

# Why 'Kill All the Lawyers'?



*How Shakespeare helps us define professionalism for Oregon's lawyers and judges*

By Hon. Wallace P. Carson Jr. and Barrie J. Herbold

William Shakespeare wrote *Henry VI, Part II*, around 1590; it is one of his 10 "Histories" dramatizing the chaos of leadership in England during the 15th century. Set in England in 1445-55, it brings to life efforts of Henry VI to retain his monarchy in the face of a challenge by the competing House of York, dissatisfaction with his rule among the English nobility and a peasant revolt. When Henry sends the Duke of York to put down a rebellion in Ireland, York arranges with the English rebel John Cade to make life difficult for Henry in York's absence.

In Act IV, scene ii, Cade, a commoner, gathered with his supporters at Blackheath in preparation for a march on London, announces that he has a claim to the throne as a purported grandson of the Earl of March. He speaks of how the world will be different when he is king:

CADE: *Be brave then; for your captain is brave, and vows reformation. There shall be in England seven halfpenny loaves sold for a penny...*

ALL: *God save your majesty!...*

DICK (a rebel): *The first thing we do, let's kill all the lawyers.*

CADE: *Nay, that I mean to do. Is not this a lamentable thing, that of the skin of an innocent lamb should be made parchment, being scribbled o'er, should undo a*

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*man? Some say the bee stings: but I say, 'tis the bee's wax; for I did but seal once a thing, and I was never mine own man since.*

At this point, the unfortunate clerk of Chatham, who is said to be able to "write and read and cast accmpt" appears on the scene:

CADE: *Here's a villain!*

SMITH: *Has a book in his pocket with red letters in't.*

CADE: *Nay, then, he is a conjurer.*

DICK: *Nay, he can make obligations, and write court-hand.*

CADE: *... Come hither, sirrah, I must examine thee...Dost thou use to write thy name? Or hast thou a mark to thyself, like an honest plain-dealing man?*

CLERK: *Sir, I thank God, I have been so well brought up that I can write my*

*name. ...*

CADE: *Away with him, I say! Hang him with his pen and ink-horn about his neck!*

When in Act IV, scene vii, the rebels march on London, Cade commands destruction of the Inns of Court and orders his followers to "burn all the records of the realm" saying "[m]y mouth shall be the parliament of England."

Indeed, it is an historical fact that in 1450, 30,000 peasants sympathetic to the Duke of York marched on London seeking land reform. Viewed in both their literary and historic context, the words "kill all the lawyers," coming from the mouth of an English commoner, as imagined by one of the great creative geniuses in the history of the world, take on a significance that give us guidance almost 400 years later about the power of knowledge, the degradation of those who are deprived access to the use of knowledge and the harm that comes to society as a result of that deprivation. It is the height of irony that Shakespeare's words, so often quoted to depict lawyers as parasites in society, instead express the very essence of the importance of law and lawyers.

When the quote is viewed in context, it becomes clear that lawyers, and indeed all those who held the keys to the legal



and commercial structure of that time, were not the abusers of the poor and oppressed. They were not those who sought money and power and should therefore be destroyed, as Shakespeare's language is so often used to imply. Cade and his friends wanted to "... kill all the lawyers" because to them lawyers and others with knowledge and education were the gatekeepers of the legal system. Crucial to the plot to overthrow the king was to eliminate all lawyers and others of learning who stood between the rebels and the destruction of the monarchy.

Shakespeare's articulation of this idea is stated with brilliant clarity when Cade, referring to the poor clerk of Chat-

ham, says, "He is a conjurer." Lawyers and other people with learning were seen by non-lawyers as possessing magical powers. Cade's reference to "a bee's wax seal" that made him "never mine own man since" is an equally powerful metaphor. Our final lesson from their plight: in their helplessness, the only recourse of the mob is to plunge the system into further chaos - to destroy the law.

Like so much of Shakespeare's work, the ideas expressed by Cade and his followers are entirely timeless. If you have ever spoken to a senior citizen with a paper he or she signed but cannot understand, then you know that little has changed from the 15th to the 20th cen-

tury in this regard. Today, even for very sophisticated clients, lawyers routinely hold the golden key to the legal system - to get you in or keep you out, to protect your rights or destroy them. We are the interpreters, the counselors, the guides, to all those who must use the legal system. By virtue of our learning, we have great power to make the system work for good or ill. When the system fails to work, all of us pay the price - in acts of senseless violence, in the confusion and destructiveness of fractured lives, and in the perpetuation of social and economic injustice on an enormous scale.

