

Keeping Watch on the Waterfront: Social Responsibility in Legal and Library Professional Organizations*

Leslie M. Campbell**

At the 1997 Annual Meeting of the American Association of Law Libraries, the Social Responsibilities Special Interest Section sponsored a program titled "Keeping Watch on the Waterfront: A History of Social Responsibility in Legal and Library Professional Organizations." In this article, Ms. Campbell frames the issues surrounding social and political activism by professional organizations. Her introduction is followed by edited remarks from the program's speakers, leaders of the American Bar Association, American Library Association, and American Association of Law Libraries.

The Association's responsibilities relate primarily to the legal profession, and these could not be discharged if our membership were lost, fractionated or embittered by involvement in political controversy. . . . [I]t is essential that the basic policy of avoiding political involvement be strictly followed except where the issues clearly involve the Association's primary responsibilities. A different policy . . . could jeopardize the Association's very existence.—Lewis Powell¹

By perpetuating the myth that their profession should be politically neutral, librarians have created a value vacuum that is easily being filled by the prevailing political and economic ethos. Neutrality, in effect, allows an unquestioned acquiescence to the imperatives of the most powerful and influential elements in society.—Henry Blanke²

Introduction

Should Professional Associations Take Social and Political Stands?

¶1 Should the American Association of Law Libraries (AALL) have taken a stand on the war in the Balkans? Do we need to "weigh in" on important social issues such as affirmative action, same-sex marriage, or euthanasia? What about

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** Public Services Librarian, University of San Francisco Law Library, San Francisco, California. Thanks go to Prano Amjadi, Head of Reference, Santa Clara University School of Law Library, co-coordinator of the 1997 Program, for her assistance and editing. Also to student assistants Susan Klug, Andie Seeber, and Michelle Balancio.

1. Lewis Powell, *The President's Page*, 51 A.B.A. J. 101, 120 (1965).

2. Henry Blanke, *Librarianship and Political Values: Neutrality or Commitment*, LIBR. J., July 1989, at 39, 40.

announcing a position on abortion? The American Bar Association (ABA) has taken formal positions on abortion, several times in fact.³ That process involved several years of divisive and emotional debate, parliamentary maneuvering, and harsh criticism; and it ultimately resulted in the resignation of upwards of 3,000 members in protest. Given that scenario, perhaps AALL should limit itself to issues more closely related to law libraries. But what are those? Literacy? Copyright? Legal citation format? How about censorship or pornography on the Internet or antitrust issues in the legal publishing industry? It is fascinating to consider that the ABA, the American Library Association (ALA), and AALL have all taken positions on nuclear arms control and nuclear freeze. In fact, the ABA alone has taken well over 1,200 policy positions on matters ranging from abortion to flag desecration to welfare reform.⁴

¶12 Is this what we want from our professional organization? Deciding which issues are proper or germane to a professional organization is a tough question that continues to plague the leadership of the ABA, AALL, and ALA. In fact, none of these organizations have established clear, concise policies on how to handle controversial issues when they arise, and so disputes over them continue.

¶13 The Social Responsibilities Special Interest Section sponsored a program titled "Keeping Watch on the Waterfront: A History of Social Responsibility in Legal and Library Professional Organizations" at the 1997 Annual Meeting to open a dialogue on these difficult questions.⁵ The panel featured leaders from the ABA, ALA, and AALL discussing the thorny issues triggered by their professional organizations' long and varied histories of social and political activism. In the remainder of this introduction, I attempt to frame and highlight the issues raised by the basic question of what we want from our organizations. This is followed by insights from the program's speakers, edited from their remarks. The speakers were Ann Puckett, past member of the AALL Executive Board; Patricia Glass Schuman, past president of the American Library Association; and George Bushnell, past president of the American Bar Association.

Trade Association or Society Leader?

¶14 Why do legal and library professional organizations struggle with political activism? The debate over political activism continues because it goes to the very definition of the proper role of the practitioners of our respective professions and the nature of their professional associations. In order to decide what issues are proper or germane, we must first decide what are the role and purpose of our pro-

3. See *infra* ¶¶ 7–9.

4. Gary Hengstler, *In Political Year, ABA Policies are Something to Talk About*, A.B.A. J., Aug. 1996, at 108, 109–110.

5. KEEPING WATCH ON THE WATERFRONT: A HISTORY OF SOCIAL RESPONSIBILITY IN LEGAL AND LIBRARY PROFESSIONAL ORGANIZATIONS, audiotape of program presented at 90th Annual Meeting, American Ass'n of Law Libraries, Baltimore, July 22, 1997 (Valencia, Calif.: Mobiltape, 1997).

fessional organizations. Some commentators reduce this issue to the question: “Is the group an organization of professionals or just a trade association?” The underlying assumption is that an organization that represents a “true” profession must take interest in larger social issues. Roscoe Pound, dean of the Harvard Law School and an ABA president, posed these questions: “[W]hat elements go to make up a profession, and what are the purposes and what is the spirit of a profession in distinction from other callings, and, in particular, from a trade?”⁶ He pointed to three things that distinguish a profession from a trade: learning, organization, and the spirit of public service, concluding: “It is the essence of a profession that it is practiced in a spirit of public service. ‘A trade . . . aims primarily at personal gain; a profession at the exercise of powers beneficial to mankind.’”⁷

¶15 In an article titled “Librarianship and Political Values: Neutrality or Commitment,” reference librarian Henry Blanke asked: “Is the proper role of the librarian that of the value-free technical expert or the socially committed public servant?”⁸

The Argument for Silence: The Dangers of Activism

¶16 Naturally, not all members agree on the proper role of their professions or their professional organizations. Many argue that the purpose of a professional association is only to serve and further the profession itself. According to this school of thought, the organization should focus only on issues germane to achieving that goal. Discussion of “hot button” social issues can cause division and strife, and can polarize groups within the organization, while also undermining its credibility. The classic statement of this position for the ABA was made by Lewis Powell:

The [American Bar] Association’s responsibilities relate primarily to the legal profession, and these could not be discharged if our membership were lost, fractionated or embittered by involvement in political controversy . . . it is essential that the basic policy of avoiding political involvement be strictly followed except where the issues clearly involve the Association’s primary responsibilities. A different policy would soon dilute the effectiveness of the Association in the areas of its primary responsibility as a professional organization. Indeed, it could jeopardize the Association’s very existence.⁹

¶17 Social issues such as abortion, which are enmeshed in moral, religious, or philosophical questions, magnify the dangers of activism. These are especially divisive because they are so emotional. Nowhere has this been better demonstrated than with the ABA’s ongoing debate over abortion rights. The positions taken by the ABA on abortion have been accompanied by lobbying, campaigning, mass

6. ROSCOE POUND, *THE LAWYER FROM ANTIQUITY TO MODERN TIMES* 4 (1953).

7. *Id.* at 7, 9.

