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Francis X. Riley Lecture on Professionalism*

GEORGE E. BUSHNELL, JR.**

Thank you very much, Dean Alfani, for that very warm and generous introduction. It is a real privilege for me to be here this afternoon. I would begin by noting that you do the American Bar Association--and this office I temporarily occupy--great honor by inviting me to be part of this lecture series.

As the name indicates, this event pays homage to Francis X. Riley--a premier legal educator who has devoted his professional life not only to first Lewis and then Northern Illinois University College of Law, but also to making the legal profession better, stronger, and more responsive to the public we serve. He reminds us all what of it means to be a "real" lawyer. It is fitting that the Northern Illinois University College of Law has chosen to pay honor to Professor Riley by hosting this series of lectures. I hope that my participation will not lessen its prestige.

Preparing for this afternoon's remarks forced me to rethink the whole question of professionalism. Professionalism is a word one often hears within the body of the organized bar. But what does it mean? What do we mean when we speak or preach about the need to enhance the professionalism of lawyers?

So, in preparing to travel here today, it occurred to me that we ought to begin our discussion by seeing if we could arrive at some common definition of professionalism, or at least, attempt to define what we mean by professionalism within the legal profession. But, after giving the matter a considerable amount of thought, my conclusion is that arriving at such a definition is too much of a daunting task. Indeed, it occurs to me that putting forth a definition that would garner even a plurality of support among lawyers is virtually impossible.

I suggest that the reason for this is simple. I submit that professionalism is not a fixed point on a map at a precise moment in time. For

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our great and diverse profession, professionalism--much like justice--is a moving target. It is not something that we can define in some limited number of words, print on a scroll in beautiful calligraphy and place on a shelf to be consulted every morning. It just doesn't work that way.

Starting from this perspective, the whole question of professionalism can be analyzed not so much in terms of a definition, but rather in terms of what the public, the society, and the times in which we live demand of all lawyers if we are to fulfill the professional obligation each of us accepted upon being admitted to the bar.

This afternoon, it is my intention to look at the legal profession of the 1990s in this context--to look at what it means to be a "professional" in these times; to look at a sampling of the obstacles which seem to obstruct lawyers in carrying out these professional obligations; and, to look at a way in which the legal profession can act affirmatively to confirm its traditional role of leadership within the life of our nation.

We begin with a very basic question--what does it mean to be a professional in the United States in the 1990s? Let's look at one intriguing view. Some of you may have seen the recent article in the *New York Times Sunday Magazine* discussing the whole notion of being a "professional." The author of the article makes an interesting observation. In our society today, everyone is a professional. For, virtually everyone has a little specialized training, a little specialized knowledge, and a title of one sort or another. If you have these three things, voilà, you are a professional.

Now, there was once a time--a kinder, more gentle age--when there were but three 'learned' professions--the clergy, law, and medicine. But those romantic days are gone. Today, there are so-called urban professionals, professional executives, professional plumbers, professional meeting planners, professional journalists, professional writers, professional athletes, and--if one is to believe the ungodly fuss being made over the antics of one Kato Kaelin--even professional celebrities.

So, we see that the very idea of being a professional or part of a profession seems to have lost its currency. And, as we consider that development, we may conclude that it is a waste of time to even consider how to raise awareness about "professionalism."

But this proliferation in the numbers and types of professions--and the subsequent watering down of the notion of what professionalism means in the minds of the public is not the only challenges faced by lawyers in attempting to confirm our traditional role in society. Even the actual practice of law--our judgment in working on behalf of our clients--has become the object of second-guessing, perhaps to the point where we even second-guess ourselves.

Further, I submit that the legal profession is further diminished by the

shallow, yet intimate, coverage which television and other media provide the public about the work in which lawyers engage. Look at what has happened in recent times as a result of Court TV's coverage of sensational trials, CNN's gavel-to-gavel coverage of the current circus going on in a Los Angeles courtroom, and the plethora of television shows--both real and dramatic--focusing on the work of our justice system. It is true that, because of this intense coverage of the justice system, millions of people sitting in armchairs across the nation believe that they understand as much about the justice system, about legal strategy and about the law as any judge, any lawyer, or any client involved in a particular case. The justice system has become like politics. We're so busy covering "the game" and looking for winners and losers, we never bother to consider the facts or the larger issues involved in a matter. In this atmosphere, subject to the scrutiny of the informed and uninformed alike, it is difficult for some lawyers to feel that they are part of a single, vibrant profession.

