

REDEFINING PROFESSIONALISM AS SEEKING

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Over the past two – and now nearly three – decades, members of the bench, bar, and legal academy have lamented the decline of professionalism among American lawyers.¹ Among the problems now perceived to plague our profession include² that we, as lawyers, have lost an understanding of the practice of law as a “calling.”³ That changes in the economics of the practice of law have transmuted our practice from a profession to a business.⁴ That we have lost our way as independent intermediaries and counselors and, in so doing, have become “hired guns” content merely to do our clients’ bidding.⁵ And, finally, that the warm, collegial civility and

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1. See, e.g., Warren E. Burger, *The Decline of Professionalism*, 61 TENN. L. REV. 1 (1993); see generally MARY ANN GLENDON, *A NATION UNDER LAWYERS: HOW THE CRISIS IN THE LEGAL PROFESSION IS TRANSFORMING AMERICAN SOCIETY* (1994); ANTHONY T. KRONMAN, *THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION* (1993); SOL M. LINOWITZ & MARTIN MAYER, *THE BETRAYED PROFESSION: LAWYERING AT THE END OF THE TWENTIETH CENTURY* (1994); see also Samuel J. Levine, *Essay, Faith in Legal Professionalism: Believers and Heretics*, 61 MD. L. REV. 217 (2002); Therese Maynard, *Teaching Professionalism: The Lawyer as Professional*, 34 GA. L. REV. 895, 895 n.2 (2000) (“[t]he literature teems with articles that describe, often in rather distressing terms, the crisis within the legal profession today”); Fred C. Zacharias, *Reconciling Professionalism and Client Interests*, 36 WM. & MARY L. REV. 1303, 1307 n.11 (1995) (“[o]ver the past two decades, hundreds of articles and speeches have focused on the meaning of professionalism, its perceived ‘decline,’ and steps the bar should take to improve it.”).

2. Some also have expressed concerns about the general competency of lawyers and their compliance with disciplinary codes. See A.B.A., *FINAL REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON PROFESSIONAL COMPETENCE* (1983). But this is more a matter of “legal ethics” than “professionalism.”

3. See Phoebe A. Haddon, *Education for a Public Calling in the 21st Century*, 69 WASH. L. REV. 573 (1994).

4. See, e.g., Wm. Reece Smith, Jr., *Teaching and Learning Professionalism*, 32 WAKE FOREST L. REV. 613, 613 (1997); Eleanor W. Myers, “Simple Truths” About Moral Education, 45 AM. U. L. REV. 823, 827 (1996); Norman Bowie, *The Law: From a Profession to a Business*, 41 VAND. L. REV. 741 (1988).

5. See Robert F. Cochran, Jr., *Professionalism in the Postmodern Age: Its Death, Attempts at Resuscitation, and Alternate Sources of Virtue*, 14 NOTRE DAME J.L. ETHICS & PUB. POL’Y 305, 311-13 (2000); Margaret Ann Wilkinson, Peter Mercer & Terra Strong, *Mentor, Mercenary or Melding: An Empirical Inquiry into the Role of the Lawyer*, 28 LOY. U. CHI. L.J. 373 (1996); David Luban, *The Noblesse Oblige Tradition in the Practice of Law*, 41 VAND. L. REV. 717

comradery that lawyers once shared – or we think they shared – has been swallowed by an eat-or-be-eaten mentality.⁶

These malignancies, they say, are a cancer on our profession. Lawyers are increasingly disillusioned, clients dissatisfied, and the public disgusted. Because of this crisis, the perception of lawyers – like the Dow – continues to look for a bottom.⁷

In response to these widespread concerns, the profession has waged a multi-frontal crusade to improve professionalism in the practice of law. In addition to forming innumerable committees, the organized bar has conducted symposia,⁸ adopted civility creeds,⁹ offered continuing legal education programs,¹⁰ and called upon American law schools to teach professionalism to law students.¹¹ Courts have adopted lawyer – and judge – civility codes and, perhaps most controversially, have implemented mandatory professionalism CLE requirements. For example, the

Louisiana Supreme Court in 1997 amended its Rules for Continuing Legal Education¹² to require that every Louisiana lawyer attend at least one hour of professionalism CLE each year.¹³

(1988).

