# SOME REFLECTIONS ON MY FIFTY YEARS IN THE LEGAL PROFESSION

remarks delivered on the occasion of the

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Hon. Harry T. Edwards
Senior Circuit Judge, Chief Judge Emeritus
U.S. Court of Appeals for the D.C. Circuit

I attended my 50th Reunion at the University of Michigan Law School this fall. It is hard for me to believe that I have spent five decades in the legal profession. I practiced law for five years, have been a member of the legal academy for forty-five years, arbitrated for ten years, and have been on the bench for thirty-five years. As Yogi Berra said, "if I had to do it over, I'd do it again." I recently read somewhere that during the first 50 years of our lives we gain experience, and during the second 50 years we have fun. There is some truth in this. But I can tell you that the second 50 years would be more fun if I had the physical capabilities that I possessed during my first 50 years.

Apart from enjoying life with family and friends, I have been reflecting a lot on my time in the legal profession. I would like to share some of my thoughts with you. And, if time permits, I would be happy to get your take on some of my views.

When I entered law school, I had an idealized view of the profession as presenting a unique opportunity to serve society. I really believed that lawyers had the intellect, status, and training to understand and employ the law in pursuit of the public good. In the 1990s, however, I began to have some doubts. I wrote several articles decrying the growing disjunction between legal education and the practice of law, and I was not alone in expressing concerns. Several prominent scholars and lawyers wrote books ruing the state of the legal profession. They criticized the modern law firm: its preoccupation with money, its tendency to make lawyers mere technicians, and its rejection of the notion that lawyers should counsel clients regarding ends. And they argued that the legal academy was eschewing its obligation to prepare students for the practice of law.

We still face a number of problems in all areas of the legal profession. The problems that bother me the most are those that plague the legal academy. Why? Because, in my view, the legal academy sets the tone for the profession. A law graduate can achieve distinction in the profession even if his or her legal education was deficient. But it cannot be doubted that both the legal profession and society will be better served if the work of the legal academy is sterling, not deficient. And to achieve and maintain a standard of excellence, I think that members of the legal academy should embrace something that

Professor J.B. White said a number of years ago: namely, that in order for legal academic work "to be of value to the law it is essential that the work in question express interest in, and respect for, the possibilities of what lawyers and judges do."

Unfortunately, there are still law professors who express disdain for the practice of law, and offer no concrete proposals for reform. In my view, this is unacceptable. In his book, FAILING LAW SCHOOLS, Professor Brian Tamanaha rips the legal academy for producing volumes of material that is of no use to lawyers, legislators, regulators, or judges. His critique is a bit harsh because there are many law professors who publish good scholarship that seeks to serve the public good. However, some of what Tamanaha says rings true.

Beyond the ongoing debates over legal scholarship, law schools are now facing a number of critics who question the value of legal education and suggest that major reforms are necessary. And law school applications are down, in part due to the economic crisis in the legal profession. The simple truth is that we can no longer ignore the questions that have been raised about legal education.

In the Fall of 2014, the Dean of Washington University School of Law in St. Louis wrote to members of the judiciary asking their advice on two things: (1) the education of our next generation of attorneys; and (2) the role that law schools should play in addressing social issues as they emerge in our communities. I recently received a letter from the Dean, who reported that the judges were "remarkably consistent" in their replies. Here is the Dean's list summarizing the judges' comments on what we should do to improve legal education:

- Increase the focus on research and writing, and assure that all courses have a writing component;
- Increase the focus on skills-based and clinical course work;
- Increase students' access to and understanding of electronic filings and materials;
- Promote a culture of candor and honesty at every turn;
- Assure that students understand evidence and jurisdictional issues;
- Increase students' understanding of the practice of law as a business;
- Help future lawyers internalize the need to set aside time for public service later in their careers;
- Offer seminars that focus on civil rights to assure that students understand contemporary social justice issues; and

- And do not eliminate the third year of law school.

