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INFORMAL REMARKS ON PROFESSIONALISM

*Burnele V. Powell**

Roy Simon's introduction of me reminds me of the old joke by Groucho Marx who said, "That was a fine introduction; I don't really deserve it. Of course, I have lumbago, and I don't deserve that either." It is, indeed, a pleasure to be here at Hofstra this evening and particularly to have this return engagement. As I was flying out here I was trying to think—as I sometimes do when called upon to speak—of some appropriate metaphor to set up my remarks. While I was walking around with my head in the clouds (actually in the process of boarding Delta Airlines), I took a quick glance at my ticket so I would know where my seat was. I began walking and finally made my way down the congested aisle. I got to seat 25A and noticed that it was occupied by a young woman. So I said to her, "Excuse me, are you in 25A?" She looked at me with total certainty and said, "Yes, indeed, I am in 25A. This is my seat." And I thought for a minute, "Oh well, I guess I'd better look again."

I pulled out my ticket, checked it and noticed that because I did not have my glasses on — a mistake that I won't make this afternoon — that I was actually to be in 25E. I immediately took the seat across the aisle, got myself comfortable, and began looking at some papers.

About this time two individuals walked up to me and said, "Excuse me sir; you are in our seats," and I said "I am in 25E." "Yes we know," they said "25E is the aisle in front."

So I said, "Oh, excuse me."

By this time I was a little flustered. I got up, sat in the next row, again made myself comfortable. And then I began to notice that as the people came onto the airplane behind me there was a lot of confusion. People were sitting in the aisle and they were jumping up and getting into another aisle. They were stepping across, etc. And there was an elderly gentlemen who actually had to move three times before he finally got his seat.

I couldn't figure out what it was, and then I looked across the aisle from my 25E and I noticed that the row across was 24. I thought, "This is odd." Delta airlines has spent a lot of money putting together an airline,

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telling the people that they are serving the public, trying to make it comfortable for us, and they didn't think enough to design their seating in such a way that row 25 would be the same row on both sides on the plane. And then it came to me. I thought, you know, maybe that's where we are with professionalism.

Maybe our problem is that we know where we want to go in some broad sense — we know what that destination is — but we are not at all sure about whether we are going to get there with any sense of comfort. We are not at all sure that, when each of us individually decides what professionalism is, that we are really going to find out at the end of the day that we're ready to stand up for that or in my case sit down for that.

Case in point: I had the opportunity to see a speech that Dean Kronman gave some time ago. I noted that at one point, after talking about the commitment of particularly the large firms in the US to ideals of service and professionalism, he said something along these lines — “Well, indeed,” he said exactly this for I am quoting: “In the first place the commercialization of law practice, especially in upper reaches at the country's largest and most prestigious firms, has introduced an element of competitiveness that has caused many lawyers in these firms to view the public responsibilities as a luxury they can no longer afford. They are in the frantic scramble to attract business by appealing to the self-interest of clients. Of course, the luxury is the luxury of performing *pro bono* service. This tendency has been exacerbated, I am bound to say, by the official pronouncements on legal ethics made by the American Bar Association and other organized groups which increasingly endorse the view that lawyers serve the public good best by serving the private interests of their clients with maximum zeal which is in effect treating lawyers like Adam Smith's tradesman.” He then goes on.

And I thought, “Oh, that's a nice provocative statement there. We've got the lawyers turning their back on their professional obligation, and we've got the American Bar Association and other large groups actually kind of urging them on.” I thought this was certainly to be a point of our discussion Sunday afternoon.

But then I had an opportunity also to read Professor Mashburn's piece, and I was struck by the fact that at one point she says, “At minimum, law schools, and in particular state schools must be prepared to respond to persistent calls from the bar and bench to do something about the so-called professionalism crisis”.

I thought, “Ah, Professor Mashburn is telling us that the bar associations are out there in an organized, systematic way calling upon people to engage in professionalism.”

Well, wait a minute, which is it? Which seat are we in? And if we can find our seat, what is it that we are supposed to do about it?

And indeed, that is the question that I hope our panelists will be prepared to address this afternoon.

I will tell you at the outset that my own view is that we are at a point where, as I said, we all know where we want to go. The question is whether we can define how to get there and what we are prepared to give and give up in the process.

What we want, I think, at the end of the day — at the end of the trip — is to see professionalism as a call for us to act above the articulated standard — above the legal obligation. We want at the end of the day to work in a profession where those around us also have operative procedures that are above the standard. Our colleagues, we hope, will be people who will set their own standards and not simply look to others to articulate the rules. At least that's where I want to go, and many lawyers who I have talked to also want to go there. But in truth, I think that we are not at a point where we are going to make that trip very easily.

One thing that bothers me is that I think that in all truth — and here I will simply cut to the point as opposed to elaborating — where we are as lawyers is that we are simply professional influence peddlers. By professional influence peddlers I don't want completely to compare us to people like Dick Morris, who in politics spin the situation on behalf of their clients. But I do want to say that we have an obligation, particularly in legal academia, but also each and every one of us as lawyers, really to spin the situation. The difference between us and Dick Morris, however, is I hope that we spin the situation *by example*. Ultimately maybe that's the best we can do in terms of professionalism.

I had occasion to write a piece published in the South Texas Law Review in which I said that professionalism is really nothing more than ordinary morality. I say today that ordinary morality does require each of us to lead by example. But that raises a question for us. Indeed, I think it raises several questions for us, and I will list them and then turn it over to our panelists.

Leadership by example is the first big question. Can professionalism ever mean anything more than simply leading by example? Do we want to legislate professionalism, in other words? Even if we do not want to legislate morality or if we find that we cannot legislate morality, how do we deal with the difficult issues of the marketplace? What does the market place demand of us as professionals and as people who are engaged in the business world? What does lawyer professionalism dictate about the relationship of lawyers to other professions — those with whom we

have to interact on a regular basis? What is the relationship of lawyer professionalism to volunteerism? Are there other models of legal professionalism that exist among the bar, the judiciary, and academia? Are they the same models of professionalism?

I would hope that we will get some insight on those points here this afternoon, and if indeed we do, as I expect we will, we will have a happy landing.

I will leave it there and take a seat.