8. Blanke, *supra* note 2, at 43.

9. Powell, *supra* note 1, at 101, 120.

demonstrations, strife, and discord, and have been called “a very dangerous path, almost suicidal” for the ABA.¹⁰

¶18 The ABA’s history with abortion began in 1990 when the House of Delegates approved a pro-abortion policy by a vote of 238–106, only to reverse its position six months later after the resignation of 1,500 members.¹¹ The next year the ABA again took several positions relating to abortion. The high point (or low point, depending on one’s view) of the controversy came in the 1992 ABA Annual Meeting. Amid mass demonstrations and paid consultants engaged in “a well financed campaign featuring a telephone blitz and targeted mailings,”¹² the House approved an abortion rights resolution. This action led to the resignation of approximately 3,000 (and perhaps as many as 4,500) members and prompted harsh criticism of the ABA.¹³

¶19 After the 1992 Annual Meeting, the ABA was variously referred to as a “left wing activist organization with no concern for the lives and interests of the membership,”¹⁴ and an “adjunct of a Democratic Party meeting.”¹⁵ One commentator summarized the abortion debate this way:

Preoccupied with abortion, ABA policy meetings since 1990 have been nasty affairs— oratorical slugfests over the wisdom or folly of the world’s largest lawyers organization taking a stand on this most divisive issue. . . . Abortion has been the lightning rod of a broader criticism that the ABA leadership puts too much emphasis on controversial social and political issues.¹⁶

¶10 Many also argue that librarians or lawyers have no special expertise to resolve these political or social issues and so should not be entering the debate. As Leslie W. Jacobs of the ABA Antitrust Section has stated:

Lawyers as citizens probably have an opinion on most social issues, but lawyers as an association should probably refrain. . . . What we’re talking about, perhaps, is an inflated view of our own importance. . . . If the ABA does not begin to refrain from taking positions on the controversies of the moment, “we’ll find that our effectiveness is diminished.”¹⁷

Similarly, Theodore Olson has observed:

[L]awyers have no special expertise on social issues and should leave them to the public

10. Mark Hansen, *Abortion Rights Before the ABA House: Opponents Promise a Fight to Retain Neutrality Position Adopted in 1990*, A.B.A. J., Aug. 1992, at 22.

11. David M. Leonard, *The American Bar Association: An Appearance of Propriety*, 16 HARV. J. L. & PUB. POL. 537, 551 (1993).

12. Cris Carmody, *ABA House Backs Abortion Rights*, CHI. DAILY L. BULL., Aug. 12, 1992, at 3.

13. See Leonard, *supra* note 11, at 553.

14. Jerry Laws, *Abortion and the ABA: The Issue that Won’t Die*, LEGAL TIMES, Oct. 26, 1992, at 2.

15. James Podgers, *Which Way ABA? Pondering New Policy Directions*, A.B.A. J., Dec. 1992, at 60, 62.

16. Mark Ballard, *ABA Critics Fight Abortion-Rights Stand by Proxy: Neutrality Supporters Win Easier Procedure for Calling a Bar Vote*, LEGAL TIMES, Aug. 22, 1994, at 2.

17. Maureen Stapleton, *For Once More Hot Air Might’ve Been Welcome*, CHI. DAILY L. BULL., Feb. 5, 1996, at 1.

and elected representatives. Abortion is a religious, legal, moral, social, economic, and political issue. What makes me smarter or more perceptive than a minister, policeman, school teacher, or parent?¹⁸

¶11 As another ABA member put it: “I don’t think the purpose of the ABA is to get involved in political issues. We’re a group of lawyers that meets for four days, and we’re trying to tell the State Department what it should do. I think the president, state department and senate know a lot more about this than I do.”¹⁹

¶12 Taking partisan positions can diminish the organization’s credibility on issues that are closely related to its mission. This is a crucial concern for the ABA because of its role in judicial selection which “make even the appearance of bias unacceptable.”²⁰ The ABA also accredits law schools, and its political stands have led to controversies with that role as well, even to the point of law schools withholding their dues in response to positions taken by the ABA.²¹

¶13 The California State Bar recently provided a graphic demonstration of the potentially dire consequences of political and social activism to the credibility and efficacy of the professional organization. In October 1997, Governor Pete Wilson, a Republican, vetoed a routine bill allowing the state bar to collect annual dues, effectively depriving the bar of operating funds and eviscerating its attorney discipline, lawyer referral, and pro bono programs. As one commentator put it, the bar was “disbarred by a furious attorney who happen[ed] to be the governor.”²²

¶14 Wilson’s veto message made clear that one of the prime motivations for “pulling the plug” on the state bar was its history of social and political activism. Wilson repeated criticism that the bar “is partisan, representing the views of the most vocal while excluding or opposing the interests of others.”²³ Wilson singled out specific bar resolutions on social and political issues as particular targets of his ire, including legalization of same-sex marriages, discrimination against transvestites and transsexuals, reduction of penalties for drug dealers, objections to chemical castration of child molesters, and affirmative action. He concluded “[t]he Bar has drifted, however, and become lost, its ultimate mission obscured. It is now part magazine publisher, part real estate investor, part travel agent, and part

18. Theodore B. Olson, *The Politicization of Bar Associations: A Critical Appraisal*, Address before the Philadelphia Chapter of the Federalist Society (June 16, 1993), in *THE ABA IN LAW AND SOCIAL POLICY: WHAT ROLE?* 13, 19 (1994).

19. Lynn Reaves & Vicki Quade, *On Hold: ABA House Defers Action on International Issues*, A.B.A. J., Oct. 1984, at 32, 33.

20. Leonard, *supra* note 11, at 557. The author continues: “If the ABA continues to insist on taking positions on controversial political issues, it should abstain from participation in the federal judicial selection process.” *Id.*

21. *See id.*

22. Editorial, *A Vindictive Veto: Gov. Wilson, Critical of the State Bar’s Politics and Lobbying, Arrogates to Himself the Right to Regulate the Legal Profession*, S. F. EXAMINER, Oct. 16, 1997, at A-ED.

23. Veto Message, S. 1145, 1997–1998 Reg. Sess. (Cal. Oct. 11, 1997), available in California Legislative Council, *Official California Legislative Information* (visited Apr. 7, 2000) <http://www.leginfo.ca.gov/pub/97-98/bill/sen/sb_1101-1150/sb_1145_vt_19971011.html>.

social critic, commingling its responsibilities and revenues in a manner which creates an almost constant appearance of impropriety.”²⁴

¶15 Governor Wilson’s action was just a skirmish in a long-running battle over the California State Bar’s history of political advocacy. The saga began more than a decade ago when the United States Supreme Court directed the bar to refund the portion of members’ dues that was spent on political activities. In *Keller v. State Bar of California*,²⁵ the Court prohibited the state bar from using mandatory dues money to advocate causes outside its purview. The *Keller* decision set as the guiding standard “whether the challenged expenditures are necessarily or reasonably incurred for the purpose of regulating the legal profession or ‘improving the quality of legal service available to the people of the State.’”²⁶ The state bar may fund activities “germane” to these goals but not activities of an ideological nature that fall outside those areas.