It seems obvious that Oregon lawyers, so readily able to ensure that the court system provides to all the opportunities and protections that Cade and his compatriots believed that they could not obtain from the system in England in 1450, should as privileged professionals see that it does so. We note the distinction between the OSB Code of Professional Responsibility (Disciplinary Rules), which carefully and specifically addresses our obligations to our individual clients - but which does not obligate us to use our unique powers and skills to serve the common good, that is, to ensure that the system of justice works, for everyone - and professionalism, the heights to which we should aspire.

Here, we draw the connection between chaos and rebellion in 15th century England and professionalism in 20th century Oregon: We believe that the truly professional lawyer and judge will take it as her or his obligation to ensure that, in modern-day Oregon, unlike in Cade's England, justice is available to all. Professionalism, as distinct from ethics, is characterized by a conviction on the part of an individual lawyer or judge that she or he is charged with the responsibility to continuously to ensure that the legal system works - effectively, efficiently, and fairly - for all.

Why, one asks, do lawyers have this obligation? We start with the proposition that our culture recognizes certain "core

## OREGON BENCH/BAR COMMISSION ON PROFESSIONALISM

*By Wallace P. Carson Jr. and Barrie J. Herbold*

The Oregon Bench/Bar Commission on Professionalism was established 1995 by order of the chief justice of the Oregon Supreme Court. It is comprised of four judges and two lay persons appointed by the chief justice, and four lawyers, a law professor from one of Oregon's law schools and one lay person appointed by the president of the Oregon State Bar. The chief justice and the bar president are de facto members. Commission members are drawn from specified geographic regions; the commission is required to meet at least four times annually.

As a rule, the commission conducts CLE seminars, in the form of round-table discussions of professionalism hypotheticals for members of the local bar at its meeting places. In addition, the commission has sponsored and conducted CLE programs using a similar format at the annual meeting of the bar each year since 1995, and, henceforth, will do so at the biennial meetings of the bar in conjunction with the meeting of the OSB House of Delegates. Further, in conjunction with the bar the commission has conducted professionalism CLEs at other times during each of those years, as well. The commission also sponsors a very effective and well-received orientation course for first-year law students at Willamette University College of Law. The University of Oregon School of Law is beginning a similar program this month.

The commission in 1997 received an award from the ABA as one of the outstanding programs promoting professionalism in the country; the financial reward from that honor, together with an anonymous donation for the purpose of purchasing literature and videotapes regarding professionalism, made it possible for the commission to hire a contractor to assist with its work and to purchase materials for training that are available to all members of the bar from a library at the offices of the OSB.

The commission's charge is to "promote among lawyers and judges principles of professionalism, including civility and commitment to the elimination of discrimination within the judicial system." Interestingly enough, however, one of the key concerns of commission members has been and continues to be a *definition* of the term "professionalism," a word so often used and yet so "soft," so broad and vague as to defy understanding, much less make possible the promotion of a specific kind of conduct. By the accompanying article, Chief Justice Carson and Herbold, one of the members of the state bar task force that proposed formation of the commission and a current member, propose a basic definition of the term "professionalism" to become an aspirational standard and the hallmark of professional behavior among Oregon lawyers and judges. ■



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values” as to which there is substantial agreement. These values are taught in many contexts – in the family, in religious organizations, in community gatherings, in schools, in professional training and in many other ways. Michael Josephson of the Josephson Institute for the Advancement of Ethics, a well-known and respected writer and speaker regarding ethics, identifies the “six pillars of character” as caring, fairness, respect, trustworthiness, citizenship and responsibility.

These values are mostly other-directed; that is, they encourage us to treat others in positive, supportive ways while promoting our own integrity and acknowledging our individual accountability and responsibility. In the legal profession, similar values that direct us to take responsibility for others – honesty, trustworthiness, courage, a sense of fairness and accountability – all are subsumed under the notion that we must ethically represent our individual clients consistently and concomitantly with the promotion of the fair and efficient administration of justice in our state. That is, those of us who are privileged with the gifts of intelligence and access to knowledge sufficient to obtain and maintain a license to practice law should use those gifts for the common good, just as those with other gifts should use theirs in other contexts. We can expand the reach of our good works far beyond the needs of our individ-

ual cases and clients if we take responsibility for making the system work.

If we consider this “core value” of professionalism in light of other definitions of professionalism, we see a common thread. The OSB Statement of Professionalism states, “professionalism sensitively and fairly serves the best interests of clients and the public, ... fosters respect and trust ... between lawyers and the public, promotes the efficient resolution of disputes, [and] simplifies transactions... .” Quoting Roscoe Pound, *The Lawyer from Antiquity to Modern Times* 5 (1953), *The Ethical Oregon Lawyer*, section 2.2 (1994) agrees that professionalism “reaches beyond the minimum standards” of the disciplinary rules and “emphasizes the pursuit of a learned art not only as a means of earning a livelihood but also in the spirit of public service.”

