

Professionalism and the Law Professor

by Gerald J. Thain

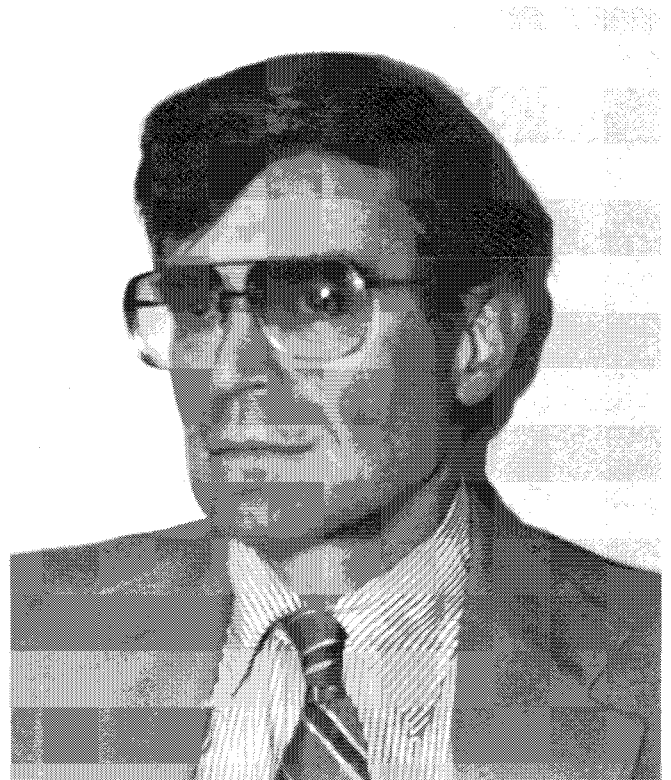
Associate Dean and Professor of Law

Lawyers today hear a good deal about professionalism. I would like to add to that discussion my thoughts about professionalism and the law professor. The term "professionalism" has a quicksilver aspect to it. It may remind some of former Supreme Court Justice Stewart's famous comment that he did not know how to define pornography but he knew it when he saw it. Many people think they recognize professional behavior and non-professional behavior when they see it but they are not so certain how to define it.

I begin with a caveat. Just as an exhortation to patriotic values may be the last refuge of a scoundrel, a tirade against "unprofessional" conduct may be a less than high-minded effort to maintain the benefits of a closed circle of anti-competitive conduct. Some even consider a "professional" person to be the antithesis of a fair-minded person with basic human values! Presumably, it was this attitude to which Virginia Woolf was referring when she urged women to join professions but not to become professional. Personally, I have always objected to the idea that "professionalism" necessarily entails economic protectionism. I use the term "professionalism" here to refer to someone with knowledge and skill that is applied in the most effective manner on behalf of those served by that person.

I think a true professional is one who reasonably believes that he or she is practicing "a higher calling"—not in the sense that it necessarily carries more status or importance than the work performed by others but that the position has obligations that go well beyond the important tasks of earning enough income to survive and to provide food and shelter for oneself and one's family. The tasks of a professional have significance for the larger public as well as those immediately served. As a result, special concern about one's conduct and how well it meets the supposedly old-fashioned virtues of traditional morality must be constantly considered and addressed. Those of us in legal education serve not only as "gatekeepers" to the profession in our task of educating students but also (intentionally or otherwise) as role models for the future lawyers we teach in the way we approach our obligations as professionals.

Some major aspects of professionalism—the way one implements that "higher calling"—can be listed. I will consider these aspects as they relate to legal educators. The first aspect of a "professional" is a dedication to the pursuit of excellence instead of mere adequacy. By definition, of course, it is impossible for each person in a field to become the best. Nonetheless, it is possible for each to



strive to reach that level of excellence and, to raise their skills to a higher level. (In Robert Browning's words, "A man's reach should exceed his grasp or what's a heaven for?") In my view, a true law school professional is one who is constantly striving to achieve peak performance in the roles of teaching, research and public service. This requires a delicate balancing of duties in such a fashion that, for example, one is not always "too busy" to see students or to grade exams promptly, or to be a member of an important committee, or to represent the institution at any of its major ceremonial functions.