6. See E. Norman Veasey, *Rambo Be Gone*, 4 BUS. LAW TODAY 12 (Jan/Feb 1995); N. Gregory Smith, *Ethics v. Professionalism and the Louisiana Supreme Court*, 58 LA. L. REV. 539, 541 (1998) (noting that bar journals, legal periodicals, and discussions with practitioners “reveal that incivility and unprofessional conduct are far more pervasive than lawyer incompetency or dishonesty”).

7. See, e.g., Erica Moeser, *Standards, Change, Politics, and the Millennium*, 28 LOY. U. CHI. L.J. 229, 230 (1996).

8. See, e.g., A.B.A., TEACHING AND LEARNING PROFESSIONALISM: SYMPOSIUM PROCEEDINGS (1996); A.B.A., TEACHING AND LEARNING PROFESSIONALISM: REPORT OF THE PROFESSIONALISM COMMITTEE (1996) [hereinafter, A.B.A. REPORT ON TEACHING AND LEARNING PROFESSIONALISM].

9. More than 100 county, city and state bar associations, and many federal courts, have adopted civility codes. See, e.g., Allen K. Harris, *The Professionalism Crisis: The “Z” Words and Other Rambo Tactics*, 53 S.C. L. REV. 549, 582-83 (2002).

10. See, e.g., Joryn Jenkins, *Teaching and Learning Professionalism*, FED. LAWYER, Aug. 1997, at 6 (discussing “The Florida Lawyers Ethics School”).

11. See A.B.A. REPORT ON TEACHING AND LEARNING PROFESSIONALISM, *supra* note 8, at 13-25 (“Law School Professionalism Training”).

12. See Smith, *Ethics v. Professionalism*, *supra* note 6, at 544-47 (discussing the new rule).

13. Louisiana Supreme Court Order of May 23, 1997. The general reception among practicing, CLE-attending Louisiana lawyers to professionalism CLE has been chilly, at best, and hostile at worst.

Through these prescriptions, the American professionalism movement is now admonishing, ordering, and lecturing: “lawyer heal thyself.”¹⁴ In this light, the current professionalism movement appears rooted in our country’s long self-help tradition. For more than 200 years, those who know better have been sharing the secrets to health, wealth (often with no money down¹⁵), and spirituality. In colonial times, Puritan self-improvement literature taught readers how to lead Godly, Protestant lives. In the 1800’s, books on etiquette, femininity, homemaking, sexual purity, and success guided Americans through an increasingly complicated, industrialized world. Today, thousands of new self-help titles are published each year to serve as life’s little instruction books,¹⁶ to nourish our souls with chicken soup¹⁷ and to reteach us – with self-proclaimed wit and wisdom¹⁸ – what we already learned in kindergarten.¹⁹ Given that our profession currently must endure compulsory professionalism seminars, can professionalism self-help books, tapes, books on tapes, support groups, on-line communities, and 12-step programs be far behind?

Although courts and bar associations are increasingly evangelical²⁰ about helping us cure what ails us,²¹ widespread and fundamental

14. See Richard Pena, *The First 48 Days*, 61 TEXAS B.J. 742, 744 (1998) (discussing Texas Bar Association’s “Lawyer Heal Thyself” program which includes lawyers committing to “not engage in ‘Rambo’ tactics; and a pledge by lawyers and judges to not bash other lawyers and judges”); Roger S. Haydock, *Civility in Practice: Attorney, Heal Thyself*, 16 WM. MITCHELL L. REV. 1239 (1990).

15. JEFF MCHONE, CREATION OF WEALTH: NO MONEY DOWN (1984).

16. See, e.g., H. JACKSON BROWN, JR., THE COMPLETE LIFE’S LITTLE INSTRUCTION BOOK (2000); H. JACKSON BROWN, JR., LIFE’S INSTRUCTIONS FOR WISDOM, SUCCESS AND HAPPINESS (2001).

17. See, e.g., CHICKEN SOUP FOR THE ROMANTIC SOUL: INSPIRATIONAL STORIES ABOUT LOVE AND ROMANCE (CHICKEN SOUP FOR THE SOUL) (Jack Canfield, Mark Victor Hansen, Chrissy Donnelly, eds., 2003).

