

# We ARE THE Stewards OF OUR PROFESSION:

## THE IMPORTANCE OF LAWYER PROFESSIONALISM

by Frank Overton Brown Jr.

The Senior Lawyers Conference (SLC) of the Virginia State Bar comprises of all members of the VSB fifty-five years of age or older and in good standing. There are more than twelve thousand members of the SLC. The conference's purpose is "to uphold the honor of the profession of law, to apply the knowledge and experience of the profession to the promotion of the public good, to encourage cordial discourse and interaction among the members of the VSB and to pursue its mission and goals as set out in the bylaws."

**The Senior Lawyers Conference has a special interest and responsibility regarding professionalism and civility, which is a fundamental component of professionalism.**

We previously addressed civility and professionalism in *Virginia Lawyer*; available on the VSB Web site.\*

This issue of *Virginia Lawyer* features an article, "Civility—Its Urgent Necessity for a Civilized Future," by Edward R. Slaughter Jr., in which he explores societal and cultural underpinnings that impinge on civility. As part of our duty toward the profession, we will continue to emphasize civility.

I noted the ways I heard or read the word "professional" in a variety of contexts. References included: "professional golfer," "professional bull rider," "professional football player," "professional cartoonist," "professional engineer," "professional photographer," "professional wedding planner," "professional journalist," "professional musician," "professional geriatric care manager," "professional attitudes" and "professional appearance." I never heard or read "professional lawyer." Why is that?

Being professional is implicit in being a lawyer; there is an expectation, in and out of the profession, that a lawyer is a pro-

fessional. To say "professional lawyer" is redundant. We are the stewards of the legal profession. We are the guardians of professionalism.

What is "professionalism?" "Professionalism is not just about appearance, ethics, and a code of conduct. Professionalism is about having a lifetime dedication and commitment to higher standards and ideals, honorable values, and continuous self-improvement. Professionalism is a built-in guidance system for always doing the best that you can do, always doing the right thing, and always standing tall for what you believe." (*Standing Tall*, by James R. Ball, The Goals Institute, [www.goalsinstitute.com](http://www.goalsinstitute.com).)

What are the sources of this lifetime dedication and commitment? How is the foundation laid, and how is the structure built? The building blocks are many: family upbringing, education, religious studies, societal influences, military training and discipline, encouragement by the bar, professional programs, help of peers and mentors, leadership and example of professional associates and members of the judiciary, and a fundamental system of values.

In the past three decades, lawyers, judges, bar associations and courts throughout the nation have promoted professionalism. The American Bar Association's Center for

Professional Responsibility's Web site—<http://www.abanet.org/cpr/professionalism/profcodes.html>—lists more than 150 professionalism creeds, codes, standards, pledges, statements, guidelines, goals, principles, rules, tenets, oaths and mandates that have been promulgated by courts and state and local bar associations in the District of Columbia and forty-six states, including Virginia. The Supreme Court of Virginia and Virginia State Bar were early leaders in this area.

In 1987, the Supreme Court of Virginia established the Virginia State Bar's Harry L. Carrico Professionalism Course, which must be attended by any active member who is licensed after June 30, 1988, or who changes his or her membership to active status. The curriculum focuses on the *Virginia Rules of Professional Conduct* and lawyers' ethical obligations. The course is approved for six ethics hours of mandatory continuing legal education credit. A topic included in the Professionalism Course is principles of professional courtesy, developed by the Board of Governors of the VSB Litigation Section.

The preamble of the principles states: "Civility and manners, no less than a deep-rooted, broad respect for the law, are the hallmark of an enlightened and effective system of justice. Courtesy, then, emanating from all quarters, extending in all directions, becomes an indispensable ingredient in the orderly administration of the courts."

The preface to the 2006–2007 Professionalism Course states, in part:

In general, lawyers operate in three spheres that overlap at many points. First, lawyers represent clients. Second, lawyers are obliged to implement and improve our legal system. Third, lawyers of necessity must concern themselves with the mundane minutiae of making a living. The Rules permeate all three aspects of practicing law.... *Mere adherence to the Rules, however, is not always enough to ensure that we will continue to uphold the exacting stan-*

*dards of Professionalism that have characterized the practice of law in Virginia. Thus, this course will emphasize not only what the Rules require, but also what is additionally necessary if we are to preserve the right to call ourselves professionals.* [emphasis added] The practice of law has never been a business in the traditional sense. Lawyers must undergo rigorous formal training and then be qualified by a state licensing authority. By common consent and tradition, but only with the

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Commonwealth's continued sufferance, we regulate ourselves. Our Rules of Professional Conduct balance many important interests, but exclude self-interest. As professionals, we must subordinate financial reward to social responsibility, and we should aspire to conduct ourselves with honor and civility.

