

PANEL III. THE CHANGING ROLE OF LAWYERS IN THE GLOBAL WORLD

Moderator: Professor Wojciech Kocot, Faculty of Law and Administration, University of Warsaw

Panelists: Professor Jon Mills, Levin College of Law, University of Florida; Agnieszka Stefanowicz-Barańska, esq., Dentons; Witold Daniłowicz, esq, DJBW Legal; Professor Marek Wierzbowski, Faculty of Law and Administration, University of Warsaw

Professor Wojciech Kocot, Moderator:

Good afternoon, it is a pleasure to start the third panel in our conference on “Legal education and legal profession in the global world from Polish and American perspective”. I think that our discussion so far has been very fruitful and we will follow this success. What we are going to talk about? Generally speaking, the topic of our panel is: “the changing role of lawyers in the global world”, so from the academic perspective the question is what do we need to teach future lawyers? We talked about this already in the former panel, so I think it is time to develop or to make our discussion more specific. I think that the main problem of our panel and the main problem to be discussed is the question what does it mean to be global lawyer? Does it mean that we are supposed to create a universal lawyer, not a universal soldier, but a universal lawyer? Do we need to teach students more than law e.g. law and economics?

I think it is a *talon d’Achille* of our education because we do not teach our students economy, our law students, of course. That is a big mistake and it is very visible during court procedures when the judges have nothing to say about economy, they do not understand economy and economic reasoning of big transaction, they are going to judge. So that is very important, I think. Similar to economics, what Professor Witkowska mentioned during her speech, we have another area which need to be considered, like sociology and psychology. Do we need to teach law students other sciences? Another problem I would like to raise – is it necessary for law students to have a full command of foreign legal systems and to what extent? Do we need, as University, to develop these universal skills or just encourage them to develop them by themselves? That is a very vital, very fundamental question. What skills should we administer? Do we need to teach them how to communicate, to negotiate, to reach a compromise – these are also very important, vital questions. So far, we do not teach them how to negotiate, how to conduct the discussions, the interview with clients, what language to use, meaning legal language, so the lawyers will be understood by others. Those are also very important problems in our discussion how to create, to use a shortcut, a universal lawyer. Of course, I think that in our panel we

have a lot of experts in these matters. I am very glad to have all of you today and I hope to discuss with you these problems from the practical point of view. Now I would like to introduce our first panelist Professor Jon Mills – Professor of Law, Dean Emeritus of Levin College of Law, from 1999 to 2003. Professor Mills served in Florida’s Legislature for 10 years and was Speaker of the House in 1987 and 1988. His major policy initiatives include water quality, environmental bills, child abuse. He is very experienced and successful in representing parties, especially in constitutional cases. My point of interest was, for instance, Versace murder case, where he represented the family of the deceased in protecting their right to privacy. He is a very devoted academician and combines teaching with practice, especially in the constitutional matters and I think he will be able to share with us his practical experience. So, please, take the floor, Professor Mills. Thank you.

Professor Jon Mills, Levin College of Law, University of Florida:

Thank you very much. It is a privilege to be here. It is hard to believe that Julian Juergensmeyer and I came here 40 years ago. When we started coming to Poland we would never have thought we will be here today in this beautiful building and participating in this highly successful program. I would like to thank Dean Okolski and Dean Tomaszewski and all of the succeeding deans for keeping this program going. We have to thank Julian for his early leadership, Dean Robert Jerry for keeping this program going, and for the leadership of Ewa Gmurzyńska and JoAnn Klein who every day for 15 years have led this program, made it work and kept our students both involved and learning.

If our mission today is to describe how to create a universal lawyer, we have a tough job. I would suggest that lawyers had a higher mission than simply to practice law. Very few people have the right to practice law. With that right comes responsibility. As a lawyer, you have a duty to society, the courts and to justice. Is there a reason to believe that practicing law today is substantially different than it was 15 or 30 years ago? I would say yes. Generally, this is a different world because of technology, the level of communication, and the level of data sharing. Technology has changed the commercial world, the public world, and the world of news and communication. I suggest that technology is advancing far faster than law. We, as lawyers, are trained to look to history, to look to the past, to look to precedence. It is a new way of thinking for us to look ahead. Technology created a new level of complexity. Complexity is generally good for lawyers because somebody has to interpret that complexity. The level of complexity now has mixed among different disciplines. It is not just a technology; it is science, medicine, biology, and environment. In all of these areas the world is more complex and very different. Law is involved in all of these issues.

To be an effective environmental lawyer you have to understand something about science as well as the law. In addition, the pace of change in technology,

communication and trade all contribute to the complex environment. And Poland is in the middle of many of those important changes.

The world is different than it was when we came here forty years ago. We communicate more with each other, we trade with each other, and it is more complex for all of us. More issues are global – trade, environment, human rights, business. Some of the global issues are obvious and some are not so obvious. If someone handles a divorce in middle of Florida at the moment, you may have to know Columbian law. It is not obvious but it is important to understand.

I want to highlight four issues in particular:

1. First – both lawyers and law schools must address the global nature of the practice of law.

2. Second – we all must understand the impact of new technology increasing complexity and specialization in legal practice.

3. Third – law schools must address the issue of the difference between the practice of law and learning legal theories in law school.

4. And finally, the importance of the duty of a lawyer to be a citizen and a leader and someone who will defend a rule of law.

