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## Public Service in the Private Practice

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## Public Service in the Private Practice

William Webster\*

*The following essay is based on a presentation by Judge Webster on 26 January 1999.*

I always feel St. Louis is home; this is my city. During my flight I saw the Arch, the TWA Dome of course, the old Court House, and other landmarks. Then I saw all of those beautiful banners, and I said “They should not have done that for me.”<sup>1</sup> It was nice but really unnecessary. I thought of the contrast in 1978, over twenty years ago, when I went to Washington to meet with the Attorney General to talk about taking the position of Director of the FBI. We kept it very quiet but somehow a reporter in the Washington Post managed to ferret it out.<sup>2</sup> When I returned to St. Louis there were about fifteen television cameras waiting at the gate. I was with one of my friends that I saw on the airplane, and we walked right by the reporters because I was wearing a hat. My friend said, “I wonder who was on the plane?” I did not respond, although he found out the next day.

I am particularly pleased to be speaking with the portrait of Hadley Griffin behind me. He was one of the warmest friends I have ever had, one of the finest citizens of this city, and a great friend to Washington University. Hadley started out in the Wohl Shoe Company as general counsel after the War and worked his way up through the company to be President, Chair, and Chief Executive Officer. He was also Chair of the Board of Trustees of Washington University and a Trustee of

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\* An alumnus of Washington University School of Law and a senior partner at Milbank, Tweed, Hadley, & McCoy.

1. The banners were remaining from the visit of Pope John Paul II to St. Louis on January 26-27, 1999.

2. *Midwest Judges Focus of Search for FBI Chief*, WASH. POST, Jan. 10, 1978, at C7. See also Charles R. Babrock, *Carter Chooses St. Louis Judge as FBI Director*, WASH. POST, Jan. 19, 1978, at A1.

the Smithsonian. I have never known a finer, more civic-minded lawyer than Hadley. He always found time to serve. In a way, that is precisely what I am going to talk about—not just the obligations, but also the privilege of service as a lawyer.

I should mention three others who served well in the Congress at the risk of omitting those who are still in office: Tom Eagleton (I saw the Tom Eagleton building rising in the sky on my flight into town); Jack Danforth, who continues to lead in St. Louis; and my good friend Jim Symington, who is still in Washington. Jim served as the Chief of Protocol and as a member of Congress; he sets a good example for the citizens of Washington by his participation in many worthwhile projects in the inner city. I practiced law with him here in St. Louis forty-five years ago. He is an outstanding citizen imbued with the spirit of public service as a private lawyer.

I particularly want to express my appreciation to Susan Appleton for her remarks. She is one of the most outstanding clerks I have ever had and among the most fun. She not only has distinguished herself here at the law school as an Associate Dean and as a professor, but also as one who has published works for law students' use. In addition, the American Law Institute (ALI) elected her to its council just a few years ago. This is a matter of great pride for me, because the ALI is perhaps the most prestigious organization of legal minds as a convergence of the best judges, lawyers, and professors in the country and as one of my favorite organizations. She is very active and very productive and we are grateful for that.

My thesis this morning is that there is much more to practicing law than maximizing billable hours, leveraging associates, and working through the night to become a partner. If you want to look for it, it is there. I worry because, in my opinion, the emphasis on the business aspects of private practice has caused much of the cynicism about lawyers. It has actually overshadowed, at least in the public's perception, the enormously disproportionate amount of public contributions that lawyers make to improve the quality of life and access to justice in our communities, in our country, and indeed around the world. Our legal knowledge and judgment, honed in law school and with experience, continue to provide invaluable resources

in a vast array of areas of public interest. Much of our service involves our representation of the poor and the disenfranchised in order to assure that adequate legal services are available to secure their rights and, if necessary, to defend them. A good part of this forum series, of which these remarks are a part, is devoted to that discussion.

Another area of our service is the improvement of our justice system. In other words, this improvement involves the better management of our important agencies that define the nature of ordered liberty as we experience it in this country. That is what I want to speak of most of all today.