18. See H. JACKSON BROWN, JR., WIT AND WISDOM FROM THE PEANUT BUTTER GANG (1994).

19. See ROBERT FULGHUM, ALL I REALLY NEED TO KNOW I LEARNED IN KINDERGARTEN (1988). One adroit commentator has contended that only people who die before reaching first grade learn everything they need to know about life in kindergarten. See WENDY KAMINER, I’M DYSFUNCTIONAL, YOU’RE DYSFUNCTIONAL: THE RECOVERY MOVEMENT AND OTHER SELF-HELP FASHIONS 7 (1992).

20. Preachers of professionalism frequently resort to religious metaphors, and often invoke language of righteousness and salvation through adherence to “creeds,” and the taking of “oaths” and “pledges.” See Rob Atkinson, *A Dissenter’s Commentary on the Professionalism Crusade*, 74 TEX. L. REV. 259, 263 (1995).

21. To be sure, the professionalism movement has its “heretics.” See Levine, *Faith in Legal Professionalism*, *supra* note 1, at 235-41; see also Russell G. Pearce, *The Professionalism Paradigm Shift: Why Discarding Professional Ideology Will Improve the Conduct and Reputation of the Bar*, 70 N.Y.U. L. REV. 1229 (1995); Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871

uncertainty remains about the meaning of the term “professionalism” itself. In a 1986 report, an American Bar Association commission on professionalism observed that “professionalism is an elastic concept, the meaning and application of which are hard to pin down.”²² One law professor succinctly commented that, “[p]rofessionalism is an elusive notion.”²³

Despite that the term “professionalism” is indeed difficult to define, many have tried. Some have defined professionalism as civility.²⁴ This definition, which equates professionalism with common courtesy and social etiquette, extolls the virtues of being cordial, pleasant, of promptly returning phone calls, exhibiting kindness at depositions, and the like. Those who champion civility often rail against bellicose “Rambo” litigators²⁵ who shoot with their mouths and ask questions never.

Others have defined professionalism as charity. For example, the ABA Professionalism Committee’s 1996 Report on Teaching and Learning Professionalism defines professionalism as follows: “A professional lawyer is an expert in law pursuing a learned art . . . in the spirit of public service . . . as part of a common calling to promote justice and public good.”²⁶ On this view, “professionalism” is synonymous with a dedication to pro bono service.²⁷

Others have defined professionalism using an “I-know-it-when-I-see-

(1999).

22. American Bar Association, “. . . *In the Spirit of Public Service:*” *A Blueprint for the Rekindling of Lawyer Professionalism, Report of the Commission on Professionalism*, 112 F.R.D. 243, 261 (1987).

23. Eleanor W. Myers, “*Simple Truths*” *About Moral Education*, 45 AM. U. L. REV. 823, 825 (1996).

24. See generally Sandra Day O’Connor, *Professionalism: Remarks at the Dedication of the University of Oklahoma’s Law School Building and Library 2002*, 55 OKLA. L. REV. 197, 198-99 (2002); Steven Lubet, *Professionalism Revisited*, 42 EMORY L.J. 197, 198-99 (1993); Douglas S. Lang, *Professionalism and Civility: Is it Time for a Different Approach?*, 63 TEX. B.J. 552 (2000); William J. Wernz, *Does Professionalism Literature Idealize the Past and Over-Rate Civility? Is Zeal a Vice or a Cardinal Virtue*, 13 No. 1 PROF. LAW. 1 (Fall 2001).

25. See, e.g., Harris, *The Professionalism Crisis*, *supra* note 9; James A. George, *The “Rambo” Problem: Is Mandatory CLE the Way Back to Atticus?*, 62 LA. L. REV. 467 (2002); Jean M. Carey, *Rambo Depositions: Controlling an Ethical Cancer in Civil Litigation*, 25 HOFSTRA L. REV. 561 (1996); Robert N. Saylor, *Rambo Litigation: Why Hardball Tactics Don’t Work*, 74 A.B.A. J. 78 (Mar. 1988).

26. A.B.A. REPORT ON TEACHING AND LEARNING PROFESSIONALISM, *supra* note 8, at 6. This definition of professionalism can be traced to Dean Roscoe Pound’s statement that a profession is engaged in “pursuing a learned art as a common calling in the spirit of public service” *Id.* at 5 (quoting ROSCOE POUND, *THE LAWYER FROM ANTIQUITY TO MODERN TIMES* 5 (1953)).

