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Keynote Address

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American Bar Association

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Barnett: Keynote Address
KEYNOTE ADDRESS

MARTHA W. BARNETT*

It is a pleasure to be with you this evening under any circumstances, but especially to talk about professionalism.

Most discussions of professionalism begin with respect, or more accurately, the lack of respect for lawyers. I have received many letters and had many conversations with lawyers who want to know what the ABA, and more specifically, what I am doing to improve the image of the profession.

To these concerned attorneys, it is a professional issue, not a public relations issue or even a popularity contest. These are good, hardworking people. They usually aren't the ones making the big bucks. They coach Little League, sing in the choir, do pro bono work, and serve on many community boards. They just can't understand the negative public attitude towards their profession.

Historians tell us that the legal profession has always been this way. The public just doesn't seem to like lawyers. Take for example, a commencement address delivered by Timothy Dwight at Yale University. He warned eager young graduates of the evils in the legal practice. He accused our profession of meanness and deception, of multiplying needless litigation, and of postponing trials to glean the last coin from a client's pocket. He also spoke of lawyers seizing advantage through the ignorance and prejudice of a jury. Finally, he urged the graduates to shun a law career like "death or infamy."¹

Mr. Dwight made those remarks in July of 1776, a time when most of the signers of the Declaration of Independence were lawyers. These lawyers, however, unlike like the ones described by Mr. Dwight, were so high in stature and quality that Jefferson referred to them as "demi-gods."

Dwight was not alone in his opinions, then or now. Negative perceptions of the legal profession continue despite the fact that since 1776, lawyers have been the driving force behind the creation of our great democracy.

I remember well the reaction of my father-in-law and mother-in-law when they learned I was going to law school. My mother-in-law was very concerned, but it had more to do with concern about who was going to take care of her beloved son and grandson than anything else. My father-in-law, however, grinned. He had several good friends who were lawyers. He said, "Well, Martha, one thing about lawyers is that they do good when times are good, but they do better when times are bad." At the time, I did not understand what he was talking about, but I've learned his sentiments captured a generally held public perception.

* President, American Bar Association.

1. Timothy Dwight, *A Valedictory Address to the Young Gentlemen, Who Commenced Bachelors of Arts at Yale College, July 25th, 1776*, AM. MAG. Jan. 1788, at 101.

While the concern about respect for the profession is an interesting one, a more important issue, at least to me, is the public perception of lawyers. History tells us we are never going to win the Miss or Mr. Congeniality Contest. But the public's trust and confidence in the legal profession and in the justice system is critical. It is critical not just to the health of the legal profession, but also to the very democratic system that we love and that is the envy of the free world.

This is where the concept of "professionalism" comes into play so clearly. As I prepared for tonight, I did a survey of some of the law-related literature and found no shortage of treatises, law review articles, and bar association studies that address the concept of professionalism. I have been active in the ABA long enough to remember any number of professionalism commissions and to have served on several. In fact, I met Deborah Rhode at just such a conference at FSU a couple of years ago. I must admit, I only read a few of the articles, but there was a common theme among them.

In these articles, I found the standard definitions of professionalism (most use the same starting point, that is that the word "profession" comes from the Latin *professionem*, meaning to make a public declaration),² the consistent lament for the lack of it, and many suggestions for regaining it.

One idea that was new for me and stuck with me was the study of the history of professions in general. Three professions emerged from the Middle Ages. One was the clerical profession, which professed a duty to care for the health of the soul. A second was the medical profession, which professed a duty to care for the health of the body. The third was the legal profession, which professed its commitment to care for the health of politics, ensuring rationality and the dispensation of justice.³ How simple and appealing—and wishful these definitions are. And yet, how accurate in terms of today's rhetoric about professionalism.

I have a sense that while we have never been popular, lawyers have always enjoyed a special status—and indeed a special place—in the hearts of Americans because the public believed that the legal profession had a mission that was bigger than the business of practicing law. They understood the concept of the "lawyer-statesman" who combined practical wisdom and statesmanship to advance society and its democratic values.

I always have liked Alexis DeTocqueville's comments about lawyers. After his visit to colonial America, he observed, "If I were asked where I place the American aristocracy, I should reply, without hesitation, that it is not

2. A.B.A. SECTION ON LEGAL EDUC. AND ADMISSION TO THE BAR, TEACHING AND LEARNING PROFESSIONALISM 8 (1996).

3. ROBERT L. HAGUE, SUCCESSFUL PARTNERING BETWEEN INSIDE AND OUTSIDE COUNSEL 37-40 (2000).

among the rich, who are united by no common tie, but that it occupies the judicial bench and the bar.”⁴

But today, as the legal profession has evolved with modern economics, so has the typical lawyer, from statesman to businessman. Society has changed as well. We are more consumer oriented and so is the law. The proliferation of lawyers, not to mention the ever-increasing number of non-lawyers who want to offer legal services, has created intense competition for clients and fees.

