A PANEL DISCUSSION ON PROFESSIONALISM
PROFESSIONALISM THEN AND NOW

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INTRODUCTION

As Alabamians, we have all been faced with, or forced to deal with, certain aspects of the blighted history of our state and its segregationist past. However, what many people don't realize is that during our state's most tumultuous time in history, Alabama also offered the nation a unique and profound piece of civility to which we can all be proud. Alabama is considered by many as the birth place of the Confederacy, the birth place of the Civil Rights movement - and - the birth place of the Professional Code of Conduct that governs our actions as lawyers.

In 1881, Thomas Goode Jones[1] first proposed to the Alabama State Bar that they develop a regulatory code outlining the professional standards and conduct expected of lawyers practicing in Alabama. The Alabama State Bar appointed Mr. Jones as chair of a three-person committee that took up this

[1] Thomas Goode Jones was a farmer, editor and later the governor of the State of Alabama from 1865-1894. In 1901, Theodore Roosevelt gave Thomas Goode Jones a recess appointment to the federal district court in Alabama. He was confirmed by the full Senate later that year.

cause. Over several years, that committee went through numerous drafts before the Alabama State Bar finally adopted the code in 1887.[2]

Mr. Jones realized early on that the regulatory code had to be broad enough to encompass all of the various nuisances that are presented by the law; yet, it had to be simple and straightforward in its drafting to be practical and useful. Mr. Jones's regulatory code drew national attention and praise and was later the basis for the code of conduct that the American Bar Association drafted in 1908. That same code is the basis for the rules that govern our actions as lawyers even today.[3]

I. Why Do We Have a Proscribed Code of Conduct?

Lawyers are not just *members* of the legal system. Instead, we are appropriately referred to as *officers* of the court and are therefore responsible to the judiciary for our professional (and sometimes private) activities. In almost every jurisdiction within the United States, the legal profession has been granted the power of self-government. With this great power, comes great responsibility.

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[2] *See generally* Carol Rice Andrews, Paul M. Pruitt Jr., and David I. Durham. Gilded Age Legal Ethics: Essays on Thomas Goode Jones' 1887 Code and the Regulation of the Profession. Publication of the Bounds Law Library, no. 4. Tuscaloosa: University of Alabama School of Law, 2003. vii, 136 pp.

[3] Id.

Although sometimes difficult for those outside the legal profession to understand, self regulation is an essential means for the legal profession to maintain its independence from intrusive government entities that are often driven by public opinion. "An independent legal profession is an important force in preserving government under the law, for abuse of legal authority is more readily challenged by a profession whose members are not dependent upon the executive and legislative branches of government for the right to practice. Supervision by an independent judiciary, and conformity with the rules the judiciary adopts for the profession, assures both independence and responsibility."[4]

Lawyers must demonstrate to the public that we are capable of self regulation in order to maintain confidence in the judiciary. "Without public confidence, the judicial branch could not function."[5] Without public confidence in both the judges who hear disputes and the lawyers who present the arguments, the legal system is unable to dispense justice and its sole purpose for existence is compromised. Historically, when people do not trust the courts, they will resort to other means to resolve their disputes. In this sense, the public confidence in the judicial system is essential to maintaining a functioning, democratic society. Adherence to the principles cited in the oath of

[4] Florida Bar Journal. Rules Regulating the Florida Bar. September 1997.

professional conduct that each lawyer takes before entering practice is directly related to our ability to maintain a positive, public perception of the judiciary and further ensure the civility and justice inherent within the system.

II. Historically, How Were Principles of Ethics and Professionalism Emphasized or Taught?

Prior to the adoption of Thomas Goode Jones' regulatory code, there was still the principle that lawyers would be honest and ethical when dealing with their clients and the court.[6] In fact, the sources of many of those expectations precede the birth of our country, and colonialism as a whole.[7] For a few centuries, and many more decades, the ethical duties and obligations expected of lawyers were taught by older attorneys and judges. This practice dates back to times when earning a law degree meant an extended apprenticeship under another lawyer. As more law schools were created and became the primary path for eligibility to the practice of law, legal ethics became part of the core curriculum. Despite the introduction of these ethical duties and obligations in the classroom, the proscribed modes of conduct were still being reinforced under the tutelage and mentoring of older lawyers and judges. In this early

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[5] In re Raab, 763 N.Y.S.2d. 213, 218 (2003).