27. See, e.g., O’Connor, *Professionalism*, *supra* note 24, at 200 (“public service marks the difference between a business and a profession”).

it” approach. For example, Westlaw is replete with essays and speeches lauding an honoree—usually a dead law dean, law professor, or judge – with the perfunctory and conclusory observation that his life was a “a model of professionalism.”²⁸ On this view, professionalism is like pornography:²⁹ something that is difficult to articulate, but that is readily apparent to the eye, if only to the eye of the beholder.

Finally, and perhaps most predominantly, professionalism has been defined comparatively by distinguishing what it isn’t. On this view, whatever professionalism is, it’s not “legal ethics” – at least to the extent that the term “legal ethics” denotes the professional norms enforced through the lawyer disciplinary process. In contrast to “legal ethics” – which is concerned with what lawyers “shall” and “shall not” do – “professionalism” is concerned with the “shoulds” and the “should nots.” For example, in *Evanoff v. Evanoff*, one justice of the Georgia Supreme Court observed that: “[e]thics is that which is required and professionalism is that which is expected.”³⁰ The Louisiana Supreme Court likewise has declared that, “[p]rofessionalism . . . entails what is more broadly expected of attorneys. It includes courses on the duties of attorneys to the judicial system, courts, public, clients, and other attorneys; attorney competency, and pro bono obligations.”³¹

Although all of these definitions recur in the professionalism conversation, none, in my view, sufficiently channels the discussion. Consider, first, professionalism-as-civility. Civility is something that everyone agrees is good. However, where civility ends, and where incivility begins is notoriously indeterminate. As a result, to define professionalism as civility is to leave it undefined.

Consider, next, professionalism-as-charity. Charity is also good. However, this view reduces professionalism to a single, politically-biased (and politically-correct) view of helping the poor,³² forsaking

28. See, e.g., Scott H. Bice, *A Tribute to Vice Dean Jerry Wiley*, 70 S. CAL. L. REV. 1611, 1612 (1997) (“And, oh, was he an effective teacher, instilling the highest values of professionalism and ethical conduct in his students as he guided them through the doctrine of torts and taught them the process of legal reasoning.”); see also, e.g., Ronald A. Cass, Stephen G. Breyer & William G. Young, *Tribute to Honorable Joseph L. Tauro*, 81 B.U. L. REV. 1 (2001) (“his professionalism and technical competence are unsurpassed”).

29. See *Jacobellis v. Ohio*, 378 U.S. 184, 197 (Stewart, J., concurring); see also *Miller v. California*, 413 U.S. 15, 39 (1973) (quoting Justice Stewart’s concurrence in *Jacobellis*); Gloria Sturman, *Professionalism: We Know it When We See It*, NEVADA LAWYER at 6 (Oct. 2002).

30. *Evanoff v. Evanoff*, 418 S.E.2d 62, 63 (Ga. 1992) (Benham, J., concurring).

31. LA. S. CT. R. 3(c) (professionalism definition).

32. See Timothy P. Terrell & James H. Wildman, *Rethinking “Professionalism,”* 41 EMORY L.J. 403, 419 (1992).

commercialism, and dedicating a meaningful portion of one's practice to providing legal services to those in need.

Consider, finally, the professionalism-as-not-ethics definition. Granted, professionalism norms must never be confused with disciplinary standards. And granted, our profession needs hortatory principles—the “shoulds” and the “should nots” – to supplement its disciplinary standards. Indeed, this is probably more true today than ever before considering that lawyers have increasingly “tended to look at nothing but the rules,” and “to ignore exhortations to set their standards at a higher level.”³³ However, concluding that professionalism is “something extra” over and above what is mandated by disciplinary rules provides no guidance regarding *what* this “something extra” is, *how* we are to deliver that which is more “broadly expected” of us, and *who* exactly is “expecting” whatever it is he is expecting.³⁴

Thus, although everyone agrees that professionalism is good, no one has yet defined it in a way that everyone else can unconditionally accept.³⁵ As Professor Roger Cramton has opined, “in today’s world of moral relativism, deconstruction and denial of foundational truth, it is not enough to be for ‘justice’ and ‘the public good’ because they lack agreed-upon content.”³⁶ Given that everyone is talking about professionalism and lots of people are doing something about it, has the time come to reach a consensus regarding what *it* is?

