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Professionalism

Bruce C. Hafen

The announced subject of my remarks is something about law school activities. The handout you have received tells you most of what you need to know on that subject in an immediate and practical sense. What the handout does not say, however, is that the purpose of everything we do in this law school, formally and informally, is to make of you an attorney and counselor at law, a lawyer, a member of the bar, part of a learned and noble profession. Whether you come to understand the special meaning of those titles is a matter for your own discovery.

You will not learn, merely from reading the cases, that special combination of skill, insight, and selflessness that work together to create a truly professional counselor at law. But I daresay that if you do not make this discovery, really as a by-product of what we do in the classroom, you will leave this campus three years hence not much more than a relatively sophisticated money grubber and may always wonder why all that lofty language about being a professional seems so full of emptiness.

What does it mean, that word "professional"? Oh, it might mean playing football for money instead of for fun. Or maybe it means competently executed, a "professional" job, something done by a "real pro." You may wonder if the word differs in any material sense from "trade" or "occupation." Some will tell you it means joining up with the "establishment," the guardians of the existing power structure.

I must confess that the word did not mean much to me when I graduated from law school, or even when I practiced. But just lately, for some reason, some concepts filled with meaning—intellectual, social, and spiritual—have come to my mind in association with the word "professional."

I think it began when I was giving an oral examination to an Honors Program student who was planning to enter medical school. I wanted to ask some question that would probe the range of his mind in connection with his vocational choice, but I did not know much about medicine. I believe I finally put the question this way: "The law protects as privileged—that is, not admissible as evidence in a court of law—the confidential

communications between a lawyer and his client, a priest and a penitent, and a doctor and his patient. What do these three roles, lawyer, priest, and physician, have in common that justifies this important legal privilege?"

His brow furrowed, a few beads of sweat appeared. Finally, he ventured, "Well, they all go to school a long time, and at least the doctors and lawyers make a lot of money." "Not all of them," I replied. That was all he said, but I continued to think about it.

Then I noticed in some reading I was doing for another purpose (though I'm sure I was aware of it before) that these three were the first, and for many years the only, fields of higher education, the oldest, the most traditional of all *learned* endeavors in western civilization. Much later, the scholar—the university teacher and researcher—was added by some to this list. However, in recent years many occupations, from salesmen to hobos, have claimed an interest in the status imputed by that word "profession."

Just lately, I ran across a brilliant little analysis by a sociologist named Goode of whether "the big three" or "big four," depending on a minor distinction or two, will or should ever be displaced as the central professions. You will be relieved to know that Goode doesn't think any of the other fields will make it, but more important than his conclusion is his explanation of what it is that makes the traditional professions unique.

Some of the characteristics that distinguish a true profession are the following. (I will be using Goode as a point of departure, but do not blame him for what follows.)

(1) Members of the profession have mastered an abstract body of erudite knowledge that can and does solve complex and highly personal problems.

(2) The knowledge and skills involved are sufficiently difficult that they are not accessible to the ordinary man, by his own efforts or even with help. Thus, only other professionals in the same field can judge the competence of their fellows.

(3) The practitioner rather than the client determines the client's needs.

(4) The profession demands real sacrifice from practitioners both ideally and in fact.

(5) The problems with which the profession deals are so sensitive and so important that incompetence within the profession is highly dangerous, both to the individual client and to society.

(6) As a result of the kinds of facts just mentioned, the lay society has no alternative but to trust the professional, even to the extent of laying bare to him its most intimate and threatening fears in a complete leap of faith, thereby entrusting the professional not only

with confidential facts but also with enough power and control over their lives that he can truly bless or tragically exploit them.

(7) If the professional puts his own self-interest or the interests of others who would exploit his position above that of the client, he not only should not, but actually cannot perform the task he is engaged to perform. Thus, the very nature of the needs he is supposed to meet *requires* trust, devotion to selfless ideals, and objectivity. If those elements do not characterize the professional relationship, he is not really a professional at all, and he is not in fact performing the function recognized over the last several centuries as indispensable. The function he *is* performing, on the other hand, is quite dispensable.

In another interesting treatise[1] on the role of the major professions in American history, it is noted that one fundamental question has been the source of society's anxiety about the role of the learned professions. That question is, "Their interest or God's?" In other words, people have traditionally believed that the allegiance of professionals was to God, or in more recent years, at least to higher values and principles than their own self-interest. But because of the absolute necessity, if problems are to be solved, of entrusting professionals with total power to deal as they will with sensitive personal matters as well as with the resources of society, people have always been, to use a modern phrase, a little antsy about what professionals will do with that power. Whenever it appears that a person with power to bless our lives or curse them might really be motivated by something other than our best interests, we panic and instinctively want to take back that grant of trust that has left us so vulnerable. Once the trust is gone, we keep from professionals what they must have to perform their intended task—our secrets.

Let me take you back now, for a moment, to the question I posed to the Honors student. Shortly after that interview, I asked another Honors student informally how he might have answered that question. His response was more provocative. "What do the lawyer, doctor, and priest have in common?" he repeated. "I think they are all *healers*, those to whom we open up our innermost secrets when something seems to threaten our very lives, physically, spiritually, or in some other way that would destroy our liberty or our property, our chance to live. And we go to them to be healed, to be made whole, and to retain control over our lives."

