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"PROFESSIONALISM"

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It is a great pleasure to be here at the University of Oregon to dedicate the William W. Knight Law Center. You have created a beautiful, state-of-the-art facility, equipped to meet the demands of contemporary legal education and befitting the University of Oregon's reputation. It is bound to inspire academic achievement, nurture interesting and valuable scholarship, and nourish a sense of community among the school's students, faculty, staff, and alumni.

As magnificent as it is, what I would like to talk to you about today is not your new building. Instead, I would like to talk about the enterprise this building is now a part of, and what those who use it will do once they have left. It is hardly a secret that many lawyers today are dissatisfied with their professional lives. The pressures associated with the increasing commercialization *386 of law practice have made lawyers, as a group, a profoundly unhappy lot. As a recent New York Times article concluded, "job dissatisfaction among lawyers is widespread, profound and growing worse."

An examination of the research on lawyers' overall well-being is deeply troubling. Attorneys are more than three times as likely as non-lawyers to suffer from depression, and they are significantly more apt to develop a drug dependency, to get divorced, or to contemplate suicide. Lawyers suffer from stress-related diseases, such as ulcers, coronary artery disease, and hypertension, at rates well above average. Unsurprisingly, a recent RAND Institute study of lawyers in California found that they were "profoundly pessimistic about the state of the legal profession and its future," and that only half would choose to become lawyers if they had it to do over.

This dissatisfaction is not limited to those within the legal community. Lawyers have increasingly been the subject of public derision. A lawyer in Texas recently filed a lawsuit claiming that he had been the victim of housing discrimination. Apparently, after several unpleasant experiences, the property company had adopted a policy of never selling new homes to attorneys. In economics, lawyers are typically described as creating "deadweight loss," not an altogether flattering term. And a recent study characterized the portrayal of lawyers in popular films today as that of "miserable human beings, either unethical or incompetent at their jobs." Few Americans can even recall that our society once sincerely trusted and respected its lawyers.

I believe that a decline in professionalism is partly responsible for this state of affairs. Dean Roscoe Pound said that a profession is "a group . . . pursuing a learned art as a common calling in the spirit of public service--no less a public service because it may incidentally be a means of livelihood." On graduation from law school, aspiring attorneys do not simply gain the means to a comfortable livelihood. They also assume the obligations of professionalism: obligations in their dealings with other attorneys; obligations toward legal institutions; and obligations to the public. Personal relationships lie at the heart of the work that lawyers do. Despite our vast technological advances, the human dimension remains constant, and these professional responsibilities will endure.

Lawyers must do more than know the law and the art of practicing *387 it. A great lawyer is always mindful of the moral and social aspects of the attorney's power and position as an officer of the court. That point was reaffirmed by a case we decided a few years ago. The narrow question presented was whether a criminal defendant has a right to present through his lawyer a story that the lawyer knows to be false. The Court unanimously found that there was no such right. The Constitution requires lawyers to represent their clients zealously, the Court held; but nothing in the Constitution justifies advocacy so zealous that it exceeds the bounds of the law.

It has been said that a nation's laws are an expression of its people's highest ideals. Regrettably, the conduct of our nation's lawyers has sometimes been an expression of the lowest. Increasingly, lawyers complain of a growing incivility in the profession, and a professional environment in which hostility, selfishness, and a win-at-all-costs mentality are prevalent. One lawyer who recently stopped practicing explained his decision to leave the profession

in these bleak terms: "I was tired of the deceit. I was tired of the chicanery. But most of all, I was tired of the misery my job caused other people. Many attorneys believe that 'zealously representing their clients' means pushing all rules of ethics and decency to the limit." This complaint is not unique. In a National Law Journal study, over fifty percent of the attorneys surveyed used the word "obnoxious" to describe their colleagues. Indeed, sometimes attorney conduct is not simply rude but downright scandalous. Two lawyers from prominent New York firms recently turned a deposition into an actual brawl. And attorneys have been spotted exchanging invectives and even engaging in shoving matches in front of court clerk's offices--a scene more reminiscent of combatants in Autzen Stadium than of professionals trained in the art of reason.

