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ON PROFESSIONALISM
IN THE LAW



CONVOCATION ON THE
FACE OF THE PROFESSION IV
LEADERSHIP OF THE BAR

ALBANY, NEW YORK

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RECORD OF PROCEEDINGS

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FOREWORD

The New York State Judicial Institute on Professionalism in the Law (“Institute”) was created in March of 1999 by Chief Judge Judith Kaye. The Institute’s primary focus is to promote professionalism among members of the legal profession.

On April 23 and 24, 2007, the Institute held a convocation on the face of the profession entitled *Leadership of the Bar*. This convocation is the final in a series. Prior convocations examined how students are selected for law school; the manner in which law schools impart to students the profession’s values; and the manner in which law graduates learn their craft and participate in the profession during their first seven years.

This convocation was convened to create a dialogue with seasoned lawyers who by virtue of their experience constitute the leadership of the profession. Prior to the convocation, focus groups were held in Rochester, Buffalo, Syracuse, Long Island and New York City. It was determined from these groups that this convocation would address three primary topics that were repeatedly discussed: mentoring; lawyers in public life; and the pursuit of an integrated life in law.

The convocation consisted of three panel discussions. The first panel addressed lawyers in public life. Participants were John A. DeFrancisco, Esq., Chairman of the New York State Senate Judiciary Committee; John D. Feerick, Esq., Dean Emeritus, Fordham Law School; Richard Rifkin, Esq., Special Counsel to New York State Governor Eliot Spitzer; and the Honorable Richard C. Wesley, Judge, United States Court of Appeals for the Second Circuit. Members discussed the role of lawyers in public life and described what brought them to the law and the influence of their families. Each discussed how his family instilled in him an obligation to society and to the law, and each gave vivid descriptions of how the legal profession has enriched his life.

The second panel consisted of Marion Hancock Fish, Esq., partner at Hancock & Estabrook; Lesley Friedman Rosenthal, Esq., General Counsel of Lincoln Center for the Performing Arts; and Christopher D. Thomas, Esq., partner at Nixon Peabody, LLP. The members said that mentoring meant more than just involvement in the law and in their law firms and described how involvement in the community, bar functions and family were relevant and had significant influence on how they practiced law and were influential in their mentoring.

The third panel consisted of Daniel R. Alonso, Esq., partner at Kaye Scholer; Flor Colón, Esq., counsel at Xerox Corporation; and Christopher J. Cadin, Esq., Staff Attorney at Legal Services of Central New York. Each panel

member came from a unique background, described a unique lifestyle and gave his/her perspective of an integrated life in the law. Each gave a fascinating and divergent view of how to manage a legal career and a personal life.

Opening remarks were presented by the Honorable Judith S. Kaye, Chief Judge of the State of New York; Louis A. Craco, Esq., Chair of the Institute; Mark H. Alcott, Esq., President of the New York State Bar Association; and Stephen J. Friedman, Esq., Dean at Pace University School of Law. Paul C. Saunders, Esq., a member of the Institute and a litigation partner at Cravath, Swaine & Moore, LLP, addressed the participants at lunch. Jeremy Travis, Esq., President of John Jay College of Criminal Justice of the City of New York, spoke at dinner.

On Day 2 of the convocation, prior to breakout sessions, opening remarks were made by M. Catherine Richardson, Esq., former President of the New York State Bar Association and a member of the Institute, and Mr. Alcott.

The tenor of the convocation was set by thoughtful and provocative opening remarks by Dean Friedman, who posited that lawyers believe that (a) there has been a decline in professionalism and (b) the profession should remain static. He articulated that the profession has changed and that we must identify our traditional and core values, protect the same, and adapt new ways. He suggested that the legal profession should not resist a business model. Private businesses, he observed, emphasize their cultures and values, train their associates in them and are efficient in doing so. He observed that there has been a growth in the complexity in the law and that it is incumbent upon lawyers to find those who are familiar with the specialized areas of law. He suggested that lawyers could learn much from the business model, rather than resisting the concept or complaining that lawyering has become too much of a business.

Finally, we would be remiss if we did not acknowledge the support and encouragement of Chief Judge Judith Kaye, the guidance of Lou Craco, Chair of the Institute, and the work and assistance of the members and staff, especially Rachel Hahn, Sheila Murphy and Catherine O'Hagan Wolfe, who made this convocation possible.

Joseph V. McCarthy
M. Catherine Richardson
Program Co-Chairs,
New York State Judicial Institute on
Professionalism in the Law

EXECUTIVE SUMMARY

“Convocation on the Face of the Profession IV – Leadership of the Bar” was held in Albany, New York, on April 23 and 24, 2007. It was the culmination of a longitudinal series that began with the first Convocation on the Face of the Profession, held in November 2000, which looked at issues arising when law students are selected and introduced to life in the law.¹ The series continued with “Convocation on the Face of the Profession II – The First Seven Years of Practice,” which took place in November 2002.² The third Convocation on the Face of the Profession, held in November 2004, looped back to issues raised by the first Convocation and focused on the development of professional values in law school.³

The keynote speaker for Convocation IV, Dean Stephen J. Friedman of Pace University School of Law (who had previously been a partner at a large law firm, a government lawyer, and in-house counsel for major corporations), advanced the provocative idea that law should become more – not less – like a business. He pointed out that most law firms have adopted only part of what it means to be a business, *viz.*, crude 19th-century capitalism and the kind of practices that lead to debacles like Enron and WorldCom. Law firms have, by and large, ignored the other things that make great businesses great, such as building career paths and training even senior employees. Dean Friedman noted that most law firms don’t really have a human resources department; instead, they have a personnel department.

Dean Friedman pointed out that lawyers think creatively about their clients’ problems; they need to bring the same creativity and effort to the restructuring of their profession. For example, to staunch the unprofitable loss of mid-level associates, firms could pay third-year associates a bonus to stay another three years.⁴ They could look at investment banks for a different kind of career path; not all senior bankers become managing directors. They could look at non-legal personal service firms for lessons on how to manage large firms.⁵ They could let mothers get off the partnership track, work a reduced schedule for a period of time, and then get back on track.

Law schools can also help. For example, Pace Law School offers a course that facilitates the reentry into the workplace of full-time mothers who used to work as lawyers.

1. See 1 J.N.Y.S. Jud. Inst. Prof. Law (2001).

2. See 3 J.N.Y.S. Jud. Inst. Prof. Law (2003).

3. See 4 J.N.Y.S. Jud. Inst. Prof. Law (2005).

4. In another example of thinking creatively, the Honorable Richard C. Wesley (a Judge of the United States Court of Appeals for the Second Circuit and one of the panelists at the Convocation) suggested that large law firms hire people from the D.A.’s office or the public defender’s office because those lawyers have a lot of courtroom experience.

5. See, *e.g.*, *Accounting for Good People*, *ECONOMIST*, July 21, 2007, at 68.

Dean Friedman acknowledged that lawyers hate change. However, change is inevitable and does not necessarily mean decline; change in the traditional way of doing things does not necessarily mean change in traditional values.

Three panel discussions took place at Convocation IV: one on lawyers in public or civic life, one on mentoring, and one on pursuit of an integrated life in the law. These topics were chosen because they were the ones that recurred at focus groups held throughout New York State in preparation for the convocation. The participants at the focus groups were asked why they had stayed in the legal profession and what made them happy in their profession. Another way to put the question is, as Chief Judge Judith S. Kaye said in her opening remarks at Convocation IV, “What makes a complete lawyer – a complete professional – today?”

Members of one panel often had useful things to say about the topic of a different panel. The luncheon presentation (an edited version of a joint presentation of the New York State Bar Association and the New York State Judicial Institute on Professionalism in the Law on what being a true professional in the practice of law means) also touched on these subjects. Therefore, the first part of the following summary is thematic rather than panel-by-panel.

Some panelists argued that the private practice of law is a public service because lawyers deliver the rule of law every day by practicing law. However, most panelists felt that lawyers have an obligation to engage in a more traditional version of public service, such as participation in community or bar association affairs. One panelist, Daniel R. Alonso, a partner at Kaye Scholer, said that the only excuse for not engaging in such activities is that one’s family obligations do not allow enough time for them.

Some panelists said that they did not do much public service or mentoring when their children were young; they increased their participation when their children were older. However, panelist Flor M. Colón, an in-house lawyer at Xerox, said that one never ceases being busy with one’s children; therefore, one should not put off other activities in the hope that one will have more time in the future.

Many panelists said they were inspired to go into the law and/or perform public service by their parents. However, for those of us who were not so fortunate, panelist Lesley Friedman Rosenthal, the General Counsel of Lincoln Center, pointed out that we can be “adopted” by mentors. Various panelists said they were influenced by teachers, and one was influenced by a commencement speaker. Another panelist, Christopher D. Thomas, a partner at Nixon Peabody, used the image of a baton (the mentee) advancing in a relay race by being handed from one runner to another, *i.e.*, from one mentor to another.

Various speakers noted that there are two types of mentoring. One is practical training, *i.e.*, how to take a deposition, conduct cross-examination, etc. The other is a more personal perspective. “Forced” or “conscripted” mentoring,

where a more senior lawyer is assigned to a younger lawyer, might work for practical training. However, for the second type of mentoring, the relationship has to be natural, not forced. One speaker, Mark H. Alcott, the president of the New York State Bar Association, pointed out that such natural mentoring relationships can arise out of a work relationship, *i.e.*, two people work together and find that they have interests in common.

There was disagreement about whether it is necessary for mentors and mentees to resemble each other. An audience member, Professor Eleanor S. Stein, pointed out that the danger of relying solely on informal mentoring is that the existing hierarchy will replicate itself; for example, a male partner will mentor a male associate because the associate reminds the partner of what he was like at that age. Mr. Thomas implied that race, gender, sexual orientation, etc. were not important for the first type of mentoring (*e.g.*, how to write a brief) but were important for the more personal type of mentoring. On the other hand, Ms. Rosenthal said that mentors and mentees do not have to be “an exact genotypic match.”

Panelist Marion Hancock Fish, a partner at Hancock & Estabrook, pointed out that mentoring does not have to be limited to lawyers. For example, if there are few lawyers of color in a particular community, a trusts and estates lawyer could encourage and recommend a financial planner who is a person of color. Ms. Fish also noted that one can get valuable feedback from nonlawyers.

Ms. Rosenthal agreed that mentoring is not limited to older lawyers mentoring younger lawyers. She argued that lawyers need to start earlier. For example, on Law Day, they could talk to schoolchildren about the law.

Some concrete suggestions for mentoring include the following:

- teach a class at a law school or be a jurist-in-residence at a law school
- offer an internship (*e.g.*, at a court or in connection with a bar association committee) to a young person
- get the associates at your firm involved in bar association activities (*e.g.*, drafting reports)
- ask a younger lawyer to teach a basic CLE class
- for litigation practices that have a lot of cases going to trial, senior and junior lawyers can meet once a week and discuss cases that are getting ready for trial; the techniques that are used in one case might turn out to be useful for another.
- “group mentoring,” *e.g.*, a monthly lunch for all the female lawyers at a firm
- social activities involving all the lawyers at a firm

- offer CLE credit for being a mentor (and to a mentee for participating in a mentoring program)⁶
- The mentor has to be willing to admit that he/she made mistakes when he/she was younger; otherwise, the mentee will not want to confess to any mistakes.
- A firm can recruit its alumni to be mentors.

Christopher E. Chang, a member of the Institute, asked how solo practitioners can obtain mentoring.⁷ Suggestions included the Inns of Court program, bar associations, and technology (*e.g.*, webcasts and podcasts).

Judge Leslie E. Stein, also a member of the Institute, suggested that the biennial attorney registration form include a line that lawyers would have to sign, saying that they had met with either a less experienced lawyer or a more experienced lawyer for *x* hours and either provided or obtained mentoring.

