A NATION HELD TOGETHER BY LAWS

An interview with Leah Wortham

Leah Wortham graduated from Harvard Law School. Before joining the Catholic University of America in 1981, she worked for the Atlanta Legal Aid Society, as Legislative Assistant for New York Congresswoman Elizabeth Holtzman, as Assistant to the President of the US Legal Services Corporation for Policy Planning, and also as Deputy Associate Director of the US International Development Cooperation Agency.

At CUA she has served as Clinical Coordinator and an Associate Dean. She teaches in the area of Professional Responsibility, Criminal Law, and the externship clinical program. She has cooperated with numerous international organizations, such as the Global Alliance for Justice Education, the Ford Foundation, the Soros organizations, the American Bar Association Central and Eurasia Law Initiative (now the Rule of Law Initiative), the Public Interest Law Institute, European Law Students Association, and the United Nations Commission for Refugees. The list of countries in which she has worked is also impressive and includes Poland, Croatia, Macedonia, Montenegro, Latvia, Hungary, Bulgaria, Russia, Kazakhstan, the Kyrgyz Republic, Ukraine, South Africa, Argentina, India and the Philippines.

She has been very active in the D.C. Bar, it being the third largest in the United States with more than 80,000 members. She has chaired the Ethics Committee, which issues interpretations of the ethical rules governing lawyers. She also chaired the D.C. Bar Rules of Professional Conduct Review Committee. During her membership, this Committee undertook a four-year review of the D.C. ethical rules in light of the work of the ABA Ethics 2000 Commission and proposed amendments to almost every rule and comment. The Committee's report was adopted by the D.C. Court of Appeals, and the new rules became effective in 2007.

In addition, she served as a hearing committee member and chair for lawyer disciplinary cases.

Her longstanding cooperation with the Jagiellonian University has been extensive, as well as profound. In the 1990s, she assisted JU faculty when they created the first successful clinic education program in the Central and Eastern Europe, which has been flourishing ever since. At present, every Polish public law school and several private ones have an active clinic program. Leah Wortham is the CUA director for an LL.M. organized in association with the Jagiellonian University and head of an American Law Certificate Program, in which Jagiellonian and international LL.M. students take part. In June 2008, she received the Zasłużony dla UJ medal awarded by the JU Faculty Senate upon recommendation of the University Rector to honor people whose services are considered to be of vital importance to the University.

I must admit, I was very curious – and nervous, to meet the woman who has had such an impact on the development of the lawyers' ethic policy and who was there at the very beginning of the clinic program in Poland. Despite my high expectations, Leah Wortham still managed to surprise me with her extremely friendly, straightforward approach and a lively personality. In the interview, she elaborated on the two above-mentioned areas of her expertise, as well as on the New Law and Development Movement, the differences between the European and American legal profession, the need of dialog between lawmakers and practitioners and the social consequences of people's career choices. Going through the interview, I couldn't suppress the feeling that, had there been more Leah Worthams, the women's movement would never emerge – it just wouldn't be necessary.

Joanna Śliwa*: You've given lectures about ethical aspects of the legal profession on the forum of numerous, international entities, such as the United Nations Committee for the Refugees and the Soros organizations. Are lawyers working in those places exposed to any particular moral threats?*

Leah Wortham: Some situations, particularly representation of refugees, raise specific problems. For example, the legal representation of refugees often involves a group of people or a family, instead of an individual. Therefore, you need to be extremely careful about the possible conflict of interests. Conflict of interest concerns are also important in a situation when a single organization is the only provider of legal help for a camp of refugees in a given area. Especially, when refugees come from the same country, there may be differing interests based on events that happened in the home country, e.g. hav-

ing been on different sides of an ethnic conflict. Is it possible to represent people with these different interests?

Generally speaking, some issues that arise in a context like refugee clinics are quite specific to that kind of practice, but most of the problems that arise in providing legal services are common to a number of types of practice. In my experience, the issues and question in regulating lawyers and establishing standards for their behavior tend to be the same across cultures. The solutions may differ among countries, but the issues tend to be common ones, e.g. confidentiality, conflicts of interest, rules about contacting potential clients.

