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Bench, Bar, Law School Partnership Can Bring Professionalism Back

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Bench, bar, law school partnership can bring professionalism back

J. Martin Burke, dean of the UIM School of Law, presented the following paper at the June Annual Meeting CLE seminar on Professionalism.

In her 1960 masterpiece, *To Kill a Mockingbird*, Harper Lee paints a portrait of a small town lawyer, Atticus Finch, who represents lawyering at its best. The many facets of Atticus Finch's character emerge as Lee masterfully sketches the details of one period of his family's life as seen through the eyes of his young daughter Jean Louise, affectionately known as Scout.

Atticus was a widower trying to raise two bright and rambunctious children, Jem and Scout. As a parent and lawyer, he worked to instill in his children a respect for the law and for the rights of others. Recall the many times he admonished Jem and Scout not to disturb their neighbors, the Radleys, and in particular, to respect the privacy of the reclusive Arthur Radley, whom the children referred to as Boo.

Atticus was a community-spirited individual. He represented Maycomb County in the Alabama State Legislature and, until he took on the representation of Tom Robinson, a black man charged with raping a white woman, he was widely respected.

Atticus was an attorney with a passion for justice. When he agreed to represent Tom Robinson, he did so recognizing that he and his family would be criticized and even shunned by relatives, friends and neighbors. When Scout questioned why he would disregard the opinion of people in the community and represent someone like Tom, Atticus replied: "For a number of reasons, Scout. The main one is that if I didn't I couldn't hold my head up in town. I couldn't represent this county in the legislature. I couldn't even tell you or Jem not to do something."

Atticus took the case knowing that in all probability he couldn't win because, as he put it, in a case pitting a white man's word against a black man's

word, the black man would not be believed. And, although he knew that he would not be compensated for his time, he undertook the case because it was right to do so because Tom Robinson was entitled to equal justice under the law.



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Atticus' courage is highlighted in Lee's evocative description of Atticus keeping an all night vigil at the county jail in order to protect Tom. Particularly dramatic is Lee's description of the middle-of-the-night confrontation between Atticus, Jem and Scout, and the group of white men who came to the jail to kidnap and presumably kill Tom. We witness Atticus' deep compassion for others, especially the weak, when Tom Robinson is killed in an effort to escape from prison and Atticus must break the news to Helen, Tom's wife.

Lee depicts Atticus as a gentleman and

a man of conviction — an attorney whose conduct always reflected a deep respect for the law and for legal institutions. With her masterful strokes, she paints a picture of the lawyer as a professional—one who is committed to public service—one who subordinates financial reward and sometimes personal standing to social responsibility.

I wonder how Lee would depict an attorney today? Certainly most modern descriptions of attorneys are far from flattering. Indeed, if anything, we are barraged by lawyer jokes and comments from people both within and without the profession decrying the lack of professionalism among lawyers.

Now I know and you know that there are many Atticus Finches in our profession, particularly here in Montana, but my fear is that the values which motivated Atticus may no longer be shared as widely as they once were by members of our profession. The evidence at least suggests that.

State and local bar associations across this country report a growing concern within the profession for the lack of civility among lawyers. A win-at-any-cost mentality has resulted in attorneys lying to or misleading other attorneys, taking advantage of opposing counsel on technicalities, writing abrasive letters and taking brash and overly aggressive stances, pressing marginal claims, acting as hired guns, and failing to accord other attorneys basic courtesies such as returning telephone calls or accommodating an opposing lawyer's schedule.

Some of these same criticisms also have been voiced by clients who often do not believe that they have been kept properly informed of the progress on their case, or had their matters handled as expeditiously and inexpensively as possible. Others complain that attorneys don't return their calls, are late for appointments, and appear more wor-

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ried about getting paid than doing a good job for the client. Often clients are dismayed at the attorney's failure to advise them regarding alternatives to litigation and are appalled at the expense of the discovery efforts.

Despite a few reports to the contrary, lawyer volunteerism is also on the decline. And I attribute that in no small part to the commercialism which seems to be running rampant in our profession. The focus in too many law firms and on the part of too many attorneys appears to be on the bottom line — how many billable hours have I generated today? Increasingly, I hear, even in our own state, that firms are requiring an average of 38-40 billable hours per week. As a result, attorneys have little time for community involvement and for the kinds of exemplary public efforts which have been part of the tradition of our profession.

The message communicated by many attorneys and firms to new lawyers is that almost all of one's waking time should translate into billable hours for the firm. Double and triple billing of time is becoming commonplace. In our own state of Montana, I see few attorneys serving in the state legislature. Why? Because they can't afford to take time away from their practice. Likewise, there is a reluctance on the part of some of the best and the brightest within our profession to allow their names to be considered for judgeships or to run for elected judgeships.

In many cases, these attorneys explain that they simply can't afford the cut in pay that service on the bench would entail. This concern for the bottom line leads me to question whether ours will for very long be viewed as a profession dedicated to the public good or as a profession providing leadership in government and community life.