Instead of talking about work/life “balance,” Ms. Rosenthal talked of work/life “synergy.” She pointed out that the lessons and experiences one has at work can be useful at home, and vice versa.

Some concrete suggestions for integrating life and law included:

- reduce one’s hours in exchange for reducing one’s pay. However, this can be difficult even for a partner to negotiate.
- choose civic activities or organizations that one is passionate about
- periodically assess the activities in which one is involved; weed some out if necessary
- be willing to ask for help (*e.g.*, from a spouse)
- work with people whom one respects so that one’s colleagues are like one’s family
- combine one’s vocation and one’s avocation (*e.g.*, by being an entertainment lawyer)

Ms. Colón had a useful suggestion if one has a child who is taking lessons (*e.g.*, piano lessons or dance lessons), *viz.*, to take lessons in the same area.

In the panel on lawyers in public service, Senator John A. DeFrancisco, who still practices law in addition to serving in the Senate, said that it is important for politicians to be part-time politicians in order to be more independent. Unfortunately (from his perspective), fewer and fewer members of the legislature who have been trained as lawyers actually practice law; instead, they have become career politicians.

Also on the panel on lawyers in public service, John D. Feerick (Dean Emeritus of Fordham Law School) noted that many lawyers are afraid that pub-

6. One would think that young lawyers would be delighted to have the opportunity to be mentored. However, a panelist, an audience member, and Breakout Group I during the second day of the convocation all noted that mentees do not take as much advantage of mentoring as one might expect.

7. This question was also addressed by Breakout Group I during the second day of the convocation.

lic service requires a huge time commitment. He said it was necessary to communicate that lawyers can help (*e.g.*, with pro bono work) even if they have only ten hours a month or five hours a week.

A third member of the panel on lawyers in public service, Judge Wesley, said that the group most in need of lawyers is immigrants who are in deportation and removal proceedings. They desperately need meaningful, competent representation at the trial level.

During the panel on integrating law and life, audience member Matthew Lee Kletter pointed out that there are opportunities for public service because counties are trying to expand the number of people who can serve as guardians ad litem.

Mr. Alonso, a member of the panel on integrating life and law, said that law firms could encourage bar association and other civic activities by giving credit for such activities toward billable hour requirements.

Many speakers urged that lawyers facing mandatory retirement be encouraged to perform public service and mentoring if they do not want to retire.⁸ Richard Rifkin (Special Counsel to New York State Governor Eliot Spitzer) said that his office is happy to accept volunteer lawyers. Dean Feerick said that the Center for Social Justice and Dispute Resolution at Fordham Law School matches up senior lawyers (Fordham alumni) with students and recent graduates to work on poverty-related projects.

As various speakers pointed out, the people who attended Convocation IV are the happy lawyers, the ones who love what they do. The problem is how to reach out to the unhappy lawyers and improve their lot.

The dinner speaker was Jeremy Travis, the President of John Jay College of Criminal Justice of the City University of New York. He urged the leaders of the bar to tackle the problem of the disproportionate impact of stop-and-frisks, arrests, incarceration, and parole revocation on minority communities, especially the African-American community.

On the second day of the convocation, Mr. Alcott gave an address urging the end of mandatory retirement of law firm partners based solely on age. Instead, senior lawyers should be evaluated in the same manner as other lawyers at their firm.

Finally, the remaining participants in the convocation broke up into two discussion groups. The conclusions reached by Breakout Group I have been incorporated into the preceding discussion. Breakout Group II was asked how to improve the partnership between law firms and legal service organizations. It suggested that other parts of New York State could adapt the VOLS (Volunteers of Legal Service) model that is working in New York City.⁹

8. During the second day of the convocation, Breakout Group I addressed a similar question.

9. For more information about VOLS, see www.volsprobono.org.

CONVOCATION PROGRAM

OPENING SESSION AND KEYNOTE ADDRESS

HONORABLE JUDITH S. KAYE

Judith S. Kaye is the first woman to serve on New York State's highest court, appointed as an Associate Judge in 1983 and as Chief Judge in 1993. Chief Judge Kaye received her undergraduate degree from Barnard College and her law degree from New York University School of Law (cum laude). Chief Judge Kaye engaged in private practice in New York City until her appointment to the Court of Appeals. She is Chair of the Permanent Judicial Commission on Justice for Children. Among other posts, she served as Trustee of the Law Center Foundation of New York University, Director of the Legal Aid Society, Director of the American Judicature Society, Executive Committee member of the Association of the Bar of the City of New York, and member of various other committees of the New York State and American Bar Associations.

LOUIS A. CRACO, ESQ.

Louis A. Craco is of counsel to the firm Craco & Ellsworth, LLP, located in Huntington and Manhasset, New York. A retired partner of Willkie Farr & Gallagher, Mr. Craco's practice centers on litigation and arbitration. New York State Chief Judge Judith S. Kaye appointed him Chair of the New York State Judicial Institute on Professionalism in the Law when she created the Institute in 1999; he also served as Chair of the Chief Judge's Committee on the Profession and the Courts. From 1982-1984, Mr. Craco was President of the Association of the Bar of the City of New York.

MARK H. ALCOTT, ESQ.

Mark H. Alcott is the President of the New York State Bar Association. Mr. Alcott is also a senior litigation partner in the New York City law firm of Paul, Weiss, Rifkind, Wharton & Garrison, LLP. Previously, Mr. Alcott served as Chair of the Bar Association's Commercial and Federal Litigation Section; initiated and chaired a Section task force that proposed creation of a statewide commercial court and served on the committee; and acted as Chair of numerous other major professional committees and groups. He is active in numerous civic and philanthropic affairs.

STEPHEN J. FRIEDMAN, ESQ.

Stephen J. Friedman is Dean of Pace University School of Law. Prior to that, he was a senior partner at Debevoise & Plimpton, LLP, where he served as Co-Chairman of the firm's corporate department. He served as Executive Vice President and General Counsel of The Equitable Companies Incorporated and its subsidiary, The Equitable Life Assurance Society of the United States, and served as Executive Vice President of the E.F. Hutton Group Inc. Dean Friedman has served as a Commissioner of the Securities and Exchange Commission, Deputy Assistant Secretary of the Treasury for Capital Markets Policy, Special Assistant to the U.S. Maritime Administrator, and Law Clerk to Justice William J. Brennan Jr. of the United States Supreme Court. Dean Friedman is Chairman Emeritus of the American Ballet Theatre. He also serves as a trustee and former President of the Practicing Law Institute, and a trustee and former Chairman of the Asian University for Women Support Foundation. He serves as a member of the Council on Foreign Relations and served as chairman of the Overseas Development Council.

PANEL 1 - LAWYERS IN PUBLIC LIFE**Presenter:****M. CATHERINE RICHARDSON, ESQ.**

Catherine Richardson is a retired partner of Bond Schoeneck and King, PLLC. Ms. Richardson is a Former President of the New York State Bar Association, and she is a member of the New York State Judicial Institute on Professionalism in the Law. She has served on the Board of Governors and as a Fellow to the American Bar Association, is Past President of the Onondaga County Bar Association, and a Fellow to the New York State Bar Foundation.

Panelists:**JOHN D. FEERICK, ESQ.**

John D. Feerick is the former Dean of Fordham University School of Law, where he currently holds the Sidney D. Norris Chair and is the executive director of the Feerick Center for Social Justice and Dispute Resolution. Mr. Feerick has been appointed to numerous public offices, including Chair of the New York State Commission on Judicial Elections; Special Master of the Family Homeless Litigation in New York City; Chair of the Committee to Review Audiovisual Coverage of Court Proceedings; former President of the Association of the Bar of the City of New York; Chairman

of the New York State Commission on Government Integrity; Chair of the Fund for Modern Courts; Chair of the Board of Directors of the American Arbitration Association; President of the Citizens Union Foundation; and Court-appointed Special Master and arbitrator and mediator of numerous disputes. A former partner at Skadden, Arps, Slate, Meagher & Flom, LLP, he created and ran that firm's labor and employment department from 1968-1982.

JOHN A. DEFRANCISCO, ESQ.

John A. DeFrancisco is a New York State Senator, where he has served since 1992. Senator DeFrancisco has worked to support such initiatives as reducing crime, reforming welfare, leading the nation in cutting taxes and creating hundreds of thousands of new jobs. As Chairman of the Senate Judiciary Committee, Senator DeFrancisco has advocated for reform in how candidates for New York State Supreme Court Justice are nominated, as well as how town and village courts can be improved. Prior to his election to the Senate, he served 11 years on the Syracuse Common Council, first as Councilor-at-Large and later as Council President. He is a community leader and education advocate, and he has served as a former member and President of the Syracuse City School District Board of Education.

RICHARD RIFKIN, ESQ.

Richard Rifkin serves as Special Counsel to Governor Eliot Spitzer. Mr. Rifkin's previous positions include Deputy Attorney General for the State Counsel Division of the Attorney General's Office, Executive Director of the State Ethics Commission, Counsel to the Attorney General, and First Assistant Attorney General. Following his admission to the Bar, Mr. Rifkin entered the private practice of law, followed by the position of staff counsel to Assemblyman Leonard Stavisky. He served as Counsel to the Bronx Borough President and was appointed Deputy First Assistant Attorney General.

HONORABLE RICHARD C. WESLEY

Richard C. Wesley was appointed a Judge of the U.S. Court of Appeals for the Second Circuit in 2003. Previously, he served on the New York State Court of Appeals and the New York State Appellate Division, Fourth Department. He was elected as a Justice of New York State Supreme Court, in the Seventh Judicial District. Judge Wesley was assistant counsel and chief legislative aide to Assembly Minority Leader James L. Emery of Genesee, and an elected member of the New York State Assembly.

LUNCHEON PROGRAM

PAUL C. SAUNDERS, ESQ.

Paul C. Saunders is a litigation partner at Cravath, Swaine & Moore LLP, practicing in the areas of trial work and international arbitration. Mr. Saunders concentrates his focus on the antitrust, securities, intellectual property and employment discrimination arenas, on which he also speaks frequently. Mr. Saunders was a Captain in the U.S. Army in the Judge Advocate General's Corps. In 2003, he was appointed as a Distinguished Visiting Professor from Practice at the Georgetown University Law Center. He is a member of the American Bar Association, the New York State Bar Association, the Association of the Bar of the City of New York's Committee on International Dispute Resolution, and the London Court of International Arbitration. He served as Co-Chair to the National Lawyers' Committee for Civil Rights Under Law and as a Board Member and Vice President of the Legal Aid Society. In addition to his appointment by Hon. Judith S. Kaye to the NYS Judicial Institute on Professionalism in the Law, Mr. Saunders also serves the state courts as a member of the Judicial Hearing Officer Selection Advisory Committee.

Panel II - MENTORING

Presenter:

JOSEPH V. McCARTHY, ESQ.

Joseph V. McCarthy is a partner at Roach, Brown, McCarthy & Gruber, P.C., practicing in the areas of general civil litigation, malpractice litigation and products liability. He serves as a member of the NYS Judicial Institute on Professionalism in the Law. Mr. McCarthy was President of the Erie County Bar Foundation from 1999-2000. He also served as Director of the Erie County Bar Association from 1988-1991, President-Elect from 1992-1993, and President from 1993-1994. He was appointed to the Board of Directors of the Volunteer Lawyers Program from 1992-1993, the New York State Bar Association Committee on Merit Selection from 1992-1995, the Eighth Judicial District Judicial Advisory Council from 1993-1995, Director of the Western New York Trial Lawyers Association from 1985-1988, and Director of the Western New York Defense Lawyers Association from 1990-1993. Mr. McCarthy has served as a member of the Executive Committee from 1997-2003. Mr. McCarthy is a Fellow of the American College of Trial Lawyers, having served as the upstate representative in 2005 and 2006.