It is fairly obvious, and probably not surprising to you, that the judges' concerns focus on matters relating to lawyers' abilities to perform well in practice. I generally agree with the suggestions, although I understand that it would be difficult to ensure that all courses have a meaningful writing component. I would add two suggestions to the list:

**First**, the legal academy must help to devise strategies on how legal services should be delivered in years ahead. Technological changes will surely make many of our current practices obsolete. So it is very important that some smart people, who have no vested interest in making money in practice, think about how lawyers should interact with clients, with one another, and with judicial fora as technology changes.

**Second**, the legal academy must address concerns relating to the high cost of legal education. Too many law graduates enter practice carrying extraordinary debt.

Did any of you read the editorial on "The Law School Debt Crisis," published by the *New York Times* on Sunday, October 25, 2015? It is a long and scathing indictment of the legal academy. Here is an excerpt from the editorial:

> In 2006, Congress extended the federal Direct PLUS Loan program to allow a graduate or professional student to borrow the full amount of tuition, no matter how high, and living expenses. The idea was to give more people access to higher education and thus, in theory, higher life-time earnings. But broader access doesn't mean much if degrees lead not to well-paying jobs but to heavy debt burdens. That is all too often the result with PLUS loans.
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> The consequences of this free flow of federal loans have been entirely predictable: Law schools jacked up tuition and accepted more students, even after the legal job market stalled and shrank in the wake of the recession. For years, law schools were able to obscure the poor market by refusing to publish meaningful employment information about their graduates. But in response to pressure from skeptical lawmakers and unhappy graduates, the schools began sharing the data - and it wasn't a pretty picture. Forty-three percent of all 2013 law school graduates did not have long-term full-time legal jobs nine months after graduation, and the numbers are only getting worse. In 2012, the average law graduate's debt was $140,000, 59 percent higher than eight years earlier.
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> Perhaps the most galling part of this crisis is the misallocation of resources. Even as law schools are churning out unqualified graduates stuck under hopeless mountains of debt, millions of poor and lower-income Americans remain desperate for quality legal representation. Public defenders around the country rely on minuscule budgets to handle overwhelming caseloads. In many cases, the lawyers are so overworked that they cannot provide constitutionally adequate representation for criminal defendants. Civil legal services that help people with housing, immigration and workplace issues are even more scarce, with hardly any public support.

> If fewer federal dollars were streaming into law schools' coffers and more were directed to fund legal services organizations, the legal profession - and the American legal system as a whole - would be better for it.

I did not see the editorial until after I had prepared my talk, so it did not surprise me. What is depressing, however, is the bleak picture that the public now has of the legal academy. We cannot leave these issues unattended.

Despite the problems that we face, I continue to be optimistic in my outlook. I still cherish the best ideals of the legal academy and the legal profession. Our society depends upon lawyers to fortify the rule of law, and good legal education helps to ensure that lawyers will never waver in this commitment. And I believe that members of the legal academy have the wherewithal to adopt reforms necessary to cure the ills of legal education.

I recently heard from a good friend who is a partner in a major law firm who told me about a first-of-a-kind pro bono law firm created by Georgetown Law Center and two prominent law firms. The new pro bono operation will provide legal services to Washington, D.C. residents whose incomes are too high to qualify for legal aid, but not enough to afford private attorneys. One of the law firm partners prepared the 501(c)(3) exemption application and received a favorable ruling from the IRS. Georgetown will provide 15-month paid stipends of $40,000 to six graduating seniors each year. The pro bono firm will be located in the office of one of the established law firms, where the fellows will be trained and supervised by seasoned attorneys. The fellows will be awarded L.L.M. degrees at no cost at the end of their pro bono stints. The program will be overseen by the law school and the law firms, who together will provide more than $1 million in support. This is a great example of what talented and committed practicing lawyers and members of the academy can do when working collaboratively to serve the public good.

Legal education, practice, and judging are inexorably tied together; therefore, we cannot fully satisfy our responsibilities to society unless all parts of the legal profession work in concert. And, as I have already said, legal education should be more than just the starting point for entry into the profession. Members of the academy should be gadflies in pursuit of positive reforms in our systems of justice. But this means that members of the academy must respect the possibilities of what lawyers do, engage members of the bar to understand the strengths and weaknesses of legal practice, and produce scholarship that addresses the needs of the profession.

