

ABA '98

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SECTION C

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With professionalism movement well under way, it is time for lawyers to address justice issues.

BY JEROME J. SHESTACK
SPECIAL TO THE NATIONAL LAW JOURNAL

ONE YEAR AGO, in these pages, I announced that the ABA would focus on an agenda designed to advance professionalism. I said that I hoped to "draw on the collective talent, strength and dedication within the profession to magnify the qualities that entitle our profession to be held as a learned and noble calling."

The response to our urging and initiatives to take professionalism seriously has been significant and heartwarming. We have fulfilled that commitment.

As outlined a year ago, there are six plainly stated values of professionalism: integrity and ethics, competence infused with independence, learning that replenishes and enriches, civility to enlarge human dignity and worth, obligations to the rule of law and the justice system, and pro bono service. I asked every ABA entity to promote these values. This year, we published "Promoting Professionalism," a report describing ABA programs, publications, initiatives in substantive and procedural law, and other activities designed to support and enhance professionalism. The breadth and quality of these programs is remarkable.

State and local bars, corporate coun-

Mr. Shestack is completing his term as ABA president. He is a partner and head of the litigation department at Philadelphia's Wolf, Block, Schorr & Solis-Cohen L.L.P.

sel associations and academia also have focused on professional values. State chief justices are establishing commissions on professionalism. The Conference of Chief Judges soon will issue a plan to promote professionalism, detailing the critical role judges play in promoting adherence to professional values.

The ABA has worked with the American Corporate Counsel Association and individual corporate counsel to address the enhancement of professional values. The ABA is working also with the Association of American Law Schools to enhance the teaching of ethics and professionalism—not as a one-time course, but in a way that permeates the curriculum.

This engaging response to our emphasis on professionalism is not a result of any groundbreaking insight or brilliant public relations strategy. Rather, it is a response to the yearning of most lawyers to practice as professionals and adhere to professional values.

A fundamental professional obligation of lawyers is to improve the justice system that is their ministry. As individuals, we cannot do much. Through the ABA, however, we can enlist thousands of lawyers in our efforts. The ABA is addressing a variety of justice issues:

■ *Justice for children at risk.* The word "justice" too often is inaudible in addressing problems of juveniles in the courts. In most states, families and children with multiple problems are shuttled among different courts: one for domestic

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The bar must campaign for the independence of the judiciary—and of the legal profession itself.

BY PHILIP S. ANDERSON
SPECIAL TO THE NATIONAL LAW JOURNAL

THE LEGAL PROFESSION must address two major issues: the independence of the judiciary and the independence of the profession. The former is an issue for the general public. The latter is for the bar, but it affects a much broader audience and requires a searching examination of the fundamental precepts of what it means to be a lawyer, what protections clients should be afforded and what values of the profession are essential to the integrity of the justice system.

Judicial independence, which is vital to a free society, again has emerged as an issue, as it has every generation or so since the founding of the republic. It arises today because of attacks on unpopular opinions by politically motivated organizations in retention elections and by attacks on "activist" judges.

To most lawyers, it is unthinkable that the tripartite system that has provided such stability in our society could be replaced by one that would produce subservient and intimidated judges, yet political candidates see judges and the judicial system as ripe targets for short-term political advantage. This, coupled with public inattention and a lack of understanding of what judges do and the

Mr. Anderson, president-elect of the ABA, begins his term at the close of the annual meeting. He is a partner at Little Rock, Ark.'s Williams & Anderson.

source of their authority, has rendered a branch of government susceptible to the drastic changes proposed in some quarters of society. One such proposal is to amend the Constitution to provide for terms of years for federal judges, who then would be subject to reappointment by vote of the Senate. This would mark the end of the system of three independent, equal branches of government.

The problem is that most members of the public, even if well-informed, do not have a fair grasp of our tripartite system. Many believe the courts are part of the executive branch. Many do not understand that judges—particularly federal judges—make unpopular decisions because the executive and legislative branches decline to make the hard choices often raised by societal problems. Those issues then wind up in the courts.

Judges often stand accused of being soft on crime because they protect the constitutional rights of defendants accused of crime.