But let us be fair. The legal system and lawyers are not the only victims of this trend. For example, during my lifetime, the amount of television, radio, and newspaper coverage of sports has quadrupled at the very least. What has been the result? Each day, women and men all across the nation express "expert opinions" about what a coach or manager or player did wrong in the game the evening before. Talk radio even provides an opportunity to express these views to a wide audience. To listen to some of these callers, they seem convinced that if some owner would just take a flyer on them, they would certainly do as well, or even better than, the current coach or manager or second baseman.

In much the same way, coverage of the justice system has led to the growth of the "Monday-morning quarterbacking" industry regarding lawyers and the legal profession. It is tragic that some lawyers have become part of this movement--appearing on television, on radio, or in print to discuss how another lawyer should have approached a case or a line of questioning. How absurd. But these societal trends present a great challenge for the legal profession. They undermine the confidence of individual lawyers and make the entire profession look less important to the life of the nation.

How then can we restore in the profession a sense of being above all this nonsense? And, how can we reaffirm the legal profession's traditional role of leadership in our society? For some in the organized bar, answers to these questions are confusing. Sadly, some in our profession have obsessed on opinion polls which demonstrate that the public holds the legal profession in low esteem. We shouldn't be surprised. Lawyer-bashing, after all, has biblical roots. Those who obsess on these polls suggest that the profession undertake an expensive and aggressive public relations campaign. The aim of the campaign is to get members of the public to "like" us.

Forgive me, but such a notion strikes me as ridiculous and would actually contribute to the problem rather than solve it. With all the conviction I can muster, let me say that such an approach is stupid and undignified.

My response to the challenges outlined here is simple. My suggestion is that rather than concerning ourselves with the way in which others view our work, members of the legal profession must restore its sense of professionalism and renew its traditional role of leadership in the community by reaffirming and defending the core values which have always guided this profession. For, everywhere one turns, the core values that this profession has labored for centuries to support and further--core values such as ensuring access to justice for all persons and defending the sanctity of our Constitution--are being attacked by those with political motivations, some of whom are members of our own profession.

The challenges of which I speak demand attention not only today for those in my generation, but also require the vigilance of those who will follow in the practice of law--young men and women like those enrolled at Northern Illinois University College of Law.

Let me cite a few examples concerning the issues at the core of this profession to which we should return. Let's begin with access to justice. Just thirty years ago last month, the American Bar Association House of Delegates, at the urging of then-ABA President Lewis Powell, first endorsed the notion of a federally-funded program to provide legal services to those who simply could not afford legal assistance.

In 1974, Congress created the Legal Services Corporation ("LSC"), leading directly to the establishment of legal services programs all over the country. Today these programs are threatened. Within the past several weeks, both Houses of Congress have voted to rescind funding for the Corporation for the current fiscal year. And, the House of Representatives Budget Committee has suggested that the program be completely eliminated within five years. The result of such actions would be devastating. It would mean the closing of many legal services programs in towns, counties, and cities across the nation. It would, in effect, be turning a cold shoulder to the concepts of justice and fairness.

In many communities, the local legal services office is at the center of community life, helping people with their daily problems and providing a measure of dignity by saving people from a life of desolate and desperate poverty. And the need is so great. In 1993, for example, the last year for which numbers are available, fifteen percent of our population, or forty million people, lived in poverty.

Last year, LSC-funded entities handled 1.7 million cases for a cost of about \$250 per case. And at the current appropriation of \$415 million per

year--before the cuts that will be made--each American is paying about \$1.50 for LSC. Isn't justice and fairness worth a buck-and-a-half--the cost of a cup of coffee and a doughnut?