The Professionalism Course's faculty comprises of Virginia judges, lawyers and law professors—more than eighty in all. They are a diverse group, and they are united by their deep commitment to the principles that underlie the *Rules of Professional Conduct* and the ideals that inspire professionalism in the practice of law. The Professionalism Course is not required for

active members who were licensed before July 1, 1988, and is required only once for those licensed since that time; however, even if not required, it may be voluntarily attended by any lawyer at any time as a periodic refresher course on professionalism. In any event, a periodic review of the course's content will assist in maintaining our sense of professional direction.

In professionalism efforts throughout the country, some of the expectations of a lawyer that have been cited are: integrity; trustworthiness; courteousness; respectfulness; honesty; fairness; efficiency in resolving matters for clients; "my word is my bond"; commitment to the public good; competence; civility; service to clients, community and profession; candor; good judgment; undivided loyalty to clients; confidentiality; thoroughness; communication; good faith; avoiding even the appearance of impropriety; providing education to the public; support of and service to the profession; pro bono service; upholding the honor of the profession; respect for our judicial system; punctuality; exercise of independent judgment; and providing leadership to community and at the bar.

It is through leadership and participation at the bar that opportunities exist to improve and enhance the profession and to develop collegiality. Collegiality engenders a positive peer influence, which improves performance and strengthens the profession.

It has been said that unprofessional conduct occurs because lawyers are the product of the society from which they are drawn, and that the trend has been for the practice of law to become more of a business and less of a profession.

Others have a different view: "Where unprofessional behavior exists, it is rarely because of demographic or economic drivers. More commonly, unprofessional behavior exists when those in a leadership role inadvertently allow it to exist by failing to proactively establish, communicate, and enforce a code of conduct and standards of excellence." (*How to Nurture Professionalism in Your Organization*

in *Three Steps*, The Goals Institute, [www.goalsinstitute.com](http://www.goalsinstitute.com).)

This belief regarding professionalism in general underscores the important role that leadership plays in professionalism in the law in particular. Leadership in the legal profession is by turns very concentrated and very diffuse.

Chief Justice Leroy R. Hassell Sr. has taken an active role in reaching out to lawyers and in improving professionalism, access to courts and the administration of justice. Another form of leadership exists within the profession, and that is leadership by example by members of the bar. It is really a form of servant leadership. It is a more subtle, but important and permeating, aspect of professional leadership. It is displayed in the very heart of the profession itself, it emanates from the law schools, it flows from the courts, it is strengthened by peers, it exists at the bar—from local and specialty bar associations to the Virginia State Bar and The Virginia Bar Association—and it comes from myriad other sources.

The strongest, most productive institution [substitute the word “profession” here] over a long period of time is one in which, other things being equal, there is the largest amount of voluntary action in support of the goals of the institution. The people who staff the institution do the “right” things at the right time—things that optimize total effectiveness—because goals are clear and comprehensive and the people understand what ought to be done. They believe they are the right things to do, and they take the necessary actions without being instructed. (*The Power of Servant Leadership*, Robert K. Greenleaf, Berrett-Koehler Publishers, Inc., 1998, page 51.)

Greenleaf also wrote: “The servant-leader is servant first. It begins with the natural feeling that one wants to serve. Then conscious choice brings one to aspire to lead.” This idea of having a calling to serve is deeply rooted and value based. In addition to following the mandates of the rules, a lawyer is willing to sacrifice

self-interests for the sake of others. Sacrificing self-interests does not mean not earning a living.

## THE LEGAL PROFESSION TODAY HAS ITS CRITICS, SOME WITH GOOD REASON, BUT MOST BASED UPON A GENERALIZED, VAGUE, CENTURIES-OLD SOCIAL ATTITUDE TOWARD LAWYERS.

Roscoe Pound, dean of the Harvard Law School from 1916 to 1936, wrote “[t]here is much more in a profession than a traditionally dignified calling. The term refers to a group . . . pursuing a learned art as a common calling in the spirit of public service—no less a public service because it may incidentally be a means of livelihood.”