Moreover, when one considers specific “professionalism” concerns repeated by article after article and group after group, it is clear that our over-arching standard – that we as lawyers and judges must accept responsibility for the overall efficacy of Oregon’s justice system – creates a structure within which all such concerns can be simply and constructively analyzed.

These are examples:

**Lawyers’ obligation to support legal services for low income people.**

At a CLE program given a few years ago by the commission on Professionalism, participants were asked if they believed that lawyers have a different obligation than non-lawyers to contribute to the provision of legal services to the poor. About two-thirds of those in the room agreed that they do. Certainly a basic tenet of the notion of professionalism we articulate here includes ensuring low income people’s access to legal services – by giving money (to the Campaign for Equal Justice or various programs such as St. Andrews Legal Clinic), or by giving time through any of a variety of groups (such as the Volunteer Lawyers Project or

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MRA-1998-A024737

ED 3/98



the Senior Law Project). The November 1998 Access to Justice Conference is another example of lawyers working to improve access to the courts for all Oregonians.

**Promotion of diversity among lawyers.**

While this goal can and should be seen as encouraging an increase in the numbers of minority lawyers within the state for the simple reason that it is of benefit to those individuals, it is important to remember that real access to the system often depends upon the public's ability to find lawyers with whom they feel comfortable and can communicate. This "fit" may or may not be racially driven, but ensuring that Oregon has lawyers of every color and ethnic background can only assist in making the system more accessible.

**The elimination of bias within the system.**

It seems a proposition too obvious to state that any kind of discrimination within the system does just what bias against the commoners of 15th century England did – it shuts people out. Oregon's judges and lawyers have a continuing obligation to ensure fair treatment, including the provision of interpreters and others when necessary to assist those who cannot fully participate in the system otherwise.

**The accessibility and use of alternative dispute resolution.**

Douglas County Circuit Judge Joan Seitz ("Professionalism, Viewed from the Bench", page 72) discusses the important role that judges and lawyers can play in leading parties to settlement of difficult dissolutions. The OSB's Statement of Professionalism similarly encourages lawyers to offer ADR early and often. When the overriding goal of making the system work effectively and efficiently is considered in this context, it is easy to see why eager and constructive participation in mediation must be a trait of the professional Oregon lawyer and judge.

**Courtesy and civility.**

Lawyers should be courteous, reasonable and responsive – not simply so that we can enjoy our practices, although that is a valuable goal. Incivility creates tensions that waste time and energy, leading to negative rather than positive outcomes. The system works best when the practice of law is conducted in a polite and positive way. Moreover, it is clear that when we act with civility we are also mod-



eling behavior that is one of the key parts of our societal standards as a whole.

**Use of the court to enforce professionalism requirements.**

It appears to be a controversial issue whether the Oregon courts should become involved in issues arising from unprofessional conduct among lawyers. If this question is considered in light of the standard that our fundamental goal is to insure that the system *works*, it becomes clear that it is the task of the trial judge to get involved in such disputes to the extent necessary to see that all participants are behaving in such a way that the matter will be concluded as quickly, efficiently and fairly as possible.

**"Rambo" tactics.**

As Michael Long points out in his excellent discussion of "cut-throat" trial techniques in this issue, "according to this theory, civil and criminal litigation are merely mercenary games played by

opposing sides ... ." The notion that, as lawyers, we are engaged in a battle to win at any cost, even of the truth, is a pervasive idea. It is seen as such an impediment to professional behavior that the Multnomah Bar Association's Summit on Professionalism recommended that the word "zealous" be removed from the title of DR 7.107 regarding advocacy. When so-called "Rambo tactics" are considered in light of our professional responsibility to see that the system promotes justice for all, we see that they are undoubtedly unprofessional. Moreover, deposition, discovery and courtroom tactics that are oppressive, unreasonable, time-consuming or mean-spirited clearly prevent the system from operating fairly and efficiently. We all know that these tactics are unprofessional. If we make reference to our basic standard, we know why.

As lawyers and judges, we live out who we are by our actions. Professionalism is not something to don at the office or take off with our suits and our robes; our behavior continuously demonstrates who we are. We can improve our own lives and spirits, those of our clients, opposing counsel and parties and the community as a whole, if we simply remember that our part in this system gives us tremendous power, to make life better for every citizen of Oregon. If every lawyer and judge in the state would analyze every action she or he takes in light of the goal of ensuring that the system works fairly and efficiently for everyone, questions about professionalism would simply disappear – and tremendous good would result for our community. ■

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