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During my 50 years in the legal profession, I have been privileged to work as a law teacher, practitioner, and judge. I thought it might be interesting to reflect on my work in each of these areas of the profession to stir your thoughts about what we might do better as members of the legal profession to serve society.

**Most lawyers, save for those who earn another advanced degree, receive roughly the same education**. The quality of the offerings may vary from school to school, but the core materials are pretty much the same. The requirements for entry into practice, law teaching, and judicial positions are not the same, however. When I was screened for a job with a law firm, my grades, references, areas of interest, and passing the bar were what mattered. But the firm's job-hiring process did not in any way resemble the gauntlet through which I had to run to be invited to join the faculties at the University of Michigan and Harvard Law Schools. And what I went through to be hired was nothing like what job candidates for law teaching positions endure today.

In my day, law teaching candidates were hired based on their intelligence, references, accomplishments, interviews (and sometimes a "job talk"), and the potential to be outstanding teachers and scholars. Now, many job candidates must produce high-quality articles before even being considered for faculty positions. The articles are then critiqued by the entire faculty when candidates present "job talks." A number of law graduates have told me that they have been strongly advised not to spend any significant time in practice if they want to pursue a career in the legal academy. And some schools prefer candidates who have PhDs in areas outside of law. I would never have entered law teaching in today's market because I wanted meaningful experience in practice (which I loved), I had neither the time nor the financial support to write a high-quality article while I was practicing; and I had no interest in obtaining a PhD.

Appointment to the bench is, of course, very different. Professional accomplishments, experience, and reputation matter a lot. And, normally, judges are not young. I joined the D.C. Circuit at age 39, which I think is too young to enter service on the federal bench. However, I did not have the option of delaying my appointment. In truth, I had no interest in serving on the bench when I was first approached. I had been very happy in practice and I enjoyed law teaching. But I agreed to pursue the opportunity because it seemed like an interesting challenge, and the near total absence of African Americans on the federal bench was a problem that needed to be corrected.

The appointment process that I faced was relatively easy – nothing like what we have seen in recent years. I was confirmed within two months after my nomination, and, if I remember correctly, my confirmation hearing was no more than about 45 minutes.

I probably would not entertain an invitation to serve on the bench today. The confirmation process is not something that I could tolerate. I have watched really outstanding lawyers suffer unseemly treatment after being nominated for the bench. The process is too long; it is too politicized; and it is often disrespectful of those who are forced to endure it. The result has been that many good people now want no part of the judicial confirmation process.

**Most lawyers who enter practice, the academy, or the judiciary, are not trained very well on the particulars of the job**. I had decent mentoring at the law firm at which I worked in Chicago, but there was no formal training. I had no training or mentoring when

I started teaching or judging. I discovered that you just screwed up your confidence, aimed to emulate the best teachers and judges around you, and got to work. It is a little bit better now than it used to be, but far from ideal. The truth is that new law teachers and judges mostly fend for themselves when they start.

It may be that because law professors mostly work alone in preparing for classes, lecturing, and writing, we have come to believe no good purpose would be served in trying to "train" new members of the academy. I do not subscribe to this view. There is certainly more that law schools can do to constructively instruct new members of the academy on how to be effective in classroom "teaching."

The issue is somewhat more complicated with judges because most new judges are relatively senior when they join the bench. And judicial independence is sacred. There is a lot that judges can be taught about how to run a chambers. But we do not do it systematically because chambers are little fiefdoms which are largely closed off from "how to operate" suggestions. Teaching a judge how to "judge" is a different matter. This would smack of standardization which is inimical to judicial independence. Judges do learn a lot from one another, however, when we circulate proposed opinions and receive comments and suggestions from our judicial colleagues.

**Most of us who are in the legal profession, whether in practice, teaching, or judging are relatively driven and competitive**. Practicing lawyers are necessarily competitive because they usually work in adversarial settings representing clients. Practicing lawyers often must compete to succeed – in securing and representing clients, and in producing billable hours. The bottom-line matters. In this way, practice is very different from teaching and judging.