Panelists:**MARION HANCOCK FISH, ESQ.**

Marion Hancock Fish is a partner at Hancock & Estabrook, LLP, where she concentrates her practice on trust and estate planning and administration, asset preservation, family business successions and guardianships. She serves as Treasurer and Chair of the Distinguished Lawyer Award Committee at the Onondaga County Bar Association, is a member of the Estate Planning Council of Central New York, the New York State Bar Association, Chair of the Board of Directors of the Visiting Nurses Association of Central New York, Inc., and a Past Chair of the Board of Directors of the New York Community Foundation and SUNY College of Environmental Science and Forestry Foundation, Inc. She has served on the Boards of the Onondaga-Oswego Chapter of the Red Cross and the Rape Crisis Center of Syracuse, Inc. Ms. Fish was an Adjunct Professor at Syracuse University's College of Law and Legal Assistant Program.

LESLEY FRIEDMAN ROSENTHAL, ESQ.

Lesley Friedman Rosenthal is Vice President, General Counsel and Corporate Secretary of Lincoln Center for the Performing Arts, Inc., and is the incoming Chair of the Commercial & Federal Litigation Section at the New York State Bar Association. As Section Chair, she oversees the work of 30 committees representing the 2,200 members of the Section and anchors Section events and CLE programs. Previously, she practiced in the litigation department and the communications & technology group at Paul, Weiss, Rifkind, Wharton & Garrison, LLP, and served as a judicial law clerk to the Honorable Shirley Wohl Kram of the United States District Court, Southern District of New York.

CHRISTOPHER D. THOMAS, ESQ.

Christopher D. Thomas is a partner at Nixon Peabody, LLP, concentrating his practice in the fields of product liability defense, personal injury defense, construction disputes and injuries, and First Amendment jurisprudence. Mr. Thomas previously served as an assistant public defender with the Monroe County Public Defender's Office, where he tried cases in all levels of New York State trial courts. He has written articles on the post-sale duty to warn in New York, and has presented on issues related to mold litigation. Mr. Thomas is a member of the New York State Bar Association and the Monroe County Bar Association.

PANEL III - PURSUIT OF AN INTEGRATED LIFE IN LAW**Presenter:****JOSEPH V. McCARTHY, ESQ.****Panelists:****DANIEL R. ALONSO, ESQ.**

Daniel Alonso is a litigation partner at Kaye Scholer, LLP, focusing on white-collar defense, internal investigations, securities litigation and regulatory enforcement defense. Prior to joining Kaye Scholer, Mr. Alonso served as Chief of the Criminal Division in the United States Attorney's Office for the Eastern District of New York. His previous positions include Assistant U.S. Attorney, New York County, where he prosecuted securities fraud cases, and law clerk to Judge Joseph W. Bellacosa of the New York State Court of Appeals. Mr. Alonso serves the New York City Bar Association in several capacities, including as Chair of the Criminal Justice Council and member of the Dewey Medal Committee. He is the Chair of the New York Hispanic Bar Task Force on Judicial Selection, a member of the Federal Bar Council, and a Board Member of The Fund for Modern Courts.

FLOR COLÓN, ESQ.

Flor Colón is Counsel to Xerox Corporation in Rochester, NY. Previously, she was a senior associate at Nixon Hargrave, Devans & Doyle, LLP, where she worked in the commercial litigation department concentrating in the areas of antitrust and securities. Ms. Colón is a member of the New York State Bar Association, the American Corporation Counsel, and the Greater Rochester Association for Women Attorneys. She is involved in many community and professional associations, including the Ibero-American Action League, the Board of Directors of the Greater Rochester Association for Women Attorneys, and the Eugenio Maria De Hostos Charter School.

CHRISTOPHER J. CADIN, ESQ.

Christopher J. Cadin is a career attorney for Legal Services of Central New York, Inc. His current concentration is primarily with Social Security disability appeals at the Federal Court level. He is a member of the Onondaga County Estates and Surrogate Court Practice Committee, the Federal Court Practice Committee, and the Onondaga County Bar Human Resources Committee. He also provides assistance to the Legal Aid Society of

Mid-New York's Older Americans' Unit, and is actively involved with clinics and presentations on senior issues and Social Security disability, including the annual Elder Law Fair. Mr. Cadin has also taught contract law at the Université de Lille, France.

DINNER PROGRAM

LOUIS A. CRACO, ESQ.

HONORABLE CARMEN BEAUCHAMP CIPARICK

Carmen Beauchamp Ciparick is an Associate Judge of the Court of Appeals. Judge Ciparick was appointed a staff attorney with the Legal Aid Society in New York City in 1967. In 1969, she became an Assistant Counsel for the Judicial Conference of the State of New York; in 1972, Chief Law Assistant of the New York City Criminal Court, and in 1974, Counsel in the office of the New York City Administrative Judge. In 1978, she was appointed Judge of the New York City Criminal Court and, in 1982, was elected to the New York State Supreme Court. She was appointed to the Court of Appeals on December 1, 1993 by Governor Mario M. Cuomo, confirmed by the State Senate and sworn in on January 4, 1994. Judge Ciparick is a member of NYS Judicial Institute on Professionalism in the Law.

JEREMY TRAVIS, ESQ.

Jeremy Travis serves as the fourth President of John Jay College of Criminal Justice of The City of New York. Prior to his appointment, President Travis served as a Senior Fellow affiliated with the Justice Policy Center at the Urban Institute, a nonpartisan research and policy organization in Washington, D.C. From 1994-2000, President Travis directed the National Institute of Justice, the research arm of the U.S. Department of Justice. Prior to his service in Washington, he served as Deputy Commissioner for Legal Matters for the New York City Police Department, Chief Counsel to the U.S. House Judiciary Subcommittee on Criminal Justice, and Special Advisor to New York City Mayor Edward I. Koch as Assistant Director for Law Enforcement Services for the Mayor's Office of Operations, and Special Counsel to the Police Commissioner of the New York Police Department. President Travis served as a law clerk to then-U.S. Court of Appeals Judge Ruth Bader Ginsburg. He also was the Executive Director of the New York City Criminal Justice Agency from 1977-79 and served six years at the Vera Institute of Justice. President Travis is a board member of the United Nations Interregional Crime and Justice Research Institute.

OPENING REMARKS - DAY TWO**M. CATHERINE RICHARDSON, ESQ.****MARK H. ALCOTT, ESQ.****REPORTS FROM BREAKOUT SESSIONS AND
CLOSING REMARKS****MARC WALDAUER, ESQ.**

Marc Waldauer has been practicing law for 34 years, primarily in the area of family law. He is a Former President of the Onondaga County Bar Association and Former Chair of the Family Law Committee. Mr. Waldauer is a past member of the New York State Bar Association House of Delegates, and he is a charter and current member of the New York State Judicial Institute on Professionalism in the Law.

DANIEL R. ALONSO, ESQ.**M. CATHERINE RICHARDSON, ESQ.**

**A CONVOCATION ON THE FACE OF
THE PROFESSION IV:
LEADERSHIP OF THE BAR**

OPENING SESSION AND KEYNOTE ADDRESS

LOUIS A. CRACO, ESQ.

CHAIR, NEW YORK STATE JUDICIAL INSTITUTE
ON PROFESSIONALISM IN THE LAW

Good morning, everyone. Welcome to the fourth convocation of the Institute on Professionalism in the Law.

This is the fourth convocation in a cycle which we began in the year 2000. This cycle was designed after quite assiduous conversations with our friends in the bar and the legal academy to find a way to engage in a meaningful conversation between those two components of the profession about the issues of professionalism, and to do so in a non-trite way, to explore ways of approaching our common interests that were not the “same old, same old,” as Dean David Leeberson of Columbia Law School¹ put it.

We began the cycle by examining longitudinally the question of what influences the professional formation of lawyers in the process of being selected for law school, going through law school, and being placed out of law school. That was our first convocation.² Our second convocation was one in which we worried about young lawyers.³ The third was a reprise of the first, focusing on the development of professional values in law school.⁴ Now we come to lawyers in a stage of life which has been variously called “after the seven-year itch” or “in the prime of life” or “mature lawyers.” You take your pick after you’ve heard what is said.

In this convocation, we are going to explore the factors that impinge on the notions of professionalism and the opportunities to discover what it means to be a lawyer in contemporary American society through the same kind of dialogue that we have had in the past. That approach is adequately set out in the materials that have been sent to you.

I want to thank the New York State Bar Association, and particularly Mark Alcott, for helping us with this convocation. We will be at the [NYSBA’s] Bar Center tomorrow morning and for lunch and dinner today. I also want to

1. Now president of Rice University in Texas.

2. See 1 J.N.Y.S. JUD. INST. PROF. LAW (2001).

3. See 3 J.N.Y.S. JUD. INST. PROF. LAW (2003).

4. See 4 J.N.Y.S. JUD. INST. PROF. LAW (2005).

thank Catherine Richardson and Joseph McCarthy, members of the Institute who have served as co-chairs of this convocation, which has been more than two years in the making. I will not tell you, because it would exhaust all the time involved, the amount of effort that has gone into that endeavor, including focus groups around the state and really serious and careful planning.

Most especially, I would like to thank the Court of Appeals for the honor they do us as well as the hospitality they extend to us in allowing us to convene here. We did that for the first time in the year 2000. We did it again for the third convocation. There is nothing that quite captures the combination of dignity and purpose that we are talking about as this courtroom does.

We are thankful, of course, most particularly to the members of the Court who have joined us today, and I must say personally to the Chief Judge who called us into existence all those years ago and at whose enthusiastic sufferance we have continued to prosper. It is my pleasure to introduce in her own house the Chief Judge of the State of New York.

HONORABLE JUDITH S. KAYE

CHIEF JUDGE OF THE STATE OF NEW YORK

Thank you, Lou. Thank you all so much. I want to extend a greeting to all of you on behalf of my Court of Appeals colleagues: Judge Ciparick, Judge Graffeo, Judge Read, Judge Smith, Judge Pigott, Judge Jones, and, of course, Judge Richard C. Wesley, who is indeed one of ours – just on short-term loan to the Second Circuit. I am so pleased, as well, to welcome our friends from the bar, from the Executive and from the Legislature. This is indeed a great occasion.

You have heard a little about the convocations. I just want to give you a word of background on the Institute. The Judicial Institute on Professionalism was created in 1999 in response to the recommendation of the Committee on Professionalism in the Courts, which was chaired by, of course, Lou Craco. Over the years I am proud to say we have implemented every single one of the recommendations of Lou's wonderful committee that was in our authority to implement. And naturally when it came to constituting an Institute, we thought first and foremost of Lou himself. Little did he know when he accepted my telephone call late one sunny August afternoon how enduring his service would be. So you have to be careful when you answer the phone, Lou. But fortunately for all of us, Lou has been the guiding spirit first of the Committee, then of the Institute from its very beginnings. Profound thanks to you, Lou, and to every single member of this truly extraordinary Institute on Professionalism in the Law.

As you have heard, the convocation on the first seven years of practice explored the concerns of the new lawyer of our century: heavy debt, pressure to

log in high billable hours, ethical concerns, incorporating pro bono work or bar association or civic activities, and working in an environment of unbridled, competitive pressures where the bottom line seems to drive everything above it.

Today's convocation moves on to what happens later, beyond the first seven years of practice, for lawyers who remain in practice and are not driven away by the factors that I have just mentioned. This convocation covers some really fascinating questions about experienced lawyers, questions that resulted from focus groups that the Institute conducted throughout the state. In the end, the essential question boils down to a simple one: what makes a complete lawyer – a complete professional – today?

Having been admitted to the bar 44 years ago, I can't help venturing a couple of observations. I share these both because many of the career issues were distinctly different for lawyers of my day and because, remarkably, many of them are unchanged. And I do not mean that as a compliment.

Today, for example, it would be unthinkable – illegal too – to tell a female job applicant, as women of my years were routinely and unabashedly told, that the firm's quota of women already had been filled. At the time I received my law degree, women nationwide represented about 3 percent of the total law school enrollment. Today the number is close to 50 percent. Similarly, in 1972 (the earliest year for which the ABA has provided data), minorities represented about 6 percent of total enrollments; today, the number exceeds 21 percent. So, most definitely the face of the profession has changed and is changing.

