do it. We named it Ethics 2000, because, in 1997, we thought it would take three years to complete. We completed the project in 2002, a mere two years tardy.

We held hearings. We asked for comments. We went around the country. We heard from clients. We listened to lawyers. And among the lawyers who came to visit us was one Richard Painter, who's a wonderful fellow and a very good advocate; Richard is a professor at the University of Illinois Law School at Urbana-Champaign. Richard Painter had one particular complaint with Ethics 2000: he wanted us to change Model Rule 1.13.²

Model Rule 1.13 is the rule that was established back when the Model Rules were originally adopted; it tells a lawyer how the lawyer should deal with an organizational client. Whether it's a small business or a gigantic corporation, whether it's a not-for-profit or it's a homeowners' association, the rule tells the lawyer how to deal with an organizational client. It was very well-structured, or so we thought.

1. Ethics 2000 was the nickname of the ABA's Commission on the Evaluation of the Rules of Professional Conduct ("Ethics 2000 Commission") originally established at the author's suggestion by President-elect Jerome Shestack with the assistance of his predecessor, Lee Cooper, and successor, Philip Anderson. Memo. from Lawrence J. Fox, Chairman of the ABA Standing Committee on Ethics and Professional Responsibility, to Jerome Shestack, ABA President-Elect, *Ethics 2000: Is the ABA Ready for the Next Century?* (Feb. 24, 1997) (copy on file with Lawrence J. Fox).

2. At the time, Model Rule 1.13 provided in relevant part:
If a lawyer for an organization knows that an officer, employee or other person associated with the organization is engaged in action, intends to act or refuses to act in a matter related to the representation that is a violation of a legal obligation to the organization, or a violation of law which reasonably might be imputed to the organization, and is likely to result in substantial injury to the organization, the lawyer shall proceed as is reasonably necessary in the best interest of the organization. In determining how to proceed, the lawyer shall give due consideration to the seriousness of the violation and its consequences, the scope and nature of the lawyer's representation, the responsibility in the organization and the apparent motivation of the person involved, the policies of the organization concerning such matters and any other relevant considerations. Any measures taken shall be designed to minimize disruption of the organization and the risk of revealing information relating to the representation to persons outside the organization. . . .
Model R. Prof. Conduct 1.13(b) (ABA 1995).

But, no, Richard Painter had this idea that a lawyer who was dealing with an organizational client, when he or she uncovered certain conduct within the organization, had an absolute obligation to go up the corporate or organizational ladder, right to the top. Richard wanted to mandate that. He came before us and he told us of one case back in 1982 or so in which a lawyer had failed to go up to the top and, based on that one instance, Richard argued we should change the rule.

I'm telling you this in a somewhat derisive way only because that was how we treated Richard Painter. There were thirteen of us on this Commission. We rarely agreed on anything, but thirteen of us were unanimous that Richard's idea was not a very good one. It did not make sense to mandate what a lawyer should do in dealing with an organizational client. Lawyers should exercise good judgment. They should do the right thing. But that did not mean the profession should mandate this particular response.

So we sent Richard packing. Richard, however, is tenacious and so he came back one more time and tried again, and we sent him packing again. I don't know which visit was worse, but, in any event, Richard went away unhappy.

CONGRESS ACTING PRECIPITOUSLY

Then we had a little event called Enron, and that was followed by a couple of other very bad events called WorldCom and Adelphia. These events captured the headlines in America. They had everybody running around like chickens without their heads, a frenzy of hysteria, editorials screaming about how corporate America was corrupt³ and we've got to do something about it. And the "do something about it" movement was led by Congress.⁴

Now why was Congress in such an uproar? Well, first of all, a lot of people had lost a lot of money, including their pensions. And, hey, Congress hears about that sort of thing. . . . So that was one good reason. The second reason was a little more pernicious. Of the senators and members of the House of Representatives of

3. Editorial, *Enron and the Lawyers*, N.Y. Times A14 (Jan. 28, 2002) (available at <http://college3.nytimes.com/guests/articles/2002/01/28/994817.xml>); William Safire, "You Wuz Robbed!," N.Y. Times A27 (Feb. 11, 2002).

4. For a jaundiced view of this "movement," see John C. Danforth, *When Enforcement Becomes Harassment*, N.Y. Times A31 (May 6, 2003).

the United States, we had literally hundreds who had accepted huge contributions from Enron: Democrats, Republicans, Pennsylvanians, Floridians.⁵ They had all accepted money, and they were very embarrassed.