I have had many role models in my life, but two are significant. One was Ethan Shepley, who I am sure is known by reputation to most of you. Ethan was a very distinguished lawyer in this city, a great chancellor, and a dedicated public servant; he was always willing to offer himself for public office. The second one, over almost a fifty-year period, was John J. McCloy, who is one of the named partners in the firm where I am a partner currently. John J. McCloy was the Assistant Secretary of War under Franklin Roosevelt, and he later became High Commissioner of Germany during the Allied occupation. He returned to New York where he joined a private law firm later called Millbank, Tweed, Hadley and McCloy. He served in various capacities, including Chair of the Boards of the Chase Manhattan Bank and the Ford Foundation, and had a host of other worthy undertakings. He was one of the five or six men identified as “the wise men” in Evan Thomas’ great book about that kind of *eminence gris*.<sup>3</sup>

I first met John McCloy in 1946 when I went back to an undergraduate reunion at Amherst, where he was Chair of the Board for twenty years, I believe. I will not take you through the entirety of the story. In short, he gave me a bottle of scotch that no one had seen for a long time during the War, and I kept it as a memento. I took it home and saved it for many years, waiting for a time to use it. Finally, when he came to Washington University as the Tyrrell Williams

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3. WALTER ISAACSON & EVAN THOMAS, *THE WISE MEN: SIX FRIENDS AND THE WORLD THEY MADE* (1986).

Lecturer, I said, “Well, somebody will enjoy this scotch, let’s break it out.” My wife then informed me, “No, your mother used that in a scotch cake years ago; it’s all gone.”

John McCloy had a theory that he shared, and it has remained with me through the years. He called it the private person in public life. His theory is a simple one and involves three types of service. There is the elected official, and that person has an important role. There is the bureaucrat—the career government employee—and that person also has an important role. Then there is a third category—the private person in public life. This is the person who is asked to provide a needed service because of particular qualifications he might have and then is asked to go home when that service has been performed. This person has the independence to know the job does not belong to him, nor does he belong to that job. This person does, however, try to do the best job he can do to give the best advice to the appointing authority and is then prepared to leave at any time, rather than to compromise principles or to become proprietary about the work. McCloy believed this is the glue that holds this government together because it brings the outside citizen, the rest of us, the governed, into the governing process in a unique way. This is not because we ran for it, not because we signed up for it, but because we were thought to have something to contribute.

For me this area had great appeal because it meant I could go home. I did not have to abandon forever the legal career for which I had worked so hard to qualify. It was an opportunity to get back and become involved again as a private citizen. It also meant that I could engage in new opportunities to nurture the institutions that have nurtured me. This is the way I feel about Washington University Law School. It nurtured me and I take great pride in every opportunity to see it grow, to be part of its growth, and to see the ascent to excellence that has been the hallmark of the recent, highly successful campaigns. For instance, we have witnessed the completion of this wonderful building, which people all over the country are talking about. I also am pleased to see that we are now providing our great faculty and fine students with a place worthy of Washington University.

Let me talk just a little bit from my own experience and about the

range of things that lawyers in private practice can do besides compete for money. Obviously, service at the bar is important. We have the state bar, the city or metropolitan bar, and the American Bar Association, not to mention the various professional colleges. I am thinking about the work that is not just invitational but is readily available to all of you if you find your niche and participate.

I finally found my niche after many years in the Business Law Section of the American Bar Association. I worked up through the chairs, was editor of *The Business Lawyer*, the preeminent cutting-edge publication on business and corporate matters, and finally became Chair of the section just as I got the opportunity to go to Washington to be Director of the FBI. I was able to finish most of my term as Chair, and it has been a very satisfactory experience, because it was a vehicle for improving the quality of work that our corporate bar produces.

You will have the opportunity, if you are lucky, to engage in pioneering that means something to our society—not just solving people's disputes but working to help put something in place. In my day it was credit cards. That may be good or bad depending on how you look at credit cards, but bankcards were the new phenomenon of the late sixties. I had the privilege of representing the three major banks in this city; I helped put together the first center for Master Charge, now Master Card. It was soon to become a part of a national network in which we represented over six hundred banks in our area, and its service was made available to citizens throughout the world. It was a wonderful experience figuring out how to classify this new service. Is it an assignment of accounts receivable or a letter of credit? How could we avoid the antitrust stipulations with so many banks actually talking to each other? I spent much time in Washington asking the Antitrust Division, "Do you want one big monopoly in Los Angeles called the Bank of America to run the charge cards?" We negotiated barriers to entry and the access to the market; as a result, something useful to society, if properly managed by the consumer, has eventuated. This kind of pioneering is fun.