When lawyers themselves generate conflict, rather than addressing the dispute between the parties they represent, it undermines our adversarial system and erodes the public's confidence that justice is being served. Greater civility can only enhance the effectiveness of our justice system, improve the public's perception of lawyers, and increase lawyers' professional satisfaction. I fear that we have lost sight of a fundamental attribute of our profession, one that Shakespeare described in *The Taming of the Shrew*. Adversaries in law, he wrote, "strive mightily, but eat and drink as friends." In contemporary practice, however, we ***388** speak of our dealings with other lawyers as war-- and too often we act accordingly.

Consider the language that lawyers use to describe their everyday experiences:

"I attacked every weak point in their argument."

"Her criticisms were right on target."

"I demolished his position."

"If we use that strategy, she will wipe us out."

"I shot down each of their contentions."

But one need not envision litigation as war, argument as battle, or trial as siege. Argument, for example, can be conceived of as discourse. When I ask a question during oral argument, it is meant not as an attack but as an invitation for counsel to address an area of particular concern. The most effective advocates respond accordingly, answering honestly and directly. Indeed, a good approach to oral advocacy is to pretend that each Judge or Justice would like to vote in your favor, and will, but only if you can set the judge's concerns to rest by directly answering the question the judge finds troubling.

Trial similarly can be seen as an investigation in which the jury must choose among competing versions of the facts. Ranting and raving probably do little to convince. A more persuasive technique is to present yourself as a reasonable person who wants to see justice done, it just so happens that justice will be done by finding for your client, not opposing counsel's. All too often attorneys forget that the whisper can be more dramatic (and compelling) than the scream.

Justice Holmes believed that "a lawyer [can] try [a] case like a gentleman," or gentlewoman, I would add, "without giving up any portion of his [or her energy and force." Civility, however, is not a virtue that many of today's lawyers choose to advertise, as underscored by one lawyer's characterization of his marketing strategy: "Clients," he explained, are "not looking for a guy who coaches Little League. They don't want a wimp. They want a lawyer who means business, an animal who's going to get the job done, whatever it takes." It is appalling that any member of our profession would describe himself in these terms. "Getting the job done" should go hand and hand with courtesy; a lawyer can "mean business" without remaking himself as an "animal."

The common objection to civility is that acting courteously will ***389** somehow diminish zealous advocacy for the client. Once, in fact, after I made some public remarks about the importance of civility, I received a letter taking me to task: "I want a [lawyer]," he said, "who could be capable of hating my opponents. I want a person [who] is willing and eager to stomp my opponents into the dirt. There should be absolutely no friendliness shown to the opposition." I see it differently. In my view, incivility disserves the client because it wastes time and energy: time that is billed at hundreds of dollars an hour, and energy that is better spent working on the client's case than working over the opponent. It is hardly the case that the least contentious lawyer always loses. It is enough for the ideas and positions of the parties to clash; it is wasteful and self-defeating for the lawyers to do so as well.

There is another aspect of professionalism that goes more to the heart of what it means to be a lawyer. Lawyers are dissatisfied with their careers not simply because of the long hours and hard work, or even the decline in civility. Rather, many lawyers question whether, at the end of the day, they have contributed anything worthwhile to society. Indeed, there is an old joke to that effect. It involves two men on a balloon expedition who became hopelessly lost in a storm. When the storm cleared, they found themselves floating above a one-lane road, with nothing in sight but wheat fields. There was no one, absolutely no one, around. Finally, they spotted a woman walking down the road.

[Calling down] "Hey!" they called out. "W-h-e-r-e a-r-e w-e?"

To which the woman responded [calling up]:

"You're up in a balloon, about twenty-five feet off the ground."

"She's a lawyer," one man commented to the other.

