

Aiming for the Moon

Professionalism starts with who we understand ourselves to be.

BY **FRANK E. STEVENSON**

Editor's Note: Frank Stevenson is the 2019 recipient of the Morris Harrell Professionalism Award, which honors the "attorney who best exemplifies, by their conduct and character, truly professional traits who others seek to emulate and who all in the bar admire." Stevenson was recognized by the Dallas Bar Association and the Texas Center for Legal Ethics and Professionalism at an award ceremony on November 15 at the Belo Mansion. The following is an excerpt of his acceptance speech.

Shortly after John F. Kennedy announced our nation's resolve to place a man on the moon by the close of that decade, he toured the NASA space center for the first time. Seeing a janitor carrying a broom, President Kennedy left his official entourage and walked over and asked what he was doing. The janitor responded: "Mr. President, I'm helping put a man on the moon."

It's an instructive anecdote for what it says about self-understanding. In 1962 when JFK took that tour, NASA must have employed a hundred janitors. And in the strictest sense, all of them did exactly the same thing. But in any sense that matters, they weren't doing remotely the same thing. The difference was not in what they were doing, but in what they understood themselves as doing. Some were pushing brooms; some were putting men on the moon.

You and I are presented that exact same choice every single day, whatever our line of work. We have the option to aim low in our self-understanding of what it is we do and who we are. Or we have the option to aim high. How high? Well, how 'bout the moon?

For the last 100 years, the trajectory of legal ethics in America has tilted toward pushing brooms.

The first nationally promulgated ethical standards were the *Canons of Ethics* adopted by the American Bar Association in 1908. The canons were strictly aspirational, ennobling, and infused with a strong moral component of what a lawyer should do, in distinction to what a lawyer must do.

In 1969, the ABA replaced the canons with the *Code of Professional Responsibility*. The code retained aspirational elements, just like the 1908 canons, but added Disciplinary Rules—minimum standards and the absolute lowest level of conduct to which an attorney could stoop without being subject to discipline.

In 1983, the ABA adopted the *Model Rules of Professional Conduct*, which remain in effect today. The model rules dropped all aspirational features, leaving only black-letter minimum rules and explanatory comments.

Thus American legal ethics had completed a 180-degree shift—starting out as entirely aspirational and moral, progressing to add hard-and-fast minimum standards to the aspirational elements, and concluding

with solely minimum standards with no aspirational elements at all. It seems to me that lawyers who understand themselves and what they do as countenancing conduct compliant with just the minimum standard, just short of discipline, are pushing brooms.

Fortunately, state, metro, and specialty bar associations came to the realization that the absence of any appeal to the profession's higher virtues in the ABA Rules was contributing to an erosion of civility among lawyers and a decline in the overall dignity of the profession. With the aspirational and moral elements of legal ethics having been wrung out like water from a chamois, these bar associations shifted their attention to a wholly different and higher standard.

A standard called "professionalism."

These associations began formulating their own professionalism statements about how lawyers should comport themselves, and not simply how they must.

Roughly 150 different professionalism statements have been issued, but none more significant than the *Texas Lawyer's Creed: A Mandate for Professionalism*, which was promulgated exactly 30 years ago, almost to this very day.

The first thing the creed requires its subscribers to profess is not how they should act or even what they believe, but who they are—"I am a lawyer" is its opening line. Only after that does the creed propose how a Texas lawyer ought to behave.

Beginning with a profession of identity, not of conduct, suggests that professionalism itself is in large part a matter of who we understand ourselves to be and what we understand ourselves to be engaged in. So, just like the NASA janitor, it's an issue of self-understanding. **TBJ**

To read the entire speech, go to texasbar.com/stevensonspeech.



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