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COMMENTS ON PROFESSIONALISM

*The Honorable John M. Walker, Jr.**

We have all talked about professionalism. We've talked about the importance of it, the disconnects that Dean Powell brought up, the theories that Professor Mashburn referred to, and finally, the analysis articulated by Dean Kronman. What I would like to say is that I think we need to make the transition from a theory of professionalism into how to teach professionalism.

The law schools have a challenge. They have a tremendous challenge because professionalism is not something that is just going to emerge by itself. The sense of professionalism, the sense of being a professional lawyer, is not going to emerge out of thin air. It's got to be thought about. It's got to be taught. It's got to be built into the life of the law student and, after law school, into the life of the lawyer. But teaching professionalism at law school is very important. These are the lawyer's formative years, the years of first impressions.

Every year I get three or four law clerks who usually come to me right out of law school. How they view the law and the profession is of critical interest to me because, as I see it, their views are going to forecast not only their careers, but the careers of thousands of other like-minded and similarly-educated individuals. In preparation for coming here today, I did a little survey. I don't pretend that it has any statistical significance. It is anecdotal, but still of interest.

I have thirty-one former law clerks who have finished their clerkships with me and are no longer clerking on the Supreme Court, which some do after they clerk for me. It's interesting to see where their careers have taken them. Of these thirty-one former law clerks, nine are either in the United States government or trying to get into the government from big firms. Five are teaching, three are in small firms by choice, one is in a public interest think tank, and five have left the law all together—three for business, one to become a screen writer in Hollywood (and he's doing better than anybody, financially), and one to raise her children. She's had many children and is not about to go back into practice, at least not in the near future. Eight of my former clerks

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are currently in big firms; however, five of these clerked for me within the last two years. They have debts to pay off and, as soon as their financial worries are relieved, most expect to move on. There might be one or two of the five who will stay in the big firm. Two of my former clerks are big firm partners; one is not yet a partner but probably will be.

All of the foregoing tells me something. It tells me that maybe the law schools are doing a pretty good job of inculcating some of the ideals that Dean Kronman just mentioned. Ideals of professionalism, public interest, the integrative nature of the law, a respect for the generalism of the law, and respect for tradition and precedent. All of this is deeply a part of these students' professional lives. But what are my former clerks doing with this training and education? By and large, they are not sticking around the big law firms. They are looking for ways to make their professional lives more meaningful in a broader sense, not just in terms of income. To be sure, they will pay their bills. They will do what is necessary to meet their financial obligations. But the generation of a high income, it seems to me, is not why they went to law school, or at least it was not their goal when they graduated from law school. I think it is quite remarkable. I assume that my colleagues on the Second Circuit Court of Appeals would have a similar report to give you.

Law schools can teach professionalism, but they can't do it in a one or two-hour course. It has to be built into the entire curriculum. If the law schools wish to produce a graduate student with a highly developed sense of professionalism and ethics, they will first select students who are interested in a career of moral value. There will be cases in every course taught in the schools that are teaching tools on matters of ethics, on matters of character, on matters of making the morally correct judgments in the right situations. The law schools can draw exemplary practitioners back into academia and deeply immerse them into the curriculum of the law school. They can co-teach. The schools can use adjunct professors. They can have clinical programs. They should make such programs really important. My belief is that there is a tremendous student attraction to clinical programs, particularly in the second and third year of law school.

The alumni can return and tell their stories to the students and tell them about how their careers have gone and open themselves up to questioning. The remark was made here that ethics and the love of the profession depends on heroes and examples, and I couldn't agree more. I think that there is a great deal that law schools can do to bring back their heroes and to have them share their experiences with the students.

Let me close by saying that I can conclude from my own situation with my own law clerks that the law schools from which these students came, and they are the schools which you are familiar with, are doing a good job of inculcating professional ideals. These former students desire to pursue the public good. I guess that one could also conclude, at least from what I've seen, that the future of the big firms in attracting such students, is problematical. The big firms are not going to attract some of the students who in the past may have aspired to work for a big firm. This ties in, I think, to a comment that Dean Kronman has written about in his book, *THE IDEA OF THE LAWYER-STATESMAN*. Twenty years ago the big firms were generating lawyer-statesmen. They easily come to mind: people like Cyrus Vance, John McCloy and Dean Atchinson. This was the ideal that people pursued twenty or thirty years ago when they went from law schools into big firms. The graduate would aspire to big firm practice and, at the same time, pursue the public good.

There are economic pressures that Dean Kronman has referred to that are making the lawyer-statesman ideal nearly impossible today. The culture has changed. But what I see from my vantage point is not that the students are trapped in the big firms. Instead, they are opting for a reduced salary in order to get the meaningful professional life that they desire. That has been my experience. What does that tell me as a free market economist? Well, maybe at some point the market place is going to have to correct. There is a labor market out there. These are the best and the brightest students. They are not opting for these big firms. At some point I think the firms will have to react. And there is going to be a tension between the need for the outstanding law students to fill the big firms associate pools, on the one hand, and the pressures that, on the other hand, are driving young lawyers away from big firms, pressures toward increased billable hours, increased specialization and so forth, pressures that are getting between them and their clients.

I don't have a solution for the big firms beyond pointing out the desirability of restoring a culture, if at all possible, that admits of the lawyer-statesman. I just think that there are very interesting developments that are going on. I think there is fluidity. I am not quite as pessimistic as Dean Kronman because I think the basic desire on the part of law schools, law faculty, the academicians that I know, and the students, is in the right direction. At some point, I believe, the rest of the profession is going to wake up to all of this.

I would say, in a final comment, that the paradigm of the professional lawyer doesn't necessarily fit the judiciary. It does in one sense obviously: lawyers should be generalists, judges should be generalists.

Judges should be able to deal with all kinds of cases as we must do under the federal system. We ought to be able to handle different cases with equal skill. We ought to have the judgment to discern when good arguments are being made and when bad arguments are being made. But one must not confuse the idea of the generalist lawyer or practitioner with the idea of broad discretion in judicial decision-making. The notion of the law, itself, relying upon the judge as a broad discretionary decision maker, for me, is problematical. I'm always concerned about extended judicial discretion in deciding cases in the law because that can lead to disparate results. It can lead to a fragmentation of rules, or worse to their dissolution. This ultimately throws into some question the rule of law itself. After all, ours is a system of laws, not *ad hoc* judgments. So all I am saying is that what may be satisfactory for the lawyer practitioner may not be satisfactory for the law and for the role of the judge.

Finally, I would like to simply conclude by saying that I am less pessimistic than Dean Kronman. Perhaps my optimism is misplaced in some way. I feel that we are in a period of difficulty and ferment, but that the right forces will come to the fore. I feel that the situation we will be reporting on twenty years from now will be better than the one we are reporting on today. Thank you.