A second aspect of professionalism is a dedication to truth-telling. This means that hard decisions are not avoided simply because they are unpleasant. A truth-telling law professor, for example, will not look at an examination and decide to avoid giving a deserved low grade simply because such action will inconvenience student and professor alike. A law professor who reports that a student has demonstrated sufficient competence in a given class is also reporting that, based upon the performance in that class, the professor has no significant

qualms about that student's ability to function satisfactorily as a lawyer bearing responsibility for the property and problems and occasionally the very lives of clients. This point is especially telling in Wisconsin, a state with the diploma privilege for its graduates. When I, as a law professor in this state, assert that a student has demonstrated sufficient competence, I am, for practical purposes, certifying that student for bar admission, not simply eligibility for a bar examination. In my judgment, the diploma privilege is a sensible and satisfactory approach to bar admission but its efficacy is conditioned upon the law faculty's faithfulness to its professional responsibilities as truth-tellers.

A third element of professionalism is a proper allegiance to one's clients or employer. Any legal educator who considers the relative autonomy of a law professor to serve as justification for self-indulgence at the expense of the law school may well be in the wrong field. One who represents a client or an institution has an obligation to do so in the honest sense of that word. I emphasize that I am not urging irrevocable or blind allegiance such as that so shamefully exhibited by some of the lawyer participants in the Watergate scandal of the 1970's. Nor do I define "allegiance" as a refusal to recognize any of the defects of one's client or cause. There is a clear line separating your loyal critics from your opponents. One who cannot, in good conscience, find some redeeming value in representing a client or an institution beyond the financial compensation for that service should evaluate whether continuation in that role is appropriate. To put this in a related personal context, I at one time was a very vocal internal critic of the Federal Trade Commission at a time I was employed there. However, my goal was reform of the agency so that it could be more effective in carrying out its legislative mandate. I was not seeking its abolition—a position that I believe could properly be taken only outside its doors. Similarly, those law faculty who seek restructure, reconsideration and reform of legal education in general or a specific institution in particular are not being disloyal. Those who carp about their institution but consider efforts to improve it beneath them are not conducting themselves professionally—they are exemplifying the proposition that those who are not part of the solution are part of the problem.

A fourth aspect of professionalism is a respect for others and for the views of others. One of the obligations of a law professor is to share the benefits of scholarship and inquiry and to voice one's belief about the strength or weaknesses of legal decisions, doctrines or approaches. It is entirely proper and appropriate for a professional law faculty member to believe that another position is erroneous and to use all of one's advocacy

skills to oppose that wrong-minded view. It is a far different thing to refuse to let others speak or to treat them with contempt because they indicate an unwillingness to accept every proposition forwarded by you. Professional law faculty will assert their views with vigor but remain willing to hear the views of others—colleagues, students, citizens—in the course of speaking their minds.

A fifth aspect of a true professional is recognition of one's responsibility to the larger profession. By this, I mean recognition of the responsibility among law faculty to their colleagues or counterparts in the bar or in teaching. A true professional will be involved in some of the concerns of the bar or legal education beyond those required simply to fulfill minimal contractual obligations. Service on a bar committee, a pro bono involvement with a case or cause, or service on university organizations beyond that which is required are but a few examples of how this responsibility may be fulfilled.

A sixth aspect of professionalism is a recognition of one's responsibility to the more general community. Involvement in a service club, fund-raising or volunteer service for charities or for the arts, or other service organizations are some examples of contributions which help to make one's community a better place to live.

A seventh and, to my mind, vital element of professionalism is a sense of proportion or balance, including some sense of humor. A person with an exaggerated sense of self-importance has an unduly distorted view of the world and lacks a proper balance. Candor compels me to note that most of us in law teaching have run across a fellow teacher who brings to mind the remark attributed to Winston Churchill about Sir Stafford Cripps, a particularly stuffy opponent—"There, but for the grace of God, goes God." Pomposity detracts from the substance of a person's case or presentation and limits the effectiveness of an advocate. I believe pomposity and professionalism are incompatible.

Do law professors consistently achieve the high level of professionalism noted above? Not all, not always, not completely. However, I can honestly state that I believe the Wisconsin law faculty demonstrates, by my criteria, a very high degree of professionalism. Few are ever fully successful in attaining lofty goals and it is certainly easier to do no more than satisfy one's contractual or statutory obligations. The easier route, however, is often less satisfying and less fulfilling. One of Robert Frost's most famous poems said that when he took the path "less travelled by" of two paths diverging in a narrow wood (presumably the more difficult route to traverse), that "made all the difference." Those who reach for the peak of professional conduct are likely to share that sentiment, when the time comes for reflection on one's life and work.