Practice is different in another way as well. When I left practice to become a law professor, I assumed that I would be joining an enlightened world of thoughtful thinkers, most of whom were open-minded and forward-thinking. I did indeed find a number of very smart, supportive, thoughtful, and creative colleagues. But, to my surprise, I also encountered a number of academics who were guarded, parochial, risk averse, and intolerant of the views of others. Not all, mind you. But enough so that what I discovered in the legal academy was very different from what I had experienced in private practice.

**Oversight and retention in practice and law teaching are equally demanding, but in very different ways**. In practice, a lawyer's achievements are usually obvious. And if you succeed, you usually move up in the hierarchy unless you make too many personal enemies. In law teaching, tenure is typically the measure of success. The road to tenure varies from school to school, just as the paths to higher positions in practice vary greatly in different firms, organizations, and government agencies.

Once tenure is achieved, however, law teaching offers a very high quality of life – better than either practice or judging, in my view. The work done by good professionals in practice, teaching, and judging is equally demanding – all work very hard and are under

pressure to produce at a high quality level. The top practitioners earn more, on the average than the highest paid professors, and certainly more than judges. Practitioners always are under pressure to produce billable hours, and they do not get significant time off each summer as many professors do.

I am always amused at the number of people who view a law professor's job as easy work. In truth, the work of a good teacher and scholar can be absolutely draining. Fulfilling? Yes. But preparing for a full load of classes, conducting class sessions, counseling students, writing letters of recommendation, producing good scholarship, keeping up with all of the developments in your areas of interest, serving on committees, pursuing public interest projects, giving speeches, attending faculty meetings, and grading, taken together and done right, can be a real challenge. Grading, alone, may be the most mind-numbing, exhausting, and hateful task performed by anyone in the legal profession.

A federal judge's life is admittedly very nice if you can accept the relatively cloistered existence that judges must follow. Judges can engage in academic work and in some public interest pursuits, but we cannot participate in any political activities. Despite these strictures, most of my colleagues and I relish the challenges that come with hearing and deciding tough cases. And I think that writing opinions ranks as the most interesting work I have done as a member of the legal profession. The outcome matters a lot to the people involved and it may attract a large audience of interested people. This fuels the adrenalin.

I cannot say the same thing about writing a law review article. It can be tedious. And a large majority of our articles are not read by many people. Indeed, few people even know when we are working on an article or book. There can be a real adrenalin rush in writing an article, especially if the subject is intellectually challenging and important. But the issuance of an opinion is usually more exciting than publishing an article, because a judicial opinion is accompanied by a mandate to parties to comply with the court's judgment and it establishes a binding precedent. Articles, on the other hand, search for readers and approval, neither of which may come.

The rewards of teaching are more palpable. Teaching involves people who are counting on us to challenge, inspire, and mentor them. It can be truly exhilarating work. There are few better experiences than conducting a class that is utterly sublime. It is hard to do on a regular basis, but what a high when you hit the mark!

There are at least three other situations that I would rank as comparable: One involves the work of high powered trial and appellate litigators, many of whom have told me that, especially in tough cases, their work can be absolutely intoxicating.

The second situation involves appellate judges. Most appellate judges feel a great sense of accomplishment when, after working really hard to produce a first-rate opinion in a difficult and contentious case, the two other judges on the panel send notes saying, "*I am happy to concur in your terrific opinion*."

Finally, at least for me, the third situation arises in connection with my law clerks.

Working with law clerks can be wonderfully challenging and uplifting. The judge/law clerk relationship is not unlike the law teacher/student relationship. The opportunity to mentor the young stars who will lead the legal profession in the years ahead is heady stuff. There is also a great bond that develops between a judge and his law clerks that often results in a lasting friendship.