Many commentators think so. In an article entitled, *Rethinking “Professionalism,”* Timothy Terrell and James Wildman complain that, “lawyers have sought a cure for a disease before agreeing on its nature, symptoms, and causes.”³⁷ They conclude that, “for law schools or Bar associations or anyone else to acknowledge and preach the values of professionalism, lawyers must first agree on the nature and substance of the sermon.”³⁸ One of our country’s foremost thinkers on all things, Yogi Berra, summarized the need for a shared sense of direction best: “If you

33. A.B.A. COMMISSION ON PROFESSIONALISM, *supra* note 8, at 259.

34. Still others define professionalism, or “organized professionalism,” as the effort by members of the bar to organize themselves into an “identifiable group,” so that they can regulate entry into the legal “labor market” in a cartel-like fashion. See Thomas D. Morgan, *Toward Abandoning Organized Professionalism*, 30 HOFSTRA L. REV. 947, 949-50 (2002).

35. Roger C. Cramton, *Delivery of Legal Services to Ordinary Americans*, 44 CASE W. RES. L. REV. 531 (1997); see also, e.g., Deborah L. Rhode, *Opening Remarks: Professionalism*, 52 S.C. L. REV. 458, 459 (2001) (“I have long argued that a central part of the ‘professionalism problem’ is a lack of consensus about exactly what the problem is, let alone how best to address it.”).

36. See Cramton, *supra* note 35, at 13.

37. Terrell & Wildman, *Rethinking “Professionalism,” supra* note 32, at 417.

38. *Id.*

don't know where you're going, when you get there, you'll be lost.”

Unfortunately, however, if “professionalism” must await shared direction and widespread consensus, we are in for a wait – and a very long wait at that. As Reinhold Niebuhr said of philosophy – that no philosopher is capable of stating the absolute truth³⁹ – one could likewise say about “professionalism” – that no lawyer, judge or academician is capable of stating once and for all what is or is not “professional.”⁴⁰ What constitutes “professional” conduct is something upon which we will never agree.⁴¹ Indeed, professional norms as to which there is consensus are simply not the stuff of the current “professionalism” debate. They are, rather, the stuff of disciplinary codes – or “legal ethics” to use the widely-accepted misnomer.

Given the inherent futility of finding “professionalism,” should we simply forsake the search? Were we to survey members of the bar at a mandatory CLE seminar on civility, the resounding answer would be “yes.” I submit, however, that instead of abandoning the quest for professionalism that we should recommit ourselves to it. But we should not set out on a vain and useless snipe hunt. Before searching for professionalism, we first must redefine it in a way that will make the effort worthwhile. One way to do so – and in my view the only way – is to redefine professionalism as seeking.

What is professionalism-as-seeking? Professionalism-as-seeking implores us to examine, in ourselves and in our colleagues at the bench, bar, and academy, the norms, values, and assumptions that guide our professional conduct. It does not preach to us about how we “shall” or even “should” act. It does not demand conformity.⁴² Rather, it merely implores us to ask ourselves “what is the good professional life?” It asks us to ask “how ought we to live our lives as lawyers?”⁴³

39. See REINHOLD NIEBUHR, *THE NATURE AND DESTINY OF MAN: HUMAN NATURE* 195 (1941). For law review articles discussing legal ethics and professionalism from a Niebuhrian perspective, see Amy R. Mashburn, *Pragmatism and Paradox: Reinhold Niebuhr's Critical Social Ethic and the Regulation of Lawyers*, 6 *GEO. J. LEGAL ETHICS* 737 (1993); Amy R. Mashburn, *Pragmatic Professionalism: An Exercise in Applied Ethics*, 2 *J. INST. FOR STUDY LEG. ETHICS* 101 (1999).

40. “Believe those who are seeking the truth; doubt those who find it.” See ANDRÉ GIDE, *THE IMMORALIST*.

41. See Rhode, *Opening Remarks*, *supra* note 35, at 459 (“whatever consensus exists about professionalism at the symbolic level often fades when concrete practices or sanctions are at issue”).