Back in the '60s and the early '70s, we were completely focused on just getting in the door without much thought of the impenetrable ceilings that hovered above us. We were concerned about survival in the workplace, about proving that we all belonged, and about avoiding discrimination. Today those are no longer the central issues, although they surely do remain serious issues. Instead, what seems to be rising to the surface is the subject of one of your panels today, and that is the subject of mentoring.

Mentors, of course, can guide new lawyers in advancing professionally in their employment and improving their chance for leadership positions in the workplace and in the community. They can guide other lawyers in expanding their contacts and knowledge, building a law practice, getting through job changes and personal crises, and finding opportunities to participate in public life, become a bar association officer or committee chair, among many possibilities.

One of today's panels, as I have mentioned, will be devoted to mentoring – mentoring of younger lawyers, peers, women, minorities, minority women, the need for it, how to do it, and the personal and professional satisfaction it can bring to both sides. That is a great idea, and it gives me great hope for the future.

I am optimistic, also, about the other two panels – participation in public life and pursuing an integrated life in law. Back in the early '60s, balancing work and personal life was an ever-present issue but a distinctly private agony for individual women. Over time, as more of us have entered the profession, the issue, thankfully, has become a topic of open discussion, lectures, articles, symposia and studies, but not yet solutions. Achieving the right balance, regrettably, remains an issue for women, but happily today it is also an issue for non-women, which means maybe at long last we will finally work together to find solutions.

Another dramatic change: computers, laptops, e-mails, Internet, BlackBerries, cell phones, configurations combining all of the above, instead of helping us become more efficient or making our life easier, have made us not only accessible to the demands of work at all times but also actually capable of working 24/7. And economic concerns have increased the pressures to spend more time working across the spectrum. Public interest positions affected by budgetary limitations leave staff workers with heavy workloads and limited resources to get the job done.

So, for many segments of the profession, serving clients and doing our job seem to have overtaken everything else, not only increasing the challenge of balancing work with personal life, but also making it harder to find time for public life, bar activities and pro bono service. Is that the kind of profession we want to have? Of course not. Will those pressures redefine our profession? I certainly hope not.

That brings me, finally, to a related subject that is very much on my mind. What happens to the leadership of the bar when they reach the increasingly diminishing mandatory retirement ages at their workplaces? Should we as a profession be encouraging moves to Florida to play golf and tennis? This is also an issue that has become more significant in recent years as we all live longer and healthier. Indeed, the New York State Bar Association addressed mandatory retirement in the January 2007 report of its Special Committee on Age Discrimination in the Profession.⁵ That committee was created by Mark Alcott, our great State Bar president, one of the speakers who follows me.

I am hoping that great ideas will emerge from the ABA Commission on Second Season of Service, of which I am the honorary chair. We will be making our final report this summer at the ABA meeting in San Francisco. One of our missions is to examine how senior lawyers might continue practicing law, whether for continuing income with a new career pathway or as a form of public service or pro bono work, or in some combination of the two.

5. New York State Bar Association Special Committee on Age Discrimination in the Profession, *Report and Recommendations on Mandatory Retirement Practices in the Profession* (January 2007).

For now I can think of one way to avoid wasting the talents of mature lawyers, and that includes the aging leadership of the bar, those who have pursued an integrated and satisfying life in the law. They are a great resource and a great treasure. Law firms, for example, could provide such lawyers with the space and the resources to conduct a pro bono practice. The lawyer and the firm will make a tremendous contribution to the community while creating a great opportunity for mentoring and supervising firm lawyers doing their own pro bono work.

So, what makes a complete lawyer today? We know the answer. A complete lawyer has a balanced life that includes serving clients as well as contributing mightily to the profession and to the community. But how do we get there? That is the tough question. I have no doubt, however, that the ensuing discussion over the next two days will take us a very long way toward finding the answer.

MR. CRACO

As I said, we are the beneficiaries of a partnership in this convocation with the New York State Bar Association. Not only is one of the co-chairs running the program – Catherine Richardson – a former state bar president herself, not only have we maintained momentum due to our collaboration in his term with Vince Buzard, but Mark Alcott has been most helpful in getting things rolling here today. May I introduce Mark for a few words.

MARK H. ALCOTT, ESQ.

PRESIDENT, NEW YORK STATE BAR ASSOCIATION

Good morning, everyone. Thank you, Chief Judge Kaye, and thank you, Chairman Craco, for inviting me to participate in this very important convocation and, in particular, for crafting this as a convocation that focuses on the leadership of the bar. I have found over a lifetime of experience in the public sector that, for a lawyer who wants to make a contribution, who wants to make a difference to the profession, to the legal system and to the community at large, the way to do it is through the organized bar. That is where the leaders of our profession gravitate. That is where they are able to make their biggest impact and their biggest contribution.

This year I have had the extraordinary opportunity to participate at the highest level of leadership as President of the State Bar Association. It is at once a sobering and exciting time to be a bar leader. We face serious challenges. At the same time, we are on the brink of an era of major change through the leadership of a reform-minded chief judge and a reform-minded governor. And so, already this year, my leadership colleagues and I have been at the forefront of the great issues that face our profession: defense of our core values, preservation

and protection of the independence of our courts and the independence of the bar, protection of the attorney/client privilege and the right to counsel, promotion of the rule of law, expansion of the diversity of our profession, and enhancement of access to justice for the poor and the weak.

Even as we defend and promote those core values, we are working for major change. And so, this year we have been deeply involved in efforts to adopt merit selection of our judges, to encourage truthful and dignified lawyer advertising, to bring an end to age discrimination in our profession, to advocate fair and enhanced judicial compensation, to work for a streamlined and transparent court structure, to seek modernized standards of attorney conduct, and to accomplish many other significant reforms. In all of these efforts, we strive to be the voice of the profession and, simultaneously, the advocate of the public interest. And in all of these efforts, we seek the collaboration of the court system, the law schools, the profession, and others who can help to advance these great and noble causes.

Gatherings like this provide the opportunity for us to do just that, for us to collaborate, to learn from one another, and to work with another. So, I thank you very much for giving me the opportunity to participate in this great convocation.

MR. CRACO

The sign on the front of the podium, which says Stephen Friedman, is about to become true.

The job description of a keynote speaker at these convocations – since regrettably, Chief Judge, we are not likely to come up with answers, but to refine the questions for further work – is to set the table for the discussion, to give a tour of the horizon of the things we are trying to at least fathom a bit. I asked Stephen Friedman to be our keynote speaker because if the day turned out to be sunny and 80 degrees and a large portion of the audience wished to instead play golf, we could leave Stephen here in the courtroom to talk to himself and the convocation would nonetheless be complete.

When I fell into the hands of the Jesuits as a young man and was taught scholastic logic as we then were, there was a maxim of logic which we were introduced to, which we had to learn in Latin, but I will spare you that. The drift of it was that from the fact that a thing is possible, you may not infer that it is, but from the fact that a thing is, you may infer that it is possible. Stephen is here to prove to you that it is possible because it is.

It all began auspiciously enough with a magna cum laude degree from Princeton and a magna cum laude degree from Harvard Law School and the law review editorship, but what is key about Stephen's contribution both to the bar and to this convocation is the extent to which he exemplifies the kind of integrated life in the law that we are going to spend two days talking about.

After a clerkship for Justice Brennan, he went to Debevoise & Plimpton. Over his career, he has been there and out and there and out. While he was there, he found time to become chair of the corporate department, but in the intervening time he was Deputy Assistant Secretary for Capital Markets Policy in the Treasury Department. He was a commissioner of the United States Securities and Exchange Commission. He was drafted by E.F. Hutton to be executive vice president and general counsel, so he was in-house counsel. And he followed that by being executive vice president and general counsel of the Equitable Life Insurance Society of America, again an in-house counsel, and then back to Debevoise & Plimpton. Along the way he found the time to be the chairman and chief executive of the Practising Law Institute, to be a member and chair of too many bar association committees to begin to mention, a director of various corporations, but also of the National Association of Securities Dealers (NASD). And then when, as the Chief Judge mentioned, the encroachments of time led a partner to come to him one day and ask, "What are your plans?," he became the Dean of Pace Law School to begin a whole new career. One might think it was new except that he had found time along the way to be an adjunct professor of law at Columbia.

So, he has been in public service. He has been hugely successful in private practice. He has been in the professional activities of the bar. And he is now one of those people in the academy with whom we try to engage in a conversation. It is my great pleasure to introduce our keynote speaker, Stephen Friedman.

STEPHEN J. FRIEDMAN, ESQ.

DEAN, PACE UNIVERSITY SCHOOL OF LAW

I have been asked to consider the pressures that bear on mature lawyers, particularly those arising from changes in the legal profession over the past 30 or 40 years. What I would like to talk about is how we as a profession have responded to those.

In my letter of invitation, mature lawyers were defined as those who have been practicing between 8 and 25 years, which puts the mature lawyer at the upper end at about 50. As you will see, I have extended that somewhat because it is really in their fifties and sixties that lawyers begin to think seriously about what has happened to the profession during their lifetime and to ask questions about their own role.

A lot of what I am going to say is applicable principally to midsize and large firms and principally to lawyers who are advising businesses rather than individuals. That is in part because that reflects my own practice and experience and in part because I think that single practitioners and lawyers in small firms have quite different experiences and in some sense are happier.

The pace of change in the legal profession during my career has been really astonishing. Many lawyers bemoan those changes and ask why we cannot go back to the old ways of doing things. Are they right?

Let me begin by harking back to my high school euclidean plane geometry and give you an axiom and a proposition. The axiom is pretty simple: nothing stays the same, everything changes, including the legal profession, and most certainly structural changes are not reversible. I call the proposition Friedman's Law; it arose out of a conversation I had with my seatmate on an airplane about 10 or 12 years ago. He was an architect in his early sixties and he was bemoaning the changes in the profession of architecture during his career. As he talked, I started to think about similar conversations that I have had with lawyers, physicians, accountants, and others. And then I formulated Friedman's Law, which holds that the senior members of every profession believe that it has declined substantially in quality during their lifetime. That was true of Cicero, and I think it is true of successive generations of lawyers.

We know it is not possible if we begin measuring the decline with Cicero. We would all be practicing law in the nether regions of hell by now. So why is it that so many of us think there has been a decline? In part it is simply because most of us accept the profession and our law firms as they are when we first joined them, and all of the changes after that are seen as a deterioration from a state of platonic perfection. In short, we confuse change with decline.

Change is inevitable because the needs of our clients change, the structure of the markets changes, the economy changes, our competition changes, and law firms have to accommodate to those shifts. It is a mistake – and this is a critical issue – to confuse the traditional ways of doing things with the traditional values that are so important to our profession. Our challenge is to identify the values we want to protect and then to develop new ways of doing things that accommodate to the changes and protect those values. The problem is that lawyers hate to change the way they do things. They hate to change the way they practice law and the way they organize their law firms.

We can regret the growth of the notion of law as a business, but we cannot deny it and we cannot wish it away. In many ways it's more a lament than an analysis. Law has always been a business in the sense that it is a personal service rendered for profit. So let me put my thesis in its most provocative form, and that is the problem is not that we've become a business, but that in many respects law firms and lawyers are not businesslike enough.

Now what in the world does that mean? What I mean is that most law firms have adopted only part of what it means to be a business, a pretty rudimentary measuring of legal output and a crude set of financial incentives. It is a kind of legal version of 19th-century capitalism.

The other part of being a business includes the steps that make great businesses great: developing and transmitting a strong culture and values; taking a

great deal of care to guide the career paths of both associates and partners; thinking about how to re-engineer the way we do things, not only to make them more efficient but also to make the rendering of legal services better, to raise quality. And there are a lot of other things.