I had breakfast this morning with some of the students. We talked about what each of us sees as new areas of this kind of pioneering. I

think it is the explosion of intellectual property law that gives us opportunities to use modern technologies in ways that meet legal requirements, which protect both the proprietary interests and the intangibles. This has already changed the way we think about the workplace.

There are other opportunities for service, perhaps not as glamorous, but that are equally as satisfying. I will mention one briefly because of an interesting coincidence. Over thirty years ago, Stewart Symington, Jr. and I were asked to represent the second oldest Baptist church in Ballwin. This was an African-American church that had been in Ballwin from almost the beginning of Missouri history. It was being crowded by the local leaders, because they wanted its space to build supermarkets and other things they thought were more appropriate. The town leaders denied the church the right to repair their furnace on the grounds of a non-conforming use. It did not take us long to remedy that situation. The church is still there and still functioning, although, I am told it is about to acquire a new facility under its own timetable and not under pressure from others. The woman who asked me to do this work played a large role in raising me and in raising my own children. She is now, to her great pride and satisfaction, the eighty-eight year old mother of the wife of the new mayor of Washington, D.C., Anthony Williams. We have had a big reunion and we talked about this church situation when she came back to see her son-in-law installed as the new mayor, in whom we have great hope.

I should mention the late Harrison Tweed, another named partner in Millbank Tweed. He was the person most responsible for the continuing legal education programs in the United States. There are many ways in which lawyers can make the profession better—not just obtaining a degree but actively engaging in exciting work.

When I left my appointment as United States Attorney and returned to my firm, Larry Roos, then Supervisor of St. Louis County, gave me an unusual assignment. The County had just passed a Decent Literature Code<sup>4</sup> under an ordinance establishing a Decent Literature

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4. St. Louis County, Mo., Revised Ordinances ch. 706 (1972 Supp.).

Commission.<sup>5</sup> He wanted me to chair it, and I said, “Larry, why me?” He said, “Well, it takes one to know one.” I guess that was a kind of backhanded compliment. I spent six years as Chair of the St. Louis County Decent Literature Commission, which turned out to be a success. This was largely because it was during a period when there were far less serious and life-threatening issues confronting us, and people were worried about pornography and obscenity and their impact upon children.

We had on our commission the Chair of the ACLU, the Chair of the National Citizens for Decent Literature, and the Dean of the Medical School at Washington University. Together we tried to inform the public about the new Supreme Court decisions, including the *Roth* decision<sup>6</sup> and others, by determining their meaning not only in terms of freedom of the press and freedom of speech but also in terms of what was and was not permissible. Fortunately, we avoided the book burnings and other problems that afflicted other parts of the country. It was a good experience for me, frustrating as it was, because there were no clear permanent answers.

Another experience during that time was my service for five years on the Missouri Board of Law Examiners. Just previously, I had been teaching Negotiable Instruments at Washington University as an adjunct professor (and it is just as well because the Uniform Commercial Code was about to be enacted and I would have to relearn it entirely). I enjoyed the assignment because we played an important role in examining the qualifications and the character of the applicants taking the Missouri Bar, as well as in grading the papers. I still laugh with my friend Jack Danforth who missed one of our questions on constitutional law, because he had been both working at Davis Polk in New York and serving his Episcopal church. Somehow he had not heard about a recent constitutional decision we included in the examination. We tried to stay current, and it kept us conscious of the rule of law.

When I was appointed to the federal bench in 1970, we were

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5. *Id.* § 706.040.