JŚ: *Confidentiality was to be my next question. Confidential relationships between the client and the lawyer are supposed to be the rule. However, due to the specific kind of legislation that has been emerging lately, such as the famous US Department of Justice's memoranda, this approach has been somewhat eroded. Can confidentiality still be called a rule and, if yes, what are the exceptions to it?*

LW: There are three bodies of law which relate to client-lawyer confidentiality in the US. The first one is the attorney-client privilege, evidentiary law that provides what cannot be revealed in court or during discovery. The Supreme Court has referred to its roots in history, but has not given it a Constitutional status. One major policy envisaged behind it is to protect the individual's dignity and freedom by enabling the unhindered communication with the lawyer. For a long time this justification was considered inapplicable in the case of companies and it was not until the Upjohn case that the court decided to grant the same privilege also to corporate entities. Cases on corporate privilege stress the importance of unhindered communication in the lawyer's function to assist the client to follow the law.

However, not everything that an employee says to a corporate lawyer is protected. The communication must be between someone seeking legal advice and a person that this advice seeker at least reasonably believes to be a lawyer. Also, if a person seeks legal advice with the purpose of violating the law or if the person uses a lawyer's services to perpetrate a crime or fraud, the privilege doesn't apply.

Another element of confidentiality is the ethical duty of agents and fiduciaries to protect certain information from disclosure. The rules concerning this ethical duty are codified in state rules of conduct, most of which are patterned after the American Bar Association Model Rules of Professional Conduct. These confidentiality rules also are subject to exceptions which, to a great extent, parallel those connected with the attorney-client privilege.

The third body of law related to confidentiality is the privacy of the work product, which concerns materials that are prepared in anticipation of litigation, such as memos, interviews with witnesses and other similar things. Like attorney-client privilege, work product relates to whether information is protected from lawful discovery in a court proceeding. The ethical duty of confidentiality is an obligation of a lawyer to a client, rather than a question of the duty to produce evidence in court. If material is within the attorney-client privilege, the protection is absolute. The protection for "ordinary" work product, e.g. records of witness interviews, can yield if there is substantial need for the materials and they cannot otherwise be obtained without undue hardship. An example I always give to my students is a case of a medical malpractice viewed by two nurses. Three years later, a lawsuit takes place and the plaintiff's lawyer asks for the statements that the hospital's lawyer took from the nurses soon after the incident. The plaintiff's lawyer asked the nurses what happened, but they said they cannot recall the events any more. Because in this context the nurses were only witnesses, not people accused of having done something that could be imputed to their employer, the court ruled that their statements were work product, not privileged communication. As work product, the hospital could be required to produce the nurses' statements because the plaintiffs' had substantial need for the nurses' account of what happened and could not otherwise obtain the information when the nurses said they no longer recalled the events.

All this demonstrates that the confidentiality issue is not as simple as people tend to think. One particular thing about the Holder Memorandum that people found really upsetting was the extreme pressure put on the corporate defendants with respect to ways in which corporate defense was conducted. Due to the specificity of the plea bargain offer, corporations were simply forced to either waive their privilege or end up being faced with much more severe penalties. This was not so much a concern about the law, but rather about the tactics that were used.

Significantly, for a long time, national model rules of conduct did not have an exception from confidentiality for economic injury, as opposed to physical one. Most states had such an exception. Efforts were made to include an exception for economic injury from crime or fraud to the Model Rules, but all failed until the big corporate scandals of Enron and WorldCom. With the pressure of pending Securities and Exchange Commission proposals under the Sarbanes-Oxley Act, the American Bar Association finally added the economic injury exception from a crime or fraud resulting from use of lawyer's services to the Model Rules. Still, it remained a very controversial issue and lots of people were concerned about it and thought it a threat to the confidentiality principles. I was very much in favor of this solution and that's what we, eventually, applied in the D.C. Bar.

As I previously said, client crime or fraud using a lawyer's services was already an exception to the privilege, although many lawyers are not aware of that. Some of them assume what I call the 'Tarzan school' of the lawyer-client relations, "Me – client, you – lawyer. Privilege!" This is wrong! Unfortunately, many law schools do not stress attorney-client privilege law in their evidence or professional responsibility courses... Lawyer-client communications related to a client's pursuit or use of the lawyer's services to perpetrate a crime or fraud are not protected! The reason for this lies in the privilege itself, which is supposed to enable free communication between an employee and a corporate lawyer on the topic of, say, something that happened in the past, because then it is a question of the right to defense. The unhindered communication is also needed to help the client comply with the law – but not evade it. However, the case with corporate issues is usually that there are things going on at that very time. As a result, a lawyer may get caught up in between the duty to disclose, based on the lack of privilege, and the ethical rule of non-disclosure. What this usually means is that the lawyers will not be able to provide the right protection for themselves in situations like Enron and WorldCom because they are the only people left with some money in their accounts, about whom assumptions will inevitably be made that they participated or at least were aware of what was going on.

