A STATE BAR PRESIDENT’S VIEWS ON PROFESSIONAL ETHICS

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In drafting my remarks to you today, I have reflected at length upon the changes in our profession since I was licensed in 1975. If you read the newspapers, or even listen to conversations among our own colleagues at the bar, you will hear concerns about our image, about professionalism, and about greed. In fact, in many of the surveys taken within our own profession, these issues are among those felt to be of highest concern. I can’t tell you how many times I have heard, or even thought myself, that the practice was more gentile, more civil, and that lawyers were more highly regarded even as recently as 1975 when I began my practice.

Yet, somehow, I think that we overlook, or perhaps forget, some of the long standing derision of lawyers. A speaker at one of our own bar association’s annual meetings delivered a paper addressing the unpopularity of lawyers in which he recalled the innumerable publications by the press of anecdotes and of practical jokes in which lawyers are the subject of ridicule. This was in 1881.

More recently the ABA Committee on Professional Ethics in considering changes in the profession and its resulting decrease in professionalism, remarked that "[W]e can not be blind to the fact that, however high may be the motives of some, the trend of many is away from the ideals of the past, and the tendency more and more to reduce our high calling to the level of a trade, to a mere means of livelihood, or of personal aggrandizement. With the influx of increasing numbers, who seek admission to the profession mainly for its emoluments, have come new and changed

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conditions." This report was delivered in 1906.

Has our image in fact changed markedly? Is the professionalism of the great majority of lawyers at a new low and should this rank as our number one concern? One could debate these issues forever, but perhaps the most important fact is that they are issues and they have been issues for well over a hundred years. I do not mean to indicate that the current concern about a lack of professionalism and our poor image is not important or is misplaced. To the contrary, it is my opinion that as officers of the court we are sworn to a higher standard of conduct and I firmly believe that it is the primary role of the Alabama State Bar to enforce that high standard and to lead our members to practice by that ideal.

However, whether our image has changed or not, there are many real, documented changes taking place in our profession today.

In the less populous communities across this state lawyers are besieged by growing numbers of lower and middle income families in need of legal services, but often unable to pay even a modest fee for those services. These same lawyers are also contending with increasing specialization within the law and the demands of clients which range from criminal defense and domestic relations to sophisticated corporate, tax, employment, securities and environmental needs.

In our larger communities lawyers and law firms are striving to create boutiques, or maintain corporate client bases in an age of rapidly increasing consolidation on a state, regional and, indeed, global basis. This consolidation of business is resulting in the regionalization of legal practices at the corporate level often depriving established local firms of long time clients.

All of this is occurring against a backdrop of declining loyalty to firms, clients and practices driven by the demand for profitability and by personal dissatisfaction and unhappiness in the profession which manifests itself in the breakup of law firms and practices.

Changes in technology impact the legal profession daily, increasing the ability, and thus the expectation, for rapid response to issues. Gone are the days when lawyers communicated with typewritten correspondence as a means of exchanging positions, negotiating issues, or responding to a client's needs. Today in the fast paced world of telefax, e-mail, computerized research and the Internet, issues arise, are investigated, positions taken and responses demanded within twenty-four hour time frames. Distance is irrelevant, and jurisdictions begin to fade, creating ethical nightmares which are yet to be dealt with at even the national
level, much less locally.

Accounting firms, paralegals, title insurers, legal specialists and others, driven by their own profit motives and the relative inaccessibility of legal service to the great majority of our population, increasingly infringe upon our profession resulting in even greater competition and pressure on courts and legislators to deal with actions heretofore deemed as the unauthorized practice of law.

Trial lawyers versus the defense bar; litigators versus non-litigators; boutiques versus big firms; regional and national law firms versus local and statewide firms; state bars versus specialty bars; business versus non-business lawyers; criminal versus civil, the list of fractionalization and competitive factions within our profession goes on and on, each fighting for a piece of the action as the pendulum of profitability swings back and forth.

What, then, does the future hold for our profession? It has changed more in the past 15 years than in the previous 150. In our own state the number of lawyers licensed approaches 12,000 versus the mere 5,500 which were licensed in 1980. On average over 1100 lawyers sit for the Alabama State Bar exam each year and over 600 hundred receive their licenses, continuing to swell our ranks. Despite these facts, every survey taken indicates the increasingly difficult ability of the indigent and, alas, the middle class in our state (its vast majority) to access affordable, quality legal services for routine needs.

In the midst of all of this change, we as Alabama lawyers, and our state bar association in particular, must attempt to bring focus to our mission, our strategic plan, and the role of the bench and bar in the administration of a fair and impartial judicial system in this state.

In the past several years, we have begun to address many of these issues, putting in to place a strategic plan, focusing on the perceived lack of professionalism and unity of the bar, debating the import and answers to challenges to our image, and broadening service programs to our ever changing profession.

Today, however, in order to keep pace with the ever changing needs of our profession, its strengths and its weaknesses, we must do a better job of anticipating instead of reacting to paradigm changes in the way we practice law and the respect we hold for its institutions.

How do we intend to deal with the fractionalization and influence of specialty bars and sections? How do we intend to deal with advertising and solicitation on the Internet from the standpoint of enforcing each state’s ethical rules? How do we intend to deal with the growing partici-
pation by the undereducated in our legal system and the added pressures which this has placed on lawyers and judges? What can we do to educate the populous of this state in understanding their legal system, and appreciating the role of lawyers and judges? What are we willing to do about the debilitating impact of billable hours, billing goals, contingent fees and alternative billing techniques on the spirit of our practitioners, and our image as professionals? What can we do about the widening gap in both expertise and profitability between rural and metropolitan lawyers, between large and small firms? How can we insure the capability of all of the people of this state to access our legal system for routine needs? What can we do to substantially increase minority participation in the legal profession in this state?

To address these issues we must promptly increase communication among the state and local bar associations, specialty bars, sections and all factions of our association. We must find better ways to reach out to the citizenry of this state and educate them about our legal system and invite their participation, and we must find a way to allow every man and woman in the state of Alabama who is in need of legal services to find affordable, quality assistance.

We can not expect understanding of our role in the legal system, or respect for that system, from those who have no access to it. Most jurisdictions in this country are now concluding that the ability to improve access to justice can only come through a combination of many efforts, including pro bono services, funding for legal services, alternative dispute resolution, IOLTA programs, as well as local plans for providing access to justice in coordination with existing organizations, such as bar associations and United Way. Many other states are considering mandatory pro bono service for licensees, the shifting of punitive damage awards to fund legal services to the indigent, and taxes on legal services for such purposes. We must look at all available avenues in our state to familiarize our citizens with the legal system, such as the pilot program using lay volunteers currently being conducted in Lee County by the Administrative Office of Courts. We should also investigate simplified proceedings in small claims court, and for probate and domestic matters, or even consider the establishment of citizen dispute settlement centers to assist in the resolution of disputes in an efficient and economical matter.

I know that some of these thoughts are of concern to many of our practicing attorneys. But we have a dilemma. We have the opportunity to design a means for Alabama lawyers to provide legal services to those in
need in this state, or at least be instrumental in creating other avenues for the underprivileged and middle class to address their legal needs. Failing such, we can watch legislatures or federal courts authorize wholesale changes in our legal system.

I think this is the single greatest challenge facing our profession today, and I am convinced that our ability to resolve it is very much intertwined with the solution to our own image problems.

We must be willing to assume responsibility, as professionals, for our justice system and its creditability, and we must be willing to lead the membership of our Alabama State Bar to a swift and just resolution of each of these challenges.

Thank you.