

Remarks upon Acceptance of Michael Franck Award May 29, 2008

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I am very gratified by this honor. I knew Mike Franck and admired his dedication, his knowledge and intelligence, his candid observations about our profession and its ethical needs. He was a consistent supporter of efforts to improve and a model for all of us.

I begin by observing that I have considered myself a lawyer engaged in teaching rather than an academic also engaged in law practice. I believe the practice of law is demanding intellectually, ethically and, if I may say so, spiritually. In performing as a teacher it is useful, in my opinion, to present one's self as among those who most of the students will join in undertaking to practice law as well as study it.

Some years ago my colleague Professor Deborah Rhode referred to our profession as a mansion of many rooms. Pressing the metaphor a little further we could call it a condominium in or near the high rent district. Our services have become very expensive. We are held together by a common code, the Rules of Professional Conduct or the Code of Professional Responsibility as the case may be. The rules of the code addressing many salient issues are very general, not to say vague, and correspondingly ambiguous in many applications. There is no avoiding this condition because different rules for various areas of practice would be ethically invidious in some degree and, in my estimate, as a political matter very difficult to formulate.

The rules never were much more definite even in the imagined golden age of our profession, whenever that was. But it was thought, or imagined, that we shared a common credo, a common understanding of the nature of our work and the role of the legal profession in society. That may no longer be the case. For the younger lawyers, and some not so young, the "billable hour" has become the watchword. For many partners the watchword has become "profits per partner." In both cases and in many areas of practice a dominant concern has become the economic returns to practitioner and the economic stability of law firms.

In these circumstances it becomes imperative that conscientious lawyers having attachment to traditional virtues of the profession seek companionship among others of like mind. It would be futile in my opinion to seek a special regime of rules, because, even if it could be accomplished, the price in professional disunity would be high. But the regime of rules, to which I have devoted much professional

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effort, is not the only ethical resource available to practitioners. Rather, recourse can be sought in sub-associations in the practice, among whose members are shared values perhaps not so strongly held by others. I have in mind the values of disinterested viewpoint in giving advice and assistance, and of dedication to the law as the foundation of constitutional government. An element in dedication to law is acceptance of the idea that law imposes serious ethical obligations on lawyers as well as conferring important powers on them—the right to speak truth to power and the authority to maintain the confidentiality of client confidences.

In the search for such professional companionship we might harken to the monastic tradition that is one source of our professional identity. That tradition involves an ethic and a form of organization. The ethic is the virtue of service, one shared in different form by the clergy, the professional military, traditional pedagogy, and the classic civil service. The form of organization is a community of like-minded people committed to mutual support. One model is the Inn of Court. The American Inns of Court have been conceived as a means of inculcating proper professionalism in the neophyte lawyers. Some units of those organizations have conceived their function as going further, of sustaining inculcation of proper professionalism among experienced lawyers. That approach seems particularly feasible when close connection is made to law schools, thereby engaging the attachments that many lawyers have to alma mater.

Pursuit of something like the monastic tradition is difficult in our materialistic, pluralistic, decentralized, competitive culture. I do not expect that ambient culture to change much, nor would most of us prefer a more controlling political system. So we should accept it as the field of endeavor in seeking out companions in mutual support. It is a challenge worthy of our best efforts.

The common credo is the commitment that all lawyers profess, and which many live by, that our vocation is protection of the law's ideal of justice for all, and its realization in our lives so far as possible. This commitment is in a way naive, but also for that reason genuine. One version of it is that phrased in the Preamble to the Constitution: "Form a more Perfect Union." Another formulation more closely connected to our profession is that we are custodians of the rule of law. That is particularly true of professional responsibility lawyers. We are believers in, advisors to and sometimes monitors of the legal system, which makes us particularly well-suited to this important task.