Let's imagine that I represent a client and I have no idea about his misbehavior. I file statements for him, issue opinions, and confirm that what he says is true. If, subsequently, I discover that something is not right I need the possibility to withdraw the documents from the respective institution in order to protect my own potential liability. Until the economic injury rule was introduced, you could disaffirm a previous filing as part of withdrawal from representation, a "noisy withdrawal", but no more could be said. Now, lawyers may go further in disclosure, if they consider it necessary to prevent them from becoming a party to the client's crime. To me, this is not erosion of confidentiality - it's just a positive reconciliation of the legislation. I also consider it the right policy as far as civil law circumstances go. I feel completely different with respect to criminal cases.

JŚ: *What about the situations where employees talk with corporate lawyers treating them, for obvious reasons, as their friends and allies? In accordance with what you say, this kind of communication, as not being a clear-cut case of requesting and rendering legal services, might not be subject to the privilege. Isn't that detrimental to the employees?*

LW: The point is that, although this communication, more than any other, should be clear-cut, it is sometimes in the companies' business not to make it so. The company may

want the employees to believe it is a friendly situation they are in, which might induce them to say something that the company will later use to fire them and clean itself from accusation. I agree that this is a huge problem but it's more of a separate issue concerning fair dealings with your employees and it does not undermine the whole confidentiality-privilege background.[1]

JŚ: *Can a lawyer lie for his client in the court of law with respect to past or future crimes?*

LW: The lawyer may never lie. Never can he be knowingly saying something that is untrue. In order to tackle the matter more precisely, we need to differentiate between three situations: making affirmative statements contrary to truth; saying something that is true in itself but is misleading in the context and, finally, remaining silent. These possible ways of conduct, although pertaining to the same topic, are governed by different sets of rules.

Affirmative lying is strictly forbidden on the basis that lawyers should be honest while dealing with people in the course of their professional life. The point where it gets tricky is when a lawyer knows that someone else is not telling the truth. Does he then have an obligation to reveal this knowledge? According to the rules of conduct, in a civil case, if you know that your witness is going to lie, you simply don't put him on the stand, even if your client might not like that. If you don't know for sure but reasonably believe that lying will occur, it's still ethical for you to refuse to accept the statement, although technically, you don't have to do that.

The situation changes dramatically as we move to the area of criminal law. The criminal defendant has a Constitutional right to take the stand – that's something he cannot be deprived of. Many jurisdictions add, though, that a person is not entitled to testify perjuriously. What do you do now? In most situations you wouldn't want the defendant to take the stand anyway, because he would then be subject to cross-examination on prior acts which may be particularly dangerous as your client can already have a criminal record. White-collar defendants, on the other hand, usually would take the stand. The point is that this is the only situation where, despite your soundest knowledge that false statements are to be delivered, you cannot prevent a person from testifying. In addition to the cases of anticipated perjury that we've been talking about just now, there's also the perjury occurred. If a lawyer finds out later that his client has lied, the Model Rules require the lawyer to take "reasonable remedial measures" to correct the falsehood.

[1] For comparison, see: discussion on confidentiality with Sarah Duggin (*"We ought to let companies be socially liable!" An interview with Sarah Duggin*, p. 30-32) and with Eric Hirschhorn (*"...Building a plane while flying..."An interview with Eric Hirschhorn*, p. 81-82).

