

# LECTURE

## PROFESSIONALISM AND THE LAW

*Hon. George C. Hanks, Jr.\**

Thank you Dean Baynes for that very generous introduction and for the privilege of sharing my thoughts with you on professionalism and the law.

On the issue of professionalism, the bench and the bar are at a crossroads and the decisions we will collectively make about how to proceed will determine nothing less than the future of our society. In recent years there has been a discernible erosion of professionalism in our legal justice system. This disturbing trend may have severe consequences to our society and our profession if we do not act soon to reverse its course.

It seems that every day we hear anecdotal stories of lawyers and judges behaving badly, dishonoring the oaths that they once took to become members of our noble profession. Conduct such as threatening remarks in correspondence to opposing counsel and the court, inappropriate language and outward displays of anger is becoming more commonplace in our profession. Every day we are bombarded in the media with stories of belligerence and uncivil behavior by our political and business leaders. As a result, many of our colleagues, especially younger attorneys, are being lulled into the perception that this type of behavior is not only

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socially acceptable but is an integral part of our profession. Reality television shows about lawyers and legal cases and some late night television advertisements for legal services only seem to reinforce this perception. While headline making unprofessional conduct by lawyers and judges currently seems to be the exception and not the norm it is occurring with increasing regularity.

Why is professionalism so important? Why do we as members of the bar strive to maintain the highest ethical and moral standards and integrity of character in not only our practice but in every aspect of our lives? The answer to this question can be found in the words of the Reverend Dr. Martin Luther King, Jr. as he considered whether to march on Selma, Alabama in 1965 at the potential cost of his life and the lives of his followers. In making the decision to proceed with the march, Reverend King drew inspiration from the words of his father, Reverend Martin Luther King, Sr., “[W]e cannot lead where we do not go, and we cannot teach what we do not know.”<sup>1</sup>

When you take the oath as a member of the bar, like the Reverend Dr. King, you make the decision to become part of something far larger than yourself. You accept the sacred trust of your fellow citizens to protect the integrity of our legal justice system, the very cornerstone of our democracy, the foundation of our society. You accept the burden of having others place in your care the things that matter the most to them; their lives, their families, and their livelihoods and you pledge to help them resolve the problems in their lives that they may be powerless to resolve on their own. *When you take that oath you accept the awesome responsibility of being a leader in our society and placing the needs of others above your own.*

The reason each one of us should commit ourselves to the highest ethical and moral standards is simple: it is because the morals and values we display in our practice as leaders and guardians of our justice system will be reflected in the morals and values of society around us.

If we, as lawyers, care—Society will care.

If we, as lawyers, act—Society will act.

If in your practice you treat your fellow members of the bar,

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1. Clayborne Carson, *Martin Luther King, Jr., and the African-American Social Gospel*, in *AFRICAN-AMERICAN CHRISTIANITY* 159, 162 (Paul E. Johnson ed., 1994).

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our courts, and our legal justice system with disdain and contempt—others will do the same.

If you use the law to unfairly manipulate or take advantage of the weak or the poor—others in society will see it as a license to do the same in their daily lives.

If we treat our careers as nothing more than just a series of wins and losses to be notched in our belts as litigators—Society will see us as hired guns with our loyalties not to justice but for sale to the highest bidder.

If we discriminate against our clients based on their race, religion, or socio-economic background—we encourage others to do the same.

If we, as the guardians of liberty, have no faith in our legal justice system, then our society, our way of life, will crumble into dust like ancient parchments, full of empty promises and worthless ideals.

Society looks to lawyers to resolve its problems not create them. *The strength of our legal justice system to govern and protect our society lies in its integrity and that integrity is built on the professionalism of the bench and the bar.*

In this day and age it is easy for us to lose sight of the impact that we have on the lives of those around us and the mantle of responsibility to society that we bear. We live in a society where the motto of the day is, “It’s all about ME!!” In fact, recently I saw a young high school student wearing a t-shirt proclaiming in big bold letters for everyone to see: “It’s ALWAYS just about me!” We have the pressures of billing and client development and providing for our families. We often do not have frank discussions about professionalism with non-lawyers and, when we do, we are often listening to the latest lawyer joke or on the defensive about some unpopular court opinion that has recently been in the news. It is very easy to become discouraged about some of the behavior we see in our colleagues.