**Have you ever thought about how our work is assessed?** That is, once a lawyer becomes a partner or otherwise achieves a measure of security in a position, or a professor secures tenure, or a judge is confirmed, who grades our work? Judges are the most insulated, I think, because we have life tenure. We face public critiques (in the media, law review articles, internet blogs, and the like), but many judges pay no attention to these critiques. None of us wants to carry a bad reputation, but good judges do not curry favor. We hope to earn the respect of the bar and the public that we serve, but we cannot tailor our judgments to garner praise. We also want the respect of our colleagues, but we maintain distinct personalities and styles in our collegial interactions. There is no one model of a "great judge." I am driven by a sense of duty, integrity, and commitment to justice, as are most of my colleagues. My colleagues' responses to my proposed opinions and my assessments of my own work are what I use to grade my performance on the bench.

Tenured law professors follow a similar model. There are diffuse measures of standing in the academy: student evaluations, law review publications; books, citations to one's work, invitations to speak, awards, offers to visit at other schools, to name a few. But as Henry Adams once said, "[Great teachers] affect eternity; [they] can never tell where [their] influence stops." There are a few among us whose written work is so stunningly profound that it is recognized in short order as a measure of greatness. However, I have met many *great law teachers* whose scholarship will never be viewed as seminal.

I suppose it is easiest to assess the work of practitioners. As a judge, I certainly can easily recognize sterling briefs and great oral arguments. High quality work of this sort often results in success in court and in other practice endeavors, a good reputation, referrals, billable hours, and client loyalty, all of which are assessments of a lawyer's work. Less obvious but no less important measures of practitioners' work are their commitments to handle pro bono cases, service on bar committees, mentoring of young lawyers, and integrity in dealing with other members of the profession and clients. It is not hard to find great lawyers in a community because their reputations usually precede them.

**Over the years I have thought and written a lot about "collegiality" on the appellate courts**. When I speak of a collegial court, I do not mean that all judges are friends. Instead, what I mean is that judges have a common interest, as members of the judiciary, in getting the law right, and that, as a result, we are willing to listen, persuade, and be persuaded, all in an atmosphere of civility and respect. In my early days on the D.C. Circuit, judges of similar political persuasions too often sided with one another merely out of partisan loyalty, not on the merits of the case. It was awful. Fortunately, the court has changed dramatically over the past 25 years. It is now a place in which the personal politics of the judges do not play a significant role in decision making. This is as it should be.

As bad as it was at the D.C. Circuit in years past, nothing can really rival what I have seen in some law faculty meetings dealing with contested hiring decisions or proposed changes to the curriculum. Faculty hires can be very contentious because faculty members are sometimes drawn to candidates who fit their preferred mold; and, of course, hiring decisions may determine whether a certain group on the faculty holds sway in the years ahead. These battles can affect collegial relations on a law faculty, although it is not inevitable. There are some law schools that thrive because of good and supportive relationships between members of the faculty. There is no reason that this should not be the norm.

Law firms struggle over different matters, usually relating to the bottom line – billable hours, distribution of income, mergers, and closures. Collegiality is not insignificant in law firms and in other kinds of law offices, but there are often hierarchies (say, between partners and associates) that create dynamics that are not seen in a the legal academy and the judiciary.

**Which would I pick if I had to choose between practice, teaching, and judging?** I loved private practice, but that would not be my first choice now because of the many changes that I have seen in law firm business models over the past 50 years. The choice for me between judging and teaching would be very difficult. I would not have joined the D.C. Circuit in 1980 if I could not have continued to teach. I have taught at a number of different schools, without a break, for the past 45 years. I have also continued to publish. And I view myself as a teacher and mentor in my relationships with my law clerks. This might suggest that teaching is my first love. But it is a close call. I really enjoy the challenges and responsibilities of the bench. And my work as a judge allows me to see better how I am serving justice than does my work as a law professor. It is very rewarding, and I get to do it for life (so long as I am of sound mind).

In the end, I need not choose. Fortunately for me, my work as a judge enhances my teaching, and vice versa, so I am happy. And I will do my best for as long as I can to fulfill the demands of each position.

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Thank you for honoring me with the 2015 Marshall-Wythe Medallion. The past recipients of this award include a number of sterling Justices, judges, academics, and politicians who represent the best that the legal profession has to offer. I am humbled to be included in their company.