That student and I have since discussed the possibility that in ancient times the healer, the source of justice and life of both body and spirit, was God and those who actually represented him. The complete dependence of men upon God to bring about justice or maintain the quality of life was a

true reflection of man's natural relationship to Him. But when God gradually receded from apparent participation in the lives of most men, as they supposed, those roles still had to be filled. The nature of man and his most crucial problems required it. And thus the other healers arose, and men's faith in them continued, sometimes warranted, sometimes unwarranted. My student friend believes it was because of the ancient power of the true priesthood that the lawyers and judges, the scholars, and the other holders of power, political and otherwise, assumed the tradition of wearing robes in an imitation of the priesthood robes that had originally symbolized the authority and power of the great healer. I leave that possibility for your continued reflection.

But my commentary on the learned professions is not complete because in recent times, the citadel of status and power represented by the professionals has been under heavy assault as society increasingly sees that citadel as a symbol of money and self-interest rather than actual service. Let me quote another recent study of professional life in America:

> The professions justify themselves as organized efforts to assure that society's vital needs are met: the need for justice, for health, for knowledge, for spiritual guidance, for communication, for governance, for the creation and maintenance of a physical environment, for the socially responsible provision of goods and services.
>
> But over the past ten years we are forced to recognize that something is amiss. Vital needs are unmet, and the organized professions seem perversely or arrogantly opposed to change. Vast increases in funding for medicine, education, law and welfare have been accompanied by declines in service to those most in need.
>
> The young have learned this lesson almost too well. Five years ago, Paul Goodman taught a course on "Professionalism" at the New School for Social Research in New York City. Goodman brought in professionals to explain "the obstacles that stood in the way of honest practice and their own life experiences in circumventing them." These professionals were rejected by the students, who called them "liars, finks, mystifiers, or deluded." Goodman realized that the students "did not believe in the existence of real professions at all; professions were concepts of repressive society."[2]

Therefore, this study reports, there has been increasing agitation "to replace the unresponsive hierarchies that now exist to serve entrenched interests with new, humane professions that really serve their clients, particularly the poor."[3] The twin goals of those who actively lead such movements are, "first, to transform the institutions of society (rather than merely augment or support their word), and secondly, to liberate, rather than merely to help, the oppressed and the poor."[4] Note that the advocates of this position believe that "the most important insight of recent years [is]

that political organization is not enough, that civil society and culture must be reconstructed"[5] in order to achieve the reforms they believe are needed.

I, too, am a professional. I have felt the inner tug and pull of my interests against those of a client. I have seen some of the hypocrisy to which reference has been made. But my view of the solution to such dilemmas differs from those I have mentioned. The reformers may be quite right these days that the healers and others to whom we have entrusted our power have not always proven worthy of that trust, not only in highly visible places but at the grassroots level as well. However, that does not change the facts established by the ages.

The needs of men for the healing power have not vanished. But if the needs go unmet, if the healers do not heal, I say, that is because of the hearts of the healers, not because of the transitory social fabric of our day. Oh, it is true, if the custodians of life and liberty and justice have turned their power to bless into a power to curse, then that social fabric of which we speak may just come all unraveled. But the symbol of the robes remains as the symbol of the healing power. There is no such power in the symbols of destruction and anarchy, and changes in environment simply do not change men's hearts.

The real question for you, for me, and for all who assume the responsibility of the professional tradition is whether we really do prove worthy of the trust. Can our hearts be changed enough that it really is a selfless interest we serve? I happen to believe they *can*. And also by a leap of faith, this law school has committed itself to the proposition that they *will*, not by force or pedantic incantations, but by your private discoveries, borne of righteous desires.

May I close with a homespun little story? I am told that my sister was visiting her grandparents years ago, when she was about three or four. She longed for their attention after supper but found them invariably reading the newspaper for what must have seemed like an awfully long time. Soon she gave up on breaking through the newsprint wall and began trying to read the discarded pages herself, since it seemed to be so interesting. But she couldn't, try as she would. Then she noticed that both her grandfather and her grandmother were wearing glasses. Aha, she thought, that is how they make sense of all those letters and numbers. So she went to Grandma with the sincere request, "Grandma, could I borrow your glasses so I can read the paper, too?"

Ladies and gentlemen, the power is not in the glasses. It is not in the robes or the titles or the credentials. It is in the man or the woman who has somehow attuned his or her life to the sources of the true healing power, thereby himself becoming a *source* of the power, as the branches on a vine. That can be done, and is done, quite independently of religious affiliations

or theological frameworks, as demonstrated by the stirring examples of the true professional whose names and writings you will soon begin to encounter in the great books and cases of the law.

May you discover and give yourself to the same secrets that they did, not only because your life will thus become more rich, but more importantly, because you as a counselor at the law may thus make a profound difference in the lives of the people and the society whom you aspire one day to serve.

This address was given to the charter class of the BYU Law School on August 30, 1973 (four days after the first opening of the school). Reprinted from the Clark Memorandum*, Fall 1999, 12–15.*

Bruce C. Hafen received his J.D. from the University of Utah in 1967 and served as Dean of the J. Reuben Clark Law School 1985–89. He is currently a member of the First Quorum of the Seventy.

Notes

1. Daniel H. Calhoun, *Professional Lives in America: Structure and Aspiration, 1750–1850* (Cambridge, MA: Harvard University Press, 1965).

2. Ronald Gross and Paul Osterman, eds., *The New Professionals* (1965), 10, citing "The New Reformation," *New York Times Magazine*, 14 September 1969.

3. *Id.* at 13, quoting Joseph Featherstone, *Schools Where Children Learn* (1971), x.

4. *Id.* at 17.

5. *Id.* at 25–26.