I'm going to come back to this theme, but I would like you to reflect for a moment and compare the amount of time that firms like McKinsey, General Electric or Citibank or even the U.S. Marine Corps devote to training even their most senior people and to building and inculcating the organization's values and culture. Compare that to what the traditional and typical American law firm does.

We lawyers are really superb at dealing with changes in the law. We exist and make our living, in effect, on the cutting edge of change, but we are pitiful in thinking of new ways to structure the way we practice law and the way we render legal services. Re-engineer the practice of law? It is a really unheard-of idea.

What I would like to do is explore three or four of the major changes that have taken place over the last 30 years or so, see how we cope with them and see, if we can, how much more potential there is for increasing the quality of the professional life of American lawyers.

Let me start with the astonishing growth in the complexity in the law. One only has to look at what has happened to the Internal Revenue Code to see that. That growth in complexity has been mirrored in every area of law, and it has been amplified by the growth of wholly new areas – health law, environmental law, intellectual property, employment law, and a lot of others.

That is a good development, because one of the really great things about being a lawyer is that it is possible to change your job without changing your seat. As the law changes and new legal and regulatory systems appear, lawyers have to master those developments. I have always found that process tremendously exciting. And for many of the lawyers I know, that process represents a major source of change and excitement and challenge in their lives.

Complexity has another effect, though, and it is not quite as attractive. Sophisticated clients, and particularly those who deal with outside lawyers through general counsels, actually want a lawyer who knows what he or she is doing, and they often want a lawyer who has an established reputation in a particular area. They ask corporate lawyers for deal lists and litigators for examples of similar lawsuits that they've handled. They are reluctant to pay for on-the-job training for associates and unwilling to pay for partners.

In the good old days, one of the best things about law practice was that one could be a real generalist. When I was a young lawyer, I worked on tax matters, fought labor elections, did corporate work, and worked on litigation. While many of us think that we still have the capacity to do that, our clients do not.

The high legal fees that have come to characterize practice these days have created great pressure for productivity and for instant knowledge. As a consequence, many of us have found ourselves knowing more and more about less and less. We have become specialists. And for young lawyers the pressure for early specialization and early productivity has become intense, sometimes at a really absurd level of detail. That trend is not confined to large law firms. It affects medium-sized firms and, based on conversations I have had, it is increasingly affecting individual practitioners. It also raises questions about the traditional learn-to-think-like-a-lawyer approach to legal education. Is that trend reversible? Clearly it is not.

What is the appropriate response? The appropriate response is to recognize the boredom that comes with detailed specialization for young lawyers and to give more thought to creating career paths for them that will provide constant change, growth, and challenge. That is the reason that in so many companies the human resources department has become a major one in senior management. In contrast, law firms do not even have a human resources department. They have what could be best described as a personnel department. In general, they pay astonishingly little attention to what motivates associates and partners.

It is assumed that associates are going to be motivated by the desire to become partners. Instead, they leave in droves. It is assumed that partners will be motivated by the desire to be successful. As long as they are working hard and bringing in new clients, they are left largely alone. When that stops, what happens? I will come back to that later, but it is not much of a way to run a business or a profession.

A second major trend has been the increase in diversity in the legal profession. There were eight or ten women in my law school class. Now, about half of all law students are women, and about half of all associates hired by large law firms are women. And there the challenge begins, because women associates become partners at a much lower rate than males. Is that discrimination? Some think so. I think it is because many of them leave before they reach the point that they are considered for partnership.

Both the hiring and the promotion of other minorities, especially African Americans and Hispanic Americans, have lagged even further. If you look at a demographic projection of 22-year-olds in America by ethnic background, virtually every ethnic group dribbles along at a slightly increasing rate except Hispanic Americans, who are projected to increase on a curve that rises at a very steep angle. That is something that the legal profession really is not dealing with.

What is standing in the way of hiring and promotion? In the case of women, law firms are losing a lot of their most talented lawyers because of the pressures and the time demands of law practice. Law firms have not come to

terms with the fact that those pre-partnership years are also the prime childbearing years.

Many firms, including my former firm, have introduced part-time programs for women. There was an article in the *American Lawyer* not long ago that featured one of my former partners who is described in the headline as a part-time “powerhouse.”⁶ May Beth said in this interview that she actually works five days a week, but she goes home at 6:30 or 7:00 instead of staying later. Well, that is a schedule that does not work for too many women. What is needed is a means for women who desire to, in effect, get off the partnership track, to work at a drastically reduced schedule for some period of time to keep their hand in, and then get back on when they are ready.

Most lawyers would tell you that that kind of path is not consistent with the demands of modern law practice. My question is, how long can law firms think that way when half of all the people they hire are women? If lawyers brought the same imagination and creativity to this problem that they bring to the legal problems of their clients, this problem could be solved.

There is another approach. This would benefit women who practice law for 2 to 5 years then go home to be full-time mothers and then, 10 to 14 years later, would like to return to law practice. At that point they are totally out of touch with the changes in substantive law in their areas. Their skills have degraded through non-use. They do not have a lot of self-confidence as lawyers. And it is pretty hard to convince a law firm that they are good people to hire.

At Pace Law School we have begun to offer a one-semester, part-time program for these women which will focus in successive terms on different substantive areas, has a major focus on skills, and ends with an externship in a law firm or corporate law office. Is that going to work? We will see, but it requires law firms and corporate law offices to embrace this idea. I think they will.

Other minorities present different challenges which are beyond what I can address here, but more attention particularly needs to be devoted to attracting the best minority students to law as a profession and to law school; to creating effective role models, which is critically important; to mentoring; and to very individualized job placement.

Another major trend has been the increased mobility of lawyers. As with these other developments, there is an upside and a downside. The legal profession, along with academia, is almost unique in America in offering people the opportunity to leave for a stint in government, business, academia, or elsewhere, and then to return sometimes to the same firm. That is very special.

But there is also an extraordinary mobility, which certainly did not exist when I was a young lawyer, for both partners and associates to leave a firm and

6. Amy Kolz, *Obstacle Course: To Make It in the Male-Dominated World of Litigation, Women Have to Break Through Old Stereotypes to Build Top-Tier Practices*, AM. LAW., Jan. 2007, at 88.

join another firm. The attrition rate at large law firms for associates is about 25 percent a year. Even more astonishing to me, Hildebrandt International reports that in 2000 and 2005 almost 2500 partners moved from the 200 largest law firms to another firm. I assume that includes some mergers and some wholesale movements of practice groups.

Of course, there is a downside to this mobility. From a lawyer's point of view, when you come back to law practice after four or five years away, you are often out of touch with the substantive law. You are also in the position of having to build a law practice all over again, which I can tell you from firsthand experience is a challenge.

From the firm's point of view, the most dramatic effect has been this extreme movement of associates and the loss of partners. An associate turnover rate of 25 percent is very costly and has a drastic effect both on the economics of the firm and the quality of professional service, because there are not enough senior associates. Law firms are losing many of their best lawyers after three years, which is the point where they are just beginning to become real lawyers. The advantages of convincing those associates to stay for another three years are enormous, but how many law firms do you know who are doing things like offering stay-pay bonuses to associates for staying another three years? It is not the way law firms do things.

The growth at many firms in the middle level of senior counsel (senior to associates, less senior than partners) has been a partial response, but by and large, law firms, no matter how large, have not really begun to question the traditional structure of "up or out" which was developed, really, for a different age and different size firms. Contrast, for example, the number of senior bankers at the nation's major banks who are highly paid and doing important work, but are not on a path to become managing directors. Is that something law firms should do? I don't know, but it is something worth experimenting with.

Now let me turn to the elephant in the room, which is the growth of the notion of law as a business. When lawyers talk about that, they really are talking about two or three or four very different things. One certainly revolves around the erosion of those factors that make the law as a profession different from a commercial business. We have a special code of ethical behavior. Lawyers have obligations to the courts and to the justice system. We believe in the importance of a lawyer maintaining his or her independence from the client. The profession has an historic commitment to public service, and there is a tradition of civility among all lawyers.

There is no doubt that in the past 20 or 30 years those values have been eroded, but the erosion does not necessarily follow from a desire to become profitable. It comes from a failure to communicate and formulate effectively the importance of professional values and even more to reward those lawyers who embody them. If a firm rewards only the ability to produce higher revenues,

that is what it will get. If it gives those rewards notwithstanding a lack of civility or public service or candor, then it is sending a very clear message to all the lawyers in that firm.

Another problem with law as a business arises simply from the fact of size. Being in a large firm simply feels more like a business. Size brings a lot of advantages. For midsized firms, growth has afforded those who used to practice in smaller firms the advantages of diversification of practice, partners with expertise in a lot of different areas, geographical diversification, more financial stability, and often higher earnings. For the large firms, it has provided real worldwide diversification and the ability to bring enormous resources to bear on very large and complex problems or litigations that their clients face that simply would be beyond the capacity of a smaller law firm. In part, the drive for size is part and parcel of the drive for better client service.

A lot of lawyers feel it is just not as satisfying to practice law in a very large firm, and I agree with that. Large personal service organizations need to be managed in a way that smaller ones do not, and you need more formal techniques. Levels of work and contributions have to be measured and expectations have to be communicated, whereas in a small firm everyone knows who is not working hard. Even their spouses know which of their partners are not working hard.

In dealing with size, we need to look at the techniques that have been used by some of the larger non-legal personal service firms. Every good management strives to create a system of social and financial incentives that will align the objectives of its most important participants with the objectives of the firm. Law firms are no different. They need to build a culture that combines professional values with the profit motive. They need to assemble a mosaic of skills to permit them to render service at the highest level. They have to teach partners how to manage major projects. How many firms do you know that do that? They have to strive to produce not only high quality legal service, but high quality legal service at the lowest relative cost. How many firms do you know that teach their associates that there is a high value placed on rendering high quality legal service at the lowest possible cost? I think it is the opposite. Firms have to think broadly about how to motivate both partners and associates and plan their career tracks. These things receive little or no attention in most law firms.

Now, let's spend a moment on the impact of money. The role of money is often decried in discussions of the legal profession and is identified with greed and unprofessional values. And indeed sometimes that is the case: but it is surely not bad that lawyers are in a position to earn comfortable livings and that some lawyers are in a position to earn a lot of money – not a lot, I hasten to add, by the standards of the hedge fund industry. But its effects can be pernicious, and sometimes that is just the result of economics. One of the effects of

the extraordinarily high salaries that associates are paid these days is that it creates enormous pressure for high hours and high productivity. That is not greed. It is economics.

Those firms which reward only new business – and there are firms like that – find their partners endlessly squabbling about who owns clients. That cannot be hidden from clients, and I can tell you as a former general counsel that clients really hate it. Partners in such firms do not like to work on the projects of other partners because they are not rewarded for it. Similarly, firms that primarily reward aggregate hours find that the hours magically increase, often at the cost of other activities that are important to the firm.

So, is this emphasis on money inconsistent with professional values? It need not be so. Many lawyers have the misguided idea that an emphasis on profits, on providing financial incentives for high performing partners, means they are operating as a business. Businesses that act like that end up like WorldCom and Enron. In fact, as we have seen, operating as a business requires much more.

Finally, let me spend a moment on the growth of corporate law offices, because this is a development which has been too little appreciated. First, it has some real benefits. Being a general counsel is really a terrific job. It taxes a wide range of a lawyer's skills. The general counsel is an advisor to senior management and the board. He or she is charged with the responsibility of establishing the level of legal risk that the enterprise is assuming, and that is a fascinating undertaking. The general counsel is the primary decisionmaker on most legal issues and therefore is a highly trained client as well as a lawyer. And the general counsel is usually much closer to his or her clients than virtually any outside lawyer.

Those attributes are present in varying degrees throughout a corporate law department, and these jobs have proved to be wonderful for a wide range of associates and partners. Also, they present a much more manageable career track for women. When I was a general counsel, a very high percentage of the best resumes I saw were from women. And if you look at a list of the general counsels of our largest companies, a large number of them are women.

