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PROFESSIONALISM: REMARKS AT THE DEDICATION OF THE UNIVERSITY OF OKLAHOMA'S LAW SCHOOL BUILDING AND LIBRARY, 2002

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It is a great pleasure to be here at the University of Oklahoma to participate in the dedication of the new building and library for the College of Law. You have created a beautiful, state-of-the-art facility, equipped to meet the demands of contemporary legal education and befitting the University of Oklahoma's excellent 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.

When David Boren decided to leave the U.S. Senate, John and I and people across the land were sad and disappointed. As a Senator, David Boren made great contributions to good public policy and understanding. Now that I have seen his accomplishments here at the University of Oklahoma, however, I can understand his satisfaction in seeing tangible results from his leadership and efforts. Those results are everywhere across the campus. After visiting the Reading Room and the Student Union today it made me want to be a student again and right here at this University.

The Oklahoma Law Center had a direct effect on my study of the law. One of this law center's professors in the 1930s and 1940s was Marion Rice Kirkwood. He left and went on the Stanford law faculty. He taught me real property and water law at Stanford Law School and he served as Dean of Stanford Law School for some years.

This Law Center is fortunate indeed to have Andrew Coats as Dean. He has made a real difference in the school. He is an excellent advocate. Did you know he successfully argued a case before the United States Supreme Court since I was there — he represented the Board of Regents of the University of Oklahoma in a suit against the NCAA.

* Associate Justice, Supreme Court of the United States. These remarks were delivered on April 30, 2002.

As magnificent as the new Law Center is, what I would like to talk to you about tonight 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 of law practice have made lawyers, as a group, a profoundly unhappy lot. As a *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 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 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. Our Constitution requires lawyers to represent their clients zealously, but nothing in the Constitution justifies advocacy so zealous that it exceeds the bounds of the law.

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. Bust 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 50% of the attorneys surveyed used the word "obnoxious" to describe their colleagues. Indeed, sometimes attorney conduct is not simply rude but downright scandalous.

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 speak of our dealings with other lawyers as war — and too often we act accordingly.

Justice Oliver Wendell 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."

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.

[M]embership [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. One great example was the struggle of Ada Lois Sipuel Fisher to be admitted to this law school in the 1940s. She was represented by a man who more than any other sought justice for

those denied it — Thurgood Marshall. 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 85% 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.

Certainly, life as a lawyer is a bit more complex today than it was a century ago. The ever-increasing pressure 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.

I like to say we must not be tone deaf to the music of the law. There are lawyers who never hear the law's music — indeed, those who think there is none; those who think the law is just a business — one for which high fees can be charged and collected for the necessary services only a lawyer can provide. But if you understand and hear the law's music, to quote a former law school classmate of mine,

it is a music with the logic and clarity of Bach, the thunder, sometimes overblown and pompous, of Wagner, the lyric passion of Verdi and Puccini, the genius of Mozart, Gershwin's invention, Rossini and Vivaldi's energy, Aaron Copeland's folksy common sense, Beethoven's majesty, and, unfortunately, not a little of the ponderous tedium of Mahler and the sterile intellectualism of Schonberg. . . . The words [of the music of the law you can hear] are words of equality, justice, fairness, consistency, predictability, equity, wrongs righted, and the repose of disputes settled without violence, without undue advantage, and without leaving either side with bitter feelings of having been cheated. It is the music sung in the world . . . of childlike innocence in

which the lion lies down with the lamb. [Perhaps] it is not a world that ever was, nor ever will be, but it is a world worth living toward.

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. 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.