42. When conformity is the goal, the means should be disciplinary enforcement of “ethics rules.”

43. For others who have expressed similar views of “professionalism,” see Tom Godbold, *Professionalism: A Goal That is Hard to Reach, But Must be Preached*, *HOUSTON LAWYER*,

On this view, professionalism is like moral philosophy. Like professionalism, moral philosophy inquires into assumptions about norms and values, “about ideas of right and wrong, good and bad, what should and should not be done.”⁴⁴ Like professionalism, moral philosophy is not purely theoretical, but rather, a philosophy of practice that probes “real life” problems.⁴⁵ And like professionalism, moral philosophy is long on questions, yet short on conclusions.⁴⁶ As D.D. Raphael, Emeritus Professor of moral philosophy at the University of London, concluded, “[m]oral philosophy cannot, and does not try to, tell us what we ought to do.”⁴⁷ On the contrary, it can do no more than to “remove some confusions and clarify some obscurities, so that the options stand out more plainly.”⁴⁸ In the end, however, one is left only with an array of theories,⁴⁹ “none of them proved, none of them definitely disproved.”⁵⁰ The “actual choice between them is something you must make for yourself.”⁵¹

And so it is with professionalism-as-seeking. To be meaningful, this professionalism discourse must include the thoughtful reconsideration of seemingly self-evident truths.⁵² It must admit the possibility, if not the likelihood, of disagreement. It must not ask questions simply to elicit politically-correct answers. To be meaningful, this discourse must be candid. So where might it begin? I offer a few suggestions, but, of course, no suggested answers.

Should civility be a trait of the good lawyer? Civility is good. And, to quote Rodney King, “why can’t we all just get along?” But is incivility always bad? Homicide is bad yet society applauds it in cases of justifiable

Sep./Oct. 2002, at 9 (2002) (characterizing professionalism as “a journey, not a destination”); Sheryl Ramstad Hvass, *Law and the Art of Knowing Yourself*, 21 *HAMLIN L. REV.* 1, 5 (1997) (“[p]rofessionalism is a lifelong journey that members of my generation have dedicated themselves to”); Amy R. Mashburn, *Pragmatic Professionalism*, *supra* note 39, at 108 (“When colleagues ask me to define professionalism, I tell them I do not yet know all that it entails, but I know it involves ensuring that a certain type of conversation takes place among our students, faculty, the bar, bench, clients, and the public.”).

44. D.D. RAPHAEL, *MORAL PHILOSOPHY* 8 (2d ed. 1994).

45. *See id.* at 8-9.

46. Also like “professionalism,” the term “philosophy” has meant different things to different people at different times. *See id.* at 1.

47. *Id.* at 9.

48. *Id.* at 10.

49. For example, moral philosophers have arrayed themselves into various schools of ethical thought, including various deontological schools and teleological schools. *See id.* at 34-42 (utilitarianism); *id.* at 43-54 (intuitionism); *id.* at 55-66 (Kantian ethics).

50. RAPHAEL, *MORAL PHILOSOPHY*, *supra* note 44, at 10.

51. *Id.*

52. *See Mashburn, Pragmatic Professionalism*, *supra* note 39, at 108.

self-defense.⁵³ Perhaps incivility too is justifiable under the right circumstances.⁵⁴

Moreover, if incivility is so bad, why do any uncivil lawyers succeed? Joe Jamail, a lawyer widely cited as a paragon of unprofessionalism, has an estimated net worth that is nearly \$1 billion dollars.⁵⁵ And what about the non-lawyer poster-child for lawyer incivility, Rambo? The title of a recent bar journal article summarizes well the profession's opinion of him: "*Rambo is a Loser.*"⁵⁶ Rambo was, in fact, a loser in the 1982 movie *First Blood*. But calling him a "loser" conveniently ignores what happened in *Rambo: First Blood Part II*, and again in *Rambo III*. In both of these movies, John Rambo absolutely kicked ass. He succeeded. And how. Some believe that Rambo lives on in courthouses throughout America because he has "little to fear . . . due to appellate courts' unwillingness to uphold trial court sanctions."⁵⁷ I submit, however, that he lives on because he often wins, and because the lawyer-hiring public loves him.⁵⁸ Indeed, if the Rambo litigator were as unsuccessful and unpopular as his demonizers say he is, economic natural selection would have dragged him to the bottom of the legal-services tar pit long ago. Justice O'Connor may be right that "[g]reater civility can only enhance the effectiveness of our justice system, improve the public's perception of lawyers, and increase lawyers' professional satisfaction."⁵⁹ But she may be wrong. Clients want Rambo not Bambi.⁶⁰ Let's discuss.