The current economic prosperity has been a boom for the law business, but it has ironically hurt pro bono services. Technology has modernized the way we deliver legal services, making lawyers more efficient and effective. But it has intensified the pace and the stress of practicing law.

Money has become a dominating goal. Lawyers have always worked to make a good living. But I have seen something different in the last decade. People are entering the legal profession as a way to accumulate wealth rather than to advance the rule of law. When money becomes the goal, the lines between acceptable and unacceptable conduct begin to blur.

We are now at a time when we as professionals are faced with some choices. Time and again, lawyers have faced hard choices between personal financial security and moral responsibility, between openness and privacy, between independence and advocacy, between profit and public interest, between winning and honor.

Frankly, I think the whole question of “what it means to be a lawyer” is at issue. I am not sure there is a consensus on what the practice of law is anymore. In fact, I am sure there isn’t. You may disagree with me, and I suspect you do, but we are lawyers and we know what it means to be one. In fact, we know what it means to be a good lawyer!

What about the public? A lot of what we do, non-lawyers do everyday, and it’s legal, in the sense that it is not the unauthorized practice of law.

For example, one of my areas of practice is state and local taxation. I regularly counsel clients on tax law, business management, and I represent them before the Florida Legislature. Accountants and lobbyists counsel their clients in all these same areas; however, when I counsel clients, it’s the practice of law and when they counsel clients, it’s not.

An issue on the horizon that will also shape what it means to practice law is the multijurisdictional practice and the implications of the multistate and national practice of law. This will affect bar admission, ethics, and regulation. At the direction of the ABA Board of Governors, I have appointed a Commission to address how these and other trends will affect lawyers and our role in society.

Multidisciplinary practice has been the great debate of the last few years. The push for multidisciplinary practices is symptomatic of changes taking place in the profession, changes that are a direct result of technology and the

4. ALEXIS DE TOCQUEVILLE, *I DEMOCRACY IN AMERICA* 355 (Henry Reeve Trans., Francis Bowen ed., 4th ed. 1864).

resulting globalization of our economy. Not since the industrial revolution have we seen such a shift in paradigms.

Only when we begin to ask “what does it mean to be a lawyer” and “what is the practice of law” will we be able to successfully address the concept of professionalism.

The professionalism debate has at least two focuses: internal and external. Internally, we know what we mean when we say professional:

- Ethics
- Client service
- Independence
- Civility
- Continuing education and learning
- Responsibility to the justice system
- Service to the public
- Pro Bono.

But what about the external focus? It seems to me that the “saved” and the “true believers” always come to these conferences and that we continue to struggle with the same issues, if the literature and my anecdotal observations have any weight. So much of being a professional seems self-evident to me, but if that is true, why do we have to remind lawyers?

It seems to me that we keep preaching to the choir. It is clear that the choir has been saved, but the congregation has not understood the message. What can be done to bridge this gap?

There are many things that our organizations and we as lawyers can do. This conference and others like it are a good start. Professionalism can also be addressed through local bar associations, model rules, and law office management. Non-lawyers should also be expected to abide by and participate in professionalism standards.

The ABA hopes to be a catalyst for interstate cooperation regarding bar admissions, CLE requirements, reciprocal discipline of lawyers, and uniform rules of conduct. Commissions should be created to address cutting edge issues such as multijurisdictional practice and others.

Most importantly, law firms should integrate the principles of professionalism with everyday firm operations. My own firm, Holland & Knight LLP, has incorporated professionalism standards into our hiring and evaluation processes. The Holland & Knight “Three C’s”—character, competence and commitment—guide and direct how we operate as a firm and by which we expect others to judge us.⁵ Moreover, we actively recruit attorneys and law students who also hold high these values.

5. HOLLAND & KNIGHT L.L.P., OFFICE MANUAL, ch. 106 (2001); *see also* Holland & Knight L.L.P., *Our Commitment*, at <http://hklaw.com/commitment.asp> (last visited Feb. 1, 2001).

These Three C's provide a consistent measuring device for all of us. They are defined as follows:

Character means embracing high moral principles and ethical values in both our personal and professional lives and adhering to them despite client demands and economic pressures.

Competence means developing and employing the knowledge and skills required to serve clients effectively, diligently, and economically.

Commitment means accepting responsibility for the proper functioning of our justice system and defending it when necessary.

If every law firm and solo practitioner commits to incorporating professionalism ideals such as the "Three C's" into their everyday practice of law, we will have made great progress in our quest for positive public perception.