I think those are four important issues for us to understand.

In terms of teaching the global nature of law, we have heard a lot about changes in curriculum. I agree with the need for a more global curriculum. Of course, we need to understand curriculum issues that deal with transnational realities, trade law and issues like global harmonization of laws. Some areas of law will be harmonized easily, and some areas probably never will be. Some differences will remain because there are significant cultural differences among nations and regions and students are best served when they learn about cultures beyond their own. I suggest that in teaching and preparing lawyers for the new world it is critical that they understand more than we teach from books. That is why studying abroad in the world sense. When someone can experience the culture, the language, the values of another country it is far more valuable than reading about it in a book.

I know that the University of Florida is trying to give students that experience and so is University of Warsaw. We can change people's lives by exposing them to different cultures. I would like to give a simple example here. Everybody is familiar with traffic lights, right? They mean stop/go – so that should mean the same thing in every country, right? No, it is wrong answer! For example, in Sweden it can be 11 o'clock at night and there is no traffic. People will stop at a stop light. I know you may or you may not have driven in Brazil. I have. It does not make any difference how many cars are on the road or whether the light is green or red. Brazilians are creative in their interpretation of red and green lights. Clearly different cultures interpret laws in different ways. Direct experience in those countries will make for better citizens and better lawyers.

I recall a situation where I was one of a group of lawyers advising a company that was licensed in a European country. That company could not be easily licensed in the United States, however. It was not enough to read both laws you had to solve the situation. The culture behind the laws is different. That reality is also true in defamation cases. As you know, defamation is when somebody makes damaging and false statements about another person. You might think that law is the same in the United States and in the EU because there are many cultural similarities. Absolutely not. The United States pay so much more attention to free speech in the First Amendment when weighed against personal intrusions or defamation. Something that would clearly be defamatory in the EU is not in the United States. The EU has elevated cultural beliefs in individual dignity to higher level than has the U.S. And, by the way, in today's world, if someone distributes defamatory information on the Internet and it is available everywhere, they might decide to travel to Europe because their chances are better there. If that information was distributed both in the United States and in Europe, they may be able to do so. Therefore, we as lawyers should understand cultural and legal differences. And now, we must understand the implications of new technologies such as the Internet which make global lawyering much more complex.

This brings us to the second important area of the growing influence of technology on law. We all need to understand the new realities of global communications and new technology. Because of technology and complexity there are more areas of legal specialization than in the past: healthcare, environmental law, communication and other areas. It seems more important than ever before to have some understanding of technology, science or some technical areas. Even though you may not chose to specialize while a student, it is prudent to gain some expertise in some specific areas. You may not know if you are going to specialize in healthcare, environment or number of other issues. But I would suggest to spend some time gaining background in some of these issues so you will be capable of specializing if you choose to do so. In our environmental courses in the United States there are teachers who incorporate some biology, or various technical or scientific issues into their teaching. Clearly environmental issues are an example of a technical and global issue. Pollution is not limited by borders, so therefore, we have to work together and understand the science, technology and law relating to the environment. An interesting aspect of the increasing global exchanges on issues like the environment is the cross pollination between scientists and lawyers. In exchange programs that involved scientists and lawyers from the U.S. and Latin America the issue was dealing with environmentally endangered lands. In Brazil the endangered area is called Pantanal. It is somewhat similar to the Everglades in Florida. There were scientists and lawyers on this research project. The scientists from these two different countries had easier time talking to each other than lawyers talking to scientists in the same country. Science is a different language. But this project helped those of us who were lawyers to learn more of the

scientific language. I am suggesting to you that in the future, technology is going to be important enough so that if you learn it, you will be valuable.

The third area I mentioned was the need for real world experience. The real world is different than the books and we need to help students and new lawyers learn and experience the difference. For example, what it is like to actually talk to clients with real and serious problems. Or, if you work in public policy area, what it is like to actually experience the impact of real politics. For example, you may draft what you believe to be a perfectly good environmental bill concerning the water quality. You draft it and you give it to a Member of Parliament or Congress and they say "oh that is impossible". Why is that impossible? It is written perfectly. It is impossible because it cannot pass. You might have a policy that cleans the water perfectly but makes it impossible for farmers to grow sugar cane.

I have had an opportunity in my life to work for intelligent people, good leaders, visionaries, and I have had an opportunity to work for people who were not so intelligent and did not have a vision. I have learned from both. You have to be involved and engaged in those difficult processes, issues, and unexpected crisis. The experience will change you.

The last important issue is to understand that, as lawyers, you should be leaders and good citizens. Because you are a lawyer, people will frequently ask you questions about law – about what the law should be, or about what the law is. So you have a special privilege to advise them. With that privilege comes responsibility.

It is not enough to learn what the law is; it is not enough to learn how to analyze the law. We are not trained only to be mechanics, we are not trained just to fix the bicycle. We are trained to figure out what you can do if the bicycle cannot be fixed. People will look to you when the answers are not easy.

The fact that you have the privilege and ability to learn what the law means, also means that you have a duty to use it – particularly for those who have less chance. The poor or underrepresented people in the world deserve justice as well.

I mentioned this morning to someone, if someone went to a lawyer who was trained let's say in 1950 in the United States, he was attending a segregated school, meaning blacks were separated from whites, and they said I do not feel this is justice, I want to change this. Well, a lawyer who read the law as it existed in 1950 might say "I cannot help you, because the law says segregation is legal. The United States Supreme Court said so".