[6] *See* footnote 2.

[7] Id.

system, lawyers were able to learn both the spirit and practical applications of the expectations that governed their profession.

III. Presently, how are ethics taught?

Just a decade or so prior to today's legal environment, the responsibility of teaching the ethical values required in the profession of law fell almost entirely to the law schools who were the acting "gate keepers" to the actual practice of law.[8] In fact, many states had what was called the "diploma privilege," which meant that if you graduated from a certain law school, you were exempt from any further requirements, including sitting for that state's bar examination.

Today, however, many state bars are requiring additional ethics training as a prerequisite to the practice of law. This requirement partially has its roots in efforts by the American Bar Association ("ABA") and the national Conference of Chief Justices ("CCJ"), in conjunction with the various state bar associations. In 2001, the CCJ responded to an initiative started by the ABA and adopted an implementation strategy for a national action plan. This plan

[8] Interestingly, a few states still allow individuals to attain a licensed to practice law through an apprenticeship. These individuals must sit for the state's bar examination.

called for various public accountability and public outreach measures, *as well as a renewed interest in mentoring*.[9]

The Alabama State Bar has not stopped at just accepting the national plan. Like many other bar associations, the State Bar has recently adopted a plan known as "Bridge the Gap" which gives *additional* legal and ethics training to those individuals who successfully complete all of the bar examination requirements. Attendance at the "Bridge the Gap" program is a prerequisite to practicing law in the state. For those already licensed to practice law, the Alabama State Bar now has an additional ethics requirement to remain in compliance with the Bar's CLE policy.

The Alabama Supreme Court has also shown leadership in the area of professionalism. Chief Justice Drayton Neighbors has started the *Chief Justice's Commission on Professionalism* and has joined forces with the State Bar in offering an annual award that recognizes an individual's "outstanding contributions in advancing professionalism."[10]

The renewed interest in professionalism by the governing bodies in our profession is exciting and inspiring. However, it is also telling that there is a "renewed" need for this focus.

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[9] Keith B. Norman. "Alabama's Implementation of the National Action Plan on Lawyer Conduct and Professionalism." Alabama Lawyer. January 2003.

[10] Alabama State Bar Addendum. "The Professionalism Award." April 2006.

IV. The Need For A Renewed Focus on Professionalism.

The practice of law has changed dramatically since the time of Thomas Goode Jones. In his day, the professional bar was smaller and there was more camaraderie amongst its members. Most of a practitioner's clients during this period were individuals in the community, people who one went to church with or had other communal ties. To be a lawyer in Jones' time meant that you were expected to be involved in most of the major civic activities and to work for the overall betterment of the community. That you would also profit off of your involvement in these activities was expected, but it was not considered to be the sole reason behind your involvement. A lawyer's good name and reputation for honesty, his standing in the community and past dealings with others was the most valuable currency that kept him in business.

Today's legal environment doesn't look much like it did at the turn of the twentieth century. As our natural surroundings and overall business environment of the country has changed, so has our profession and the individuals who are responsible for maintaining its ethical mores. The legal profession once centered on the lawyer's involvement in civic activities and that lawyer's ability to develop a personal relationship with his clients, the community and fellow lawyers. Now, those foundations have given way to the

need to developing a larger case load, the increased specialization of the practice as a whole, and the resulting less personal interaction with clients, judges and other lawyers that is the effect of various technological advancements in communication. The lack of an ongoing commitment to developing these personal relationships has lead to a weakening of the communal bonds with both the public and within the profession, as a whole.