Like everything else, there is a downside here as well. Just as the corporate counsel's role has become more interesting and more challenging, there has been a parallel and related drop in the relationship of outside lawyers to those clients. At the most basic level, this has meant that the clients of a lot of lawyers are other lawyers—in-house counsel—and that is a relationship that many lawyers find less satisfying than having a “real person” as a client.

More importantly, the growth of the importance of general counsels has meant that there is more distance between the typical outside counsel, and the senior management and the board. When an outside lawyer appears at a board meeting to discuss a major litigation or a major transaction, the board has a

great deal of respect for that lawyer's experience, independence and judgment, but unless there is a longstanding relationship, there is a diminished level of confidence. I have seen time and again board members turning to their general counsel for confirmation of the advice given by independent counsel.

This changed relationship is one of the reasons that many lawyers in their fifties and sixties become unhappy and frustrated. It is because too many of them are doing the same things that they did in their thirties and their forties. This development has truncated the natural development of a lawyer's career, which begins with a learning phase, and then moves to a phase of real technical mastery. Lawyers in their thirties and forties really know what they are doing. They spend time managing major projects and major litigation. The last stage was to evolve into an advisor to the senior management and board. That role is increasingly occupied by the general counsel.

What is the solution employed by most firms? It is early retirement. I am a proponent of mandatory retirement, but early retirement raises quite a different set of social and professional problems. Most of those lawyers are highly talented and experienced. In how many firms is anyone thinking about their career paths? A well-run business would look carefully at new ways to leverage that talent and that experience.

There have been many other important changes in the legal profession and I wish I had time to talk about them, but I do not. My conclusions are simple. Size and money are not the basic problems. It is the failure to recognize that the preservation of the things we care most about in the legal profession, the values that have made this profession such a remarkable institution in American life, cannot be accomplished without a major devotion of time and effort. This is not primarily the job of our bar associations. It is the job of the leaders of our law firms. Those leaders have much to learn from the best American businesses. If we learn those lessons well and if we meld them with the core values of our profession, it will continue to offer a life of unparalleled flexibility, personal growth and satisfaction for American lawyers.

PANEL I – LAWYERS IN PUBLIC LIFE

M. CATHERINE RICHARDSON, ESQ.

CONVOCATION CO-CHAIR

MEMBER, NEW YORK STATE JUDICIAL INSTITUTE ON PROFESSIONALISM IN THE LAW

When we were planning this convocation, one of the things we did was to hold focus groups in five different areas of the state. We talked to lawyers just like you from every cross-section that we could get: from the judiciary, government and academia. We asked all of them, “What kept you in the game? Why have you stayed with the profession, seem to be very happy in the profession, and doing well in the profession?” Three major topics kept coming up and those became the topics of our three panels.

The first one is, what role does participating in civic life play in the satisfaction of your life in the law? We are very happy to have people who have really done it. We have John Feerick, who was the Dean and is now the Dean Emeritus of Fordham Law School. He started with Skadden, Arps, where he headed up the labor department at one time. He was a practicing attorney and then he saw the light. He probably is the only person in this room who has chaired more bar committees and forums than Lou Craco. And I’m sure that you have all read recently that he has been asked by the Governor to chair the Ethics Commission that is going to transform into the Commission on Public Integrity sometime in the fall.

Then we also have, as you have heard already, the Honorable Richard Wesley, who started out as a New York Assemblyman and then went to the Supreme Court, Appellate Division, Fourth Department, and the Court of Appeals. He is currently a Judge in the United States Court of Appeals for the Second Circuit.

Next we have Senator John DeFrancisco, who is a practicing attorney in Syracuse. He served on the Syracuse Common Council for eleven years and he was on the Board of Education. He has been a State Senator for fifteen years, and he is Chair of the Senate Judiciary Committee. But John is still a practicing attorney and has managed to integrate civic life and involvement in our community very strongly.

And then there is the guy who probably has the most fun job right now, Richard Rifkin, who is Special Counsel to the Governor. He started out as a practicing attorney, then got to be Counsel to the Bronx Borough President, which must have been a unique experience. He has been Executor Director of the State Ethics Commission, so John [Feerick] and he will be talking about things like that.

We are going to ask you to tell us why civic service is so important to you as a professional. And maybe the Senator can tell us about the decline in the number of lawyers in our Legislature over his lifetime in the Legislature. Is there something we can do as an Institute to make sure that the value of giving back to the community, government, and the judiciary, isn't lost with this generation or the generation after that? Is there something our bar associations can do? What can our law schools do? John [Feerick], I will ask you to begin.

JOHN D. FEERICK, ESQ.

DEAN EMERITUS, FORDHAM LAW SCHOOL

When you called me, Catherine, and asked me to be a member of this panel, you said to me, "Tell those who are here why you do what you do." What influences each of us, I suspect, is a complex world of the conscious and subconscious.

I was born in the Bronx 70 years ago, the first child of immigrant parents. My parents' main goal in life was to educate their five children and see them reach a point where they could be independent citizens. They worked exceedingly hard and loved America, and were grateful for everything they had received here. They did whatever good they could do for others, and that is the example they gave me. My Catholic faith, which I received from them, became an influence in my life from the earliest age, predisposing me to go in different directions, and influencing my choices and priorities in life.

But it was not until I entered Fordham College and met a teacher by the name of William Frasca – a lawyer by background – that the world of American government opened up for me. He was the chairman of Fordham's political science department and taught first-year college students Classic American Government. That really was my first civics course. I found the subjects of the Constitution and the workings of democracy as expressed in that document and its history absolutely fascinating. I knew then that I wanted to be an active citizen, and as a college student I participated in the student government. I loved my years at Fordham College and learned so much from the judgments of my other teachers. The interests that Professor Frasca instilled in me took me to law school, and as soon as I graduated from law school to writing on the subject of the Constitution.

The very first article I wrote, dealing with the minefield of issues involved with presidential inability,¹ was published a month before President Kennedy's assassination and was mentioned in *The New York Times* a few days after the assassination. As a result of my article, I was invited by the leadership of the

1. John D. Feerick, *The Problem of Presidential Inability – Will Congress Ever Solve It?*, 32 FORDHAM L. REV. 73 (1963).

American Bar Association to serve on a committee set up by the American Bar Association to assist Congress to address the holes in the Constitution in the areas of presidential succession and inability. That experience changed my life.

The committee consisted of 13 individuals, including very distinguished citizens such as former United States Attorney General Herbert Brownell and the future Supreme Court Justice Lewis Powell. What I remember from the experience of serving on that group was the earnestness of the group, with everyone participating and encouraged to do so in an effort to forge a series of recommendations that took account of the history of the problems involved, and to respond with solutions that were both practical and respectful of the principle of separation of powers.

The committee was chaired by Walter E. Craig, Jr., who was then President of the American Bar Association, and later Chief Judge of the Federal Court in Arizona. He made clear that no one was too young to be heard. I was fascinated by the openness of the process, how everyone challenged each other's points of view, and by the spirit of compromise and of making something happen for the people of the country and future generations. Everyone was involved in the act of creating the outcome.

There was a clear division within the committee as to whether the Constitution should have a lot of detail concerning the determination of presidential inability, or simply leave it to Congress to establish the procedures. Not unlike the world at large, the group compromised and melded the two approaches. Everyone signed on to the final document, and three years later it became the 25th Amendment to the United States Constitution.

I felt blessed at the time to have had that opportunity, from which other opportunities came, including serving as the reporter for the American Bar Association's Commission on Electoral College Reform, and then the reporter to the American Bar Association's Constitutional Conventions Study Group. Both groups generated proposed legislation and amendments to the Constitution. I was privileged at the request of leaders of the bar to testify before Congress many times on these subjects, and worked with the committee staffs involved. I was inspired by the dedication I saw on the part of so many elected officials and their staffs. In many respects, my participation in these activities was that of a student, and I found them all fascinating.

When I was asked to chair the New York State Commission on Government Integrity in 1987, and then by the Chief Judge to chair the Cameras in the Courts Committee, and then also by the Chief Judge to chair the Commission to promote confidence in judicial elections, and most recently by the Governor to chair the State Ethics Commission, I felt obliged in each instance to do so as a way of honoring the memory of my parents, expressing my gratitude for the blessings and opportunities I have had as a lawyer, and assisting those charged with important public responsibilities in their work. I sought none of the posi-

tions I have held, and in some cases I felt a great reluctance about taking them on, including recently the Commission on Ethics in the State. I have been inspired by the people with whom I served in past endeavors, such as the late Cyrus Vance and former New York Court of Appeals Judge Bernard Meyer, with whom I served on the Commission on Government Integrity. They never said no. And how could I as in a sense their acolyte say no when asked to do this recent commission, which so much continues the work of the Commission on Government Integrity?

The glue in all of my public and private work as a lawyer, and academic as well, has been my wife; without her support and understanding, no involvement would have been sustained.

As I close, I believe and was taught to believe from my earliest days that each of us is responsible for what happens in our government and in our communities. We each wield enormous influence within our communities and organizations. We often don't realize it, and we often are not reached out to and asked to serve. There is a wellspring of interest in doing good works in public life that exists in so many of the lawyers I have known and know. We need to find more ways to reach out to lawyers and to let them know they are wanted and needed.

Many give quietly and selflessly through service in politics, as members of governmental staffs, on bar association committees, and in pro bono undertakings, and in not-for-profit, church, community and other activities.

In the final analysis, as Judge Learned Hand reminded us, liberty lies not in the laws and Constitution, but in our hearts. I share deeply the view of the late Dean Robert McKay that there is no way we can ever repay the debt we have received as a result of the opportunity to serve justice as a lawyer. Thank you.

MS. RICHARDSON

That's a hard act to follow. But growing up as a child in Syracuse, I always thought that nothing ever happened in Syracuse unless our City Common Council or the County Legislature or the State worked with volunteer lawyers. So my impression of lawyers was that they were part of everything. And Senator DeFrancisco has certainly been in our community. John, it's all yours.

SENATOR JOHN A. DEFRANCISCO

CHAIRMAN, NEW YORK STATE JUDICIARY COMMITTEE

For many years I thought, why have I gotten involved in this? It is not an easy thing to be a legislator; you never make anybody happy, and usually you make everybody unhappy. Having to deal on a day-to-day basis with the media, who in many cases doesn't understand the issues but is not short on opinions, is

not easy either. I have been thinking about this for years, because I was on the School Board for four years, on the City Council for eleven (the last three of which were as President), and have now been in the Senate for fifteen years. About seven or eight years ago, I thought I knew why people run for office. Four years ago, my idea was confirmed unequivocally when my son was elected to the City Council in Syracuse. It is simply a genetic defect, and the gene was passed on to one of my children.

The real reason I got involved in public life is because of those children. I was a parent who was extremely upset with the School Board of the City of Syracuse about several issues. I would go to various meetings, and a Democrat on the School Board encouraged me to run, even though I was a Republican. The issue that was to be resolved was resolved before the election came up, so what used to be meetings of hundreds of parents boiled down to the meeting of seven candidates for three positions and the people who came along with them to help them campaign. It became a very interesting experience for me. I really enjoyed it. As long as that position was a part-time position and I could still practice law and I could give to the community, I enjoyed it.

When the opportunity arose for the City Council and President and the Senate, the principle was always the same with me. I have had opportunities to run for offices that would be full-time, but I would never do that because I always want to practice law. That is my profession, that is what I want to do with my life, and I will continue to do that. When your livelihood and your career don't depend on public life, you have a lot more independence to say what is on your mind and do what you think is right, rather than worrying about what every group wants and be in a position to, if not satisfying that group, worrying whether that career is going to continue along the career path of public life. So it has worked fine for me.