6. *Roth v. United States*, 354 U.S. 476 (1957), *reh'g denied* 355 U.S. 852 (1951).

plagued by some of the problems of the 1960s, the days of rage and anger about our government. In fact, the Chief Judge of the Eighth Circuit recruited me by telling me that the students, the young people, had lost their confidence in the judicial system, and he needed more people to come on the bench and help him. So I did. During my term on the bench, there were new opportunities. I am trying to say that law is not about one just doing her own job. Law is a profession that needs to be nurtured. I gave seminars on speedy trials and served as a member and as Chair, of the Advisory Committee on Criminal Rules. I also served on an ad hoc committee of habeas corpus organized by the Chief Judge. Along with participation as a private person in public life, I was now on the bench. I had a sense of fulfillment because I was involved in trying to make things better, and I enjoyed the many opportunities to do so.

My law clerks were extremely helpful to me during this period. Their contribution was enormous and their subsequent achievements impressive. I continued elbow clerking both at the FBI and at the CIA. One of my clerks became an Associate Dean at Washington University, and another became the Dean at Mercer Law School. Among my former clerks are several authors, including Susan Appleton. One has written the definitive work on real property law of the State of Michigan; another has written the definitive work on Stephen King (which is currently in its twelfth edition). He is an expert on a very interesting and esoteric field of writing I know nothing about, yet I am very proud to have his books on my library shelf. I have had three Assistant U.S. Attorneys, one Massachusetts Superior Court Judge, and the head of the banking division of one of America's great law firms. At the same time, working with them and learning from them was an experience that I enjoyed. I hope I will always be around younger people who can help educate me, so that I will not be in a time warp as I go through the rest of my life.

At the FBI we had unique opportunities. When I arrived the Bureau was being criticized because of black bag jobs during the same periods of time which I spoke previously. The challenge was to make sure that the public understood that we, as one of America's most cherished institutions, were accountable and responsive to the rule of law. At the

same time, corruption in government, organized crime, and white-collar crime were growing in sophistication and required more sensitive techniques. It was our job to work through the legal aspects of electronic surveillance and undercover activity—something quite new to federal investigative process in those days. Some of you may not remember the Abscam cases,<sup>7</sup> where we investigated members of Congress who were taking money and making promises to Arab sheiks who were actually undercover agents of the FBI. Several went to prison, including one Senator, but they charged entrapment. We conducted a full-scale investigation that examined the alleged entrapment and concluded there was a proper legal predicate for everything that we had done. Every conviction was affirmed and fourteen petitions for certiorari were turned down by the Supreme Court.<sup>8</sup> By the time we opened the Graylord Investigation<sup>9</sup> (which resulted in over 120 convictions of members of the judiciary and their attachés in Cook County, Chicago), no one questioned our practices because they now believed our actions were within the rule of law.

We also responded to the public demand for us to attack the problems of terrorism. It remained our job to work within the rule of law, even though when people are alarmed they are less insistent upon their civil rights. We created a hostage rescue team that was concerned with following the rules. Also, we addressed the issues of electronic surveillance. In hopes of increasing the public understanding and trust, we demonstrated that we had probable cause to a court before these sensitive techniques were used. Those were nine years of exciting times.

In the CIA we had different problems. People did not believe the

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7. Abscam resulted in the indictment and trial of 25 persons, including six congressmen and one senator. For a thorough review of the Abscam cases, see *United States v. Myers*, 527 F. Supp. 1206 (E.D.N.Y. 1981).

8. Denial of certiorari included: *Jenrette v. United States*, 471 U.S. 1099 (1985); *Schwartz v. United States*, 469 U.S. 880 (1984); *Jannotti v. United States*, 469 U.S. 880 (1984); *Kelly v. United States*, 464 U.S. 908 (1983); *Myers v. United States*, 461 U.S. 961 (1983); *Criden v. United States*, 461 U.S. 961 (1983); *Thompson v. United States*, 461 U.S. 961 (1983); *Murphy v. United States*, 461 U.S. 961 (1983); *Lederer v. United States*, 461 U.S. 961 (1983).

9. For a review of the Greylord Investigation, see J. TUOHY & R. WARDEN, *GREYLORD: JUSTICE, CHICAGO STYLE* (1989) (cited by the U.S. Supreme Court in *Bracy v. Gramfey*, 520 U.S. 899, 901 (1997)).

witnesses from the CIA; they assumed that the witnesses would lie, dissemble, be disingenuous, or give the short answer to a question that had not been properly asked. This was undermining the confidence of the members of Congress, our oversight committees, and public confidence. We put in place four C's for testimony: it must be complete, correct, candid, and consistent. I also told CIA witnesses not to respond to questions in a room with a large number of people present. For other reasons of sensitivity (protecting sources and methods), I told them:

Don't pretend you don't have an answer. Don't go around it. Say that you have an answer but you are not authorized to give it. Say you will report the question to headquarters. Headquarters will work with the staff and will serve their interests and the sworn obligation of the agency to protect their sources and their methods.