¶16 Defining the scope of that “purview” has proved troublesome, especially in light of the fact that membership in the California State Bar is mandatory for all who wish to practice law in California. A civil case was filed shortly after *Keller* seeking refunds of bar dues that went to fund eight contested bar programs, including the bar’s offices of governmental affairs and minority relations, as well as its special interest sections. This long-lived suit was recently decided by superior court judge Morrison England who ruled that a number of state bar programs (including the Conference of Delegates and special interest sections) and much of the bar’s lobbying activities could not be funded through mandatory dues.²⁷ In reviewing a list of forty pieces of legislation, the court found that the vast majority, though furthering the “extremely worthy goals of providing legal services to the poor,” were not germane to the legitimate activities of the state bar.²⁸ The legislation in question included bills on consumer protection, victims’ rights, access for disabled persons, and public education for physically handicapped.

¶17 Critics sued the state bar, claiming that taking *any* political position violated their First and Fourteenth Amendment rights. As a plaintiff to that suit stated: “You can refund all the money in the world, but my problem is that I’m still compelled to be a member of an organization that espouses views with which I don’t agree.”²⁹ This suit, *Morrow v. State Bar*,³⁰ which many viewed as part of a “campaign of revenge” against the bar by tort reformers in retaliation for the bar’s

24. *Id.*

25. 496 U.S. 1 (1990).

26. *Id.* at 14 (citation omitted).

27. *Brosterhous v. State Bar*, No. 95AS03901 (Cal. Super. Ct. Aug. 17, 1999), slip. op. available in <<http://www.mindspring.com/~lidoyle/Brosterhous.htm>>.

28. *Brosterhous*, No. 95AS03901, slip op. at 15, available in <<http://www.mindspring.com/~lidoyle/Brosterhous.htm>>.

29. *Lawmaker, Two Other Lawyers Sue State Bar Over Lobbying*, METROPOLITAN NEWS-ENTERPRISE (LOS ANGELES), June 18, 1997, at 1 (quoting Assemblyman Bill Morrow).

30. No. 97-1115 (Cal. Super. Ct. filed June 17, 1997).

position on damage awards in medical malpractice suits, was ultimately dismissed.³¹

¶18 The final chapter has (hopefully) just been written. In 1998, the California Supreme Court intervened to unanimously order California lawyers to resume paying dues, declaring the “administration of justice . . . at risk.”³² On September 7, 1999, Governor Gray Davis (who earlier had referred to Wilson’s veto of the funding bill as a “heinous act” and a “dangerous disservice to the people of California”³³) signed a bill that will once again provide for the collection of fees to fund the State Bar of California, thus ending the two-year political battle. The new law,³⁴ in addition to setting annual dues, also restricts lobbying and prohibits the use of mandatory fees to fund the Conference of Delegates and special interest education sections of the bar (thus keeping within the guidance recently set forth in *Brosterhous*).

¶19 So, the California Bar is funded again but must restrict its lobbying activities. If nothing else, California’s experience serves to remind us that professional organizations must define (and defend) their role in political debate and be prepared to face the consequences.

The Argument for Activism: Lawyers and Librarians as Leaders

¶20 On the other hand, the arguments for political activism relate in great part to the nature of the profession; many think it important that lawyers or librarians be leaders on controversial issues. As one of our commentators, George Bushnell, has written:

The organized bar must return to its traditional role in society and accept the responsibility of leadership. In doing so, the bar must set an agenda for discussing the most important issues of the day. . . . If lawyers are to make a true commitment to justice, they must look for every possible way to improve the lives of all Americans. This includes the role of leading the difficult transition to a more diverse, more accepting society.

The ABA stands ready to assist in guiding the nation back to a time when people’s differences, complexities and possibilities will be seen as a strength and not a weakness. Lawyers will try to lead the public in a real debate about issues facing American communities—free from fear and sloganeering. This is the role of the lawyer in society. This is why we were called to the bar.³⁵

31. See Daniel Terdiman, *Judge Tosses Anti-State Bar Suit*, RECORDER (San Francisco), Sept. 25, 1997, at 3.

32. *In re Attorney Discipline System*, 967 P.2d 49 (Cal. 1998).

33. David Kline, “Bar Junkies” Should Support Davis in Bid for Governor, Bar Leader Says, METROPOLITAN NEWS-ENTERPRISE (Los Angeles), Oct. 6, 1998, at 1 (quoting Gray Davis, candidate for governor).

34. Act of Sept. 7, 1999, ch. 342, 1999 Cal. Legis. Serv. 2159 (West).

35. George E. Bushnell, Jr., *The Incoming ABA President Insists that Bar Must Play a Part in Solving Today’s Most Troubling Social Issues*, NAT’L L.J., Aug. 8, 1994, at C1.

¶21 In a 1976 essay titled “The ABA as Trade Association,” Mark Green reviewed the ABA’s history and concluded that a professional organization must move beyond its “fretful concern for its own well-being to a serious examination of how it could use its power to advance the cause of legal justice.”³⁶

¶22 In an article titled “When is a Social Issue a Library Issue,” Robert Wedgeworth contends that the assumption that the library should remain neutral on social issues allows librarians to “[i]gnore or repress recognition of the political forces which impinge upon and shape the policies of public institutions. . . . Recognition of the political process involves creating allies and identifying opponents to the role of the library as an agency for facilitating the development of a well-informed public.”³⁷

¶23 Many say that professional organizations such as ours will cease to mean anything or stand for anything if they do not take political stands. “You do not have the privilege of not being involved in one of the great issues of our time,” said one ABA member of the abortion issue.³⁸ Chief Justice Warren E. Burger, in a dedication address for the Notre Dame London Law Centre, urged that “the moral basis of law must be emphasized, for without that foundation the law would be, or it would become, a set of sterile, mechanical rules, devoid of real meaning in terms of human values.”³⁹ Henry Blanke argues that remaining aloof and neutral will inevitably lead librarianship to support the interests of wealth and power in our society. He writes:

By perpetuating the myth that their profession should be politically neutral, librarians have created a value vacuum that is easily being filled by the prevailing political and economic ethos. Neutrality, in effect, allows an unquestioned acquiescence to the imperatives of the most powerful and influential elements in society.⁴⁰

¶24 Or, as one evidently exasperated ABA member put it: “I hear some say it is more important to preserve this organization than allow government to run roughshod over human rights . . . [P]reserve the organization for what? For 114 more years of good [continuing education] programs?”⁴¹

36. Mark Green, *The ABA as Trade Association*, in VERDICTS ON LAWYERS 3, 19 (Ralph Nader & Mark Green eds., 1976).

37. Robert Wedgeworth, *When is a Social Issue a Library Issue?* WILSON LIBR. BULL., Sept. 1970, at 48, 49.

38. Carmody, *supra* note 12, at 3 (quoting Charles Brower, member of ABA House of Delegates, from Washington, D.C.).

39. Warren E. Burger, *Remarks of Warren E. Burger, Chief Justice of the United States, at the Dedication of Notre Dame London Law Centre: The Role of the Lawyer Today*, 59 NOTRE DAME L. REV. 1, 3 (1983).

40. Blanke, *supra* note 2, at 40.

41. Carmody, *supra* note 12, at 3 (quoting Marna Tucker, member of ABA House of Delegates, from Washington, D.C.).

Librarians v. Lawyers: Are We Different?

¶25 Of the legal profession, George Bushnell has written:

We can no longer hide in glass towers—downtown, uptown and out of town—seeking to escape our duty to lead. We must accept our role as leaders and seek to lead a “real” public debate about long-term solutions to the problems in our society, in our justice system and within our own profession.

