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ON RETIREMENT TO A DEANSHIP†

John W. Reed*

As most of you know, I have been a teacher for more than forty years. I entered teaching at Oklahoma after four years with the Stinson Mag firm in Kansas City, and I have been on the University of Michigan faculty since 1949 except for a four-year aberration as dean at the University of Colorado Law School in the mid-1960s. As you would suppose, I am reaching the mandatory retirement age. (That's what the late Dean William L. Prosser called the "age of statutory senility.") The current year would have been my final year of teaching at the University of Michigan Law School. Wayne State University, in Detroit, had lost its law school dean; and, partly at the suggestion of a member of this group, my good friend James Robinson, I was asked to consider becoming the law school's leader for a term of five years.

The invitation had its attractions. First, I did not feel ready to retire, and the Wayne position would afford me four net additional years of activity. The question of whether one would rather burn out or rust out comes to all of us at one time or another. It came to Ken Stabler, the Oakland Raiders' and then the New Orleans Saints' quarterback and one of the free spirits of the National Football League, in a television interview. The interviewer read Stabler this passage from Jack London: "I would rather be ashes than dust. I would rather that my spark burn out in a brilliant blaze than it should be stifled by dry rot. I would rather be a superb meteor than a sleepy, permanent planet." Then he asked Stabler, "What message do you think London was trying to convey?" "Throw deep," said Stabler. So I decided that I wanted to "throw deep" a little longer.

Another attraction was that Dot and I would not have to move our residence, a tolerable commuting distance from Wayne State. We are deeply embedded in the life of Ann Arbor, where we have spent many years, and this new responsibility would not require us to move to a new community. Indeed, most of the Wayne faculty are commuters to some extent, so there was nothing unusual about our living some distance from the school.

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Finally, I wouldn't have to resign from the University of Michigan law faculty. I could take early retirement but retain a connection with that school, which has been very good to me. We still participate in their social and professional affairs, and I retain a hideaway office there.

NEW OPPORTUNITIES AND CHALLENGES

At the same time, there was the opportunity and challenge of my new school, Wayne State University. Wayne is a large research university, located in the heart of Detroit. Its 30,000 students are drawn primarily from Detroit and its surrounding counties, which means a very rich social, ethnic, and economic mix of students. It is one of three constitutional universities in Michigan; the University of Michigan, Michigan State University, and Wayne State all have constitutional status. Their governing boards are elected by popular vote, and they have considerable autonomy. Of course, they cannot get away from the tyranny of the legislature-provided budget, but otherwise they are relatively free. Wayne is a good kind of school to be a part of.

Wayne's Law School is considerably stronger than its essentially regional reputation would suggest. It has a capable faculty, largely harmonious; it has a pleasant, mostly adequate building; and it has a strong student body. The student body numbered about 900 five years ago. Then, as law school applications declined around the country, Wayne elected to keep its admission requirements high, as they had been. As a consequence the size of the entering classes diminished from 300 to 200, and the school now has about 600 students. Because many other schools lowered their standards in an effort to keep the larger numbers to which they had grown in the heyday years of the 1970s, the relative standing of Wayne's student body increased substantially.

Wayne supplies Michigan with many of its lawyers, more so than the University of Michigan, most of whose graduates leave the state. Wayne's impact on the community therefore is more direct and more visible than that of a national school like Michigan, where influence is more diffuse and less immediate. Each is valuable, but for my final years of academic life, it's exciting to see the possibility of immediate, close-at-hand results.