But some individuals, including Thurgood Marshall said "that is not what the law should be". Marshall later became a U.S. Supreme Court Justice. But in 1950 he and other lawyers were just that – lawyers. And they took on the cause of change.

I had a classmate of mine who is an ambassador. I mention this because I have not seen him for years until the last week. He said some of his law school training was useful but ultimately real life was a critical teacher. To make good decisions you must have the analytical skill of a lawyer but you must also have the judgment

to understand people and situations. The Muslim community in his country was upset by a man in the U.S. who was threatening to burn the Koran. He chose to go and talk directly to a Muslim leader and about the U.S. culture and law. He told them that in the U.S. the law even allowed someone to burn the American flag. And, that while most people found it offensive, the action was allowed as freedom of expression. That personal cultural explanation helped to understand why the burning of the Koran would not be stopped. So, my friend was able to use his legal training and his cultural knowledge to diffuse a potentially bad situation.

Being a lawyer in the new century is a great challenge because of global and cultural differences, technology and complexity. But being a lawyer gives each of you the ability to meet that challenge, seek justice, and provide leadership where leadership is needed. It is the obligation of Universities and professors to provide the opportunity for our students to be those leaders.

Thank you.

Professor Wojciech Kocot, Moderator:

Thank you, Professor Mills for this very inspiring points. I think that the last sentence you said: “we are obliged as academics to teach and provide an opportunity for the law students” is vital in this context. I think that this change of level of technology and specialization of profession, not only professionalization but specialization of the profession, is the most important problem. That is interesting what you told us about lawyers as leaders – that is interesting approach. I have never heard before such an approach, so it is very inspiring for me, of course. My other comment about what you just told us, is that the lawyer must be aware of the complexity of law in the fast globalized world, that is also interesting. I do not think that we talked about it in the first panel on education in America. As far as I remember, I know that in American legal studies are postgraduate studies. So, if you want to study law, you have to finish undergraduate studies, for example in biology, chemistry, accounting or linguistics. That gives students a completely, entirely different perspective of looking at the legal problems. Our students do not have such an opportunity, so that is a point of discussion, as well as a very interesting difference. Last comment what I think is important, is participation of students in public service. I think this is also a way to shape new law students and lawyers in the future.

Our next panelist is Mrs. Agnieszka Stefanowicz-Barańska, partner in Dentons, Head of Competition, Regulatory and Trade Group, for nearly 15 years and Mrs. Stefanowicz-Barańska graduated from the King’s College of London and she was admitted as a legal advisor in 1997. What she wants to talk about is the influence of technology and digitalization on everyday legal work. So please, take the floor.

Agnieszka Stefanowicz-Barańska, esq., Dentons:

First of all, allow me to thank you for the invitation and the opportunity to address you today. I would like to start by quoting the ABA Committee on the

future of legal profession which in 2001 said that we are in the middle of the biggest transformation of civilization since the caveman began battering. The practice of law and the administration of justice are at the blink of change of an unprecedented and exponential kind and multitude. To those of you who shaded at the prospect of the revolutionary changes in general, and especially these revolutionary changes affecting us – lawyers, I want to offer words of comfort. The legal profession has adapted itself to changing demands of society in the past and if we have done it in the past, we can do it now too. I think that university is the best place to start thinking about how to prepare yourself for these changes. There are several factors which shape the legal practice revolution now, which are on one hand, globalization and on the other, the digital revolution.

Allow me to point out that there are synergies between these two factors. As markets go virtual, they also become inherently global. Now let us look to each of these factors individually starting with globalization. Lawyers can no longer expect their practices to be purely domestic. We need to create global lawyers who can plan to operate across legal systems, dealing with trans boarder transactions, and multinational companies. Does this however, mean that international law – whatever it may mean on this concept – will be at the center of the legal practice of the future? Well, it is a fact that globalization experts pressure to worlds conversions around a uniform standard. A case in point it is emergence of global accounting standards. The growing harmonization of global antitrust law with its inherently economic and cross-border by nature is another example. However, as long as we have independent states laws, in my opinion, laws will remain local by their very nature. This means that the world of today should be not globalization but rather globalization meaning the localization of a global product. Lawyers must become globally literate but at the same time they still need to be experts in the national legal regime. Since there are increased pressures of globalization, having the opportunity to approach legal issues from another foreign view point makes us more creative lawyers. Richard Branson once said that when he needs to find a creative solution to a problem he travels in order to change the environment. Changing old habits and finding new ways is very important to the practice of law in a cross-border context.

In the context of education of new lawyers, comparative law courses and foreign law courses, such as the one offered by the Center for American Law Studies, play exactly the same role. This is very important, given that, as I will explain later, creativity will be, besides ethical values, the main advantage which lawyers will have over on-line legal services in a digitalized world.

Let us now turn to digital revolution, the second factor shaping the legal revolution. Digitalization has big influence on the place where we live and do business. This means that on one hand, clients want faster and more efficient service while on the other, lawyers and clients, both, live and work under higher stress levels than ever before. Likely the digital revolution has also in many ways

assisted us in combining the same levels of expertise as we offered before with much faster ways of rendering advice. I am speaking, of course, not only about faster communication with clients, courts and colleagues but also about technological solutions assisting the modern lawyer in everyday business. The fast ways of business require that lawyers have to be better prepared for the answers that clients pose. This means, first of all, an increasing need for narrow specialization. This is a sign of the times that nowadays law firms expect specialization already from graduates straight out of law school. However, the modern world brings many paradoxes and one of these paradoxes is that in order to be better prepared for those answers that clients pose, lawyers need to combine specialization with interdisciplinary approach to lawyering. We cannot rest exclusively on our specialization.