This is the role that lawyers have played throughout history. Our profession has led in creating a new nation, building an economic system that remains the envy of the world, and extending individual rights and liberties to all persons regardless of color, gender or sexual orientation. If we are going to be lawyers—real lawyers with pride in our profession—we have no option but to continue this course.⁴²

¶26 But is this true for librarians? Given the broad expanse of areas touched by “The Law,” many more things might be germane to, and therefore a proper concern of, the legal profession and its professional organization. It is arguable that anything that is important to legislators and courts is important for the ABA to take a stand on. The view that the ABA is unique among professional organizations has been around for a long time. A 1908 editorial in *The American Lawyer* had this to say:

In brief, it is their duty to meet and discuss the important questions which confront the community and in their wisdom, to propose the required reforms, together with those laws requisite and necessary to give these reforms force and effect. It is a duty born of the inherent function they possess as advisers of the people; and to do less than to proffer their aid in a concrete form, is to be recreant to the fiduciary capacity indigenous in the profession itself.⁴³

¶27 Since the law interplays with issues on all levels of social concern, lawyers’ roles can be viewed as all-encompassing. Can the same be said of librarians? Is our role as librarians so broad? According to speaker Schuman, our role is very broad indeed: the library profession is “intrinsicly bound to the ideals of democracy . . . as critical to our lives as hospitals, police and schools. Our cause is crucial to the creation of an ethical, enlightened, equitable information age.”⁴⁴

¶28 The role of the profession and the professional association is an issue that resonates with AALL and all librarians: we as librarians are continually asking and being asked are we a profession or a trade? Is there something about us that makes us different, makes us professionals? Does the charter of our organization extend beyond the confines of our 9–5 working world? Should we stand for some-

42. George E. Bushnell, Jr., *To Move the Nation Forward: The Bar Must Provide Leadership in Alleviating Society’s Chronic Ills*, A.B.A. J., Sept. 1994, at 8, 8.

43. Richard Harvey, *Bar Associations and the Public*, 16 AM. LAW. 85, 90 (1908).

44. Patricia Glass Schuman, Presidential Inaugural Address at the American Library Association Annual Conference (June 1991), *quoted in* Bruce Flanders & Leonard Kniffel, *Rallies, Wangles and Reads: ALA Annual Conference in Atlanta*, 22 AM. LIBR. 710, 714 (1991).

thing larger than professional development and education programs and if so, what? Are we as librarians, legal and other, different from lawyers; does our mission have less breadth and reach?

Remarks of Ann Puckett⁴⁵

¶29 I think it is appropriate to start with our own organization and then branch out to others. The formal organization of the Social Responsibility Special Interest Section in AALL began with an informal group that named itself the “Conference of Concerned Law Librarians.” You can probably guess the era when it began—in the late 1960s and early 1970s when there was a great resurgence of social responsibility and concern. This group worked informally, proposing resolutions to the Association for which they were criticized because they were considered “outsiders.” They were advised that if they wanted to propose resolutions to AALL, they should become “insiders.” So they applied for and achieved committee status within the Association in 1973, with the name Committee on Contemporary Social Problems. In 1976, the structure of the Association changed to permit special interest sections, and the Contemporary Social Problems Committee became one of the original sections approved by the Association. So it has been twenty-one years since the original SIS was formed.

¶30 In 1981, we merged with the Law Library Services to Institutional Residents SIS. At that time, I was the chair of the Law Library Services to Institutional Residents, which was gradually dying because it was such a tiny group of people with such a narrow focus. I feared that it was not going to last unless I found a “home” or a “mother” for it. So we merged the two SISs. We retained the name Contemporary Social Problems for the section, but created a permanent standing committee on Services to Institutional Residents within the section.

¶31 At that time, my vision was that the Contemporary Social Problems SIS would function as a group of standing committees, not necessarily with related interests, but addressing a variety of interests under the umbrella of “contemporary social problems.” Two other standing committees were formed very soon after that: a Committee on Women and a Committee on Minorities (later they merged into a single Committee on Women and Minorities). Those committees were never very active. The Committee on Library Services to Institutional Residents, however, remained active and strong, as it does to this day. The publications put out by that committee are still accepted by courts as the standard. This

45. Ann Puckett is Director of the Law Library, University of Georgia. She served as a member of the Executive Board of the American Association of Law Libraries (1993–96), and has chaired three of AALL’s special interest sections: Law Library Service to Institutional Residents (1980–81), Contemporary Social Problems (1984–85), and Academic Law Libraries (1990–91).

committee's publications and success are one of the unsung success stories of AALL.⁴⁶

¶132 But in 1985, when I had the good fortune to chair the section, things began to come together as I had hoped they would. I had hoped that the standing committees would grow organically, that they would come from the interests of the members who would take the initiative to start committees. If there was enough interest and enough critical mass, the committees would live on their own.

¶133 Carol Alpert⁴⁷ took that initiative. She started the Standing Committee on Lesbian and Gay Issues. Two people initially join her. They managed to sponsor a program, and by the end of that program, there were six other people. This standing committee now has a well-attended major reception and is part of the institution and a very strong voice in AALL. It is responsible for the addition of the term "sexual orientation" to the antidiscrimination bylaw of the Association⁴⁸ and has sponsored a number of programs, starting with the first one, "Private Life and the Law," which Carol Alpert planned and organized in 1985.⁴⁹

¶134 As a whole, the Social Responsibilities SIS has made significant contributions to the educational aspect of our annual meetings. It has sponsored some of the most innovative and controversial of the Association's programming. My personal favorite on serving the unpopular client featured the president of Coyote, a prostitutes' union. The room was packed. Bob Berring was the moderator, and the program was talked about for years afterwards. We have had programs on many other topics, some of them well attended than they should have been, others very well attended and controversial. The SIS has sponsored programs on elder law, domestic violence, censorship, discrimination against women, minorities, gays, lesbians, persons with disabilities, people with AIDS, animal rights, the environment, and others.

¶135 The Social Responsibilities SIS has also contributed to the development of AALL policy. It is the conscience of the Association. At least seven resolutions introduced by the Social Responsibilities SIS have been approved by the membership: affirmative action, equal rights amendment, sexual harassment, nuclear freeze, comparable worth, diversity, and recycling. As noted earlier, it was also responsible for a change in the bylaws regarding job discrimination on the basis of sexual orientation.

46. See INSTITUTIONAL SERVICES COMM., AM. ASS'N LAW LIBRARIES, RECOMMENDED COLLECTIONS FOR PRISON AND OTHER INSTITUTION LAW LIBRARIES (1985); CONTEMPORARY SOCIAL PROBLEMS SPECIAL INTEREST SECTION, AM. ASS'N LAW LIBRARIES, DIRECTORY: LAW LIBRARIES OFFERING SERVICES TO PRISONERS (1990).

47. *Editor's Note*: Carol Alpert currently serves as Media/Reference Librarian at New York University Library, as she did in 1985. She served as chair of the Contemporary Social Problems Special Interest Section in 1989-90.