A school like Wayne offers an interesting set of challenges and opportunities. Many of the students are the first in their families to have any higher education whatever, to say nothing of professional education. There is something thrilling about dealing with students like that. They are not blasé; they are excited, they are pleased to be there, and it shows in their attitudes. I had many brilliant students at Michigan, and I would not

have changed that for the world; but all of them, in order to be admitted, had to have been successful all their lives. Success was nothing new. But the circumstances of many Wayne students are quite different, and it is rewarding to work with them—a fact illustrated by an exchange at our recent Honors Convocation. At the Convocation, awards were given to students who had gotten the best grades in individual classes, who had won scholarships, or who had achieved other distinctions. At a reception afterwards, one woman, rather obviously of limited economic circumstances and formal education, approached me to ask, timidly, almost apologetically, if she could, please, take my picture with her daughter, who had just won a book prize for the highest grade in a course. Even though the award did not rank very high in the list of honors, it was supremely important to that mother. Having her daughter achieve in that way was, one sensed, just about the most marvelous thing that had happened in her life. I was deeply moved by her obvious joy and pride. Occasions like that make the deanship rewarding.

As you would suppose, there are many who question my sanity in agreeing to undertake the deanship. Indeed, on these relaxed days here in Tucson, I tend to doubt my own sanity, as I think of returning to the Michigan snow and to the aggravations that accompany any deanship. Just the other day I read something by Thomas Szasz, the psychiatrist who is critical of other psychiatrists. He conjectures that psychiatrists find mental illness everywhere: If the patient arrives early for his appointment, he is anxious; if he arrives late, he is hostile; if he arrives on time, he is compulsive. I think it was Mark Twain who said that to the man who wants badly to use a hammer, a lot of things look like nails that need hammering. Perhaps I do need psychiatric care at this point.

My accepting the job partly reveals poor memory. In the twenty years since I returned to Michigan from the Colorado deanship, I had forgotten how many frustrations a dean's job can present. The university administration considers the dean its man (or woman). He is an administrator charged with carrying out the school's policies; and there is more accountability in universities these days, because, as resources become scarce, there is, properly, a demand for increased accountability for the way in which funds are expended. And so deans are charged with seeing that results are produced and are good.

Yet that is hard to do, because universities are not cleanly hierarchical. In substance, the dean has little administrative power. He's something like the man mowing grass in the cemetery who said, "I have a lot of people underneath me, but I can't get them to do much." The faculty considers the dean its man. His responsibility, as the faculty sees it, is to find some way

to carry out the faculty's decisions on the educational matters of the enterprise. It's tough. And all deans sooner or later find themselves in an intolerable no-man's-land, from which there is no escape except resignation or firing—sooner or later but mostly sooner. The median tenure of all law deans in this country today is under four years. There are few long-term deanships any more.

One remembers the story of Mrs. Weinberg, who is waking her son Arnold. She shakes him and says, "Wake up, Arnold. It's time to go to school. You're going to be late." And he whines and says, "Mom, do I have to go?" She says, "Arnold, you have to go." He says, "Mom, why do I have to go? The teachers all hate me, and the students hate me, and I just don't want to go." She says, "Arnold, you have to go for two reasons. One is you're forty-four years old, and the other is, you're the dean." How long I continue as dean remains to be seen. As somebody once said about the world, God's will is still in probate. But it is a challenging job, and I hope to be useful for several years yet.

GOALS AS DEAN

In my term as dean there are many things that I hope to accomplish, but one above all. On my list are the standard hopes of any dean at any school. For example, I want to recruit new teachers of higher quality than the average of the existing faculty. That is psychologically difficult because, as you seek the faculty's consent to bring in someone new, you are implying to at least half of them that the new person has to be better than they are. Yet, this faculty is very cooperative, and we are about to recruit two young teachers whose credentials would be acceptable and, indeed, a source of pride to almost any law school in the country.

Second, I want to recruit the strongest possible entering class, because the quality of the student body is the single most reliable index to the quality of a law school. Wayne has a special burden in this regard because of Detroit's poor image. We recently had an open house for persons who have been admitted to the school, to encourage them to come to Wayne rather than go to some other school to which they have been admitted. A significant number of them came not alone but with their parents, which initially seemed odd, considering that they are college seniors or graduates. And then I discovered, as I moved around the room and got acquainted, that most of these were young women candidates whose parents were concerned about that terrible place called Detroit. That's what they wanted to inquire about—security precautions, safety on campus, and so on.