If you ever doubt your commitment to professionalism and the impact that you have on the lives around you I want you to just look around at the lives of the people you see every day—your family, your friends, your neighbors—and think about how your

choices affect them. As a judge, when I look at the lives of the litigants, the lawyers, and the jurors who have appeared before the court, I have seen that the LAW which we have sworn an oath to protect and defend is not just a collection of old books full of archaic words in an obscure language only to be uttered with the assistance of a Latin/English dictionary. Rather the LAW is the embodiment of our values, our hopes and our dreams as an American people and the legacy that we wish to leave behind for our children. I have seen firsthand that the LAW is truly a reflection of ourselves. And if you look carefully into the LAW, you will see the faces of the many people in your life who depend on your professionalism every day.

When, as a judge, I tell citizens that, to serve on a jury, the LAW requires them to be able to read and write English, I see the face of my grandmother Fabiola Reese, who never learned to read or write and could have never sat on a jury in my court. Grandma worked tirelessly in the hot Louisiana cotton fields so that my mother could achieve her goal of becoming an educator and teach others to do what Grandma knew that she would never learn to do. Grandma believed in the LAW to protect her family through turbulent social times and she had faith in lawyers to make sure that if her dreams did not come true, that they would make it possible for her children and grandchildren to live out her dreams for her.

Because Grandma was sometimes forgetful, she would often ask me what I did for a living. When I told her that I was a lawyer she would usually just smile and keep rocking in her great big rocking chair. But one morning she asked that question and when I again told her I was a lawyer she stopped rocking and looked at me with a twinkle in her eye and a smile that could light up this entire room and, speaking ever so slowly in her thick French Creole accent, she said, “Cher, (which is a Creole term of endearment) you know that Grandma is so very, very proud of you.” And at that moment I was so very proud to be a lawyer, one of her heroes, one of those people she looked up to, to protect her and our family and make sure that everything would always be alright. I later learned that Grandma was not as forgetful as I thought; she just loved hearing me say that her grandson was a lawyer!

Grandma did not live to see me become a judge, someone who is responsible for making sure that there will always be lawyers

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like each one of you in this room willing to accept the responsibility of being leaders in our society. *Individuals willing to do what is right because they have sworn an oath to do so.* Grandma knew very little of the black letter law and the volumes of legal treatises that are our stock and trade as lawyers. But I know that she would have loved to have been here this afternoon to tell you how much her faith in the law and lawyers made a difference in her life and the lives of our family.

You see, from Grandma and my service on the bench, I have learned that *professionalism means not only having the courage to do what is right but the humility to realize that, in my career as a lawyer, "It's not all about me." It never was. I learned that, professionalism is about doing what is right for others and, in the process, doing what is right for ourselves.* If we focus on being humble in the service of our clients, common good, civility and professionalism will always follow. The recognition of humility in the practice of law is more powerful than all the oaths and bar disciplinary rules combined and can effectively prevent the demise of professionalism in our legal justice system.

If the importance of professionalism is so clear, then why is it eroding? Some commentators, mostly non-lawyers, argue that uncivil behavior and the demise of professionalism is just the natural evolution of the adversarial process of law. They argue that at the end of the day under the adversarial process professionalism is destined to become a weakness not a virtue. I respectfully disagree. *Zealous advocacy has never required unprofessional discourse and it never will.* Professionalism is not weakness. Professionalism does not mean sacrificing fidelity to the client's cause to some supposed greater good of getting along with the court and opposing counsel. Quite the opposite, professionalism can attain favorable results more quickly and with less expense to the client than unprofessional conduct. *A reputation for professionalism is far more valuable than anything that can be attained by unprofessional behavior.* In fact, unprofessional behavior can be extremely costly to an attorney's career in terms of lost credibility with the court and inability to get favorable agreements with opposing counsel and clients who will not send additional work once they understand the history an

attorney has with the court and the bar. Unprofessional behavior rarely benefits the client, drives up litigation costs, and just irritates the parties and the judge. The greatness of a lawyer is not reflected in his or her litigiousness or by making unwavering demands upon opposing parties and counsel. *Rather, an excellent lawyer is one who achieves his or her client's objectives by advocating with fairness and who acts with honor and dignity.*

One of the leading causes of the demise of professionalism is the economic pressures of modern practice of law and the associated decline of mentoring and apprenticeship opportunities for young lawyers. The increased competition for clients has led to a growing public sense that lawyers regard their livelihood as a business rather than a profession. Given the pressures of maintaining clients, lawyers may start to define their ultimate goal as winning cases by any means necessary and at any cost without a second thought of whether justice is served. This attitude manifests itself in an array of obstinate tactics, ranging from refusals to accommodate the reasonable requests of counsel to prolonging needless time consuming conflicts between counsel. There is also the societal perception that everyone loves a winner and you want to be that winner. Unprofessional behavior also stems from portrayals of lawyers on television and movies that give clients unrealistic ideas about our justice system. Lawyers will sometimes let their clients drive their professional judgment, reasoning that if I don't do it, then my client will just pay more money to someone who will. *Your professionalism and integrity should never be for sale to the highest bidder.*