In order to be able to survive in very competitive environment, we increasingly have to combine our narrow specialization with complementary skills, meaning combine so-called hard skills, such as business and financial knowledge with soft skills such as decision analysis, time management, multicultural competence and my personal favorite, writing skills.

Allow me to focus on this last point in order to illustrate a broader perspective. Just as lawyers work under unprecedented stress levels, so do our clients. This puts more emphasis on better communication skills in order to make lives easier to our clients. Simply writing skills are the most elementary step to achieving this but other soft skills such as multicultural competence or more generally, interpersonal skills, are also a must in today's practice of the law. The 21st century lawyer has to have the ability not only to advise but also to interview, communicate and strategize in action with clients. Communication skills finally, are important also because of the globalized nature of the business environment nowadays. I have noted at the outset of globalization means that lawyers can no longer expect their practices to be purely domestic. Such approach inquires lawyers to communicate effectively with client and lawyers from legal systems which are foreign to us. Communication is the key to success in this regard. This involves first of all, fluency in the foreign language preferably in English which is the *lingua franca* of the international business and legal practice. However, cultural sensitivity, cultural sensibility or even fluency in the given foreign culture are equally important. In order to develop comfort in the global environment lawyers must therefore, emphasize on a relationships and processes of learning. However, going back for a moment to the point about the need for an interdisciplinary approach, I wanted to take this opportunity to encourage law students to the unique possibility to learn the proactive model of lawyering which is typical for the U.S. lawyers. It mixes business and legal counseling with little concern for the boundaries between them. This requires the lawyers to have a strong understanding of business in general and good knowledge of his clients business, in particular. The U.S. model of lawyering is also characterized by an attitude that focuses on

problem solving and is also closely related to another distinct phenomenon of the U.S. lawyering known as legal entrepreneurship. This gives Center's students an advantage in the market because modern lawyer will more than ever before need to learn interpersonal skills, and will need to be entrepreneurial to gain clients but also to keep clients with a "can do attitude".

In this discussion let me turn to the less optimistic prospects for the legal practice arising out of the digital revolution. Let us consider that the digitalized world is a world in which non-lawyers have much greater access to legal guidance. It has been said that the Internet democratizes expertise, giving consumers access to alternatives to traditional legal services. This has been connected to the idea of getting rid of the high-cost lawyering phenomenon. The internet also means that the attorney-client relationship is no longer built by word of mouth. On-line resources are often used for referrals. The question which we start asking ourselves therefore, is: are on-line legal services actually making lawyers superfluous or will they make lawyers superfluous in the future? On one hand, legal services are too costly to significant proportion of society. On the other hand, on-line services increase accessibility to goods and services across geographical culture and time zone boundaries, thus mandating a greater need for legal services. On-line legal services relive this tension between need and accessibility. As a result, in the future public attitude to what is self-representation is likely to change. In the world full of information the lawyer may therefore, be substituted in some instances. However, lawyers trained to practice law in a technologically competent manner have the potential not only to fulfill the needs of a world which in the legal transition but also may provide lower costs of legal advice and improve access to justice.

I wanted to note that higher demand on lawyers also puts a closer focus on service and compliance with clients demands. However, it is important that, as lawyers, we do not turn into craftsmen. The difference distinguishing us from craftsmen must, in my view, besides our creativity, be the attention to ethics and independence. We must not forget to continue to put stress on those values in order to preserve our identity, as public trust professions.

Thank you.

Professor Wojciech Kocot, Moderator:

Thank you Mrs. Stefanowicz for interesting view on the influence of globalization and digitalization on the new functions and roles of the lawyer in our world. We have to agree entirely that globalization created new paths in lawyer's careers, new brands, new professions, new specializations and there is, of course, an increasing need for narrowing professionalism. So interdisciplinary knowledge is also required and expected from new lawyers. I think this multicultural skills are very interesting. Multicultural competence plays more and more important role. And the last but not least, of course, the lawyer should be prepared not

only to advise but also to communicate, to negotiate, to talk with people. He runs professional service. And the last conclusion about Internet that democratized legal world is also interesting, I think worth to think about. Thank you very much once again.

Now our next panelist – Witold Daniłowicz who is a lawyer, graduated with distinction the Faculty of Law and Administration of the University of Wrocław, master of laws, LL.M. in 1985 at the Louisiana State University Law Center. Since 2012 he has been Managing Partner at Daniłowicz, Jurcewicz, Bielecki & Wspólnicy Law Firm. He is an expert on mergers and acquisitions in international commercial financial transactions, so in the field of law which is very sensitive as far as new trends in legal professions are concerned. So please, Mr. Daniłowicz take the floor.