Leadership in the profession demonstrates the positive aspects of the profession. The Loyola University New Orleans School of Law presents its St. Ives Award annually to an alumnus who has volunteered services to the law school or the university and who has maintained the highest standards of the legal profession. St. Ives, who lived from 1253 to 1303, is the patron saint of lawyers and clients, and was a man of unquestioned integrity and devotion to justice. Despite this unquestioned integrity and devotion to justice, it was written and sung about him: “*Advocatus erat sed non latro, res miranda populo*” (“he was a lawyer, but not a thief, a thing of wonder to the people”). More than seven centuries ago, the legal profession had its image problems, and these have persisted through the ages.

In his 1850 “Notes for a Law Lecture,” Abraham Lincoln (who was involved in more than five thousand cases in his twenty-five-year legal career, and who was one of twenty-five lawyers to become president of the United States) wrote: “There is a vague popular belief that lawyers are necessarily dishonest. I say vague, because when we consider to what extent confidence and honors are reposed in and conferred upon lawyers by the people, it appears improbable that their impression of dishonesty is very distinct and vivid. Yet the impression is common, almost universal. Let no young man choosing the law for a calling for a moment yield to the popular belief—resolve to be honest at all events.”

The legal profession today has its critics, some with good reason, but most based upon a generalized, vague, centuries-old societal attitude toward lawyers. The leaders of the profession today must help to be sure that the rules are followed, that the values of professionalism are inculcated and reinforced, and that we let the public know of the good that lawyers do, not only as practitioners of the profession, but also as leaders in service to our profession and to our communities.

*Of Counsel*, in its October 2006 issue, published an interview with Virginia State Bar Senior Lawyers Conference member, former commissioner of the Internal Revenue Service, and legendary University of Virginia law professor and practicing lawyer, Mortimer M. Caplin, who founded the Washington, D.C., law firm Caplin & Drysdale forty-two years ago.

*Of Counsel* asked Caplin, “What do you look for in attorneys when you recruit for the firm? What characteristics do you want your attorneys to have?”

Caplin responded, “We’re looking for well-rounded people. Of course, we want them to be in high academic standing because performing at the highest possible level in their field is crucial to a firm of our size. They have to be good technically. But we want people with a broader viewpoint, who are interested in what happens in

society, about what's going on around them. We encourage them to write and teach. Actually, we encourage our people to go into government. We have a tremendous record of people going into and out of government service."

*Of Counsel* then said, "So that's the public service devotion that you have," to which Caplin responded, "Yes, we believe in that philosophy. It's more than just earning a living. You have to give back."

The profession has its critics, some of whom state that they consider themselves diagnosticians, but not prescribers, of remedies. Sol M. Linowitz—senior partner of Coudert Brothers, former general counsel and chairman of the board of Xerox, and ambassador to the Organization of American States—had, in addition to negative observations contained in his book, his prescriptions for what law schools, bar associations, judges, lawyers, society and the profession itself can do to improve:

The essence of the claim to professional status and professional privilege is that the members of the profession hold themselves to higher standards than other people. A businessman, after all, may properly make his prime goal the search for profits. Indeed his obligation to his stockholders is arguably that he does whatever the law permits that will be in their pecuniary interest. A lawyer

must pass a stiffer test. He is supposed to be ethical, even when he could make more money by being unethical. Maintaining ethical standards, Justice Sandra Day O'Connor wrote in a dissenting opinion in an advertising case, 'is a task that involves a constant struggle with the relentless natural forces of economic self-interest.' What makes the lawyer professional is his insistence that in the legal realm he sets the parameters of what he will and will not do—and he tells the client what he believes is in the client's interest. (*The Betrayed Profession: Lawyering at the End of the Twentieth Century*, Sol M. Linowitz, with Martin Mayer, Charles Scribner's Sons, 1994, page 229.)

Our profession is an honorable one, especially in Virginia. As the stewards of our profession, we have the responsibility not just to maintain but also to make our profession better through our combined efforts. We must remember that ours is a public profession, that we serve our society in practically every aspect of life, and that we are the profession's guardians for present and future generations. ☪

\**Virginia Lawyer*, available on the VSB Web site at [www.vsb.org](http://www.vsb.org), "Civility in Society and the Law," April 2006, pages 24–25; "Civility and Professionalism: A Modest Proposal," April 2005, pages 46–53; "An Honorable Profession with a Silver Lining," December 2003, pages 14–24; "The Roles of Law Schools and the Judiciary in Promoting Civility, Ethics and Professionalism," December 2003, pages 30–33; "In Furtherance of Civility," October 2002, pages 40–42; and "Civility—The Golden Rule," April 2002, page 43.



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