So we had hearings, and we had excoriating speeches, and we had something called Sarbanes-Oxley come along. Mr. Sarbanes is a senator. Mr. Oxley is a representative. They are the oddest of odd couples. Mr. Sarbanes is a very liberal Democrat. Mr. Oxley is a very conservative Republican. They probably don't agree on the time of day, but they did agree that Congress should do something about this, and so we got legislation that has changed the vocabulary of America. For lawyers we now have Sarbanes-Oxley, legislative mischief with which we will live for decades.⁶

Sarbanes and Oxley put together this bill that is one of the most ridiculous pieces of legislation Congress has ever passed. And proof of that is that the Senate passed it unanimously.⁷ Anytime the Senate acts unanimously—unless it's celebrating Flag Day or naming a new monument—we all better watch out. Because when they act unanimously on substantive legislation, that means they haven't thought very much about it.

In the process, Congress came up with this very elaborate structure of what corporate America should do and what the auditors should do. Then, suddenly, somebody looked around and said: "What about the lawyers? There's nothing in this legislation about the lawyers, and the lawyers were at the scene of these crimes, too." And that's when we come back to Richard Painter. Because Richard had sent a letter to an obscure junior senator from North Carolina, some fellow named John Edwards. Richard told Senator Edwards: "This is what you should do to cure the problems of corporate America." So when Senator Edwards observed that we did not have any provision in the bill about lawyers,⁸ Richard's proposal suddenly transmogrified into § 307 of

5. For a list of the hundreds of Senators and Congressman aided by Enron's Political Action Committee, see Federal Election Commission, *FEC Disclosure Report, Enron Corp. Political Action Comm., Inc.*, <http://herndon1.sdrdc.com/cgi-bin/comsupopp/c00104810> (accessed Apr. 25, 2004).

6. *Sarbanes-Oxley Act of 2002*, Pub. L. No. 107-204, 116 Stat. 745 (2002) (amending scattered sections of titles 11, 15, 18, 28 and 29 of the United States Code).

7. 148 Cong. Rec. S6778-79 (daily ed., July 15, 2002).

8. 148 Cong. Rec. S6552 (daily ed., July 10, 2002).

Sarbanes-Oxley.⁹ Section 307 mandates going up the corporate ladder in even harsher terms than Richard had proposed.¹⁰

Beware of bad legislation. We now had § 307, and what 307 did was two things: It mandated going up the corporate ladder, and it also delegated to the Securities and Exchange Commission (SEC or Commission) the obligation—or, I should say, “the opportunity,” because they didn’t mandate anything in particular—for the SEC to come up with other new rules governing lawyers who appear before the Commission.

What are the evils here? One, the idea that the Congress of the United States or the House of Representatives in Florida, or any legislative body, ought to be regulating the conduct of lawyers is something that should leave us lawyers shocked and dismayed. Any time you delegate the regulation of lawyers to anybody other than the courts, the profession is in trouble. And that’s what happened here. This was the first time we had a major piece of legislation coming out of Congress that actually affirmatively regulated the conduct of lawyers.

Second, this was a public policy disaster in the sense that nobody figured out what went wrong in any of these frauds and nobody tied what went wrong to what the legislation was. Nobody had found that there was a single lawyer who was aware of things that should have been reported up the corporate ladder and had failed to do so.¹¹ Notwithstanding that, we got § 307. That was the first bad turn for us lawyers.

9. Section 307 provides that the SEC is required to [I]ssue rules . . . setting forth minimum standards of professional conduct for attorneys appearing and practicing before the Commission in any way in the representation of issuers, *including a rule*—(1) requiring an attorney to report evidence of a material violation of securities law or breach of fiduciary duty or similar violation by the company or any agent thereof, to the chief legal counsel or the chief executive officer of the company (or the equivalent thereof); and (2) if the counsel or officer does not appropriately respond to the evidence . . . requiring the attorney to report the evidence to the audit committee of the board of directors of the issuer or to another committee of the board of directors comprised solely of directors not employed . . . by the issuer, or to the board of directors.

116 Stat. at 784 (emphasis added).

10. For example, Model Rule 1.13 is triggered by lawyer knowledge. Model R. of Prof. Conduct 1.13(b) ABA 2004. Section 307 is triggered by “evidence,” whatever that term means in this context. 116 Stat. at 784.

11. For an argument that Canadian securities regulators’ responses to Enron were equally unfounded, see Ronald B. Davis, *Fox in S-Ox North, A Question of Fit: The Adoption of United States Market Solutions in Canada*, 33 Stetson L. Rev. 955 (2004).