The thing I really don't like about this latter set of rules is that lawyers may feel inclined not to ask the people they are representing certain questions which might result in an uncomfortable type of knowledge. When it comes to criminal cases in the USA, it's already very hard for a lawyer to establish an ongoing relation of trust with the client who is usually poor, of different ethnic or social background, often with alcoholic problems, etc. It probably won't help the lawyer much to explain, in the course of the interview, that he will have to report any lie he detects on the client's part. Therefore, in my opinion, this last rule just doesn't work. Defendant's lies in a criminal case are something that should typically be left for the jury to assess. [2]

JŚ: *The division of power between state and federal government, so characteristic for the USA, is also visible in the structure of the rules of conduct for the legal profession. The federal American Bar Association Model Rules are voluntary and provide mere guidance, while lawyers have to comply with the rules of the state they practice in. Subsequently, within the state, the question of separation of powers comes into play. Which entity, the legislative, judicial or the administrative one, introduces the rules of conduct?*

LW: There are three kinds of regulations pertaining to lawyers' behavior – admission, conduct and discipline and the usual process of enacting professional regulations consists of the appointment of a body of lawyers – volunteers or paid staff, done by the tribunal or the bar and of the inevitable tribunal's scrutiny when it comes to supervision of the work effects. It is the tribunal that makes the decisions, although in practice, the proposals are not much changed by the final review. I purposefully use the word 'tribunal' because it's not only the courts that come into play but also, e.g. the Securities and Exchange Commission and the Internal Revenue Service which, too, have the right to propose and supervise the rules. Therefore, what we are speaking of here is a team of lawyers accompanied by the judicial branch in the broad sense.

In 1969, we encountered the first big movement towards uniformity and it was at that time that ABA adopted the Code of Conduct, which was enacted by most of the states without many changes. However, in the late 70s, there appeared voices of criticism which led to formation of a commission that produced the Rules of Conduct. Their creation was surrounded by a lot of controversy and dispute, the issues that we've just been talking about, the confidentiality and client perjury, being the two most discussed ones. This time, it took much longer for the states to adopt the regulations; it was a more conscious and deliberative process. It did end with the acceptance of the Rules on the part of the majority of the states but subject to numerous changes. The last stage of the re-

[2] For comparison, see: discussion on lawyers' lies in court with Louis Barracato (*Gold E. Locks not guilty! An interview with Louis Barracato*, p. 16-17).

adjustment was the appointment of the Ethics 2000 Commission, which undertook the task of updating the Rules in accordance with technological and sociological changes and transforming them into state provisions.

JŚ: *Were there any other issues of controversy, apart from the ones we've already discussed, while introducing the changes to the D.C. Rules in 2007, based on the works of the Commission?*

LW: One more disputable thing was the question of face-to-face solicitation, which is prohibited in most states, but allowed in the District of Columbia, subject to some exceptions, such as people in physical or mental distress. After the D.C. Police decided to publish the accidents' reports which previously were confidential, a whole new profession of the so called runners developed. Runners would pursue accident victims by phone or in person, try and persuade them to instigate legal proceedings, refer them to a specific lawyer, and get paid for it. It came to a point when they became really obnoxious, harassing, even. Of course there's no doubt that harassment is prescribed but, what happened next was that the lobbyists started to pressure the D.C. Bar to get rid of the solicitation issue completely, in order to quickly upgrade the image of the trial lawyers.

I believe that solicitation rules are very important form the historical and from the free speech perspective, and that, for those reasons, they should be maintained. In D.C. we decided to address the problem of harassing runners by abolition of the payment for referring. It was a highly disputed matter at the time.

JŚ: *The possibility of advertising legal services is one of the biggest differences between the Polish and American legal professions. According to our rules, it is inappropriate for the lawyer to concentrate on obtaining new clients, which may come at the price of the services' quality. Conversely, in the US the emphasis is put on the free market and the development of competition, which is also to ensure the best legal help available. What is the basis for this variation of the approaches?*

LW: The respective rules in the USA are based on a line of important Supreme Court decisions under the First Amendment. A significant precursor of these cases was Goldfarb v. Virginia, decided in 1975. That case held that the bar's minimum fee schedule, which required all lawyers to charge a minimum percentage of the cost of a house for preparing closing documents, was a violation of the antitrust laws. A lawyer-plaintiff went to a number of lawyers in Fairfax County, Virginia, all of whom insisted on charging the minimum fee schedule. Subsequently, he filed a lawsuit invoking the provisions of antitrust law, although up to that point, an exception to the antitrust laws had been recognized for "learned professions." The Goldfarb case simply did away with this kind

of special treatment. Goldfarb found competition among legal services' providers to be a good thing. The court rejected the notion that price competition will tempt lawyers to provide inferior services, recognizing the ethical obligation and potential civil liability for failing to meet a lawyer's duty to provide quality services. If someone charges the wrong fee, it's a completely individual matter as the adequacy of services from the point of the US law has nothing to do with the amount quoted for them.