48. AMERICAN ASS'N OF LAW LIBRARIES, BYLAWS art. III.

49. PRIVATE LIFE AND THE LAW, audiotape of program presented at 78th Annual Meeting, American Ass'n of Law Libraries, New York, July 9, 1985 (Valencia, Calif.: Mobiltape, 1985).

¶136 I believe AALL reached a low point in 1990. A resolution was introduced by the SIS to limit, or forego, associationwide events at facilities using animals as part of the entertainment. It was poorly named the “Animal Rights Resolution.” It was not an animal rights resolution.⁵⁰ I am reminded of the quote that I’ve heard many times—“the power to name is the power to destroy”—because many people never read the resolution and wrongly believed that it was a resolution solely about animal rights.

¶137 At the time of the resolution, there was growing dissatisfaction with social activism within the Association. One of the ways activism is attacked in any organization is with procedure, rather than with a head-on, substantive “I disagree with your stand” approach. Another tactic is to object that it is “none of our business.” One of the things that the section had been criticized for was introducing resolutions so late in the process that members did not have a chance to read and think about them carefully before voting. The section was accused of ambushing the organization with its resolutions. (The opponents of any resolutions that the SIS managed to get passed evidently believed that if people really thought about these resolutions, they would not have voted for them.)

¶138 So the SIS tried to respond to these objections when it offered the so-called Animal Rights Resolution. The resolution was printed in the *AALL Newsletter* ahead of time. Discussion was had. An attempt was made to be much more open. However, when this resolution opened for discussion, it was ambushed by an undebatable objection to the motion from the floor, objecting to consideration of the resolution on the ground that it was not germane to the Association. That objection required only a two-thirds vote in its favor from the few tens of people, not even hundreds, who were at the business meeting and who voted that the Animal Rights Resolution should not be discussed.⁵¹

¶139 It still rankles to this day. It’s seven years later and I’m still angry about it. (I probably always will be.) I found it outrageous that a special interest section could bring an official resolution to the floor of its own association and be told, “No, we won’t even talk about it.” I was so outraged that I vowed I would never again participate in the Association and I skipped the second business meeting at Minneapolis, the only AALL meeting I have ever missed in twenty years. I obviously am not a woman of my word because I came back, became active, chaired another section, and ran for the executive board. But when I was on the board, I voted for the *Sturgis Code of Parliamentary Procedure* that we adopted two years

50. *Editor’s Note*: In fact, its official title was “Animal Rights in Entertainment Resolution.” See *Proceedings of the 83rd Annual Meeting of the American Association of Law Libraries Held in Minneapolis, Minnesota, Business Sessions, June 18, 1990*, 82 L. LIBR. J. 811, 826–27 (includes text of resolution).

51. *Editor’s Note*: A two-thirds majority—178 of the 267 members voting—was required to approve the objection to considering the resolution. It was approved by four votes: 182 opposed consideration of the resolution, while 85 favored its consideration. *Id.* at 828–29.

ago⁵² because it would not have allowed what happened in Minneapolis to occur and because I felt that what happened in Minneapolis was the low point in collegiality in my experience in this Association.

¶140 Regarding the propriety of social issues, I understand the desire to “wall off” anything that is uncomfortable. I understand why people do not want to confront difficult issues. If it were possible to make those issues disappear by not talking about them, I would agree that we should not talk about them. But the fact is we have gay and lesbian people in our Association. We have racial minorities in our Association. We have disabled people in our Association. We have many other groups that I’m not naming in our Association. If we are going to be an inclusive group and meet the needs of that diverse population, we must know what those needs are. And we must talk to them about what the needs are. We cannot guess. We cannot “figure it out.” Our lives are not walled off from the rest of the world. I am absolutely certain that we must take stands on some issues. However, we must think carefully about what things we should take stands on. I do not think we can stand for anything without knowing where our membership is coming from.

¶141 Most of the time we have operated in the dark about what our membership is really about—other than how we vote on resolutions that the Social Responsibilities SIS has sponsored. As of last year, we have a demographic survey that suggests that the Association has been on the right track in taking the stands for which its members have voted. For instance, 79 percent of our members believe that we should continue to address the needs and interests of racial and ethnic minorities. Eighty percent believe we should continue to address gender inequities. And 66 percent believe that we should address the needs and interests of gays and lesbians. (Although this was the smallest percentage, it is still two-thirds of our membership. While that is not a happy figure for the people who are most affected by it, it is still a tremendous quantum leap over what it probably was twenty or thirty years ago.)

¶142 The Social Responsibilities SIS has a proud and successful history. I think sometimes we feel beleaguered, attacked, and unappreciated. But we can be proud and we are successful. We just have to “hang in there” or as we used to say in pre-history when I was young, “keep on keeping on.”

Remarks of Patricia Glass Schuman⁵³

¶143 I was a bit surprised to be invited to talk with you about social responsibility. Although I was one of the founders of the Social Responsibilities Roundtable

52. See *Proceedings of the 89th Annual Meeting of the American Association of Law Libraries Held in Indianapolis, Indiana, July 22–24, 1996*, 88 L. LIBR. J. 523, 543 (1996).

53. Patricia Glass Schuman is a former president of the American Library Association, as well as a member of the ALA’s Executive Board and Governing Council. She is cofounder of ALA’s Social Responsibilities Roundtable and its Feminist Task Force, and has chaired the ALA Legislation and Public Awareness committees. She is cofounder of Neal-Schuman Publishers.

within ALA in 1969 and although I do write and speak often about specific social issues and their relationship to librarianship, “social responsibility” is a term I rarely hear at library conferences these days. Maybe Dennis Hopper is right when he says the ’90s will make the ’60s look like the ’50s.

¶144 We do live in difficult times, with declining public funds for public services, new technology and a widening gap between the information rich and the information poor, and growing illiteracy rates in both children and adults. Twenty-three million people live in homes where a language other than English is spoken. Recent studies of the homeless show that many function below a fifth-grade reading level. The public’s right to know is becoming ever more fragile through cut-backs in government publications, statistics, environmental and health information, and the Freedom of Information Act, not to mention multinational conglomerization of the publishing industry and privatization of public information sources.

¶145 Some in our profession think that all this has little to do with librarians. “What impact can we have on these complex social problems? We are not social workers.” That statement is true. But it is also true that the old cliché “information is power” is rapidly becoming a reality. Librarianship is a profession ethically dedicated to the organization and dissemination of information—the dissemination, therefore, of knowledge and power.

¶146 Neither the need for information nor its value is a new concept. But the amount of information an individual requires to negotiate through complex social and economic structures and the power of information to determine who will do well and who will do poorly in our society is unprecedented.

¶147 Unfortunately, librarians are often curiously invisible to the media and the public despite the crucial role that libraries can play in a democratic society. Librarians, for example, identified the issue of illiteracy long ago. But despite many library literacy programs, we never translated our role into national recognition. More aggressive players, like booksellers, assumed much of the initiative. I believe that librarians, as professionals, have the power and the skills to effect social change. We can have massive impact.

¶148 We had a button in 1969 at the Atlantic City Conference where the Social Responsibilities Roundtable was founded that said: “Libraries to the People.” Naive, perhaps, but not particularly radical. Many still see librarians as “change agents” who, through their information skills, can help people gain the information they need to alter the quality of their lives. Librarians can help to ameliorate and solve critical problems.

