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PROFESSIONALISM AND COMMUNITY: A RESPONSE TO TERRELL AND WILDMAN

Robert E. Rodes, Jr.*

Professor Terrell and Mr. Wildman have earned our gratitude with their sober, thoughtful, lucid, and honest contribution to the ongoing discussion of professionalism. They have examined the problems with a sharp and critical eye, placed them in a social and historical perspective, and offered modest but genuinely helpful suggestions for solving them. They are quite free from the obfuscation and bombast that often appear when people address this difficult subject. Best of all, they have resisted the temptation to draw an invidious distinction between a profession and a business — a distinction that is often presented in ways that no business person from Lee Iaccoca to the corner grocer can fail to find offensive.

But in the end, they fail to develop a fully satisfactory theory of professionalism. The reason is that they have bought into the primary source of all the difficulties — the privatization of morality. Even while they insist that lawyers must retain a core of moral consensus, they reconcile themselves to nobody else’s doing so. There is no way this dichotomy can work. Whatever people do, the practice of law is devoted primarily to helping them do it, and secondarily to coping with the consequences of their having done it. If lawyers do not occupy the same moral universe as other people, they will have to spend most of their time feeling either alienated or sold out.

The higher we set our professional aspirations, the more bizarre those aspirations look when we apply them to a society where all moral judgments are for the private individual to make and all private judgments are of equal value. To adopt high standards of service to clients while taking no responsibility for the goals that clients seek to achieve in using those services is to betray the whole purpose of a profession by placing altruism at the service of self-interest, honesty at the service of chicanery, decency at the service of debauchery, order at the service of violence. Moreover, it places the whole professional enterprise at the service of wealth and power. By suggesting that all clients are morally equal, it leaves us no

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reason not to prefer the ones who can give the most generous rewards.

Terrell and Wildman seem to base their analysis on a perception that the community in which lawyers operate is irretrievably broken down. Their claim is that "the legal system embodies our last vestiges of a sense of community — of shared expectations and values." I profoundly disagree. If we had no more sense of community than our legal system embodies, neither we nor our legal system could survive. In fact, I think we have much more — as anyone can observe who reads bumper stickers or notices yellow ribbons on trees. Communities are like families. They depend not on shared values but on shared experiences. And they are there whether or not we choose to pay attention to them.

I am not at all sure that Terrell and Wildman are right to see a general lack of shared values in our society. Such a lack may characterize the elite to which lawyers ex officio belong, but I do not know how deeply the rest of society is affected by it. It does not make too much difference. The problem of practicing a profession in a community is more complicated if there are no shared values, but its basic terms do not change. The foundation of professionalism, whether for doctors or for lawyers or for plumbers, is belief in what one is doing. A plurality of moral attitudes in our society does not affect our professional stance. We act like professionals not because other people believe in what we are doing, but because we do. Professionalism does not become a problem for architects even when half of the country thinks their buildings are ugly. It would not become a problem for doctors even if half of the country turned Christian Scientist. But it would become a problem if most architects became convinced that designing brothels was all one with designing hospitals or most doctors believed that performing facelifts for the rich and famous was all one with curing rabies fever in the slums. It became a problem for Albert Speer when he started designing buildings to glorify Hitler. It would have been a problem for Hawkeye Pierce if he had accepted the offer made on one *MASH* episode to leave his unit and become personal physician to a general.

The lawyers who seldom worry about professionalism are those whose practices are ideologically defined — the ACLU lawyers, the right to life

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lawyers, the welfare rights advocates, the lawyers who represent churches in religious freedom cases. If they believe in the ideology that governs their practice, it is easy for them to be "professional" because it is easy for them to believe in what they are doing. But what about the rest of us? If we are also to believe in what we are doing, we must find something broader than ideological agreement with our clients to support our service to them.

The middle ground between ideological uniformity and moral indifference is occupied by respect. A human being is a creature with an eternal destiny, a free will, a corruptible mind, and a vulnerable heart. Respect for people involves giving full recognition to this complex reality whenever and however we intervene in their affairs. This recognition will give us a way of practicing law that is neither sanctimonious nor sold out — that takes our clients and their purposes with entire seriousness and yet does not allow them to float in a moral vacuum.

The same recognition will give us a way of situating our practice in our community. Again, the analogy of the family is useful. Most of us have the experience of dealing with family members who need our help, but do not share all of our values. We have found ways to help and support them without compromising our own integrity. We can do the same with our neighbors, even when our neighbors are our clients.

This understanding of what we are doing can support a professionalism that will subsume and perfect the values Terrell and Wildman set before us — both those they consider trivial and those they adopt. It will enable us to approach our clients not with a mixture of bonhomie and permissiveness, but with genuine concern. It will turn our service to the poor from a spare time activity to a quality of our presence in the downtown offices where the burdens of the poor are actually fashioned, and where, if we choose, we can expose our clients to the social consequences of what they do. It will let us bestow our technical excellence (if we acquire it) on objects worthy of it. It will provide us with a basis for developing an

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2 Terrell & Wildman, supra note 1, at 419-21.
3 Id. at 424-31.
4 Id. at 419-20.
5 Id. at 420-21, 428-31.
6 Id. at 425-26.
agenda with our clients that is consistent with our own integrity, with that of our clients, with that of our colleagues, and with that of the legal system itself.\textsuperscript{7}
\textsuperscript{7} Id. at 426.
\textsuperscript{8} Id. at 428.
\textsuperscript{9} Id. at 427.
\textsuperscript{10} Id. at 426-27.