Atticus Finch's representation of Tom Robinson provides a classic example of pro bono work. Ours is a profession with a long and proud tradition of such work. The concern, however, for billable hours has taken its toll here as

well. The amount of pro bono work being done by attorneys in this country today is not very impressive. A recent ABA poll indicates that over 36 percent of the attorneys practicing in this country do no pro bono work, and 23 percent do only 10-25 hours of pro bono work a year.

When one considers the high cost of legal services, the dwindling resources for legal services for the poor, and the reticence of attorneys to engage in pro bono work, it becomes clear that access to quality legal services is becoming a major problem in our country for the poor and also for the middle class.

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And it is not just volunteerism in our communities, government leadership, and pro bono work that are suffering from what has been referred to as the "tyranny of the timesheet"; attorneys in their personal lives are suffering as well. There is less and less time for family life and personal time. As a result, we see nationwide a rise in drug and alcohol abuse among attorneys, more family breakups, and growing dissatisfaction with the practice.

If one were to focus only on all of these criticisms and concerns, a grim picture of our profession emerges. Again, however, I want to emphasize that much excellent, indeed extraordinary, work is being done in our communities and our states and nation by members of the bar and judiciary collectively and individually. Nonetheless, I am convinced that much more can be done and that we must address this range of criticisms and concerns. The time for studies regarding professionalism and sermons on professionalism is past, and we must define and implement an agenda for addressing the problems which threaten our profession.

I would like to make some modest suggestions for that agenda, and in

this regard I want to address the various roles which can be played by law schools, the profession and the courts and specifically note the kind of partnerships which I think can be formed for our mutual benefit.

The role of the law schools

When I first was named to the deanship at our law school, George Bouslog invited me to meet with the executive officers of the Bar to discuss what the Law School was doing to instill in students a sense of professionalism. The clear message, of course in this invitation was that the practice

ing bar expects the Law School to play an active role in professional formation. And I believe the bar in this state, and in every state, has a right to expect that of legal educators. For certainly, law schools set the foundation for the practice and should be responsible for inculcating an understanding of what it means to be a professional.

On my agenda for the law schools are a number of action items. I will discuss only a few. First, the law schools as gatekeepers for the profession must reassess in earnest their admissions standards. Certainly, those whom we admit to law school ultimately do have a significant impact on our profession and on our society. I don't believe it is enough anymore for law school admissions committees merely to engage in a numbers game. Simply stated, our admissions committees must consider more than grade point averages and LSAT scores. LSAT scores and cumulative GPA's do not adequately measure whether an applicant shares those values which undergird our profession.

Other factors which should be considered include motivation for studying law, record of leadership in the aca-

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ademic setting or in the community, record of volunteer efforts, and reputation for honesty and reliability.

Law faculties must address the fact that most students entering our law schools are not sensitive to the role which lawyers ought to play in our society and the high standards which must mark this public calling. And I'm convinced that we do not do a very good job during the three years students are with us of impressing upon our students the ethic of service in contrast to the egoism of happiness. I believe that there are a number of relatively modest ways law schools can address this matter.

First, I suggest that law schools assign all students readings — perhaps during the summer — which challenge

reflection have a community dimension — that students meet regularly in small groups with a faculty member and practicing attorneys to discuss the assigned readings. The participation of the practicing attorney in this dialogue is critical in that it emphasizes to the student that the issues being discussed are relevant. It creates an important link between students, faculty, and members of the local bar, and it affords practitioners a rare opportunity to reflect again upon their own calling. The UM Law School will embark upon this kind of program in partnership with the local bar in the near future, and I am enthusiastic about its possibilities.

My second suggestion is that law schools take greater advantage of the opportunities that our live client clinics afford us to engage students in a realistic and substantial examination

work together in sponsoring in-firm seminars on issues of professionalism such as the limits on advocacy, abuse of the discovery process, or the appropriate billing of clients.

Law schools have a responsibility to assist in the revitalizing of the local and state bar organizations. Law schools and bar associations should encourage law faculty and students to serve as members of bar committees. Last year, President Gary Spaeth took the initiative to appoint a number of our law students as members of bar committees. In many cases, the students worked side by side with members of the law faculty who had also been appointed to the committees.

The role of the practicing bar

There are a number of valuable ways in which the bar can effectively address issues of professionalism. First, I submit that there must be a concerted effort to work with new lawyers to assure a proper transition from law school to the practice. Many of the complaints I hear from lawyers regarding lack of professionalism stem from the conduct of young lawyers. Just as law professors must serve as professional role models for law students, so too must members of the bar serve as role models for newly admitted lawyers. I applaud the efforts of some local bars to establish mentoring systems designed to assist young lawyers.

As a young lawyer, I had the good fortune to work with an outstanding federal judge and later with a senior attorney in the law firm with which I was associated. Both were men with a deep compassion for people and a genuine love for the law. Both were committed spouses and fathers; they participated enthusiastically in their communities and were leaders. They were mentors for me and their's was the kind of mentorship of word and example which every new attorney should have. I urge law firms and law professors to sit down with one another and begin talking about mentoring — and to begin creating viable mentoring programs.