Technological advances in the communications field and the resulting decline of face to face interactions have accelerated the decline of professionalism. E-mail and text messaging make it easy for lawyers to disregard their responsibilities to our justice system. It is now very easy to fire off an e-mail or a text message saying things or threatening to do things that anyone with common decency would have difficulty saying to someone in person. The relative convenience and speed of this technology, especially social media sites, makes it very easy to "speak" without thinking through the consequences of that speech. It is amazing how many times, in resolving disputes that come before the court, the lawyers admit that they have never actually spoken to one another about the dispute. Often times when I ask, lawyers will tell me that they have "spoken" to one another but when pressed they sheepishly admit

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that the “words” were transmitted via e-mail or fax or through their legal assistants and secretaries. Many unprofessional and vitriolic exchanges between attorneys occur because emotions and context are very hard to interpret in electronic communications.

So what do we do? How do we prevent the demise of professionalism? Over the past fifteen years many jurisdictions and bar associations have adopted voluntary professionalism standards and incorporated concepts of professionalism into bar admission oaths. However, I believe that, while these are laudable efforts, they will not be enough because the majority of these efforts focus on curbing the external manifestations of unprofessional behavior. They focus on the punishment of bad behavior and use terms and phrases that seek to explain what professional behavior looks like in practice—something external to oneself. However, as I learned from my conversations with my grandmother those many years ago, *professionalism is not external; at its very core professionalism is deeply rooted in one’s internal possession of the virtue of humility. Professionalism starts with the realization that our careers are not just about ourselves but others.* Professionalism will prevail and real change will come only if we take the time for self-reflection and examination of our roles as attorneys and why we were first drawn to the law and if we self-monitor our behavior in light of what we find inside ourselves. Wallace P. Carson, Jr., now retired Chief Justice of the Oregon Supreme Court, summed up this approach the best when he said:

As lawyers and judges, we live out who we are by our actions. Professionalism is not something to don at the office or take off with our suits and our robes; our behavior continuously demonstrates who we are. We can improve our own lives and spirits, those of our clients, opposing counsel and parties and the community as a whole, if we simply remember that our part in the system gives us tremendous power, to make life better for every citizen . . . . If every lawyer and judge . . . would analyze every action she or he takes in light of the goal of ensuring that the system works fairly and efficiently for everyone, questions about professionalism would simply

disappear—and tremendous good would result for our community.<sup>2</sup>

When I contemplate on my own quest for professionalism, I remember the words and lessons of my father George Hanks that have been my constant companion, my beacon in making difficult decisions and my source of inspiration. These words and lessons are so important to me that over the years I have collected them in a notebook that I keep on my desk in my chambers. So important that hardly a day goes by when I cannot find a quote that Dad taught me that makes my day a little brighter and my decisions a little easier. So important that I continue to pass them on to the judges, young lawyers and law clerks that I work with every day. In fact my law clerks can usually recite to me a quote in the book from my Dad to explain just about any issue presented to the court.

You see, long before President Obama made popular the phrase “teachable moments,”<sup>3</sup> there were my Dad’s lectures. No matter how tired he was after a full day of shift work at the rubber plant, Dad would always take time to listen to us and transform the most seemingly mundane events in my young life into important “teachable moments.” Like the commentator Paul Harvey, my Dad would often start his lessons with facts or quotes from people I knew well and then conclude by telling me “the rest of the story.” Although I may not have fully understood the importance of these lessons at the time, his words have resonated with me on my journey through life. Over the years I have learned so much from Dad, but three lessons in particular have continued to serve me well as both a lawyer and judge. These lessons and words are so important that I would also like to share them with you and how they have they have shaped the person I am today and guided me on my path to professionalism. It is my hope that these words will inspire you as much as they have inspired me.

First Dad taught me that: *Whenever in doubt about what is the right thing to do, always treat people the way you would want*

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2. Wallace P. Carson, Jr. & Barrie J. Herbold, Why ‘Kill All the Lawyers’? How Shakespeare Helps Us Define Professionalism for Oregon’s Lawyers and Judges, OR. ST. B. BULL., Jan. 1999, at 12.