Of course, this development of events was followed by a string of advertisement cases because a competitive marketplace requires consumer information to function properly. This, in turn, entailed a whole dispute on how the competitive legal marketplace, being a part of the bigger entirety – marketplaces in general, really works.

One needs to remember that it's certainly not a unified issue. There's a huge difference between complicated services rendered to firms which have a lot of expertise in the matter and which would negotiate very hard with several lawyers to get cheaper services at high quality and the so called standardized services, required by most citizens. Take the refinancing of mortgage. This legal operation requires a title search every four years. Once this has been done for the first time, the next searches are, indeed, very easy. Now, due to the competition and the free marketplace, the charge for this service would be, roughly, two hundred dollars and that is very cheap. Naturally enough, the work is pretty straightforward and is mostly done by paralegals, not by the lawyer himself, but then it is also a part of the legal profession to be able to differentiate between the complicated and simple matters that can be carried out with the help of forms, computers and assistants. The marketplace ensured efficient cutting of costs where this could have been done in the consumers' interest and at no detriment to them, as well as providing a better access to legal help. The latter issue could also be solved by switching to a system that does not require the assistance of lawyers so much, which, in my opinion, is far better dealt with in Europe than in the USA.

There is no doubt that competition comes at a certain cost such as, e.g. aggressive advertising, which probably contributes to the people's dislike for lawyers. We even once had a president of the ABA who was really upset about this side effect and, thus, carried out a series of national hearings throughout the country on the topic of dignity standards. This ended up in an assumption which proved very embarrassing for him as, given the American free speech policy, it's not possible to introduce any standards of that kind.

As far as I'm concerned, there are much worse things that build up a bad picture of lawyers and the aggressive advertisements seem a reasonable price we have to pay in order to maintain other policies. I also think it has lately become very fashionable, from the

political point of view, to criticize the legal profession for whatever it does. This didn't use to bother me that much until I realized that it might end up in the society losing respect for the legal system in general, which would, indeed, be very negative.

JŚ: *Do you notice any other big differences between the organization of the Polish and American legal professions?*

LW: A significant thing is the nature of the discipline system which, I think, is not quite real in Europe and which didn't use to be real in the US until the 70s, when the US system started to become more rigorous. In addition to that, the US has a very strong civil liability system and those two elements combined strongly influence lawyers' everyday conduct. This simply boils down to the fact that US lawyers must be constantly cautious in carrying out their duties so as to avoid being sued, whereas in many other countries the reality is that the lawyers have leeway to be very unaccountable. Respectively, the US lawyers tend to be more transparent and visible; they take a very active part in the justice system and the political discourse.

Shortly speaking, the legal profession is more significant in the USA than in the civil law countries, which can well be seen in all the lawyers' TV shows and movies. There are different theories about this state of events, but the most persuasive one is that the US is a nation held together, primarily, by laws, as there is not much of a common religious, ethical or historical background to unite us.

JŚ: *Moving to the earlier stages of your career, you once worked for Elizabeth Holtzman, one of the first women in Congress, a liberal and a supporter of the Equal Rights Amendment. Can you tell us something more about that?*

LW: At the time when Congresswoman Holtzman was elected, the astonishing part was not only that she was a woman but also the fact that she was so young – in her early thirties – and had run against someone much older, more powerful and well-known than herself. The next thing that got her in the spotlight was the Watergate scandal. She was on the judiciary committee which conducted the hearings and which would have impeached Richard Nixon, had he not resigned. All of those hearings were televised, thus earning her a high public profile.

I came just after that and got a chance to do some work on the post-Watergate issues, such as President Ford's pardon of Richard Nixon. However, when I worked for the Congresswoman, she was involved in other issues including the liability of the Nazi criminals who found refuge in the USA during the beginnings of the Cold War, the extension of the time period for amending the Constitution and whether it is necessary from the point of the scrutiny level analysis, and Congressional reversal of the General Electric Co.

v. Gilbert case regarding pregnancy discrimination as gender discrimination. The work on the latter issue evolved into a very interesting project, in which different groups of interest, really preoccupied with what was at stake, presented their opinions.