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I believe the courts must join with organized bars and the law schools in emphasizing the values of our profession.

them to reflect upon the special vocation of lawyering. We currently do this at the UM School of Law.

It is not enough that they read cases and scholarly articles and commentaries on the law. They need to read about and reflect upon men and women in the practice and on the bench who have applied their knowledge and skills in resolving conflicts, have addressed sensitive ethical questions, and have charted a successful course through the maze of competing pressures and expectations that confront professionals.

And I suggest that such study and

of professional conduct. These clinics provide our students with hands-on experience; students in the clinical setting are faced with the moral dilemmas, the conflicts and the frustrations which attorneys must address.

The UM Law School has just received a grant from the U.S. Department of Education for a pilot program which should significantly enhance the experience of our students in our external clinics.

Because most if not all students at some point during their law school years also intern in law firms, I believe that the law schools and law firms should

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A second area in which the practicing bar must take action is that of access to legal services. The great majority of lawyers surveyed regarding pro bono work oppose mandatory pro bono work. I, too, oppose it. On the other hand, I believe that every lawyer should be guided by an ethic of service and, in that regard, should view pro bono activity as part of the culture of his or her firm. And, attorneys must demand that pro bono activity remains a part of the firm culture.

As I suggested early in this presentation, the profession must also address the quality of life issue. The practice of law is often stressful and that stress is exacerbated when the demands of firms for the time of attorneys creates problems on the home front. When graduates visit me at the law school and confide in me that they feel guilty and saddened about not spending much time with their children or with their spouses; when they tell me that they can't afford to participate as actively in the schools which their children attend, or in their churches; when they tell me that they haven't had time to just sit down and read a good novel for a long time I become convinced that our profession is promoting unhealthy life styles to the detriment of everyone.

How often does your firm engage in discussions about life outside the firm? When the firm sets billable hour requirements for new attorneys, what thought is given to the fact that the firm has an obligation to nurture the whole person? Is there discussion of alternative work schedules? Alternative partnership tracks? I hear from more and more graduates that they would be willing to receive less compensation if the firms would reduce their billable hour expectations.

Another item which I believe should be on the agenda of the profession is public education regarding the law. Lawyers have an obligation to preserve and to enhance the rule of law in our society. That can only occur, however, if there is an educated citizenry. In this regard, I recommend that local bars, in conjunction with the law schools, develop and implement

appropriate public education programs.

There are some excellent models including the Citizen or People Law School model and the Street Law Program. The Cascade County Young Lawyers Association has spearheaded this effort and the State Bar Professionalism Committee is now attempting to prepare materials so that these programs can be conducted throughout the state.

The role of the courts

The least understood branch of our government is undoubtedly the judicial branch. Again, I believe public education is necessary and, to that end, a partnership among the bench, the bar and the law schools can be very valuable.

Given the circumstances of our profession today, would we encourage our children to enter the practice of law?

In Montana, for example, Chief Justice Jean Turnage and the other members of our Supreme Court have established a program whereby the court holds formal sessions throughout the state. A member of the Law School faculty or I travel with the Court and, before each case is heard, present a half hour overview to the public about the case, our legal process and the structure of the Montana judicial system. The local bar associations within the community host the Court and assist by publicizing the event.

With respect to attorney misconduct, including matters such as the abuse of the discovery process, members of the judiciary play a key role. Their power is enormous and I urge that those powers including the powers available to them under Rule 11 be utilized aggressively. At the same time, I believe the courts must join with organized bars and the law schools in emphasizing the values of our profession. While I am not so sure that we need to

develop a special course on professionalism, I believe that there are ways through the existing CLE structure in each state whereby the bar, the bench and the law schools, in cooperation with one another, could set the tone for practice in a state.

Let me conclude these remarks by suggesting that the professionalism issues, which I noted at the outset, are not going to just disappear. They are real and they must be addressed. I submit that they will be addressed most effectively if a new partnership is formed among the law schools, the practicing bar and the judiciary. There is entirely too much disconnection, and indeed a growing incoherence, between law schools nationally and the practice, and I believe that ultimately everyone, lawyers, students and the general public suffer from it. I've suggested today a number of modest steps which can be taken by the schools, the bench and the bar in partnership with one another to begin addressing these professionalism issues. We are in this together.

Atticus Finches' son, Jem, aspired to be an attorney. He admired the fact that his father was a man of courage, an attorney willing to take on an unpopular cause, a man of fairness who respected the integrity of each human being and who had a deep concern for his community — a family man who loved his children, a whole person. Atticus encouraged Jem's interest in the practice of law and nurtured his growing sensitivity to the work of lawyers and the role of law.

Given the circumstances of our profession today, would we encourage our children to enter the practice of law? Would Atticus encourage Jem? I suspect that at least some of us would have deep reservations — and if I am correct I suggest that we have some work to do. For us to do nothing, for us to let our profession continue to drift from those traditions and values which have been its foundation, is to participate in the destruction of something precious.

I suspect that Atticus Finch would call our failure to act a sin, just as he taught his children that it was a sin to kill a mockingbird — ML