¶149 Some say that this view is the very antithesis of all that libraries stand for. Librarians must be neutral they say. We are, after all, the gatekeepers of information and culture. Intellectual freedom is the greatest good. Libraries, particularly public libraries, provide free access to information on all sides of the issues, so libraries, therefore, are not political.

¶150 The really crucial question facing our profession is to figure out what

business libraries are really in: the book business or the information business. There are prevalent mythologies that abound in our field. They often drive our philosophy of service, but they are not realities.

¶151 Myth one is a pervasive and insidious one which says libraries, like all institutions, are neutral, and those within them must be neutral to be effective. Certainly professionals can and should strive for objectivity, but each of us is the product of our own individual cultural, biological, and intellectual environment. Objectivity demands that we attempt to recognize our own psychological and cultural biases, sift the facts, and then make judgments based on these facts. The concept of neutrality allows us to believe that we have no effect. But “to neutralize” is to make something lose its effect or to take a negative form of action.

¶152 Revelations over the last two decades about the activities of the CIA and the FBI have made us all embarrassed witnesses to the dangers of what Warren Bennis terms “collective immorality,” or decisions and actions taken by moral men and women (including the decision to remain silent) who, gathered together under an institutional umbrella, suppress their humanistic ideas in favor of institutional goals that negate the existence of humanity. Often these goals are no more than the preservation and perpetuation of the institution. Take the statement of the director of one of the nation’s largest public libraries during the Vietnam moratorium: “It is not that the library is against peace, but neither is it against war.” Substitute the words “freedom” and “fascism” or “equality” and “racism” and the absurdity grows.

¶153 Silence has been recorded throughout history as affirmation. It is surrender, as the “good” Germans learned to their dismay. Speaking out does not mean, and never has meant, that one prevents others from doing likewise.

¶154 Myth two tells us that librarians are “gatekeepers” of information and culture. However, in reality it is publishers who are the true “gatekeepers.” It is publishers who evaluate information, deciding what to publish, when, and for whom. These are political as well as economic decisions. At the risk of stating the obvious, you cannot buy a book unless someone publishes it and offers it for sale.

¶155 Librarians perhaps are the “gateways.” We acquire, organize, preserve, store, and make materials available. The tasks of publishers and librarians are synergistic. As the creators of information, publishers and authors draw on what libraries provide in order to create new intellectual products. Libraries are a market and an important one for publishers (particularly small publishers) and also for poetry, nonfiction, children’s books, and first novels, especially in these times, when as Calvin Trillin says, the average life of a book on the shelves of a bookstore is somewhere between milk and yogurt—a few months at best.⁵⁴

¶156 Myth three is a basic tenet of our often misguided professional philoso-

54. Susan Anderson, *Library’s Friends Laugh (Out Loud) for Money*, N.Y. TIMES, May 28, 1982, at C3.

phy that intellectual freedom is an end in itself. Intellectual freedom is certainly an essential means toward the creation and maintenance of a just, humane, democratic society. The end is a society in which intellectual freedom and all other freedoms guaranteed under the Bill of Rights will flourish. No one ideal can be guarded at all costs while others are allowed to languish or they will all die.

¶157 Too often, intellectual freedom has been used as a smokescreen to perpetuate existing ideas and to prevent criticism of these ideas. The virulence with which the critics of racist or sexist children's literature are attacked by those supposedly defending intellectual freedom is but one example.

¶158 Many of these critics are not suggesting the removal of materials. What they do suggest is that alternatives to predominant materials be provided. They say intellectual freedom must become an active process that helps to achieve freedom from stereotyped socialization so that all children can have a shot at fulfilling their potentialities. True intellectual freedom is the free exchange of all ideas as a means toward achieving a truly open and legally free society. Social responsibility proponents do not espouse the suppression of access but rather the ideal that we must *work* for equality of access for all people—not just *say* that we do.

¶159 Which brings us to the fourth myth, the one that says libraries provide free access to information on all sides of all issues. This is a certainly a goal to strive for, but the reality is that libraries only provide some information on some sides of some issues to some people. This information is certainly not free. It just depends on who is footing the bill: the taxpayer, the community, the city, the state, endowment funds, private industry, etc.

¶160 Libraries are limited by what is available, their ability to handle that which is available, and their ability to pay not only for books and other information products but also for services that will make information available to library users in a usable form. Rarely do we use the power of the library profession as a market force to actively encourage such industries as publishing to make sure that materials are available. Even less often are we willing to collect materials from small and independent presses, which might complicate our procedures.

¶161 Libraries specifically choose not just what information they provide but when, where, and how. Our heady goal of free access is slipping away from us on a daily basis during the current economic crunch, and this is exacerbated by the conglomeratization of the publishing industry.

¶162 Myth five is that libraries are not political institutions. (You could have fooled me!) A friend of mine says that in the United States we have two kinds of political parties and two kinds of libraries. Democratic libraries say: "We have the book but we can't find it." Republican libraries say: "We have the book but you cannot use it." (This myth is possibly another version of the neutrality myth.)

¶163 Libraries constantly compete in the political marketplace for funding and favorable legislation: our opposition to the appointment of nonlibrarians as

Librarian of Congress and to four presidential vetoes of library funds, and our position on access to government information should be enough to discredit this myth once and for all.

¶164 In fact, for over a decade the library community has been almost a lone voice raised in protest against limitations on the public's access to government information. ALA's chronology documenting "less access to less information by and about the United States government" has twice won the dubious distinction of being designated one of "the year's most under-covered news subjects" by Project Censored, a California group. Our opponents certainly know that this is a political battle. They have a strong lobbying effort in Washington and they are winning the battle.

¶165 Which brings us to the next, and perhaps the most dangerous, myth which says that libraries must decide whether they are in the book delivery business or the information delivery business. That proposition is often urged upon librarians. The most frequent metaphor used to illustrate the argument is that of the railroad companies who failed to realize that their business was not trains but transportation. The metaphor is a glib one.

¶166 Libraries are not in either the book or the information business. Nor should they be "in business." They cannot hope to compete with the Maxwells and the Murdochs, nor with AT&T or IBM, all of whom claim that they are in the information business. Adopting the vocabulary and methodology of business is a dangerous game for libraries. This myth can lead us to follow the agenda of the marketplace rather than to forge our own.

¶167 The production, management, and sale of information are something quite different from the provision of access. It implies efficiency, not equity. Conversely, private-sector profit-oriented companies that are in the so-called information business do not, and cannot, compete with libraries; not with libraries' services, not with library programs, not with library collections, not with the expertise of librarians. They can certainly collect data. They can store it. They can manipulate, organize, and transmit it. But knowledge is a human achievement. It is not always immediately profitable in the marketplace.

¶168 Some members of the profession fantasize that business methods will change the image of libraries and improve our status as librarians and that the management and merchandising of information should be our new role. Some also believe that charging fees will "increase the user's recognition of the value of library services." But the underlying logic is faulty. I know the value of a BMW. So what? I cannot afford one. It is like saying if we charge people for borrowing books, then more people will read.