Witold Daniłowicz, esq, DJBW Legal:

Thank you very much for this kind introduction and for the invitation to speak at this Conference. When I started preparing my presentation, it occurred to me that there is no other way to start other than with the words “when I was young things were different”. I can say that when I was young, lawyers were lawyers and engineers were engineers and dentists were dentists. Now everything has changed. As Professor Mills has explained, lawyers work all over the world, so do engineers and even dentists are being trained abroad – everything is becoming international. So this invitation forced me to take a look back on how things were and how things are, particularly here in Poland, because the differences are tremendous. Interesting enough, when I was growing up, in the 60’s and 70’s, legal profession was considered as a very localized profession. Local lawyer was someone who would assist with regular – meaning local problems. There were, of course, some people here and there that were involved in international issues but normally legal profession was very local because life was local, so to say. Particularly in our part of the world international business relations were extremely limited. There was only a small group of people dealing with international issues. All of that has changed in the course of last 25 years. It is almost impossible to practice law in our country without referring to international matters. I am not even addressing the situation when someone is dealing with heritage when his uncle died abroad or someone else is marrying a lady from another jurisdiction, which are obvious examples. I was recently asked to help in changing hunting legislation in Poland. I would have thought that this area would be as local as it can get but I was obviously wrong. The main issue to be dealt with was related to the jurisprudence of the European Court of Human Rights. Thus the matter I was dealing with was an international human rights issue and not a problem of Polish legislation affecting farmers and people pursuing their interest in hunting. That is one of the fundamental changes that obviously comes to mind when you talk about the role of lawyers in the global world. Everything is becoming interna-

tional not only because of the international legislation but because new areas are opening. International human rights, international criminal law... All this matters make work of a lawyer very different in comparison with what it used to be few years ago.

But it is interesting to ask the following question: in the examples that I have just given, is the role of a lawyer actually different? And the answer to that question probably is: no. The legislation might be different, maybe it is more internationally oriented, maybe you have to deal with international treaties, maybe you have to use foreign language to access that legislation or to deal with your clients, or to deal with judges and international courts. But in those examples that I have just given, the role of a lawyer still is the same – the lawyer is someone who interprets the law, provides advice to his clients or represents them in court.

So the question arises: are there areas where the role of a lawyer has changed? From my own experience I would say that the role of a lawyer has mostly changed in business transactions. The process started in the Anglo-American world much earlier than in Europe, where the traditional role of a lawyer has been preserved until fairly recently. I started with saying that before a lawyer was a lawyer, and a businessman was a businessman. A businessman would come to a lawyer and say “tell me what the law is and then I will proceed”. As times changed, however, imperceptibly lawyers started to be more and more involved in the decision making process and in business itself. I am not judging whether this is good or bad but I am just stating a fact. When I went to the United States and graduated from a law school there, this was actually what prompted me to become a practicing lawyer. Students there were taught to deal with business issues and not only to interpret legal rules. But there was a thin red line, which at least myself, I did not want to cross. I still thought of myself as a lawyer and not necessary want to be involved in decision making. I was happy to provide advice to my client. However, I saw a lot of people, as time went by, who were crossing that line. There were lawyers, and you can see that today, whom a company would send to another country to negotiate a transaction. They do not send a president or vice-president of a company with a lawyer, they just send a lawyer. They say “you go and negotiate this deal for us”. That is a changing role of a lawyer. Things were different in the past. Most of you here, or maybe it would be safer to say, none of you here, remembers those days. Well, I remember my first deal, when I came here in 1990. I negotiated with a big state-owned company, and on the opposite side there was a manager of the company, president in today’s terminology. When we finished he gave this negotiated agreement to his lawyer who did not even appear in the negotiations. He gave it to him for his comments. He came back with the following conclusion: from the formal standpoint this agreement is correct. I have always wondered what that meant. Basically, that it was signed, and it was in writing. What else somebody can say about formal standpoint of the agreement? But it was how he viewed his role, he did not want to get involved with the business side. He wanted

to divide the responsibility quite clearly – you, the manager, are responsible for the deal you have made.

Well, that has changed dramatically. There are very few lawyers today that can say they do not want to get involved in the business side. I see that as the biggest change of a role of lawyer in today's world. What are the consequences of this change? They are numerous. There are some ethical issues involved that are often completely overlooked. The question is: if you are involved so deeply in deal making process, is your advice really objective? And what about a situation that takes us even further? A few years ago in California during so-called dot-com bubble you had numerous young entrepreneurs starting businesses in their garages. Normally, they would pay their lawyers but instead they told them: "we have no money to pay you but you will get a share of our business, you will get 20%, 15% of the company in payment for your services. It is not worth anything at the moment but if we really make it, you will be rich". And it happened. Maybe in 100 cases, maybe in 120 cases but there are many lawyers and actually a few now famous law firms who really became very rich following this approach. But the question is – looking from the ethical standpoint – if you advise someone and you have financial interest in his success, is your advice really based on what you think is best for the client, or do you think "well, maybe I should tell him to quit what he is doing but if he quits then I would lose all my money. So, maybe I tell him to continue". This is a true but historical example. I do have a very recent example too. There was recently in our country a situation, widely reviewed in the press, involving a law firm whose lawyers as a part of their compensation received stock issued during the IPO (initial public offering) they have been working on. This raises exactly the same issues! They were working... but they had financial interest.