It was very simple and people did it. I think that during the entire period no one made a single allegation of lying against a member of the Central Intelligence Agency. Similarly in the FBI, despite all of the allegations, in nine years there was not a single successful claim of a violation of a constitutional right. We as lawyers were helping to make our institutions better serve the principle of ordered liberty; therefore, the time I spent there was rich and rewarding.

The time came to return to the private realm after an enormously exciting period at the CIA. The whole world was beginning to change—the Berlin Wall came down, the Warsaw Pact disassembled, we invaded Panama, and we became involved in Desert Storm. I wondered at this point if I could return to the private practice of law. I, of course, did return and it has been a wonderful experience being back in private practice. The emphasis has shifted, but I am keeping very busy and I am able to do many of the things that engage my interest and concern for public service.

I knew someone would ask me whether a firm my size, which has roughly 375 lawyers around the world, is contributing sufficiently in its professional obligation to pro bono services; hence, I requested data before I came. Last year our 375 lawyers provided 19,122 hours of

dedicated pro bono publico services valued conservatively at over \$7 million. One does not find that in every other profession. One does find it in the legal profession, and the people that do it find great satisfaction in it. They also become better lawyers because of it.

I have spent a good deal of my post-government time as a kind of professional neutral. This included roles in a number of internal investigations—an outside look at inside problems where the insider lawyers would not have the necessary credibility to give a report and have it believed by people who were criticizing them. Initially, I was invited to conduct the evaluation of police, fire, and government performance during the riots in Los Angeles. We spent six months (over 30,000 hours) of professional time, which was donated by some of the finest lawyers in the Los Angeles area, and completed a report called “A City in Crisis.”<sup>10</sup> This report remains the model for describing what went wrong, what went right, and how to respond more effectively to civil unrest in the future.

That experience led me to begin working with alternative dispute resolution, something in which I have a long-held interest. I spend a good part of my time in major arbitrations and mediations that relieve an overcrowded court docket. This has the advantage of providing in many situations, especially business situations, the opportunity for the disputants to pick their judge, place, time, and rules. By doing this privately parties will not have the embarrassment of publicly sharing things that they wish to keep private. This is important because many desire to continue to do business in the future. At the same time they will hopefully achieve a quality of justice that serves their own interests and also helps the overall system. This is a growing part of our legal profession. I am on the Boards of CPR Institute for Dispute Resolution<sup>11</sup> and the American Arbitration Association, and we are trying to make sure that people that enter this field do it as professionally as the litigators who are litigating cases in the courts.

My work with alternative dispute resolution has been both exciting

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10. For a review of the Webster report, see Richard A. Serrano, *Roleplay Police, Riot Response Study Urges LAPD*, L.A. TIMES, Oct. 21, 1992, at A1.

11. Formerly, this Institute was known as the Center for Public Research. It maintains this connection by keeping CPR as a part of its name.

and fun because it is worthwhile. I served as a member of a special committee in a major class action suit involving the TLC Beatrice International Holding Company, the largest African-American-controlled corporation in America at that time. I had the pleasure of working through a solution that brought back some \$15 million to the company that the Delaware Chancery Court later approved.<sup>12</sup> Some of these cases require court supervision and others involve individuals who simply need assistance in finding their way to a solution they have been unable to reach themselves. This is where I do most of my billable hours and I enjoy it.

I also worked with the Police Foundation, which gave me a chance to ensure that my experience from the FBI carried over into bettering law-enforcement performance. We dealt with a range of issues including the excessive use of deadly force and community-oriented polices. I just finished five years as the Chair and now I am ready for other responsibilities.

I served on a “pay to play committee” of Arthur Levitt, the Securities and Exchange Commission Chair. We tried to stop the alarming trend of lawyers contributing to the campaigns of officials who then give them bond business in return.<sup>13</sup> Our role expanded to an American Bar Association Committee, the Chair of which was Jack Martin.