THE SEC DROOLING

Next we had the SEC. Now, it was that agency's turn. This was a delicious opportunity for them, and they ran with it. They not only adopted some remarkably complex, convoluted, difficult regulations as to what the lawyer had to do to go up an organizational ladder,¹² they not only gave us an alphabet soup of QLCCs¹³ and CLOs,¹⁴ and a maze of regulation on how the lawyers should deal with the organizational client, but they also took the invitation to come up with additional rules. And in doing so, they repealed Model Rule 1.6, the rule governing confidentiality, as to all lawyers who practice before the SEC.¹⁵ The agency announced that, despite the fact that the ABA Model Rules were to the contrary and many states' rules also were to the contrary,¹⁶ lawyers practicing before the SEC now had the SEC's permission to breach confidentiality and report client fraud. That may sound benign, but it is a very dangerous regulation.

What is wrong with this? What is wrong with having the SEC acting this way? Again, we have two things that are wrong: one, we have, in my view, bad public policy. We have nobody at the SEC making any findings. Nobody had gotten to the bottom of what went wrong at any of these frauds, let alone all of them. Nobody had tied lawyer conduct to the resulting catastrophes. Nobody had figured out whether there was a need for this regulation. The SEC simply adopted it. Why? Because it had to do something. Congress had told the SEC that the agency had to do some-

12. 17 C.F.R. pt. 205.

13. 17 C.F.R. § 205.2(k). A QLCC is a Qualified Legal Compliance Committee.

14. 17 C.F.R. § 205.3(b)(2). A CLO is a Chief Legal Officer.

15. 17 C.F.R. § 205.3(d)(2)(i). This rule permits disclosure of client confidential information to the SEC to prevent "injury to the financial interest or property of the issuer or investors." *Id.*

16. The State of Washington Bar announced in a preliminary ethics opinion that, to the extent the SEC rule conflicts with the Washington rule, the Washington rule prevails. See Brooke A. Masters, *New Rules Leave Lawyers in Bind on Whistle-Blowing*, Wash. Post E01 (Aug. 6, 2003) (available at 2003 WL 56510796) (noting client confidentiality rules in D.C. and eight states at odds with SEC rules); Rachel McTague, *Outside Counsel under New Rules Must Report Possible Violations to High Level*, 35 Sec. Reg. & L. Rpt. 1363, 1364 (Aug. 18, 2003) (noting SEC rule allowing lawyers to reveal some wrongdoing could not be a defense to breaking the attorney-client relationship provided for by the Washington Rules of Professional Conduct); *Washington Ethics Opinion Portends Clash between SEC, State Rules on Revealing Fraud*, 35 Sec. Reg. & L. Rpt. 1334, 1334 (Aug. 11, 2003) (same).

thing. And guess what? The agency enthusiastically accepted the invitation, fulfilling an SEC secret wish list as to how to deputize the private bar to the SEC's purposes.

Second, we now had the SEC coming up with the rules of professional conduct for lawyers. If it was bad enough that the legislature snatched the power to regulate lawyers from the courts, having the SEC do so was bad squared. Why? The SEC is just another litigant. They're the guys on the other side. They've got a job to do. I've got a job to do. They've got cases to bring. I've got cases to defend. They happen to represent the government. I'm a little scared of them. My clients are a lot scared of them, as well they should be.

The whole idea that one litigant would get to decide what the rules of professional conduct were for the other litigant, was as shocking here as it had been when the Justice Department (DOJ or Department) tried to repeal Model Rule 4.2, both under Dick Thornburg,¹⁷ and then under Janet Reno.¹⁸

Model Rule 4.2, for those of you who are not ready to take the MPRE,¹⁹ is the rule prohibiting contacts with represented persons.²⁰ The Justice Department decided at one point it didn't think this rule should apply to DOJ. The Department thought it was perfectly okay to contact our clients without going through us because, as DOJ asserted, going through the lawyer on the other side interfered with the legitimate needs of law enforcement. To which my answer is: so does the Fourth Amendment.

In any event, the whole idea that the Justice Department—which also just happens to be another litigant, an even scarier litigant, one we fear, but nonetheless still just another litigant—the idea that the Justice Department, the SEC, or any government regulator who is just another litigant, would be setting the rules of professional conduct for anybody on the other side, should

17. *In re Doe*, 801 F. Supp. 478, 489–493 (D.N.M. 1992).

18. 28 C.F.R. § 77.10(a) (1998); *but see U.S. ex rel. O'Keefe v. McDonnell Douglas*, 132 F.3d 1252, 1257 (8th Cir. 1998) (invalidating 28 C.F.R. § 77.10(a)).

19. MPRE stands for Multistate Professional Responsibility Exam.

20. Model Rule 4.2 provides, "In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order." Model R. Prof. Conduct 4.2 (ABA 2004).

be a frightening thought for lawyers and one that should be resisted with all our will.