"How do you know," his companion asked.

"Well," he responded, "her answer was clear, precise, perfectly accurate and totally useless."

I think we can all agree that perfect accuracy in the interest of utter futility is not the highest calling of the profession; nor is it, in my opinion, the answer to why lawyers do what they do.

Rather, my answer is the same as the one I gave from the bench a decade ago. The "[o]ne distinguishing feature of any profession," is that,

***390** unlike other occupations that may be equally respectable, . . . membership in a profession entails an ethical obligation to temper one's selfish pursuit of economic success [even though that obligation cannot] be enforced either by legal fiat or through the discipline of the market. . . . Both the special privileges incident to membership in the profession and the advantage those privileges give in the necessary task of earning a living are means to a goal that transcends the accumulation of wealth. That goal is public service.

Lawyers possess the keys to justice under a rule of law, the keys that open the courtroom door. Those keys are not held for lawyers' own private purposes; they are held in trust for those who would seek justice, rich and poor alike. We can take pride in the legal community's present efforts to fulfill that trust. The bar is currently involved in greater amounts and more diverse types of pro bono work than ever before, and law schools are providing opportunities for their students to represent and advise those who, but for the students, would have no access to legal advice or legal remedies.

Nonetheless, a great and crying need for legal services for the poor remains. The most recent estimates suggest that the legal needs of eighty-five percent of indigent Americans go unmet. Perhaps more troubling, many Americans believe that the legal system is fundamentally unfair. The inscription above the entrance to the Supreme Court reads "Equal Justice Under Law." But a substantial number of our citizens believe that this lofty ideal rings hollow, that justice is reserved for the powerful, the educated, the elite. If that perception is to be changed, and the reasons for its existence eliminated, the legal community must dedicate even more of its time and resources to public service.

The notion that lawyers have a responsibility to their community, and that they are uniquely capable of making a contribution, is nothing new, particularly at this institution. Judge Matthew Deady, for example, the President of the University's Board of Regents when this law school was founded, lived a life rich in service to his community and the legal profession. Judge Deady presided at Oregon's Constitutional Convention and drafted this state's Constitution. He was a member of the Oregon Legislature, authored The Deady Codes--early Oregon codes of civil and criminal procedure-- and became Oregon's first federal district judge. And after persuading the Board of Regents to begin a law school in 1884, he served as an adjunct professor ***391** of Constitutional Law and substantially expanded the school's library by donating his book collection.

Certainly, life as a lawyer is a bit more complex today than it was a century ago. The ever-increasing pressures of the legal marketplace, the need to bill hours, to market to clients, and to attend to the bottom line, have made

fulfilling the responsibilities of community service quite difficult. But public service marks the difference between a business and a profession. While a business can afford to focus solely on profits, a profession cannot. It must devote itself first to the community it is responsible to serve. I can imagine no greater duty than fulfilling this obligation. And I can imagine no greater pleasure. "Happiness," Justice Holmes said, "cannot be won simply by being counsel for great corporations and having an income of fifty thousand dollars. An intellect great enough to win the prize needs other food besides success." Ensuring that there is, indeed, "equal justice under law"--not just for the wealthy, but for the poor, the disadvantaged, and the disenfranchised--is the sustenance that brings meaning and joy to a lawyer's professional life.

Conclusion

Professor Richard Hopwood Thornton, the first member of this school's faculty and later its first dean, gave his students the following admonition on the school's first day of classes, October 10, 1884: "The interests of the profession are so intimately connected with those of the public that nothing which substantially affects the one can be a matter of indifference to the other." At the Court on which I sit, we do not render advisory opinions. But today, at the celebration of a similar beginning, I make an exception and offer a specific piece of advice similar to Dean Thornton's. As you use this splendid new building, I urge you to focus on the broader moral and ethical implications of your work. You should make it the Law School's commitment to teach the importance of fulfilling the responsibilities that come with membership in the profession, the importance of doing good while doing well.

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