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Remarks of Philip S. Anderson

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REMARKS

Remarks of Philip S. Anderson*

These remarks were presented by Philip S. Anderson at the Transnational Practice for the Legal Profession Forum which took place in Paris, France on November 9th and 10th 1998.

I was asked to deliver brief remarks to you this morning on the universal characteristics of the legal profession. In preparing for this assignment, I wondered whether there actually are universal characteristics of what we call lawyers in the United States, and whether there are sufficient similarities in what lawyers do in this world that we can identify a global profession with values that are universally shared.

I believe that I can identify some characteristics of the practice of law that we can agree are universal, and that I can find some unifying similarities that will permit me to define a global profession. I expect to find greater agreement on characteristics of what it is that produces lawyers and what their work consists of than I will find on the contours of a global profession. Nevertheless, I will occasionally use the word "profession" to describe the work that all lawyers find themselves doing, and I will use it in a different way when I attempt to define its characteristics. I am trying to draw a distinction between the practice of law and the profession of law. I realize that the distinction is not always clear, but these remarks are brief, and I

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think that you will see the distinction that I have in mind by the time that I reach the end.

Here is my effort. I have identified four core principles:

1. The practice of law is a learned profession. From its origins in the middle ages, the practice of law, like the practice of medicine, required a university degree, and the apprentice received specialized training in the law. The specialized training is continued today by schools dedicated to professional education.

2. The expertise developed by the lawyer must be exercised independently. That is, there should be no restraints on or conflicts coloring the advice given to a client.

3. The practice of law must be governed by ethical principles and the observance of those principles must be enforced.

4. A lawyer has an obligation to the public in addition to obligations to a particular client, and a lawyer has a responsibility to respect the concept of the rule of law.

I will address each of these in turn.

Number one. With regard to specialized training, a lawyer must have a knowledge of substantive aspects of law, and of the policies underlying the law, as well as the processes of the courts in which the law is applied and enforced.

The lawyer must have the intellectual capacity to provide competent counsel and advice. The specialized training must provide a basis for continued professional growth and education.

The lawyer must gain an understanding of the shared values of the profession. I will have more to say about this later.

Number two. The expertise learned from the specialized training must be exercised independently.

The lawyer must zealously represent the client; information received from the client must be maintained in the strictest confidence; and conflicts between the interests of the client and the interests of the lawyer or other clients of the lawyer must be avoided absolutely.

The lawyer must control the advice given to a client because the lawyer's judgment must be based solely on the legal and factual circumstances attending a matter and not on untoward influences of another sort.

Number three. There must be regulation of lawyers to ensure competence and ethical conduct.

Admission to the bar certifies a satisfactory level of competence. Lawyers must understand, however, that the license

to practice law is a privilege requiring the observance of ethical obligations, and there must be standards of conduct to protect the public by prohibiting unacceptable behavior. Regulation of the practice of law promotes the concept that a lawyer serves the public interest in addition to the client.

And now I will discuss the obligation to the public, principle number four. I have briefly outlined what lawyers do and the framework within which they practice. We generally refer to that framework as the profession of law, but I believe that there is more to the notion of a profession than just the description of the context within which a lawyer works, and here there may not be universal agreement.

I believe that the legal profession, operating within the rule of law and a transparent system of justice, strengthens the disparate institutions of the world's governments and reinforces the fabric of society.

It does this by serving the public in seeking improvements to the efficient administration of justice, and in seeking assurance that all members of a society within the ambit of the rule of law have access to the system of justice that the rule of law defines.

That means that the profession of law is more than a job; it is a high calling.

I believe that we can agree on what it is that a lawyer does, which is to say that we can define the *practice* of law; and I am confident that we can agree on certain unifying principles and standards and a method of their implementation to foster and encourage transnational practice.

My point about the *profession* of law is this: If we can also agree on the contours of a legal profession with the shared values that I have just articulated, then the lawyers represented by the people in this room can do more to ensure continued peace, productive commerce and enduring harmony in this world than all the armies of history.