3. See, e.g., Peter Wallsten & Mike Dorning, *Obama Cheers a ‘Teachable Moment’ over Beer with Gates, Crowley*, L.A. TIMES (July 31, 2009), <http://articles.latimes.com/2009/jul/31/nation/na-beer-summit31> [<https://perma.cc/C2D2-BFNT>].

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*to be treated, with dignity and respect and you will always make the right decision.* Professionalism comes from within; it is who you are as a person. Remember the oath you took when you were called to the bar as a lawyer and accepted the mantle of leadership in our society. Always take the high road because the kind of society we want to live in and for our children to live in tomorrow starts with how we treat each other today. And, when you are having the most difficult of days dealing with opposing counsel, remember with a smile, these words from my Dad: you will never out bully a bully and it is always the kid who throws the *last* punch who is the *first one* to get trouble.

Second Dad taught me that: *While it is always important to do the right thing, it is even more important to do it the right way.* It is not enough as judges that we reach the right decision in adjudicating the cases that come before us. It is not enough as lawyers that we win every case for our client. We must always do so with honor, dignity and respect for the LAW and the people who appear before us.

Finally, Dad taught me that: *While we all cannot be great, we can all do great things.* We cannot all be Supreme Court justices or write the definitive treatise on a complex legal topic. However, we can all make a difference in lives of so many people by simply being who we are as lawyers and honoring the oath that we took when we were called to the bar. Like my grandmother, there are people out there whose names you do not know, whose lives and families you will never know, but who have faith in our system and can have better lives because of how you choose to honor your oath as a lawyer every day.

Beyond the words of my father the leaders of the Texas bar have also given us the tools for this self-reflection and change. First is the oath we take as members of the bar. It has probably been a long time since most of us have examined the words of that oath. But, among other things, the oath focuses us on the core virtue of humility in professionalism, requiring us all to “honestly demean” ourselves in the practice of the law. Next we have the Texas Lawyers Creed, enacted the year that I was called to the bar in 1989, and which is commonly regarded as one of the best standards of professionalism in the country. It too requires

humility, self-reflection and self-examination beginning with its powerful preamble which states:

*I am a lawyer; I am entrusted by the People of Texas to preserve and improve our legal system. I am licensed by the Supreme Court of Texas. I must therefore abide by the Texas Disciplinary Rules of Professional Conduct, but I know that professionalism requires more than merely avoiding the violation of laws and rules. I am committed to this Creed for no other reason than it is right.*<sup>4</sup>

To put these lessons and principles into practice I suggest that we start by providing a venue for attorneys and aspiring attorneys to contemplate the mandates of professionalism insulated as much as possible for the economic stresses of the practice. A venue that can also serve as a platform for the mentoring of young lawyers. With law students this is easy since they are not yet engaged in the practice of law. In law schools we can teach professionalism as a type of clinical course with guest lecturers giving real life examples of the stresses of complying with the mandates of professionalism and serving as mentors for new students after they graduate. With respect to practicing attorneys, the best place for this self-reflection is our excellent network of local Inns of Court which provide a safe harbor for discussion, mentoring and innovative learning techniques such as role playing to address common challenges to our professionalism. The College of the State Bar of Texas is also an excellent place to begin these discussions, a place where attorneys not only receive continuing education about their ethical obligations but are given the tools to succeed in their careers without resorting to unprofessional behavior.

In closing, I leave you where I began, with the words of the Reverend Dr. King to guide you on your way in your own quest for professionalism. Dr. King said:

On some positions, cowardice asks the question, is it expedient? And then expedience comes along and asks the question, is it politic? Vanity asks the question, is it popular? Conscience asks the question, is it right?

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4. Texas Lawyer's Creed—A Mandate for Professionalism pmb. (Supreme Court of Texas & Court of Criminal Appeals 1989), <http://www.txcourts.gov/media/276685/texas-lawyerscreed.pdf> [<https://perma.cc/PR3C-JCV4>].

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There comes a time when one must take a position that is neither safe nor politic nor popular, but he must take that position because his conscience tells him that it is right.<sup>5</sup>

Good Luck and God Speed in your journeys as members of our noble profession.

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5. Martin Luther King, Jr., Remaining Awake Through a Great Revolution, Sermon Delivered at the National Cathedral, Washington, D.C. (Mar. 31, 1968), in *A TESTAMENT OF HOPE: THE ESSENTIAL WRITINGS AND SPEECHES OF MARTIN LUTHER KING, JR.* 268, 276 (James M. Washington, 1986).