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Preaching Without a License: Two Ordinary Guys Discussing Professionalism

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Taking a Look at Ourselves: An Essay on Professionalism

By Wayne S. Hyatt

I am not a professor of ethics or professional responsibility. Nor am I an "expert" schooled in the finer points of theoretical professionalism. I am just a practicing lawyer...and a real estate lawyer at that. So what warrant do I have to write about and to speak about "professionalism"? Perhaps being a lawyer, proudly a real estate lawyer, who, as do many others, cares about his profession is all the warrant I need. You may be the judge of that.

Fall 2008 marks my 40th anniversary as a member of the bar. Except for three years' service in the U.S. Navy, I have engaged in the fulltime practice of law those 40 years. Because of the rather unique nature of my practice, I have had the privilege of working with clients—and local counsel—in all but two or three states. I have seen true professionalism. Regrettably, I have also experienced the antithesis of a true professional. Those experiences, positive and negative, also help shape one's view of the very significant but too often misunderstood topic of "professionalism."

This essay does not cite scholarly reports or bar commissions. It does not cite cases. It relies instead on experience and on ACREL's own well-considered Statement of Professionalism, and it is one person's view of what it means and requires to be a professional. It is certainly not a statement that the author is a model except to the extent he—and each reader of this essay—can aspire to being the best we can be.

I hope it helps you in your professional life.

When I began practicing law 40 years ago, people did not talk about professionalism. Professionalism as a defined, separate topic was not something that received much attention or concern; people practiced as professionals but did not talk about "professionalism." The bar was small, and the bar did not rely upon a businesses model for how lawyers and law firms operated. Lawyers' firms were predominantly partnerships, and law practice was a profession, not truly a business.

Things have changed.

I have a great deal of trepidation about being charged with preaching without a license when I start talking about professionalism, but that is what this article is about. As the practice of law continues to change and as economic conditions press ever harder on the business model law firms have employed for the last 30-plus years, professionalism becomes ever more important a topic for discussion. That topic and all it entails is a subject that helps provide a way through the snares of today's practice of law.

When we fail to see ourselves as professionals and when we become more and more enmeshed in situational ethics as opposed to applying a baseline set of principles for how we

should act as lawyers, we fall victim to much the same thing that happens when someone abuses a substance. Our standards change. When our standards change, we change. One comes not to know which he or she, which persona, is the true person. Burnout is heightened, and there is a loss of reputation. When there is a loss of reputation, there is a loss of capacity as lawyers. This loss naturally follows because it is our reputation that gives us credibility and respect as attorneys and, to a considerable extent, as people. When our credibility and respect are lost or seriously diminished, we are unable to do that which should be done.

So ask yourself as you proceed through this discussion: "How do I see myself?" Does your role, and the way you play that role, allow you to be a professional? More importantly, ask yourself, "What example do I set for other attorneys?" "What example do I set for attorneys in my firm?" What example do you set for attorneys generally? And is that example, your example, one of a professional practice?

What is Professionalism?

What do we mean when we talk about professionalism? Some argue with conviction and persuasiveness that the lawyer's goal should be to think like a lawyer. I guess that is fine as far as it goes, but what does it mean, and is it enough? More importantly, we must ask ourselves what it means to *act* like a lawyer or to act as a lawyer should act. Thus, the truly important question is, "What are the standards for professionalism?" And should not these standards be as ingrained in our system as securely as is the method of "thinking like a lawyer"?

When law schools graduate new lawyers-to-be, the faculties hope they have taught those young men and women how to think like lawyers. But have they taught them how to practice as lawyers? And having been taught, have we as lawyers allowed the vagaries of today's world and today's profession to change what we know about how we should practice? I would suggest that the answer to the question, "Is thinking like a lawyer enough?" is "No." I would further suggest that anyone can be taught to think a certain way, but being a lawyer, being a professional, requires considerably more.

One of the writers that I truly love to read and to teach, and who has had a great deal of impact on me, was the son of a lawyer although he himself was a professor. His name was C.S. Lewis. I am sure that you have read either for yourself or for your children something that he wrote, whether it was *The Lion, the Witch and the Wardrobe* or something more advanced. Lewis made a comment in one of his books that was not about professionalism but that fits our point precisely. Talking about the virtues, he said that there is an important point about the virtues that ought to be remembered.

There is a difference between doing some particular just and temperate action and being a just or temperate person. Someone who is not a good tennis player may now and then make a good shot. What you mean by a good player is the man [or woman] whose eye and muscles and nerves have been so trained by making innumerable good shots that they can now be relied on. They have a certain tone or quality which is there even when he is not playing, just as a mathematician's mind has a certain habit and outlook which is there even when he is not doing

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