I never in my wildest dreams even a few years ago thought that I would be Chairman of the Judiciary Committee, that I would be working with Judge Kaye and the Court of Appeals Judges and all of the other judges in the system. I never thought that I would be on panels with distinguished members as I am now, that I would be invited to the Bar Association, to the President's event in New York City, and talk about judicial selection, or that I would soon go down to New York City again and talk about court consolidation. I never thought that it would happen, but it all evolved in that area.

Most recently, being Chairman of the Judiciary Committee, it is incumbent on me – and it has always been my thought – that I should still be concerned with my profession and make sure I am involved in decisions that I think will help the profession be better.

I am a trial attorney. The definition of a trial attorney in the Legislature is that you are a plaintiff's attorney. If you try cases for defendants, that's okay, but if you are a trial attorney there is something inherently bad about it.

I thought very strongly that some of the lawyer advertising was just out of sight, it was just over the top. I wrote a letter to Judge Kaye, and she appointed a committee headed by Judge Pigott, which moved very expeditiously. There was input from many, many people. They came out with a report, and it happened. It truly happened. Now you don't see lawyers jumping off the top of buildings or stopping trains and putting a very bad light on attorneys, especially plaintiffs' attorneys, which we don't need; we've got enough problems. Being an attorney and a legislator at the same time, you are a really bad person, because every possible bad thing in society is created either by lawyers or legislators. So it has been extremely gratifying working to dispel that.

Sometimes the various people who have a stake in the system disagree on various issues, but it is a healthy disagreement. Hopefully we get solutions, such as ones that will help the legal profession and help deliver services to not just the big guys and the corporations, but also to the little person in this community who has legal rights and unfortunately in many cases does not have access to the courts because of financial reasons.

As far as lawyers in the legislature, one-third of the Senators are "attorneys," and about 25 percent of the Assembly are "attorneys." I put that in quotation marks because they are attorneys by training, but not necessarily practicing attorneys. Many of the decisions made by many of these non-practicing attorneys are more compatible with certain decisions that might be from special interest groups for various reasons. Many are career politicians, which is a very difficult position to be in and to remain independent.

In any event, there are fewer and fewer attorneys in the Legislature, and fewer and fewer of them truly practice law. And when you get away from practicing law, the idea of the profession may not be as important to you as if you continued to practice and wanted the profession to be regarded in a good light. The Legislature could help enhance the practice of the law in many respects.

I had many other things to say, but I know there is going to be a question and answer session afterwards, and I want to leave enough time for the next two speakers.

HONORABLE RICHARD C. WESLEY

JUDGE, UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Before coming here today, I had a conversation with two people who are at the beginning of their legal careers. One is Sarah Elizabeth Wesley, who is a first-year associate at White & Case. It disturbs me greatly that even with the cost of living adjustment that I get on the federal side, she is going to make more money than me this year, and yet I still get stuck with the tab at Smith & Wollensky when we go out to dinner when I'm in New York. I think this is an indication to some degree, how our profession is changing and perhaps our

generation. I also have a 60-year-old brother who completed 32 years as a teacher and high school administrator and who is a 1-L at the University of Buffalo Law School. The fact that he is going into law as a second career is an indication to some degree of how our profession is changing.

I come from a very small town. It is a very rural community. It's called Hemlock, New York. There were five people in my class until I went to the seventh grade. Like John Feerick, I think a fair portion of why I ended up where I am is because of my upbringing. I had a mother who was very active politically – a Republican – and came to know our local Assemblyman. When I went to the University at Albany as an undergraduate majoring in history, I was able to procure a job working for him. His name is Jim Emery.

Jim was one of the more influential people in my life in terms of public service because I spent a great deal of time working with him on constituent problems, and I found that enormously rewarding. It may be someone else's bridge, or it may be someone else's culvert that overflows on a regular basis; but when it is your constituent, it is a pretty important bridge and pretty important culvert. And one of the things that I was tasked out to do was to do that.

When Lou Lehrman ran for Governor, Jim ran for Lieutenant Governor. By then, I had graduated from law school and had practiced for a couple of years in Rochester, at Harris Beach, and then had gone back to a small private practice in Geneseo, New York, and was really quite enjoying it. I had continued to do some work for Mr. Emery and enjoyed the legislative process, but when he decided to run for Lieutenant Governor and people looked for a candidate to replace Mr. Emery as Assemblyman, I was not the most willing candidate at first. However, I took to it eventually and enjoyed the four years that I was in the Legislature.

Of course, being a Republican in the Assembly for the last 30 years has not always been a pleasant experience. However, I met some great people there and had some wonderful opportunities, and my law career and my law degree were most helpful to me. I served on the Codes Committee when Mel Miller was the chairman. Mel ran a very good committee for all of the members, both Republicans and Democrats, and I enjoyed that aspect of it.

But I don't think that one appreciates how much one's life is defined by what one does until one walks away from it. John DeFrancisco is right: most of the people with law degrees who serve in the Assembly and the Senate really don't practice as much law as perhaps they would like to do.

I had a growing sense of dissatisfaction with my personal life. Being a legislator takes you away from your family for extraordinary periods of time; it is very tough on you. And so, after two terms, I decided I was not going to run for the Assembly again. Then fortune crossed my path – an opening occurred at the Supreme Court in the Seventh Judicial District. Although I was only 37

at the time, a number of people thought that I would make a good candidate. I ran for that office and was elected.

Judging has altered my life in many ways. I am a much better father, a much better spouse, a much better citizen for having judged. Judging enriches your life. It startles me every day when I wake up because I am excited about going into the office and talking with my clerks and working on an opinion, whether it's an indenture or a joint venture or some immigration problem, or a certified question to the New York Court of Appeals. Back when I was at the New York Court, getting those certified questions was always an exciting opportunity for me.

Internships and opportunities for young people to get into public service and public offices are very important. I take an intern or extern every semester. To be honest with you, it is more work than what I get out of it. But I like to do it because I am loyal to my law school, and also it is important to provide those opportunities for young people who may not necessarily have an opportunity to clerk at a later point in time.

So internships are extraordinarily important; in particular, prosecutor's offices, public defender's offices, within the Family Courts, and other areas. I know that there are many of those opportunities in the summer for young people within the New York state courts. In fact, I am regularly on the phone with [Chief Administrative Judge] Jonathan Lippman trying to place people I know who are interested in these kinds of things. I enjoy doing that because I like to provide those kinds of opportunities. I got paid to do it when I was working for Jim Emery back in the late '60s, but I think giving those opportunities to young people is very rewarding.

From the standpoint of satisfaction, I have also tried to encourage a lot of people who were extraordinarily good candidates, regardless of their political party, to run for judicial office. I have my own personal views about that, but be that as it may, that is how one gets to be on Supreme Court or Family Court or County Court in the western part of the state. I always thought that I had an obligation to encourage people who were going to be extraordinarily good judicial candidates to run for office because as the coin of the judiciary rose, then the value of the judiciary rose, and the quality of justice rose, and the confidence in the courts rose. So I thought it was another obligation of mine to do that.

When I had conversations with some of these really good practitioners, I would say to them, "You have a pad beside your bed, don't you?" They would say, "Yes." "Why do you have a pad there?" "If I wake up in the middle of the night and I have an idea about a case, I want to write that down, or if I've suddenly thought about a statute of limitations that maybe I'm going to blow, I want to write that down." I said, "If you run and win this election, you can throw the pad away."

There is a great deal of calm that comes to one being a judge, and yet there is a great deal of responsibility. One must balance the two; understanding the fact that the cases come to you is kind of leveled off with the sense of incredible responsibility that one faces, whether one walks out of that door, or walks into Albany County Family Court, or walks into a Justice Court held in the Town of Herkimer, probably on Wednesday night sometime around 7 o'clock in the evening.

It has been enormously rewarding for me. I cannot imagine having done anything else in my life. I feel incredibly fortunate that those opportunities have come to me. It has brought me into the paths of people like Judges Levine, Smith, Ciparick, Graffeo, Read, Kaye, Pigott and young Judge Smith here – “Smith the Younger” as they refer to him at the New York Court of Appeals. I have not served with him, but we have come to know each other well.

It is a large fraternity and sorority of people who serve justice, who do so without trying to make too much flash or flare, and do so in the name of a system to which they adopt their lives. They mold their lives to that, and that changes them immeasurably.

Lastly, I stress to those who come from the larger firms that some of these public service opportunities would be a wellspring for talented young people. Many people go into public service at an early age because they want to be where the action is. A lot of people become assistant district attorneys or public defenders because that is where you can get into the courtroom. Some of those people are just not willing to wait or carry somebody else's bag for a number of years before they get into the courtroom. So if I were a large law firm, I would be regularly mining the fields of the public defender's office, the legal aid society, the district attorney's office, or any of those other public service opportunities for young people.

MS. RICHARDSON

And having just come from the wellspring of power up the hill from a cabinet meeting, we have Richard Rifkin.

RICHARD RIFKIN, ESQ.

SPECIAL COUNSEL TO GOVERNOR ELIOT SPITZER

Thank you, Catherine.

One of the times one thinks about one's career is when one is asked to serve on a panel. I cannot imagine anyone more fortunate than I have been. I've done everything wrong, not planned my career at all. Everything that has happened to me has been an accident. I wound up getting hitched to a couple of people who managed to get themselves elected by the people of the State of

New York, which maybe is not a great secret to have in a career, but it is a fabulous career, and it obviously continues to be.

It is pretty heady being up on the second floor of the Capitol and the exercise of power that you have. You have to be careful how you exercise it. There is a lot of power there. I certainly find that people return my phone calls, for one thing.

But how did I wind up in public service? How does somebody get there and have a career like mine? I did not realize it at the time, but parents' influence is just enormous. My father was an old Democratic Socialist. He was a member of the American Labor Party. He left the American Labor Party when the Liberal Party was formed in 1945 and became very active in that. In fact, he was a candidate for Judge of this Court in 1954. Those were the days, of course, when the judges of this Court were elected. My father ran as a Liberal Party candidate. He lost to Judge Van Voorhis, who was then running on both the Democratic and Republican slates, so it was not as though my father had a great hope of winning. I remember going around the state with him. He was on the state platform with Averell Harriman, who was then running for Governor. I guess you learned and absorbed more than you think when you do this. And although I didn't realize it at that time, it sort of became a part of me.

I grew up in an age when Hubert Humphrey was our great hero. He was, of course, a person who believed in Government, that Government serves the people, helps the people. Government is a positive force. I never stopped believing that, and that has been one of the great things that carried me through my career.

I graduated from law school in 1965. Despite everything, I did what most other people do when they graduate from law school: I went to work with a small firm in midtown Manhattan. While I was working with the firm, I dabbled in politics. I lived in Queens County at the time and dabbled in Reform Democratic politics there. The Reform Democrats were not exactly a tower of strength in Queens County. There were about 10 of us, I think.

But it was fun, and that was actually my first experience in the Appellate Division. I got a chance to argue a case that dealt with petitions and trying to knock off some candidates for a judicial convention. So there I was, a young lawyer, about two years out, finding myself in front of the Appellate Division. It was an election case, so it went quickly, and all the cases were being called on the calendar. Somehow I seemed to fascinate them with the issues that I was raising, because I was up there for about half an hour and they were asking me questions. Of course, I lost 5-0. But it really made you think, "This is good."

I then went to work for an Assemblyman, Leonard Stavisky, on a part-time basis, while continuing to work for a private firm. He paid me the grand sum of \$500 for the session. That is what got me started down this road, because Leonard knew Bob Abrams, who was looking for counsel, and Leonard

mentioned me. That is how I got to work for Bob Abrams, when he was Borough President of the Bronx.

I didn't know the first thing about the Bronx because I had grown up in Rockaway; to me the Bronx was the other end of the world. But I did what lawyers do. You learn. You pick up something; you're assigned to do it and you learn. I had to learn about the Bronx and its issues.

