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SECTION C

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 counsel 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 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 ac-

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Inside:

Forces of Globalization Challenge Bar's Autonomy

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cused of terrible crimes. The public does not understand that protecting the rights of marginal, or even despised, elements of society preserves those rights for citizens who correctly see themselves as law-abiding and who incorrectly assume that they never will have to fear deprivation of those rights.

Educational Efforts

In "Jefferson's Children," his recent book about education, Leon Botstein, polymath and president of Bard College, observed that the United States is not educating its young to be citizens of a demanding system of government. Some of his reform proposals are startling, but few would disagree that civics should be drawn back out of the dark corner of the secondary school curriculum to which it has been relegated.

The ABA will encourage America to take a fresh look at the origins and reasons for our three-branch government in "Bulwarks of the Republic: Judicial Independence and Accountability in the American System of Justice," an invitational symposium scheduled for December. In "Separating Power," a collection of essays on the Constitution, Gerhard Casper, president of Stanford University and former dean of the University of Chicago Law School, observed that an independent judiciary long has been linked to the notion of liberty. Symposium participants will examine why that is so and will discuss the relevance of judicial tenure and public accountability to an independent judiciary.

In a symposium to be held next February, the ABA will study public attitudes toward the U.S. justice system and how they are formed and reinforced. All this will be in preparation for a national conference on trust and confidence in the U.S. system of justice, to be held in May. A purpose of the national conference will be to explore more effective ways for courts to conduct dialogues with the public on issues of mutual interest, one of the most basic of which is access to justice.

The issue of independence of the profession requires an understanding of the pressure for multidisciplinary practice—specifically, the entry of the "Big Six" accounting firms into the legal consulting market in Europe, Australia and Canada, and the implications in the United States. The accounting firms claim consolidation of legal and accounting services is the product of globalization. It may be, but it is placing cherished ideals of professional independence and client protection, in the form of conflict-of-interest rules and the like, under greater scrutiny.

Every U.S. jurisdiction except the District of Columbia prohibits lawyers from sharing fees with nonlawyers. The ABA's Model Rules of Professional Conduct prohibit nonlawyers from directing lawyers in providing legal services to the public. The question is whether these rules still are relevant or, as critics claim, are simply relics of the 19th century.

Protection of Clients

These are practice issues, but the protection of clients must be the foremost consideration. Lawyers are strictly regulated with regard to what client information can be revealed to third parties. Accountants are not subject to such strict rules. Lawyers are subject to the concept of imputed knowledge in evaluating conflicts. Accountants do not recognize the concept. The issue is whether clients really care; that is, whether it is important to a client to be shielded from conflicts in a transnational law firm, to say nothing of a transnational accounting firm.

If this issue is not addressed immediately, it will be overtaken by events. The professions of law and accounting are much better suited to working out a solution, however rudimentary, to give clients the protection they need and deserve, than are the alternate sources of dispute resolution—legislatures and courts—which could produce a patchwork of national regulation. A task force will be asked to make recommendations to the House of Delegates, the ABA's policy-making body, by August 1999.

Charting an effective course in this brief window of time is a challenge in itself. Whatever happens, whether by design or by market forces, the profession will undergo fundamental changes over the next five years. The extent to which those changes benefit clients without stripping them of the right to independent advice will depend in large measure on the profession's powers of analysis and persuasion, as well as on its ability to rise above crippling self-interest. ■