¶169 The library profession will make a grave mistake if it persists in the marketplace myth. Certainly, we must understand that libraries are a market, a large consumer of information services and products. But libraries have no business in

business. Libraries are service organizations. Librarians are service-oriented professionals. Their business is not information. Their mission is to facilitate understanding through knowledge.

¶170 A telephone operator fills an information need, and telephone operators are gradually being replaced by computers. Postal workers deliver documents, but computers and fax machines do so more efficiently. Both provide information delivery (even access of a sort) to very limited kinds of data and documents. The mission of librarians is not just to simply fill specific information needs; the mission of librarians is to solve information problems. The business myth suggests that instead we must transfer the cost, and possibly even the necessity, for information skills back to the user. A dentist does not expect a client to fill her own teeth nor does the medical profession advocate self-diagnosis and treatment. To fulfill our missions we must move beyond mythology and deal with reality.

¶171 Creation of services is a human function. The future direction of library services is largely up to librarians: to creative, knowledgeable, flexible, professional librarians; librarians who provide interpersonal interaction, information evaluation, communication, synthesis, and judgment; librarians who demand a say in future policies and developments that affect library services. What actually happens will depend not just on others but on our human creativity and ingenuity.

¶172 “Libraries provide not the only, but the also,” says Lester Asheim. “Society, certainly a democratic one, needs some communication agency which judges the importance of an idea on the basis of the individual who might be touched by it and not by the particular mechanism on which it happens to be carried or by the size of the audience that is willing (or able) to pay for it.”

¶173 Business equates information with profit. Librarians must equate information with understanding. The role of the librarian is to distinguish between data and information, between facts and knowledge, and to be concerned not only with the “what” and the “how” but also with the “why.” Access means more than mere physical location. Access means the connection of ideas to people. That is why America’s librarians must become major actors in matters of public policy. We can no longer assume that the virtue of libraries and librarians is self-evident. This attitude is what Northwestern’s Dr. Sidney calls “the impotence of virtue.”

¶174 But anonymity is not a virtue. It is a position we cannot afford. Information and books have become “big business.” Our challenge is to act, to raise our voices to effectively present what we do, to show that we can have impact. We must tell the full library story to leaders in government, business, education, and the general public. This means spending less time talking to ourselves and about ourselves; less time on the inner workings of our institutions and our associations. We must not splinter ourselves within the profession. To laypeople we are all librarians. We must speak as a unified voice. We must support one

another. Our principles and our resolutions are in place, but they alone are not enough to make a compelling case.

¶175 We have managed to do that only a few times in library history. Take the FBI's library awareness program, which is now in the news once again. Ironically, it may be one of the best public relations campaigns libraries have ever had. What we need now are facts, cases, examples that specifically show how libraries and librarians help and how the lack of them has hurt. We need ammunition to ensure that the battles to come are fought loudly, visibly, and successfully.

¶176 We have unparalleled opportunities to articulate our concerns, those of our users, and, perhaps more importantly, those who may not use libraries but need our services. This means public awareness, it means forging coalitions, it means full participation in the political process. This is a fertile time for librarians to capture the public's imagination. We must seize the initiative, articulate our values, and communicate our pride in who we are and in what we do. Our challenge is not just to provide more information or even just the right answers. Our challenge is to help people formulate the right questions. When Albert Einstein was asked "what single event was most helpful in developing the theory of relativity," he is said to have answered: "figuring out how to think about the problem." Helping others to do the same is the challenge before us if we truly have a commitment to social change.

Remarks of George E. Bushnell Jr.⁵⁵

¶177 I confess that I was totally unaware of the existence of the American Association of Law Libraries until the phone rang one day and on the other end of the line was Leslie Campbell from the University of San Francisco, inviting me to speak at the AALL Annual Meeting. I was not surprised to hear about AALL because everybody has an organization to which they belong. But I did not realize that law librarians were so well organized. Because of my ignorance, lack of experience, and lack of education, I asked Ms. Campbell if she would be good enough to provide me with some information about the organization. She not only did that, but she did a search of materials available on the subject that we're now discussing. She was gracious enough to provide me with the product of that research, including the quote from Roscoe Pound. But she didn't quite finish the quotation, and I have her to thank for knowing this. Pound went on to say, and I paraphrase: "These issues consistently involve legal matters. So it's rather

55. Mr. Bushnell is currently of counsel for the Detroit firm of Miller Canfield Paddock and Stone. He is a former president and member of both the House of Delegates and Board of Governors of the American Bar Association. He is also past president of the Detroit Bar Association (1964–65), the Michigan State Bar Association (1975–76), the Trial Attorneys of America (1971–89), and the National Conference of Bar Presidents (1984–85).

difficult to determine what is the business of the American Bar Association and what is not.”⁵⁶

¶178 Even then Pound recognized the problem that faces the American Library Association and the AALL, for it is one that has confronted the ABA since it began as an organization. My job is to acquaint you with the ABA’s involvement in matters of “social concern.” I use quote marks because what the American Bar Association has involved itself in are matters that affect the public we serve and our relationships with one another, matters that enable our society, our communities, indeed, our legal system to function. That is to say, matters of social concern are no more than matters that each of us as individuals confront or have confronted at one time or another in our daily lives. It is the historical tradition of the American Bar Association that these matters are of as much concern to lawyers as are the nuances of the tax code, the reports of the Kings Bench, the independence of the judiciary, the precepts of family law, and the effective functioning of the court systems of our respective jurisdictions. For all of our activities in this day and age ultimately must be measured by the Constitution of the United States, but more about that in just a minute.

¶179 First, let it be noted that the ABA has not publicly advanced any position on any subject or on any issue that is not identified as an established policy of the Association. If the House of Delegates has not established a policy, the ABA is silent. Nor are these policies easily established. It might be helpful if I told you a bit about the House of Delegates, which I chaired for a two-year term before becoming president of the ABA. The House of Delegates is the representative body of a membership that currently consists of more than 380,000 lawyers in the United States. The House itself consists of 525 members.⁵⁷ The membership is representative; that is to say, the majority of the members are representatives of state and local bar associations. Additionally, there are members-at-large, one-third of whom are elected each year by those attending the annual meeting of the ABA.

¶180 The ABA has twenty-six sections and divisions, all of which have representatives in the House. The Attorney General of the United States is a member of the House, as is the Director of the Administrative Office of the United States Courts. There is one delegate from the Virgin Islands, one delegate from Guam and the Commonwealth of the North Marianas, a combined seat, and one delegate each from Puerto Rico and the District of Columbia. In addition, there are delegates from twenty-eight affiliated organizations, including the National Bar Association, the Hispanic Bar Association, the National Asian Pacific American

56. See *supra* ¶ 4 and notes 6–7.

57. *Editor’s Note*: As of October 12, 1999, the House of Delegates consisted of 531 members. See American Bar Ass’n, *ABA Leadership: House of Delegates* (visited Apr. 5, 2000) <<http://www.abanet.org/leadership/delegates.html>>.

Bar Association, and the National Lesbian and Gay Law Association. Finally, membership in the House of Delegates is accorded to all sitting officers, past presidents, and past chairs of the House of Delegates, who hold lifetime seats.

