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Professions Must Maintain Ethics and Independence Or Face the Consequences

By Harry L. Hathaway

The Enron debacle has delivered a wake-up call to the worlds of business, finance, and accounting. In contrast to the legal profession, the business and finance world has no established ethical rules and often winks at conflicts of interest. In recent years the large accounting firms have expanded themselves into hydra-headed, multidisciplinary monsters—providing auditing, consulting, and legal services, which confuse the accountants' loosely cobbled ethics and conflict-of-interest rules. Unless lessons can be learned from these events, the great professions will continue to be threatened by encroachment by other groups.

Over the past 20 years America's professions have undergone attack and external and internal threats to their ethical and professional standards. As our society changes, our institutions will in most cases adapt to those changes. However, as we attempt to adapt to the transformations in the way we do things, we must take great care to protect the professional institutions that have been an important part of the foundation of America.

Of critical importance to our three great professions—law, medicine and accounting—are independence and ethics. We have witnessed what has happened to the medical profession in this country, as government and business have moved in and taken over. Government and business forces now controlling the profession have adversely affected its independence and ethical standards. Quality of care and innovation have been sacrificed for attempts to provide mass, but inevitably mediocre, care. In countries where socialized medicine has replaced private care, two systems have evolved—one for the poor and middle class and one for the wealthy, who can pay for what they believe is better care; neither system provides ideal care. Doctors in our country are losing their independence, and medical ethics have been eroded and imposed upon by the cost-cutting imperatives of medical management businesses.

The legal profession has been fighting attacks on the independence of the judiciary. We have seen our courts, under great stress, evolve into two systems of dispute resolution: Private judges for those who can afford them, and the courts for others. And in those courts judges now mandate private mediation, forcing clients at their own cost to make courts "more efficient." Such changes have lessened the quality of justice for the poor and middle class. Judges are retiring in droves before their normal retirement to get away from being underpaid and to reap the benefits of private judging, leaving a talent and experience deficit in our court system. Lawyers have been pushed to loosen ethical standards and to allow multidisciplinary practices in the legal profession, which threatens independence. The most prominent and recent example of this effect is the move by the large accounting firms to practice law, which has been resisted by the Association and the Division.

I am very proud and pleased that the ABA continues its fight to preserve the principles of our profession. The ABA's Ethics 2000 Commission will this year conclude its multiple-year study of the Model Rules of Professional Conduct. After much debate, the ABA work, while modernizing the rules to carry us into the new millennium, still maintains our high standards in dealing with such controversial topics as conflicts of interest, loyalty to clients, confidentiality, multidisciplinary practice, duties to prospective clients, candor, and so forth. The ABA is

fighting and must continue to fight the battle to prevent the unlicensed practice of law and the practice of law by nonlawyer entities. The Senior Lawyers Division has been involved at every level of the fight to protect our profession. We have provided our deep experience all along to the ABA Commission and House of Delegates. I thank and congratulate those of our leadership for their work in this area on behalf of the ABA.

Let us take a lesson from the recent events affecting the accounting profession and from unscrupulous lawyers and law firms who may have bent the rules while they grew and prospered during the recent boom in the financial market. The lessons, hopefully reinforced by Enron, are that we are a profession—not a business! We are a part of the justice system, officers of the court in all that we do. Lawyers must not become mere businesspersons, driven toward higher and higher fees, seeking equity ownership in their clients, and thereby disregarding independence and ethical standards.

The rule in the Enron case ought to be that professionals must remain independent, bound by strict ethical standards of their professions. Lawyers should not practice accountancy; accountants, accounting firms, and laypeople should not practice law or provide consulting services while providing audit services.