

# Rekindling Lawyer Professionalism

by Richard A. Salomon\*

There are many common strands in the address given by W. R. Hammond of Atlanta on "The Mission of the Lawyer"<sup>1</sup> and the comments made by the American Bar Association's (the "ABA") Commission on Professionalism in 1986.<sup>2</sup> The practice of law, of course, has changed today. The profession is much larger, more diverse, and subject to different rules than at the turn of the century, as the United States Supreme Court decisions in the advertising area perhaps evidence most poignantly.<sup>3</sup> Nonetheless, the same concern over commercialism overshadowing professionalism haunted the bar in the early 1900s as it does now.

The address by Hammond is, in essence, an attempt to "bring [lawyers] back into the old paths which have been trodden and hallowed by the feet of our ancestors."<sup>4</sup> Hammond explained:

there are dangers which must be avoided if the legal profession would not drift away from its moorings, and get loose from the principles which hold it to the right conception of its mission . . . . Are we getting away from the influence of those fine sentiments which animated and inspired the lawyers of the old professional school? . . .  
. . . The old ways do not seem to be in accord with the bustling spirit of the times.<sup>5</sup>

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\* Partner in the firm of Mayer, Brown & Platt, Chicago, Illinois. Carleton College (B.A., 1975); Harvard University (J.D., 1979). A litigator and frequent lecturer on trial and legal ethics topics, Mr. Salomon was one of the principal authors of the report of the American Bar Association's Commission on Professionalism.

1. Hammond, *The Mission of the Lawyer*, in REPORTS OF THE TWENTY-FIRST ANNUAL MEETING OF THE GEORGIA BAR ASSOCIATION 188 (1904), reprinted in 41 MERCER L. REV. 589 (1990).

2. 112 F.R.D. 243.

3. See, e.g., *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977); *Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447 (1978); *Zauderer v. Office of Disciplinary Council*, 471 U.S. 626 (1985).

4. Hammond, *supra* note 1, at 193.

5. *Id.* Compare these statements made by Hammond with the words of Louis D. Bran-

Perhaps, as we stated in the epilogue to the report of the ABA's Commission on Professionalism, "the golden age of professionalism has always been a few years *before the time that the living can remember.*"<sup>6</sup>

The fixation with the bottom line and the "hustling for clients" was a subject of concern in Georgia in 1904, just as are the spiraling salaries for young associates in the 1980s. Today, according to the *American Lawyer*, the litmus test for a successful, thriving law firm is profit motive, revenue, and ability to leverage.<sup>7</sup> Statistics on revenue per partner and profit per partner are followed religiously. But is this not an incomplete picture? What is missing is a sense of public mission: *pro bono* activities. Admittedly, while *pro bono publico* concerns were probably on the minds of lawyers in Georgia in 1904, for more *pro bono* work is done today. Still, there is a need for law firms, especially medium and large law firms, to accomplish more. It bears noting, as Hammond indicated, that the right to practice law carries with it reciprocal duties and responsibilities to return and rechannel to society some of the skills acquired. Indeed, a law license is a privilege and its retention should not be an inalienable right.

What is the "conscience of the profession" (a phrase used by Hammond) today? Is it the single-minded pursuit of the bottom dollar and increased wealth? Is it the refusal of firms to consider *pro bono* hours as a part of billable time? Or, rather, is it seen in the great historical tradition and role that lawyers have played in this country, beginning with the drafting of our founding documents? Examples abound, even in this anti-heroic age, of lawyers who have given of themselves unselfishly and at considerable personal sacrifice to provide their services to the public at large. Nonetheless, the legal profession cannot rest on these laurels and must achieve more to improve both the perception and reality of lawyer professionalism in this country.

Curiously, while opinion polls were not regularly commissioned at the time of Hammond's address, we note that lawyers today are held in lower esteem than many other professionals and members of the work force despite the noble service they provide. Indeed, according to a 1983 survey, lawyers as a group ranked slightly ahead of used car salesmen and behind the Soviet Union in terms of trustworthiness.<sup>8</sup> The profession must take steps to reverse this trend. For example, while ethics obviously does not

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deis of Boston in 1905: "Lawyers are now to a greater extent than formerly business men, a part of the great organized system of industrial and financial enterprise." L. D. BRANDEIS, *THE OPPORTUNITY IN THE LAW, IN THE LEGAL PROFESSION: RESPONSIBILITY AND REGULATION* 16 (G. Hazard & D. Rhode eds. 1985).

6. 112 F.R.D. at 304 (emphasis added).

7. The *American Lawyer* publishes a law firm profitability index every year. See, e.g., *America's One Hundred Highest Grossing Firms*, AM. LAWYER, July-Aug. 1989, at 55.

8. UPI, *Statehouse Window*, July 30, 1983.

begin in professional school, more can be done to interweave professional responsibility issues into substantive courses. In addition, the availability of legal services at affordable rates to lower and middle class Americans remains an unachieved goal, despite the fact that law schools are graduating more and more lawyers.

Common themes are also raised in the Hammond address and the ABA Commission on Professionalism report on a range of other subjects, including the need for the profession to refocus core values and principles and the subordination of the practice of law to other endeavors. With respect to the latter concern, we can see this phenomenon today with lawyers increasingly participating in the business affairs of their clients, frequently with some stake in the underlying transactions. While the conflicts of interest issues were relatively simple at the turn of the century, today they are complex and the current lack of concern in some quarters about these issues and the crucial concept of independence of counsel is, if anything, far more glaring.

Hammond, in his address, refers to the need for a few members of the profession to help "rescue and redeem the profession from utter degradation and ruin . . . ."<sup>9</sup> While lawyers were probably no closer at that time to degradation and ruin than they are now, it bears noting that as the profession enters the 1990s lawyers are far closer to the loss of the legal profession's ability to regulate itself. By way of illustration, the efforts of law firms admitting nonlawyers as partners and creating subsidiary businesses, whether they be real estate consulting services or lobbying groups, will surely hasten the day when the regulatory tentacles of the Federal Trade Commission and state legislatures will pick up where the organized bar has left off.

In 1789, Benjamin Franklin was approached by a journalist and asked, "What say you, Mr. Franklin—are these United States of America now a Republic or are they a Dictatorship?" Mr. Franklin, without pausing, retorted: "A Republic, sir, if we can keep it."<sup>10</sup>

As we enter the twenty-first century, it behooves the legal profession to work voluntarily toward the implementation of reforms that will make us more a profession "in the spirit of a public service."<sup>11</sup> We must see to it that law schools devote more attention to courses on alternative methods of dispute resolution so that litigation is not viewed as a panacea, that assimilation and training programs be established to assist young lawyers with their entry into the profession, that tough—but fair—disciplinary penalties be meted out to lawyers who commit improprieties, and that the

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9. Hammond, *supra* note 1, at 195.

10. 112 F.R.D. at 305 (recorded in the diary of James McHenry, reprinted in 6 *American Historical Review* 618 (1906)).

11. *Id.*

public be educated far more by the profession about their legal rights and how the legal system operates. These proposals are merely illustrative of steps the legal profession can take to improve its role in serving the public. As the report of the ABA Commission on Professionalism concluded, "[i]f such action is not taken, far more extensive and perhaps less-considered proposals may arise from governmental and quasi-governmental entities attempting to regulate the profession. The challenge remains. It is up to us to seize the opportunity while it is ours."<sup>12</sup>

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12. *Id.*