Let's face it, common sense and history have shown that it is a lot easier to be *less civil* and *dehumanizing* to a person when one does not often see the other person, face-to-face. Exchanging nasty e-mails or letters between lawyers is more likely if they infrequently see each other. Similarly, it is easier to misinterpret another lawyer's actions or intent if that person never has the decency to call the other lawyer on the phone, but instead, only communicates impersonally via e-mail. It is easier to include irrelevant and impertinent, derogatory, personal information in a brief if one is not going to see the other lawyer very often and does not have to attend a hearing to resolve the issue. And, it is easier to push aside the specific needs of an individual client when the lawyer already has an enormous case load that places them in front of numerous clients.

"The pressures associated with the increasing commercialization of law practice have made lawyers, as a group, a profoundly unhappy lot."[11] In a 1999 speech entitled "Professionalism," former United States Supreme Court Justice Sandra Day O'Connor recalled a study that concluded that, "[a]ttorneys are more than three times as likely as non-lawyers to suffer from depression, and they are significantly more apt to develop drug dependency, to get divorced, or to contemplate suicide...[they] suffer from stress-related diseases, such as ulcers, coronary artery disease, and hypertension, at rates well above average."[12] A *New York Times* article concluded that, "job dissatisfaction among lawyers is widespread, profound, and growing worse."[13] Perhaps Justice O'Connor's most revealing description of the recent past state of the legal profession is when she quoted an attorney who had given up the profession entirely, she recounted him as saying, "I was tired of the deceit. I was tired of the chicanery. But most of all, I was tired of the misery my job caused other people."[14]

Not surprisingly, certain segments of the public have grown frustrated with the legal profession as well. The public's discontent has often lead to

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[11] Sandra Day O'Connor. Professionalism. 78 Or. L. Rev. 385 (1999).

[12] Id.

[13] Id.

[14] Id.

retribution being sought against members of the profession or adverse action being taken directly against a lawyer or judge involved in a dispute. In some states, certain doctor's have refused to care for certain lawyers, their families, and their clients, regardless if those individuals have ever filed or participated in a medical malpractice action.[15] A lawyer in Texas has filed a lawsuit claiming housing discrimination because a major property company, undoubtedly tired of having lawyers as clients, has adopted a policy of no longer dealing with lawyers.[16]

Still worse, over the last couple of years, all of the major news organizations have had to cut to live broadcasts to report incidents where lawyers and judges (or their families) have been attacked by their former clients, or opposing parties because of a dissatisfied result. Although one should not attempt to justify the abhorrent and immoral acts of violence perpetrated on the individuals within our profession, it is easy to see how the professions move away from the idea of nurturing personal relationships with the client has lead us to the state of existence we are in today. "Personal relationships lie at the heart of the work that lawyers do. Despite our vast

[15] Laura Parker, "Medical Malpractice Battle Gets Personal." USA Today, June 13, 2004; *See also* Scott Shepard. "Mississippi Doctors Putting Trial Lawyers on Do-Not-Treat List." Memphis Business Journal, July 2, 2004.

[16] *See* footnote 11.

technological advances, the human dimension remains constant, and these professional responsibilities will endure."[17]

CONCLUSION

As the legal profession moves forward in this, the first decade of the twenty-first century, lawyers should reflect on where we are today and how we got here. The profession must take due notice of the things that have worked best, and those periods in which we could have done better. The profession should change where that course is acceptable, but remain true to the time-honored and cherished values that have made us worthy of self regulation. The recent advances and new forms of communication are here to stay and we must adapt our practice to those modes of efficiency. We cannot put the technological genie "back into the bottle."

We must continue in the path that the leadership in the State Bar and the Supreme Court have provided. However, continuing on that path is not just a collective journey. It is also a personal rededication to the values and premises that all lawyers have sworn to uphold. It is not enough to have great leadership on the issue of professionalism, it will only be sufficient when we internalize

[17] *See* footnote 11.

and incorporate those principles into our everyday practice. The future of our form of democracy depends on it.