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Improving the Justice System Is Professional Duty

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violence, another for juvenile justice, another for drug abuse and yet another for foster care. The system is bewildering, inefficient and demeaning. This spring, the ABA convened a major national conference with judges from most states to advance the idea of a Unified Family Court, with one judge and with support services for each family's problems.

The ABA has also opposed the ill-considered reaction to juvenile violence that would treat juveniles as adults and foreclose their potential to lead useful lives. On another front, with state and local bars, the ABA has marshaled record numbers of lawyers to donate pro bono legal services to assist disabled children in appealing summary removals from Social Security rolls. The success rate in these appeals—better than 75 percent—demonstrates the justice of this initiative.

■ *Justice for the disabled.* Nearly 50 million U.S. citizens have physical or mental impairments. We tend to look at the impaired as "them." But for the shift of a gene or two or for the happenstance of an accident, however, the impaired would not be them, but us. In June, the ABA convened the nation's leading experts to draft a blueprint under the Americans With Disabilities Act to provide the disabled better access to workplaces, schools and community facilities.

■ *Justice for the poor.* "Thou shalt not ration justice." Learned Hand once proclaimed as a commandment for democracy. Sadly, we still have to fight to fund local legal services programs that serve the poor. That struggle has been painful, but largely successful, thanks to grassroots support from lawyers in every congressional district across the nation.

■ *Justice for judges.* When the independence of judges is threatened, we risk our democratic institutions of separation of powers, checks and balances, and judicial protection of constitutional liberties. The maintenance of judicial independence requires continued vigilance. The ABA has been vocal in criticizing political attacks on judges through charges of "judicial activism" or delays in nominations. The association has launched a model project to help state and local bars respond appropriately to unfair criticism hurled at sitting judges in election or retention campaigns.

■ *Justice in health care.* The need for fair, efficient and economical means of resolving coverage disputes between HMOs and consumers is obvious, urgent and growing. In July, a joint task force of the ABA, the American Arbitration Association and the American Medical Association recommended fair, efficient, prompt and inexpensive model procedures for resolving such disputes. One

hopes that these will garner widespread HMO acceptance or, if necessary, will be implemented through legislation.

■ *Justice and international crimes.* Human rights are the linchpin of a world order based on justice and the rule of law. This year, as the 50th anniversary of the Universal Declaration of Human Rights and the Genocide Convention is commemorated, the ABA is supporting an international criminal court to deal with genocide, breaches of the Geneva Convention and war crimes.

■ *Justice in political contributions.* It may sound odd to speak of justice in campaign contributions. When such contributions are used to obtain legal business or to influence decisions that should be made on the merits, however, there is injustice for those who practice ethically, and the profession is diminished in the public's eye. This year, an ABA commission will address ways and means to address failings in campaign finance.

Driving for Diversity

Other issues have required continued attention. The ABA believes in the power of diversity and strives to enable the profession to reflect the makeup of the public it serves. Toward this end, it continues to advocate ways to assure diversity in law schools. The ABA has also worked to end sex discrimination in the profession.

In addition, the ABA has addressed the growing globalization of law practice, with initiatives to advance the rule of law in China, Eastern Europe, Africa and Asia. This broad mosaic of efforts is, in fact, far more ambitious than the initiatives we envisioned a year ago.

There is much more to do, however: more to assist sole and small-firm practitioners; more to deal with the erosion in quality of life caused by unconscionable demands for billable hours; more to promote mediation and arbitration, not as alternate dispute resolution but as appropriate dispute resolution; and more to make every lawyer more conscious of, and committed to, our professional values. The wish list is formidable.

Most encouraging is the support from the nation's lawyers. ABA membership is close to an all-time high of 400,000. Its publications in every area of law practice are plentiful and excellent.

The ABA's finances are healthy; it has not raised dues in five years.

The response from so many lawyers and judges is that we are on the right course. The ABA is leading the profession into the new millennium with a renewed sense of self-respect and a continuing commitment to justice and to the traditional values that validate our profession. This surely is a worthy role for the ABA. ■