Ethical issues are really something that we should focus on. I do not want to leave you with an impression that all the changes in the legal profession we see happening around us are bad. I think this is absolutely not true. Today lawyers understand businessmen better and they understand their clients better and this is a very positive development. There are, of course, new areas when that is absolutely essential. It is impossible to become a patent lawyer without some engineering background. It is impossible to become a good environmental lawyer unless you really have some proper background. So, all dual degrees are becoming very popular these days. Let also not forget that for lawyers that are coming to this red line – some of them cross it, but some of them cross it completely – it means that they even stop being lawyers and they become businessmen. This is an interesting tendency. If you look at the people who start their legal career in general counsel's office, for example, most of them dread that at one point they will cross that line and join the management of a company. This is a new phenomenon, I suspect.

When we were given the materials to prepare for this Conference one of the tasks given to us was to leave the audience with a question that could be subject

of a later discussion. The question I would like to leave you with is the following one: are our law schools actually preparing graduates to these new challenges? Are they properly equipped not only to face them but to take advantage of these new opportunities?

Thank you.

Professor Wojciech Kocot, Moderator:

Thank you Mr. Daniłowicz for very interesting presentation. I think it was absolutely practical approach. That is point for discussion: crossing this red line – when lawyer becomes businessman and is he entitled to replace his client in negotiations for example, as far as business is concern, strict business issues. So, that is very interesting point. I think that is unfortunate changing, because it may go too far, it may go wrong way. Thank you thank you very much.

Now I would like to introduce to you Professor Marek Wierzbowski, professor *ordinarius* at University of Warsaw. For our American friends, professor *ordinarius* is professor appointed by the President of Poland, because in Poland the highest professorship is from presidential nominations. So it is a bit different in Poland than in other countries, especially in common law countries. Professor Wierzbowski is also a founding partner of the law firm Wierzbowski and Partners. He was visiting professor at several American law schools and, of course, he advised many important companies during his legal practice, so he also is very familiar with the practical problems we are talking about during our panel and the whole Conference. Recently he has been appointed member of the European Law Institute and member of the board of the Polish-American Fulbright Commission. So Professor Wierzbowski, please take the floor.

Professor Marek Wierzbowski, Faculty of Law and Administration, University of Warsaw:

Thank you for that long introduction. I am not that young, so my life story is a little bit longer than the life story of other people present here. I have a feeling that there is a common opinion that demand for lawyers will grow. Therefore, there are thousands of young people who try to enroll to law schools and because it is difficult to enroll to the best, well-known ones, so people open new law schools and students come to study law over there. As you are probably aware, in Warsaw we do have now six or seven law schools. Several years ago, it was only one, our law school at the University of Warsaw. However, I think there is differentiation of demand for graduates. People who graduate at the top of the class from good law schools, recognized law schools, have usually good job opportunities. People who graduate from newly open, unknown law schools, probably have a chance to be well educated taxi drivers or take some other professions and they are not able to enter legal profession at all because demand for lawyers is, at least in recent years, relatively limited.

I remember when I was teaching in the United States, one of my colleagues was teaching 1st year students, and this was a private, quite expensive law school, and he asked the following question to the students: ok, each of you who has visited medical doctor and paid him a fee, please rise your hand. So everybody, of course, raised their hand. Then, the next question was: everybody who visited a lawyer and paid him a fee please rise your hand. There were two or three hands. As you know, students in these professional schools are usually older than in Europe. Therefore, they may have more experience and more of them dealt with lawyers. So why did students enter law school not medical school? That answers shows some kind of demand. But there is a big difference between lawyers and doctors. Because doctors make some kind of gate way at the beginning of career. If you enter medical school there are good chances that you will be a medical doctor and wealthy person. For lawyers virtually the gate way is almost at the end, when the first client knocks to your door. I was told by a friend from the city of Białystok, that in that city more than 20 lawyers using some grants from the European Union had opened their law offices. After six months, over 80% of them have not seen a single client. So, ultimately they all failed. So, it is really very difficult to enter the legal profession. But let's assume that we have a person who is really well educated, from good law school. Such a person may enter legal profession or decide to be a civil servant or may move to business. I remember once I had a friend of mine for dinner who was professor in a U.S. law school and also a couple of law firm partners – it was long time ago. The law professor was making like 120.000 \$ per year probably, two partners from the law firm, each of them was making something like a million. Two partners complained that in reality law is a very bad profession because it is predictable, profits per partner are published, so everybody knows how much you can make. If you move to business, sky is the limit. And that is reality. Some time ago when I was presiding the supervisory board of the Warsaw Stock Exchange and I discovered that half of its members were lawyers by education. But I was the only one who was a practicing lawyer and admitting that I am a lawyer. There was Mr. Stypułkowski, law school graduate who is currently president of mBank, at that time Bank Handlowy; there was Mrs. Pieronkiewicz who was president of BPH Bank, who was graduate from the law school at the Jagiellonian University; there was Mrs. Jagiełło, also law school graduate, who was civil servant but responsible for public debt.

Often it happens that even practicing lawyers decide one day to switch to business or to move with another business line. I know that law firms, which are quite successful, currently make more money on the investment fund they have opened, than they make on legal profession. They are not poorly paid, believe me. They are quite expensive lawyers. I share the opinion that future demands for legal services will be growing and they will differentiate. This will be a result of growing wealth of the society. Even average members of medium class have to

invest some of their money, to buy property and so on, so from time to time they have to use services of lawyers.