THE AMERICAN BAR ASSOCIATION LOSING ITS WAY

I want to talk about one more development. This one I'm saddened by because this one took place at the American Bar Association, our great friend, Reece Smith's ABA. It wasn't bad enough that Congress acted irresponsibly, it was not bad enough that the SEC acted totally irresponsibly, but a group at the ABA, called the Cheek Commission,²¹ decided that they should make some recommendations to the ABA on professional responsibility.²² Why? Because there was turmoil. There was a frenzy. There was Enron. The profession had gotten a black eye. After all, we were told, all these miscreants had lawyers.

The Cheek Commission made no findings, undertook no investigation, determined not one way in which any lawyer misbehaved,²³ but it told the ABA House of Delegates that the public demands changes in our rules.²⁴ It was not bad enough that we'd had the SEC change the rules of professional conduct for all lawyers who represent public companies. Some of us—just a few—don't represent public companies. Some of us represent individuals. Some of us do criminal law. Some of us do immigration law. And the SEC regulations, thankfully, did not interfere with how these non-SEC lawyers practice law. But instead of celebrating the fact that the SEC had not destroyed important professional values for non-SEC clients, the Cheek Commission proposed changes to the ABA Model Rules that apply to all lawyers. In particular, they made a recommendation to change Model Rule 1.6,

21. The Commission included the present or former General Counsel of four Fortune 500 companies, at least seven lawyers from major firms in big cities (two from 800-lawyer Gibson Dunn & Crutcher; the "solo and small firm representative" on the Commission was from a sixty-four-lawyer firm in Albuquerque!), a state business court judge and a law school dean. Think of all the voices that were missing, an omission that might have been acceptable if the Commission were not dealing with wholesale revision of model rules of professional conduct of broad application to all clients and all lawyers.

22. The Cheek Commission's Final Report is published as *Report of the American Bar Association Task Force on Corporate Responsibility*, 59 Bus. L. 145 (2003).

23. *Id.* at 147.

24. *Id.* at 155.

which prevents the disclosure of confidential information on account of client fraud.²⁵

Now, I do not want to appear before you and tell you that I am in favor of fraud. I am not. I am against fraud. I want that to be perfectly clear. But I also want you to know that it is one of the easiest statements to make: if a lawyer sees fraud, and people are getting defrauded, we should have those lawyers stop that fraud. Boy, is that easy to say. And, boy, can you win a public relations battle on such pablum.

The problem is, fraud doesn't look like fraud. If it looked like fraud, then no fraud would occur. This discussion reminds me of a client of mine who got defrauded out of an enormous sum of money. He came to me, and he was shocked. He said to me, "I cannot believe it. I got defrauded by Tom." I asked, "What do you mean?" My client replied, "Tom was a member of the Union League Club." How do you like that? It proves my point. Of course the fraudster was a member of the Union League Club. If you're going to be a fraudster, you have to be a member of the Union League Club. You have to wear a bow tie.²⁶ You have to look honest. Whatever else it is, fraud is at worst hidden and at best, ambiguous. Fraud is only clear with the benefit of hindsight. Also, if lawyers are free to disclose fraud, then someone can come along later and argue that the lawyers should have disclosed the fraud to prevent harm and their failure to do so should be actionable.

The real problem with giving lawyers the opportunity to disclose confidential client information is that this power infects the lawyer-client relationship. Instead of telling my client, as I look her in the eye, that "everything you tell me is confidential and I desperately need to know the truth" . . . Those of you who are practicing lawyers, and those of you who are law students in clinics, will know it is hard as hell to get clients to tell you the truth. Clients want to tell you what they think you want to know. But you really do want to know the truth because the truth will come out, and you need to know it early, not late.

So we sit with our clients and we urge them to tell us everything. We do that for two reasons: one, we need to know the truth and, two, we are going to do a damn good job of telling our clients

25. *Id.* at 172-174.

26. The lecturer sometimes affects bow ties.

to do the right thing. They may not always follow our advice, but that's our job: to tell them to do the right thing. And I submit that far more good has come from lawyers being able to counsel their clients with assurances of the cloak of confidentiality than will ever occur as a result of permitting lawyers to disclose client fraud.

If you inject into the lawyer–client relationship the obligation to give *Miranda* warnings about fraud—“everything you tell me is confidential, except if I decide I have to tell somebody”—then you are going to have a completely different dynamic in the lawyer–client relationship. This is because any time you give lawyers the opportunity to disclose something, it will not be a very big step for somebody to come along and assert that lawyers should be liable for failing to do it. This threat of potential liability creates a real conflict between lawyer and client, undermining that relationship in fundamental ways.