¶181 The House meets twice each year in February and August to consider the business of the Association and to establish policy. Issues come before the House from any one of the member organizations or from any individual member of the House. They must be submitted in advance to the Committee on Rules and Calendar, thus giving everyone who is a member of the House at least three weeks to consider the docket that will be presented.

¶182 As you might well imagine, 525 lawyers considering each matter subjects most of them to intense debate. I cannot overemphasize the intensity of those debates in many, many instances. This year the House will convene in San Francisco on August 5th and 6th. The matters to be voted on and the major part of the business of the House concern issues or matters that not any of our deepest enemies can argue are “social issues.” However (and this is a great big “however”), a number of these purely legal issues will, in this day and age, quickly become politicized. That is something we have to live with.

¶183 For example, one of the reports recommends that Congress and the General Accounting Office, and Executive Branch agencies make legislative changes to the congressional rule-making process. One would think that that was a “no brainer,” but it will become politicized as sure as “God made little green apples.” Another recommends guidelines for courts to use in remand proceedings. The federal judiciary and the state judicial systems are supportive of standard guidelines in remand proceedings. Again, a “no brainer.” But the Congress of the United States will turn that into a political issue, without question. Each of these, I predict, will have opponents and advocates who will charge one another with being either conservative or liberal or whatever.

¶184 Nevertheless, we will have, as we have always had, a good share of reports and recommendations that are quickly identified as so-called “social concerns.” The Beverly Hills Bar Association seeks the ABA’s approval, for example, to support legislation by states and territories that would legalize physician-assisted voluntary aid in dying for terminally ill adult persons. It is limited to adults and only after all medical options have been exhausted. This is opposed by the Commission on Legal Problems of the Elderly as well as the Commission on Mental and Physical Disability Law, who urge states to refrain from considering adoption of physician-assisted suicide legislation unless and until further research and practice data on end-of-life experiences confirm that appropriate care alternatives, support services, pain relief, and legal protections are available. That ought to keep the body awake during the debate on that issue.

¶185 The Association of the Bar of the City of New York and the New York County Lawyers Association recommend that lawyers be discouraged from making and soliciting political contributions to public officials and the issuers

of municipal securities. One would think that that issue would have an awful a lot of “sex appeal” given the current discussion in the press about political contributions. But again, inevitably, it will become an issue that is identified as “conservative” or as “liberal,” depending on which street corner you were standing on when you viewed the open intersection collision.

¶186 The Section of Criminal Justice takes a whack at the independent counsel provisions of the Ethics in Government Act to limit coverage of the Act only to the president, vice president, and attorney general, and to change the requirement that the independent counsel must file reports, including the final report. Once again, partisan politics will be very evident in the debate.

¶187 I do want to mention one issue in passing because I have somewhat of a parallel interest in this. One of the issues is to recommend approval by states and local governments of needle exchange programs, an issue that obviously impacts our legal system but, most importantly, impacts our community.

¶188 We are not above reflecting the backgrounds that all of us bring to these debates in the House of Delegates. This includes our social backgrounds, our community backgrounds, our religious backgrounds, our political backgrounds, and our ethnic backgrounds. It is that debate that results in the policies that make me very proud of our Association.

¶189 All of these issues I have been talking about will be met by individuals screaming, “None of this is the business of a professional organization.” Now that complaint has been with the American Bar Association since the late ’50s. Interestingly, when eight or nine past presidents of the Association wrote to the United States Senate condemning the appointment of Louis Brandeis to the Supreme Court, it *was* considered to be the ABA’s business. Interestingly, when the Association, without exception, opposed every legislative recommendation of the Roosevelt administration from 1932 to 1938, it *was* considered to be the business of the ABA.

¶190 So our history is rich with taking these positions and I am proud of it. The complaint that these issues are none of the business of the ABA has been with our Association since it consisted exclusively of white male lawyers, the majority of whom were Protestant. (Membership was only opened to men of color—*men* of color—in 1943. There were a few women after the end of World War II, but they were scarcer than the proverbial hen’s teeth, and none of them would ever dare aspire to committee membership.) But the world changed, and I’m proud and happy to say that the American Bar Association, without too much screaming, changed with it.

¶191 With that change came the realization that whatever happens to anyone in our respective communities impacts the legal system for every one of our communities. What many thought was no lawyer’s business became every lawyer’s business. Insofar as our Association is concerned, the added number of women and the leadership roles that they now occupy; the rainbow hue of our member-

ship; the fact that blacks, Hispanics, Asians, Middle-Easterners, and others are actively participating in what was, within my professional lifetime, an elitist organization have each served to strengthen and advance our Association beyond measure. The American Bar Association, in my judgment, now stands where lawyers have stood—as protectors of liberties and enforcers of the Constitution at a time in our history when the Constitution and liberty have never been more at risk.

¶192 Have we been criticized? You better believe that we have. We have been criticized by our members. (But parenthetically, in the twenty-one years I have been in the House of Delegates, only once was the question of “germaneness” at issue. That was when a resolution was introduced to commend President Reagan for firing the air traffic controllers who were on strike. The question of germaneness failed and the commendation was approved. It was simply a flat-out commendation with no reference to striking federal employees or anything else.) We have been criticized editorially by almost every newspaper in the country. We have been criticized by Democrats and Republicans. We have been criticized by both houses of Congress, by presidents of both parties (including the one currently serving), by every attorney general at one time or another, and by executive regulatory heads “out the wazoo.” We are regularly criticized by other organizations of lawyers, to such an extent I am totally convinced that at least one of them, the Federalist Society, would not exist if it did not have the ABA to kick around.

¶193 Have we been praised? You can bet your life we have been. We have been praised by all the individuals and institutions to which I have just referred, with the glorious exceptions of *The Wall Street Journal* and the Federalist Society. (Neither of them has ever given us one word of praise.)

¶194 Now what does all this mean? It means, obviously, that we have voiced opinions. We have taken stands. Not everyone will be pleased when any organization or any individual says, “This is what we believe . . .” or “this is what I believe . . .” It is not a role for “Willie Lomans” because you are not going to be well liked by every customer, nor are you going to please everyone.

¶195 But you will create discussion and that is the point that I really want to make. Our political system, our social system, our economic system, our legal system—which, taken together, constitute our nation—are, I submit, in a state of confusion unlike any that has visited us since 1789. This is no state of change. It is no state of transition. It is a whirlpool of confusion in which we all are spinning and from which we cannot find escape. I believe, and the ABA believes, that the reason for this frightening and threatening state of affairs is that we will not discuss the issues of the day. Rather, we remain dumb and intimidated by the shrill, loud voices of a handful of zealots, by the demagoguery (and it is demographic too) of sleazy politicians. The rest of us have abdicated our First Amendment rights to speak out, to be heard. No one must be silenced and we cannot silence ourselves.

¶196 The Constitution is for all of us: zealots, demagogues, and everyone else. We must discuss, we must debate, we must talk. We must do this in our homes; in

our churches, synagogues, and mosques; in our schools; in our professions; and in our organizations. Hopefully, there will be those who will disagree, vocally and excitably disagree. Hopefully, such disagreement will become debate. Hopefully, such debate will then become considered judgment. And then, hopefully, our chaos will cease. That is what the American Bar Association seeks when it takes positions. That is what the American Bar Association and all of us speaking today urge every organization to do.