They are reassured after they visit the campus. Wayne is as well off as

any school in a metropolitan setting; indeed, the crime rate on campus is actually lower per capita than the rate in the more idyllic setting of Ann Arbor. But that is not the image. And, of course, the surrounding community does offer some hazards that one should be aware of. In any event, we do encounter difficulty getting certain students from outside the metropolitan area to consider us seriously, and one of my problems is in the recruiting area.

We are helped, incidentally, at the moment by something that you may find surprising: an upturn in the number of applicants to law schools, nationally. The applicant pool had been declining over the past half-dozen years rather dramatically. Then, for reasons that nobody is quite sure about, the number of people taking the Law School Admission Test this past fall (1987) rose twenty percent. In fact, the fall LSAT was administered to the largest single group ever. In a few locations people were turned away for lack of facilities.

There is much speculation about what caused this, whether it is just a blip or a turnaround in trend. Some say that it is the result of the prominence of law and lawyers in the Bork hearings, and in the Iran Contra hearings; some suggest facetiously that Fawn Hall had something to do with it. Others say that it was the October stock market crash and the flight from investment banking, which had been siphoning off many who otherwise would have been interested in law studies. And, believe it or not, people are saying, seriously, that the television program *L.A. Law* played a role—the image that all lawyers have BMWs and office affairs. That seems a little far-fetched. But consider this: I am told that there is a large California high school which takes an annual census of the career goals of the graduating seniors. After drifting downward for several years, law has come back to the top of the list this past year. That same study a few years ago showed that in the year of *Raiders of the Lost Ark,* archaeology went to the top of the list!

One more of my predictable goals of my tenure at Wayne is to increase its financial resources, in order to support a stronger faculty and a stronger student body and a better program. Given Michigan's unspectacular economic circumstances, that increase must come largely from private sources. Each of you is fully aware that one of the things deans have to do is to find money to support the good things that need to be done.

THE HIGHER GOAL

These three goals are standard items on any dean's agenda, and I could expand on them and name others of similar sort. But, as I said, I do have

one goal above all. That goal is to be sure that Wayne State University Law School is doing all that it can possibly do to produce graduates with a high sense of professional responsibility.

That is my higher goal because maintaining professionalism is the most difficult challenge facing lawyers today. We seem to have a consensus that the practice of law is becoming less and less a profession and more and more a commercial business activity. There are many causes, of course, and some of the changes that have led to the decline of professionalism are irreversible. We are not going to eliminate huge, impersonal law firms or advertising or specialization or copying machines and computers and the other things that lead to depersonalization and loss of professionalism. It is merely an exercise in nostalgia to wish for return to an earlier, simpler time. Instead, the challenge is to maintain and improve ethics and professionalism given the world as it is. My intent is to do our utmost to instill in our students a sense of professionalism and high calling.

No one law school—not even all law schools together—can be the whole solution. There are many problems within the profession itself that contribute to decline. We can turn out the most sensitized and sensitive young graduate whose life nevertheless can be turned around in six months in the wrong kind of law firm. But that does not excuse us in the law schools from trying to do all we can to be sure that our graduates are sensitive to ethical concerns. We must not be deterred from doing what we can, which surely is more than we have been doing.

By and large, American law schools are doing a good technical job of training young lawyers. We are training them in a broader range of skills than ever before. In my own days in law school, from the first day to the last we were taught mostly case analysis and synthesis. We picked up a few other things by a sort of serendipity, but case analysis was our focus. Now, in addition, we teach trial advocacy and negotiation and drafting of various kinds of legal documents and client counseling and other lawyer skills, all in the context of an increasingly complex body of law. And at the same time we study law in the context of other disciplines: law and economics, law and medicine, law and psychology, law and sociology, and the like. I believe we are turning out more able, better informed graduates, at the technical level.