As if that were not bad enough, the Cheek Commission then came up with the biggest change of all. The Commission changed Model Rule 1.13.²⁷ That's the rule about going up the corporate ladder, going up the organizational ladder. We talked about it already, and we talked about how the Sarbanes-Oxley legislation mandated that the SEC change this rule for public companies. The Cheek Commission went further. They changed the rule for all organizational clients. Moreover, they went further still, way beyond the SEC's officious intermeddling, by concluding that the lawyer not only had an obligation to go up the corporate ladder, but that the lawyer was free, when the lawyer had gone up the corporate ladder and the lawyer's recommended course of action was not endorsed by the organization's board, to then disclose what was happening at the corporation in order to protect the corporation! The lawyer had permission to disclose confidential information beyond the client, even to the constabulary.²⁸ Not unlike the idea of protecting our oil fields by setting them on fire!

27. Cheek Commn. Final Rpt., *supra* n. 22, at 166–169.

28. *Id.* at 175–177.

*CAN LAWYERS BE LAWYERS? OR, WHY WE DID NOT
GO TO BUSINESS SCHOOL*

Well, what does all this mean? To me it means that the role of the lawyer has been changed. Certainly people are hard at work trying to change it. They want lawyers to become auditors of our clients. They want lawyers to become regulators. They want lawyers to prevent harm. And they want lawyers to become uber-directors of our clients. Having taken something all the way up the corporate ladder, and the board of directors having decided something contrary to what the lawyer thinks should be done, these folks would actually give the lawyer the power to trump the decision of the client's board of directors. This is power for which, I submit, lawyers do not have the talent, training, or ability, to say nothing of how this power affects the willingness of clients to contact lawyers in the first place.

We are mixing up the roles of the different participants in our world. Clients should be clients. They should make decisions with our best advice, and it is they, not the lawyers, who should be responsible for the consequences of their decisions. If they defraud people, let the clients be responsible for the consequences. Auditors should be auditors. They come in, and they have their function and their duties, not to clients, but the public. Regulators should do a damn good job of law enforcement. That's their job. Bring the miscreants to justice. And lawyers, we—in the cloak of the confidential relationship—should give our best advice. Tell our clients not to do something stupid. Tell them to do the right thing. Remonstrate with them. But if they don't conform their conduct to our best judgment, then the clients must assume responsibility for the consequences because it is their obligation to act in the best interests of their shareholders and to obey the law.

One of my colleagues called me up yesterday. The following letter had been received by this lawyer from the accounting firm for one of her clients: "Please confirm that all information brought to your attention"—this is the lawyer's attention—"indicating the occurrence of a possible illegal act," a *possible* illegal act "has been reported to us." "Us" is the accounting firm. "And to the audit committee."

What kind of a world do we live in when we lawyers are being placed in a position of sharing our client's most sensitive confidences, our attorney-client privileged information, our concerns

about possible violations of law, with auditors? Waiving the privilege so that our clients can receive audited financials? I don't think so. We're back to burning the oil fields one more time.

A CRUSADE IN REECE SMITH'S HONOR

So what does all this have to do with Reece Smith? After all, this is the William Reece Smith, Jr. Lecture. Well, I know Reece Smith very well, although I don't know him as well as many people here. And I certainly did not fully appreciate all of his extraordinary accomplishments before I did some research on his rich life after being invited to come down to Stetson.

Dean Tony Kronman at the Yale Law School writes of "The Lost Lawyer:"²⁹ the lawyer who once was, the lawyer who gives sound advice, the lawyer who is a citizen of the world, the lawyer who is committed to pro bono, the lawyer who is committed to his community, the lawyer who is committed to teaching, the lawyer who is committed to mentoring, the lawyer as statesman. Well, that lost lawyer is not lost at all. He's right here. It's Reece Smith, and he's doing it all. I submit that all of the values that Reece Smith reflects in his career and his dedication to so many institutions, should be our impetus, our guiding light, to recapturing what we have so recently lost, to recapturing our profession, and to returning ourselves to a regime where we are self-regulated by the judges, by the Bar, and not by the SEC, not by the Justice Department, and not by Congress.

I submit that we can take Reece's example—his exemplary life and his commitment to our profession—and use those values to energize a campaign. So that we can say that after all of the turmoil of the last two years and its many misguided "solutions," that we have won back our profession. I thank you for the opportunity to deliver this inaugural William Reece Smith, Jr. Lecture.

29. Anthony T. Kronman, *The Lost Lawyer: Failing Ideals of the Legal Profession* (Belknap Press 1993).