Another threat to access to justice is the so-called Common Sense Legal Reform Act--a measure which its proponents argue will "reform" the civil justice system to address the egregious excesses that system visits on small businesses, and on the Girl Scouts of America. I suggest to you that the real result of the Common Sense Legal Reform Act would be to close down access to the courts for those without deep pockets and large legal staffs.

Does our civil justice system need change and reform? Absolutely. But if reform means gutting the underlying principle of the system--justice for all and all for justice--for the sake of serving large, monied interests, then the legal profession must stand up and shout "No."

Yet, just a few weeks ago, speaker after speaker moved to the floor of the House, or appeared on television to denounce the greed of the legal profession. One member of Congress even suggested that lawyers were only seeking to protect their mountain cabins. Mountain cabins? That is plain rubbish. As a lawyer, as the son of a lawyer, my commitment--as is your commitment--is to ensuring that all persons are able to access their system of justice. That is not rubbish--that is professionalism. And that is a principle for which this profession must stand.

And then there is the disturbing trend in this nation to assume that there are simple solutions to any or all political dilemmas: amend the Constitution; hack away at the protection and guarantees contained in the Constitution; or, simply deny the ability of the federal courts to interpret exactly what the Constitution means.

Consider the following: a few weeks ago, the Senate defeated by the slimmest margin a proposed constitutional amendment designed to force the federal government to operate under a balanced budget. Whatever one thinks of such a proposal, lawyers have to be concerned about the efforts of members of the Senate to strip away one of the most fundamental "checks and balances" contained in the Constitution--the ability of the federal courts to resolve constitutional disputes between the other two branches of government. For part of this amendment would have prohibited the courts from interpreting the Constitution, thus destroying our fundamental system of checks and balances.

Yet another example: a proposed constitutional amendment has been introduced in Congress that would prohibit the desecration of the flag as a symbol of political protest and political speech. Should that pass, there will go free speech and the First Amendment.

And earlier this term, efforts passed the House of Representatives that

would severely undermine Fourth Amendment protection against search and seizure by enacting a "good faith" exception. Other efforts are being made to limit--if not eliminate--real due process through habeas corpus proceedings.

Finally, of course, news reports continue to indicate that a serious effort will be made to adopt a measure allowing mandated prayer in public schools; thus attempting to blow away yet another provision of the Bill of Rights--the Establishment Clause. It is expected that action on this proposal may be initiated as soon as the 100-day deadline of the "Contract with America" has passed.

This cannot be overemphasized: the adoption of these items threatens to cripple our freedoms and subject us all to a more authoritarian government. But worst of all, these proposals deceive the public, suggesting that they are simple answers without cost, yet highly effective. Ask yourself these questions: Will our society be more moral with intolerant school prayer? Do we encourage patriotism by strangling free speech? Do we make our streets safer by unleashing police officers to conduct warrantless searches in our homes, in our cars, and on our person?

My reason for reciting all of these issues is simple. I believe that the legal profession may only recapture its sense of professionalism and our place of leadership in society by speaking out loudly, plainly, and honestly about issues such as these. But we must act quickly.

The question for you to ponder this afternoon--as lawyers concerned about professionalism, about your profession--is what will you do? Are you willing to use your training, your experience, and your understanding of the law to speak out against these and other outrages? Or will you back off? Do you have the courage to stand up and fight, to fight for the values this profession treasures, to fight for the justice system and to fight for the sanctity of the Constitution, to fight for the future of our country?

For, in my view, it is this standing up that will return us to our rightful place in this society. By standing up, we remind others that being part of this profession is not simply a matter of having earned a degree. Being part of the legal profession requires *commitment*, *conviction*, and *courage*.

If we have the integrity to follow this course, that alone will set us apart. This conviction will renew our profession, and prepare us to lead our nation into the new millennium--into a world where justice and fairness are not simply words, but values treasured by our society.

We as lawyers must stand for what is right--the values that this profession has always held dear. *Commitment*, *conviction*, and *courage* are the essence of professionalism. They are what professionalism is all about.

I thank you for the opportunity to be here this afternoon and to share these thoughts with you.