Regulation of business became more complex. We are just after crisis and in many countries, also in the European Union there are new regulations concerning protection of banks against crisis and so on. The best example is the American Dodd-Frank Act which authorizes American regulators to issue over 200 new regulations in regard to banking and securities regulations and some of them which have been already issued are like e 500 pages long. So, it is an excellent opportunity for lawyers. Believe me, you cannot survive in such a jungle of regulations without assistance of a lawyer. I do not know for sure, if you can survive with lawyers, but at least you have somebody to be blamed if things go badly. I remember when I started practicing law in the international firm. Every lawyer had a client and virtually was doing almost everything for that client: tax, labor law, contracts and so on. Today, actually, in Poland a person who is an expert in income tax may have some problems with value added tax. There is a growing specialization, so this picture has very much changed. As you probably know, I am recognized as an expert in capital market and it would be difficult to imagine doing big offering of securities without securing assistance of the law firm which will be recognized on Manhattan and in London. Actually, there are no chances of doing big offering simply because the banks will look for lawyers with whom they are familiar. You may be best-located lawyer but unless you are recognized by banks in these two localities, you have no chances to work on such a transaction. And, of course, it is growing internationalization of business, that more and more involves many jurisdictions. Currently, I am seating as an arbitrator in the arbitration case which is partially going in Russia, Poland, France and so on, and actually we have big mixture of jurisdictions and companies involved.

What will be the future? I think it will be a big differentiation of legal practice. Still there will be demand for small local offices, acting in family cases, serving small local business. There will be a room for that. On the other side, there will be room for big, global, international firms. As you know, there is a growing concentration of the law firms, never there were so many mergers of law firms as it happened a year ago. Probably this year there will be even more mergers. So the number of international law firms is growing. There will be room for local firms doing virtually big business transactions and often used by the international firms, which do not have presence in particular jurisdiction. For example, New York firm which does not have presence in Warsaw will have hard time to go to other international firm present in Warsaw with the client, because they would be afraid to lose their client. They will go to a local firm because then there is no danger of losing that client. And, of course, there will be a room for boutique firms, very highly specializing in certain area of law, such as trust law, public procurement and so on. Some time ago, I read an article and somebody says that future, at least in serving business, belongs to global firms and boutique firms.

I think that there will be still room for local lawyers. Will this world be the same as today? Probably not. Mr. Daniłowicz has already spoken about changes which took place. We noticed big changes currently going on, for example, some time ago English law firms relied on lockstep system, which means that every partner is making the same amount of money. Today that system is abandoned, changed because it does not work, particularly if you have partners in different localities, because of legal fees. Therefore, compensation of partners will be different in England, and different in Sweden, and in Poland, Germany and so on. In fact, probably Polish good lawyers will be better paid than Swedish or German. But that is a question of supply and demand.

What else can happen? There will be probably a mixing of legal advice with some other activities. As you know, some time ago accounting firms have abandoned their legal branches. Today they have reopened them, for example PricewaterhouseCoopers has a very active law firm and other accounting firms they started legal services which are linked very much to their services. So, they provide accounting services but if something is not clear from the legal point of view, they send their client to their lawyer and ask him to give the client the opinion if this was legal or if this was not legal. So there is some kind of mix of business and legal advice, and it turns that quite often lawyer must be specialized as business advisor. A lawyer cannot disregard, and Mr. Daniłowicz spoke about that, business aspects of activity of the client. That may result in further erosion of attorney-client privilege. Today it is quite common that lawyers are called as witnesses to courts, when they say "sorry, but I cannot answer the question, it is covered but this attorney-lawyer privilege". The judge will say "ok, you are exempted from that, please, answer the question". To some extent sometimes lawyers are very deeply involved in somebody's business. Nevertheless, situation is changing and will change, so probably the future world will be full of many huge firms but acting in a little bit different way. It is also the question that this market is very competitive and the clients are not that eager to accept huge fees and quite often they decide to rely on in-house lawyers than asking for external services. Also it is the question of new area for regulation developing like for example access to public documents was something actually unknown 20 years ago, today it is a big part of legal practice.

Thank you.

Professor Wojciech Kocot, Moderator:

Thank you very much, Professor Wierzbowski. There are a lot of valuable points you brought in to this discussion. First of all, that law studies open different opportunities, so we are not determined to be lawyers after graduating from the law school. That is very important option for many of our students who can go to administration, to public service, to business or politics. As Professor Wierzbowski mentioned, I think that what is important and what was interesting espe-

cially to me is that there is room for local small firms cooperating with other law firms from abroad to escape the haunting for clients. It is interesting and worth of further consideration. Anyway, thank you for your very optimistic view on legal profession, Professor Wierzbowski. I think now we can look at a bright side of lawyer's professional life because these opportunities are very open. Personally, however, I have a little less optimistic view on that. You mentioned the growing number of law schools, growing number of lawyers make not our life difficult but their life difficult and even if they obtain grants and extra money, they still have very tough life as professionals and actually, they cannot be professionals because being a professional is not only knowledge but also experience. So thank you very much all panelists for presenting your points of view and attitudes, and now we do have some time for asking questions and discussion.