Should a good lawyer perform pro bono service? Pro bono is good. And it is desperately needed by thousands of indigent people in our community. I am currently representing, pro bono, a man accused of the first-degree murder of a little two-year-old girl and her father in New

53. See, e.g., ROLLIN M. PERKINS & RONALD N. BOYCE, CRIMINAL LAW 1119-44 (3d ed. 1982) (deadly force as justifiable self-defense).

54. For example, as the old saying goes: "If the law is on your side, pound on the law. If the facts are on your side, pound on the facts. If neither is on your side, pound on the table." See ARTHUR BLOCH, MURPHY'S LAW: LAWYERS 104 (2000).

55. See Rhode, *Opening Remarks*, *supra* note 35, at 461-62.

56. New Jersey State Bar Association, *Rambo is a Loser*, N.J. LAWYER, *Ethics Section* (Apr. 2000); see also Janeen Kerper & Gary L. Stuart, *Rambo Bites the Dust: Current Trends in Deposition Ethics*, 22 J. LEGAL PROF. 103 (1998).

57. Harris, *The Professionalism Crisis*, *supra* note 9, at 596.

58. See <http://www.abcnews.go.com/sections/entertainment/DailyNews/rambo011113.html> (visited Mar. 10, 2003) (noting that the *Rocky* and *Rambo* series have grossed more than \$2 billion).

59. O'Connor, *Professionalism*, *supra* note 24, at 199.

60. Elizabeth A. Alston, *The Ten Commandments of Professionalism: A Misguided Effort*, 13 PROF. LAWYER 24, 24 (2002) ("Clients don't want us to be nice to each other. They want us to beat each other up.").

Orleans East. Pro bono is good, but is my limited time better spent attending to a case for a man accused of murdering a child, or attending my own living child's school play? Let's discuss.

Should a good lawyer give, and should a good judge accept, campaign contributions from lawyers? We elect our judges here in Louisiana. Across this state, lawyers donate millions of dollars to sitting judges and wannabe judges each election cycle. Most of these lawyers contribute for one reason: they want preferential treatment from the contributee. These contributions are not illegal. They are not unethical. But should these lawyers give? Should these judges take? Let's discuss.

There are many, many other topics we could, and should, discuss. The limited point I hope to make here, however, is that we should come to view "professionalism" as a process and not as a place. In her article, *The Professionalism Problem*, Deborah L. Rhode commented that the professionalism campaign is destined to fail so long as it focuses on "vague . . . invocations of shared values that really aren't shared."⁶¹ We must acknowledge that professionalism is not a destination, but rather, a journey during which we all must critically evaluate the effects of our conduct – not just on our clients and on our income – but also on our profession, on our society, and on our relationships with one another. We can, as Daniel Boorstin has concluded, "find meaning in seeking."⁶² We can also find community in it, for "it is the seeking that continues to bring us together, that makes and keeps us human."⁶³

Although it offers no answers, professionalism-as-seeking-like the study of moral philosophy—"makes it more necessary, not less, to stand on your own feet, to be self-critical, and to be obliged to choose for yourself."⁶⁴ For better or for worse, lawyering is no longer a self-regulated profession. Courts, rather than bar committees of comrades, now regulate our conduct. But as to professionalism – at least as to professionalism-as-seeking – we are and we should remain self-governing. We should embrace this introspective and autonomous notion of professionalism, engage in

61. Deborah L. Rhode, *The Professionalism Problem*, 39 WM. & MARY L. REV. 283, 316 (1998).

62. DANIEL J. BOORSTIN, *THE SEEKERS: THE STORY OF MAN'S CONTINUING QUEST TO UNDERSTAND HIS WORLD* xiv (1998). Blaise Pascal argued that the desire to seek is deeply rooted in our humanity:

The struggle alone pleases us, not the victory. We love to see animals fighting, not the victor raving over the vanquished It is the same in gambling, and the same in the search for truth We never seek things for themselves – what we seek is the very seeking of things.

Id.

63. *Id.* at xii.

64. RAPHAEL, *MORAL PHILOSOPHY*, *supra* note 44, at 10.

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hearty and constructive dialogue, agree on some things and disagree on many more, but never relinquish to our colleagues at the bar, to their committees, or to the courts, our right to make our own choices about how to act within the bounds of the disciplinary rules, and how otherwise to live our professional lives.