At one of the respective conferences on approaches to reverse the Gilbert case it became clear to me that people from the legislative and litigation area do not communicate with each other very well, probably due to the fact that they look at the world from different perspectives. I think a good lawyer needs to be familiar with both aspects. What the practitioners usually overlook is that sometimes it may be easier to change the law than to follow it in its present state. On the other hand, those who write the laws sometimes lack experience and knowledge about what will actually happen when the law is implemented. Efficient and successful dealing with the law consists of not only one, but many, various modes of action in the form of simultaneous involvement of litigation, legislative and administrative strategy, as well as public law education.

JŚ: *Changing the topic a little bit, could you explain what the Law and Development Movement was?*

LW: It started in the late 1950s as funding initiatives carried out by the Ford Foundation and the US Government. It encompassed a couple of areas, with the teaching methods' improvement as one of them, but mainly it was concerned first with the legal systems in general and, later on, with the economic development. The lively financial and academic involvement resulted in a massive literature with respect to the Movement. It then coincided with the Vietnam War and some of the widely criticized moves of the USA. The two issues started to entwine which, in turn, entailed a debate about the legitimacy of the Movement itself.

The notion that was commenced as a response to those events, called the New Development Movement, was focused on efforts to promote democracy and the rule of law. After the end of the communist era, there was a huge wave of interest in the Movement as many countries were considering the changing of the legal framework, although the initiative itself was still surrounded by much controversy. I would say that the Movement has changed much over the years in the sense of becoming more humble towards the crucial problems of different countries in which it had worked. The recent developments of ideas that lie underneath the Movement aim at a conclusion that, perhaps, there is again some common ground for the legal systems and types of legal education which we encounter throughout the world.

The reason of my first visit to Poland was the Ford Foundation's interest in public interest lawyering, not in the role that law schools might play through clinical educa-

tion... The Foundation had not really worked in legal education for some time. But Ford was persuaded to support the clinical programs in Poland. Poland did not have much of a separate, public interest law sector at that time, although, of course, there were private practitioners who did work in that field. Clinical education constituted a step towards improving this situation. I think it was a great way of appropriating the funds and Poland has seen a tremendous and impressive development in the respective area, with its clinic program being an undisputed success.

One value of the development of clinical education in Poland is that the Soros Foundation can now send people from other countries to do internships and learn about clinics in Poland. The value of this cannot be exaggerated as what those people notice is that it's not only the USA that can set up and efficiently maintain such educational forms. Actually the whole idea of the ABA Central and Eurasian Law Initiative, a part of the New Development Movement which operated in the Central and Eastern Europe, was to supply the countries emerging from the communist domination with a variety of choices and ideas for rebuilding their legal frameworks and not to leave them with the sole European solution, which, of course, might be the best option, but, at the same time, doesn't have to be. After all, the key to making the right decisions is a vast amount of information that enables comparison.

And, certainly, from Poland further East, the countries have been more receptive to the US clinics than anywhere else in the Western Europe, except the UK. This approach is strongly related to the history of the particular countries. The ones that don't have the experience of being forced to undergo a dramatic change in the government form tend not to see a reason why they should change anything about their education, especially the legal one. The countries such as Poland and also, e.g. Spain are, on the other hand, more open to new ideas.

JŚ: *You sit on the advisory boards of both Polish and Russian clinic programs. Do you have any comparative observations with respect to the clinical experience in those two countries? Do they bear much specificity connected with the place of their origin?*

LW: The two organizations function differently and have a different focus, which is defensible in both these cases. The people involved in the Russian foundation are much concerned with the public interest policy, the legal change and the social impact of laws, as opposed to Poland, where emphasis is put on the more specific topics of lawyers' training, pro bono activity, growth of clinics and improvement of their basic quality. Neither way is better or worse, it just reflects the reason why the clinic programs had been set up.

JŚ: *Do you notice much competition between the clinics in Cracow and Warsaw? Traditionally, those cities have fought with each other for more popularity, which has had its impact also on the relations between the two main universities.*

LW: There's always competition but those entities have cooperated on some important ventures and, in the course of the discussion we are having, it may have already become clear that we, Americans, treat competition as a very positive thing. It has its way of inspiring people to work harder and do better.