I also serve on a Separation of Powers Commission sponsored by the University of Virginia and designed to look at such issues as the Independent Counsel, Inspectors General, and other positions that seem to approach the separation of powers issue. We just issued our final report.<sup>14</sup>

1. Perhaps as a counterpoint to Ralph Nader’s group and other interest groups, I chair an organization called the National Legal Center for the Public Interest, which approaches some of these issues

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12. *Carlton Investments v. TLC Beatrice Int’l Holdings, Inc.*, 23 DEL. J. CORP. L. 190 (Del. Ch. 1997), clarified by 23 DEL. J. CORP. L. 712 (Del. Ch. 1997).

13. See Arthur Levitt, *Lawyers and Ethics: The Problem of Pay-to-Play*, Remarks at the U.S. Securities and Exchange Commission Fixed Income Daily Conference on Municipal Finance (June 26, 1997), available in 1997 WL 353221 (S.E.C.).

14. Some of the details of this report are located in an answer to a question. See *infra* p.113.

from a business point of view. We recently hosted speakers Colin Powell, George Bush, Chief Justice Rehnquist, Sandra Day O'Connor, and President Ronald Reagan.

I am also involved on the National Commission on DNA. It is a very interesting subject and has nothing do with the current political climate or O.J. Simpson. Rather, the possibility of using DNA in a criminal context presents enormous legal issues to people in jail who want their DNA tested to possibly prove their innocence. It has also changed the face, in my opinion, of modern forensic science in law enforcement.

I chair the National Commission on the Advancement of Federal Law Enforcement, which is examining the ways in which federal law enforcement works with other related agencies. We ask such questions as whether the agency has become too powerful or if we are becoming a police state. In addition, we are looking at the issues that are discussed in the newspapers. I, along with others, are working on an Internal Revenue investigation of its Criminal Investigative Division. This is interesting for me and I hope it will be rewarding.

The last thing I might mention is that I have served as a member of the Independent Review Board of the International Brotherhood of Teamsters for six years. When I was a United States Attorney in 1960, I tried Harold Gibbens, the Teamsters' International Vice President, under the Corrupt Practices Act for using Teamster money to support political activity. Unfortunately, a very fine older judge, who did not understand that this Act was a "no intent statute" (it did not require proof of criminal intent, just knowledge), dismissed the case. Subsequently, we were unable to make the case because of double jeopardy. Thirty-nine years later I am sitting on a board that threw out the incumbent head of the Teamsters for doing exactly the same thing.<sup>15</sup> Some lessons have to be learned and relearned, but I am glad I had at least my previous experience before becoming part of this Board that tries to support the Teamsters in helping themselves get out of mob domination and corruption.

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15. See Steven Ginsberg, *Teamsters Chief Carey Expelled From Union*, WASH. POST, July 28, 1998, at E1.

These are illustrative of the kinds of things lawyers in private practice have the opportunity to do. Being a lawyer is not enough. Working to preserve the ideals of our profession, the opportunity for growth of freedom, the use of truth to inform and enlighten us in all ways, and the right of people to speak the truth are the most important contributions we can make as lawyers. I think truth and freedom are the highest aspirations of the human spirit. Others have said it but none better than Learned Hand of the Second Circuit: "Descended to us, in some sort moulded by our hands, passed on to the future with reverence and with pride, we at once its servants and its masters, renew our fealty to the Law."<sup>16</sup>

I hope that you will feel that way about the law and that you too will nourish it and improve it for succeeding generations.

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16. Learned Hand, *Commencement Address at 1931 Yale Law School Graduation*, in *THE SPIRIT OF LIBERTY* 84, 89 (Irving Dillard ed., 3d ed. 1960).

## QUESTIONS FROM THE AUDIENCE

**BILL DANIEL:** A couple of decades ago you began serving on the boards of directors of your clients. I wonder how your view has or has not changed over the years.