Professor Stuart Cohn:

Thank you, I am Stuart Cohn from the University of Florida. Thank you, panelists, for you presentations. I would like particularly react to what you said because as a young lawyer working in Chicago, Illinois in a mergers and acquisitions field, I was too, several years ago, asked by clients what I think and I never expected this question when I was in the law school. I do not think most people getting out of law school expect their clients to ask them the business questions that they eventually ask. My initial reaction was always: "Look I am your lawyer. I will do what you want me to" but I found out that my answer was never satisfactory to them. So, it is very interesting question – the red line you talked about. I want to follow up on that by asking a question, because in law school we simply are not able in our three years or as many years as you may have here, to train our students to do the kinds of guidance in counseling that you do as practicing lawyers. I remember that when I have joined the law firm our letterhead said "attorneys and counselors" and I never knew what that word "counselor" meant. I have always thought that it is the same as attorney, but it really is not. It is exactly the kind of thing that each of you have talked about. But we have a difficulty getting this out across the law students. I am wondering at your law firm, when you bring in young lawyers, how are you training them now to do the kind of work that you see in the changing role of legal profession?

Mr. Witold Daniłowicz:

When I was at White & Case at one point, probably 8 years ago, I came up with the idea – what the law firm really needs, is a worldwide training program. There were two reasons why I came up with that idea. One was because the firm, as many others law firms at that time, was growing fast through acquiring a big number of people from different jurisdictions in various countries. We had offices in over 30 countries. I thought that the training program would integrate young people and sustain the same values. But at the same time, I thought it would be essential to compliment the training they received in law school in their respec-

tive jurisdictions by the training from some sort of practitioners, not always lawyers, that would prepare them better to serve this role. So, I started to prepare this training not on legal issues but on soft skills like negotiations, presentation, and understanding of accounting issues in business. We quickly discovered that there was a growing number of people that took these courses not in law schools but somewhere else because they figured out quickly they needed more knowledge, and a different one, in business and in law. But majority really went just to traditional law schools in Europe or in the U.S. and really needed extra education. That, of course, was an opportunity for a big law firm like White & Case. Small law firms do not have this opportunity and that is the real challenge.

Mr. Przemysław Pałka:

Thank you very much. My name is Przemysław Pałka, I would like just quickly to follow up on the technology and digitalization issue. I think this is an extremely interesting problem, especially when one asks the question: “what should we teach students in law school, in order to distinguish between: 1) the way technology changes legal profession, in a sense that we communicate with clients in different way, we can register a company in a different way; and 2) how technology changes the legal system, and actually changes the world we live in”. Just to give some brief examples. In my Ph.D. dissertation I study the legal status of the entities that exist only within on-line environments. The question is who is actually the party to this service and the contract. In concluding the contract there is a company, but not a single person actually providing the service. So when I was talking to my supervisor, wondering where should I do an internship over the summer, he told me that I should go and work for a company that produces robots and drones. And I do not mean the company’s legal department. He meant “you go to these guys, you sit down, see how it all works”. I have devoted much time to learn how to the code on one hand; and the metaphysics of Thomas Aquinas, the last person to seriously treat the idea that the world’s existence is dependent on the action of another individual; because those are the skills that one needs to understand and conceptualize how the new reality operates, a necessary first step before any legal analysis becomes possible. So, my question would be: is there any space in the law departments’ legal education to teach e.g. how technology operates, what is software, what is hardware and, how it changes law? I would say, on a philosophical level, for a long time we needed law because there were issues that there were physically possible but socially unwanted. For example, there is no point in prohibiting reading in people’s minds. Even if we would find it socially undesirable assuming it was possible, we do not need to prohibit it, since it is not. But nowadays in many spheres of life we can actually make socially unwanted issues impossible. When it comes to driving, for example, there are more and more experiments on making cars actually stop if there is red. Or when it comes to fighting with speeding, putting limits on how fast a car can go. So, if that is

a sanction, one question would be: how do we, for example, encode the fact that we have a right to resistance or that there might be a necessity to break that rule to avoid a greater danger? Is there any space in a law school to teach about that?

Professor Jon Mills:

I would argue with this. I teach a course called privacy which deals with data security and technological privacy invasions. Those invasions are by government, media, businesses and individuals. A person who does not understand technology, at least to some extent, cannot understand the issues. There are firms in the United States with data and privacy security sections that are devoted solely to that issue. They are made up of some computer nerds and some lawyers and those lawyers need to be partially computer nerds to even do it. There was no real data privacy and security law one hundred years ago. Now it is a practice area.

Mrs. Agnieszka Stefanowicz-Barańska:

But the question is do you actually teach the technology or do you just ask relevant legal questions regarding technology and technological literacy is assumed?

Professor Jon Mills:

Since I am not a technology expert, I do not teach technology details. We do discuss technology a lot. And by the way, since the students are 20–25 years old there are always some students in the class who are, in fact, technology experts, because they are interested in the subject matter. I am not trying to teach coding and programming but just trying to say – yes, there is technology.

A student can read our materials for the course and see the issue of consumer advertising when he or she is texted to buy new shoes for a discount after they were searching for shoes on the internet.

We talk about cases dealing with GPS tracking location based marketing. In these instances everyone needs to understand today's technology. The U.S. Supreme Court has said that searching a cell phone is as intrusive as searching a house.

In response to your question, if it was not the technology, some of these questions would not exist. In the U.S. we are using theory of reasonable expectation of privacy as it was defined years ago and there are some justices in our Supreme Court that still communicate with each other by hand writing messages. Yet they are making judgments on what is a reasonable expectation of privacy in this new technological age. The law is still behind technology.

I think we need to discuss the technology else it would not make sense out of the new world.

Professor Wojciech Kocot:

So I would like to thank very much our panelists, please, applause them and I invite you for a coffee break now.