There are some things we lack, of course, or that our students lack. They frequently do not know how to write very well, even though we work on that. The problem was there before they ever came to us; their backgrounds were not ones of careful use of language. And it is no wonder: The other day I heard a radio interview with a school superintendent from one of Michigan's medium-size cities. About the problem of teenage pregnancy,

he said, "You know, sexual activity is rampart in our school." When the announcer tried to move on quickly, the superintendent said, "Let me regress to your previous question." With school superintendents like that, it is little wonder that some law students have problems with language.

As for ethics and professional responsibility, we are doing more than ever before, if the measure is explicit attention to those subjects. We offer courses called "Legal Ethics" and "Professional Responsibility" and "Lawyers and Clients," which deal with those concerns didactically. And we have clinical programs that deal with them in simulated or real life settings. Our students know more about the rules of professional responsibility than did any previous generation.

But that is not nearly enough. Professional responsibility is much more than merely abiding by a series of rules. It is a state of mind. Even more, it is a set of basic values. It is something like the difference between the Ten Commandments and the Golden Rule: A person who abides by the Ten Commandments is an essentially worthy person but it seems a higher morality to go beyond and to do unto others as you would have them do unto you—a value system that sets a goal always slightly beyond reach. I think I can abide by the Ten Commandments, but I'm not sure that I can fully abide by that greater principle. It has been said that there is a difference between the morality of obligation, which is abiding by the rules, and the morality of aspiration, which is doing what you ought to do to make things better.

Thus, learning the professional responsibility rules and abiding by them, while necessary and laudatory, is not enough to constitute true professional responsibility. There must be a higher sense of calling, a constant recognition that our profession is organized not to serve itself but to serve society. As individuals we are not only representatives of the law but also witnesses to the role of the law in making our society well ordered and civil, healthy and whole. The challenge for a law school lies in devising ways of helping our students develop that sense of service, of caring, of devotion, and of excellence that transmutes a competent workman into a dedicated professional.

HEROES

The development of a sense of professionalism requires more than teaching the rules. It cannot be done by preaching, though a little might not hurt. But the best way to teach that higher level of true professional responsibility is by example. To that end, I hope to bring to the attention of our students at Wayne examples of truly professionally responsible lawyers.

Of course, I want my faculty colleagues to be exemplars of professional responsibility. But they are not in practice, where the real dilemmas are faced day by day. I have in mind introducing the students to practicing lawyers who exemplify the very best of lawyering and professional responsibility. It is said that you can tell a lot about a society by looking at its heroes. If the heroes are the sharp operators, then the young will aspire to be sharp operators; but if the heroes are caring and selfless, then there is hope that the young will aspire to be caring and selfless.

Are there heroes available as exemplars for our students? Of course, lots of them, although, as John Hart Ely said in the dedication of his recent book to Earl Warren, "You don't need many heroes if you choose carefully." Think of this very group, the Barristers. My joy in being part of this organization over the years has been the opportunity it has given me to know scores of lawyers who exemplify the highest levels of ability and professional responsibility and humanity. I have learned much from you and have been inspired by you, and I have taken countless illustrations back to my own students. What better lesson in professional responsibility, for example, than Jim Brosnahan's role in the sanctuary trials? Or Jim Harper's role as a special investigator? Or Dick Bostwick's selfless work that led to his pro bono service award in Wyoming this past year? What better lesson in professional responsibility than to sit at the feet of one of my heroes, Craig Spangenberg, the consummate professional, and learn of his life as a lawyer?

Cliché though it may be, actions do speak louder than words. I expect to present to Wayne State students some of my heroes at the bar, in the hope that they will then graduate with a higher vision of what it is like to be a true professional. If I can do that, I will have helped in my small corner of the world to make a useful contribution to our calling. And the pains of the deanship will have been worthwhile.