**WILLIAM WEBSTER:** Until recently, I served on five boards; however, I no longer serve on so many because of age requirements in the bylaws. I think that being on a board and representing a client are two different responsibilities, and it is better if a sitting director does not undertake the legal work for that company. It is not unethical for her firm to do so if the board desires to engage it. I believe a more balanced approach between the two positions contributes to wise decisions. That is where I stand now or I would not be serving at all. I do think, however, one has to be very clear in knowing what one is doing when sitting on a board. I have been on the Anheuser-Busch Board for several years, and because Anheuser-Busch is the largest employer using the Teamsters, I leave the room whenever there is a policy or labor strategy discussion. When I go back to my Independent Review Board and they talk about Teamsters' leaders in the brewery business, I leave the room. I think it is up to each person to work through; this is just what I do.

**QUESTION:** What were your ambitions when you came out of law school?

**WILLIAM WEBSTER:** I thought I was going to be a lawyer from age two when someone told me this was who I was going to be. We had a few lawyers in our family, and it seemed to me to be a very noble profession. I wavered once when I was fifteen years old, because I found out hotel managers could make \$200 a month. I talked to my guidance counselor and he said, "Forget it. You're going to be a lawyer." The closest I came to a specific ambition was when I thought I would like to be a United States Senator; some of my high school buddies even started calling me "Senator." As it turned out, a war called me away; when I returned I went to law school and was busy with private practice. The ambition of being a Senator faded away.

My Congressman, whom I admired very much, campaigned on the principle that no one should serve more than twelve years. He

managed to serve eighteen years himself. His exit could have been my entry into political life, but by that time I had other obligations and interests, though not a lack of interest in the political process. I ran his “lawyers for Curtis” campaign for several years and was proud to do so.

I did not think about any of my jobs until the opportunity arose. What I am saying to you is if you have not set goals, be receptive to new opportunities and see whether they are consistent with your values, your highest sense of right, and your own assessment of your ability to do the job. With your background and skills the chances are that you will be able to do whatever you want.

QUESTION: What are your views on the renewal of the Independent Counsel Act?<sup>17</sup>

WILLIAM WEBSTER: My views are the same as the Separation of Powers Commission’s report, which came out very briefly and did not attract a lot of publicity because of events that were taking place at the same time. I was director of the FBI when William Smith was the Attorney General. We tried to fix the Independent Counsel Act twice by considering the raising of the threshold for triggering the Independent Counsel, thus requiring more evidence. The Commission feels, and I agree, that the Act should be allowed to die. We have tried to make it work and have had no success. We have never been able to convey that this is a job in which prosecutorial discretion should be exercised in the same way that a United States Attorney or an Assistant Attorney General must exercise prosecutorial discretion. There is no budget to serve as a governor on what an Independent Counsel may do.

In his defense the Independent Counsel feels that he cannot leave any stone unturned, regardless of the cost or time, although his better judgement would tell him it is time to quit. He fears he will be blamed for not having done as much as he should have done. One special prosecutor reported proudly that he had counted every peanut in Plains, Georgia,<sup>18</sup> and I wondered why he felt he had to count every

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17. 28 U.S.C. §§ 591-599 (West 1998).

18. Statement of Paul J. Curran, Special Counsel in the “Carter Peanut Warehouse Case.”

peanut.

I have also seen special prosecutors appointed by the Attorney General, and every one in a highly visible context has been top drawer. No smart Attorney General—and most of them are smart—is going to appoint an incompetent person to that role. Archibald Cox and Robert Fisk were two outstanding lawyers who did outstanding jobs as special prosecutors. The appointing judges did not continue Fisk when the Independent Counsel Statute was enacted, because the judges felt that it might appear they were deferring to the Attorney General. For that reason they made another appointment.

I regret to say that I do not think the statutory Attorney General has served us well. We would be equally well served by another form of a special prosecutor system in which there are governing guidelines that bring their investigations to an end. The public does not want to sit through investigations that last years, and I do not think it should do so. Many feel otherwise and you may have a different opinion. We wanted it to work and have given it every opportunity to work. Nothing I have said should be a reflection on Ken Starr, whom I admire, and many other people who have served in that job. The nature of the job, however, works against doing what it was intended to do.

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*See S. Rep. 97-496 at 5 (1982), reprinted in 1982 U.S.C.C.A.N. 3537, 3541.*