JŚ: *You wrote a book entitled Learning From Practice. One of its chapters is about the proper balance between the professional and private life. According to you, how should this be done?*

LW: An important matter in this field is the gender issue and the way in which the career choices influence family lives. There is massive literature written about the notion of an "ideal worker", on which a lot of US employers' assumptions are based. An ideal worker is someone who is able to devote the whole of his energy and free time to the well-being of the company. However, for this to be possible, the worker has to have a domestic partner who will do everything else for him. Consequently, up to the 1960s, there were very few women lawyers and many of the practitioners working in the prestigious law firms had wives who did not work outside the home and could take care of running their households. When I first started law school, there were barely three percent of female lawyers and nine percent of women studying law. It has got much better over the years and the percentage should eventually reach fifty-fifty.

Once you have a two-career family, you definitely need to change your ideas about the ideal worker... For a variety of reasons, the law firms were among the slowest to adapt to this new situation, while even the corporations have done much better. The structure of a law firm resembles, to some extent, a committee, the hourly billing there is still very big instead of being substituted by payment based on the efficiency of the results and a lot of attention is given to the rankings of profit per lawyer. The latter makes a specific kind of lawyers particularly desirable and cuts against anything that seems to be diminishing the overall profit estimation, no matter the reasons.

There are a couple of tips in the chapter about how to achieve a desirable balance between the two life spheres. One of them is intrinsic motivation – sorting out the things that are important to you as a person, as opposed to the extrinsic motivation, including, say, concentrating on money, competition with others and, perhaps, the parents' wishes. There's a group of sociologists in the USA called the Positive Psychology Movement, who promote concentrating on happy, successful people instead of analyzing the

pathologies. The conclusions they draw are very much similar to the things that the sociologists, philosophers and religious leaders have said before: people need for their lives to have meaning. The extrinsic incentives are not really up to this task; they can motivate only to a certain extent and might entail stress and depression. Conversely, the things that truly make people satisfied encompass acting consistently with their system of values, having strong connections with other people and behaving altruistically.

The textbook has been written from the perspective of externships which are a kind of practical classes, but more importantly, being very open and allowing the students to go almost anywhere, should give an opportunity to see what it is like to be a lawyer in a particular area. If, e.g. it is a big family that you want above all, you have to have a career that accommodates this.

The chapter also enumerates some very practical points about how to place yourself in a good position to negotiate desired conditions with an employer, once you've found a job to your liking. One way is to develop a valuable and wanted specialization. A law firm would be less likely to refuse when such a person requests part-time work for some time, compared to a situation when a normal litigator makes the same request, due to the fact that there are so many litigators which makes them easy to switch.

The general conclusion is that you need to be smart about what you are doing, what career choices you make and you should try to avoid deluding yourself with extrinsic incentives, such as competition for competition's own sake. I try, however, in the book to point out the flaws in the structure of legal workplaces that adversely affect lawyers rather than just advising law students about how to accommodate themselves to the existing system.

JŚ: *If you could, at this moment, introduce one change to the legal education in the US, what would that be? Would there be anything at all?*

LW: Its cost. The problem is not as simple as it may seem, though. The amount you need to pay for the legal education in the US is usually connected with the things that are provided for the students, because most schools are non-profit organizations. Nobody owns those schools and all the financial resources are used only for the institution. Of course, there's the question of appropriating the big overheads from the law departments, as the legal education is very popular and, simultaneously, not so expensive to organize as some other parts of the university. There has been much debate about whether it is legitimate to use those funds to finance the rest of the school.

In my opinion, a good legal education requires full-, not part-time employees, meaning you need to pay them a living wage. American law school professors get paid about as

much as a federal lawyer, which is not enough to make you rich but it's also not that bad. It's certainly less than you would make as a partner in a big law firm; still, we have lots of such partners who would like to become law teachers and have this sort of a nice, independent life. Therefore, making the system cheaper should not go in the direction of diminishing the amount spent on it, but it should rather be based on what has been emerging recently, namely, the restructuring of the loan forgiveness programs.

I'm aware of the fact that there are a lot of voices of criticism concerning the American legal education, but the thing that I find really positive about this education is the very vigorous, visible and transparent public debate with respect to it.[3]

[3] For comparison, see: discussion on legal education with Sarah Duggin (*"We ought to let companies be socially liable!" An interview with Sarah Duggin*, p. 27-28).