Bob got elected as Attorney General and without my doing anything, I suddenly found myself in the Attorney General's Office. I held a number of positions there. I became Bob's first assistant.

In the 1980s, we had a parking violations scandal in New York City. Bob came to me and said, "We've got to do something about ethics." I didn't know the first thing about ethics. So he said, "Go draft a bill. We need a bill." I did research, saw what there was around the country in terms of government ethics, and drafted a bill which we submitted to the Legislature. And for the next two years or so, I was working with the Governor's Counsel. Of course, Dean Feerick and his Commission were holding hearings. I worked very closely with Ed Davis, and the end result of that was the Ethics and Government Act of 1987.

When Bob Abrams left office to go into the private sector, I was looking for a job for the first time in many years, and the Governor's Counsel came to me and said, "You worked on ethics. We need somebody to be Executive Director of the Ethics Commission." So in my next role, I ran the Ethics Commission here for four years. It was a really exciting time for us. We accomplished an awful lot in the world of government ethics. Government ethics is not an oxymoron. I believe in it.

I was sitting at home, perfectly ensconced one Saturday night, happily enjoying my work at the Ethics Commission, when I got a call saying, "Eliot Spitzer has just been elected as the Attorney General; would you be interested in coming back to the Attorney General's Office?" At that point I gave him a definitive no. His representative asked, "Would you at least talk to Eliot?" I said I would and went down to meet him. I had never met him before. When I came out of there, I said to myself, "Wow, this guy is something. He's good." I chose to go back to the Attorney General's Office, where I was the Deputy in charge of the State Council Division. And then Eliot became Governor, and I am where I am today.

So it has not been planned, but it has given me the opportunity to have what I consider one of the truly exciting careers in the law. I am not an appellate lawyer fundamentally, but I have been before this Court at least half a dozen times, most recently in the spring. I argued a reapportionment case before this Court some years ago. I got involved in the *Campaign for Fiscal Equity* case, one of the most important cases we have had in New York State in many years. I

argued before Dean Feerick when he was a Referee. And I argued before the Supreme Court in that case.²

I have had a great opportunity to argue interesting and important cases, and that is what's exciting about the government sector. You really get to do important work, handle important cases. And, as Judge Wesley said, you don't carry a partner's briefcase. You do it on your own, and it is a very exciting career.

The good news for us in government is that in Attorney General Spitzer's second term, the quality of the people who wanted to come and work for our office, and the people we were interviewing for jobs, were just terrific. So one of the things any government office has to do to attract capable people is to build up a reputation.

But not only did we get young people, or people who had been practicing for four or five years and wanted to come in and do more exciting work, but we got not an insubstantial number of attorneys at the end of their careers. They had been successful economically, the children were out of the house, and they thought this would be a wonderful way to cap their careers. And we have also seen that in the current administration. We have got a good number of applicants in this administration, in the Spitzer Administration, who want to come in and work in government, who have fundamentally spent their lives in the private sector but want to give to government. So it really is an exciting place.

Obviously, I have been very fortunate and very enthusiastic about everything that I have done in my own career, and I can only wish that other lawyers would get the same opportunity that I have had.

MS. RICHARDSON

We are all very fortunate that you chose the roads that you took.

So, I have heard the following reasons for getting into civic and public life: genetic defect, opportunity as a young whippersnapper to get involved in something very big on the Constitution, by accident, and to get rid of a notebook by your bed stand.

Dean Friedman reminded us that, while the legal profession is changing so dramatically in many aspects, we have to retain and preserve those values that we think important. If forums around the state and you are an example, it is really important that part of our professional life is devoted, all of us, to some form of civic life, so you are the best at what you do.

Let us think about it for a minute. How do we pass this on? What do the law schools do? What do I, as a practicing attorney, do? What can our Judicial Institute on Professionalism do? What can law firms do to make sure that this

2. *Campaign for Fiscal Equity, Inc. v State*, 162 Misc 2d 493 (Sup Ct, NY County 1994), *mod* 205 AD2d 272 (1st Dept 1994), *mod* 86 NY2d 307 (1995).

value – that it is important to give back to our communities and to our public life – is one of the values that is endorsed?

MR. RIFKIN

One of the things that I do, besides being Special Counsel for the Governor, is to teach a class in government ethics at Albany Law School. Patricia Salkin asked me to do this a number of years ago. This is an opportunity for me to convey to law students my enthusiasm about government. The class is intended for students who are interested in government, and it is a way for me to urge people to spend at least part of their careers in the public sector.

JUDGE WESLEY

I spend a lot of time at the law schools. I am a jurist in residence at, I think, four law schools. This is a great opportunity because you teach a couple of classes over two or three days and you have opportunities to interact with a lot of law students. Clerkships are so unbelievably competitive and limited that it is not a meaningful opportunity. I have four clerks a year, and they roll over on an annual basis.

Large law firms should encourage their young associates who want to leave the firm for a few years to leave with the knowledge that they can come back if they want to be an ADA or AUSA. As you know, they are going to get extraordinary experience and learn a tremendous amount.

I think I have 21 former law clerks and that at least nine of them are in public service now. I try to encourage my law clerks to think about the U.S. Attorney's Office, or a prosecutor's office, or some other form of public service. So you try and ingrain that a little bit, some of the lessons I got from my mentors, also.

MS. RICHARDSON

Dean Feerick, you are teaching now also, aren't you?

MR. FEERICK

The older we get, the more we have a responsibility to express humanity to those behind us who are entering the legal profession. I watched very carefully those who were older than I was at the time; now I'm pretty much at the end of the heat. But I began to learn what lawyers are about. I had no experience with a lawyer growing up. I never met a lawyer until I got out of law school. Of course, I had law professors.

But we should somehow find a way, as my colleagues have said, to let our humanity be expressed. There are thousands of great lawyers in the state. We have to find ways to reach out. We will be surprised by what follows, to invita-

tions from leaders: within firms, within government, wherever they are. We need to pull people in. A lot of us need to be asked.

SENATOR DEFRANCISCO

The best way we can help get people, especially lawyers, into public life is by example. If you are a lawyer, by definition you don't have any time. If you can perform your duties and whatever role you play in government, and people see that, especially if young lawyers see that, they are going to want to do it, and that is the best thing that public officials can do.

I have also taught at Syracuse University Law School. I taught trial practice for about 12 years. I have not done it recently, though.

I thought I was going to be an engineer because the only people in my family who had gone to college were two uncles who were engineers. What turned me into the practice of law, and ultimately into politics, was two professors at Syracuse University: Professor Micklejohn, who taught philosophy and law, and Professor Sawyer, who taught constitutional law. I was absolutely fascinated by it. I got my engineering degree but took a lot of electives. So that was by example, in the excitement that both of them provided.

When I got to Duke Law School, the track that was always talked about was the Wall Street law firm. I started with Simpson, Thatcher & Bartlett. I decided after the military not to go back to the New York law firm, but I still retain friends from that firm.

What the law schools can do is understand that the people who go into public life are not the bottom-feeders of the world, that they have a role to play, and that being a member of a Wall Street law firm is not the be-all and the end-all of a successful career.

A. VINCENT BUZARD, ESQ.

IMMEDIATE PAST PRESIDENT, NEW YORK STATE BAR ASSOCIATION

The biggest problem, and I observed it particularly over the last year, is that firms are highly variable in their culture in encouraging people. Some firms have an enormous record of encouraging people to participate in bar associations and other forms of public life. But with far too many firms the attitude is, "If you're such a great rainmaker, why aren't we getting wet? Where is the business?" They see outside work as a way of bringing in work. That has always been present, but it has gotten far worse now. The attitude of most law firms is, "That's great, go out and do it, but keep up your hours. That has to be in addition to everything else you do." It is not valued for itself. Until it is, we are going to miss a whole group of lawyers who do not want to or cannot leave their law firms, who want to be out there but cannot because of firm pressures. So I ask any of you if you have any solution for that?

JUDGE WESLEY

There will always be economic pressures, but some firms can look beyond that. Sullivan & Cromwell has the Cromwell Fellowship, and Skadden has something similar. That is not something that is done in the upstate culture. However, to the degree that some of these upstate firms have become national in scope, they will have to adapt because there are a lot of very smart people who are interested, at the age of 27, in having some kind of impact beyond billing 2200 hours a year.

Smaller firms might think creatively about the people they want to attract and who would want to stay there. When you have a really tough legal issue, you want to be surrounded by people who are super bright and super motivated. Smaller firms might find that, although they cannot pay such people as much, they might find the environment of the firm more enticing.

MR. FEERICK

Mark Alcott has created a Senior Lawyers Committee of the State Bar Association on which I am privileged to serve. At a recent meeting, it was mentioned that a lot of lawyers thought that in order to serve, they had to be willing to give a substantial amount of time. We need to communicate opportunities in different ways and package our appeals to lawyers in new ways. For example, we might say, “Do you have ten hours a month? Do you have five hours a week? Here are different ways that you can contribute.”

SENATOR DEFRANCISCO

Mandatory retirement does not mean that you have to lose that talent. One of my friends has to retire at 62. That is really not old at all. At 62, you are certainly not at the end of your life; you still want to have some type of intellectual stimulation.

DAVID HAYES, ESQ.

BOND, SCHOENECK & KING, PLLC

We have heard a lot of great, wonderful opportunities this morning for internships or externships for young lawyers, but are there similar opportunities for internships or externships for lawyers who are later in their career (*e.g.*, lawyers who are going to retire in their late 50s or early 60s)? Probably the bar associations – both state and local – can take a leading role in encouraging those opportunities and making those opportunities available for older lawyers.

Is there a place for older lawyers like myself who are interested in public service for a period of time, or doing it on a voluntary, non-paid basis?

MR. RIFKIN

Any lawyer who wants to come to us and volunteer time, we accept.

In the Attorney General's Office, we had a program where lawyers could be hired and not serve full-time; they could serve two to four days a week, and they'd have a commensurate case load. We had a number of lawyers who took that opportunity. The concept was started for women who had young children, but it was not restricted to that, by any means. So that is certainly something that we could do on the government side to encourage people who want to do something like you suggested.

MR. FEERICK

At Fordham Law School, Dean Treanor has created the Center for Social Justice and Dispute Resolution, which he has asked me to direct. It is a center that will have senior lawyers (graduates of the school) working with students and recent graduates of the school on projects having to do with poverty.

We recently had a meeting where almost 60 or 70 senior lawyers came, looking for opportunities with their law schools. So graduates of law schools are particularly susceptible to appeals from their law schools to come back and engage with students and activities that would be significant within the law school, as a way to contribute to their law schools.

JUDGE WESLEY

My brother, Don Wesley, is the oldest member of his first-year class – it is odd for him to be in classes with some of the kids whom he had as a building principal at Orchard Park High School. He thinks that maybe he will end up being a guardian in Family Court on PINS [persons in need of supervision] petitions since he was the one prosecuting them before. It is fascinating because he doesn't really care about the money at all.

Getting back to your question, someone who had worked in finance and tax would be an extraordinarily useful member of a foundation or a board that has those kind of concerns. Also, we are an aging population. Those of us in the 50 to 65 bracket are a tidal wave of people. And there will be increasing demands for services for older folks with regard to housing and other matters. A lot of models are going to evolve. Most of them will be based upon charitable efforts, more effectively probably than governmental efforts.

It's just a matter of being creative. For example, in Rochester, there is a group called Life Span, which is a focal point for senior citizen services: everything from assisted living, to counseling with regards to life insurance, estate planning, and others. They need lawyers like you can't believe. Any lawyer who has any kind of Surrogates' background could walk in there and volunteer and easily find 20 hours of work a week.

MARIA ARIAS, ESQ.

CITY UNIVERSITY OF NEW YORK (CUNY) SCHOOL OF LAW

I am in the public sector. I teach at CUNY Law School in the Clinical Program. I am working right here with people who are interested in public service and are doing public service.

What I see, both from the work I am doing and my work with legal service organizations, is that there are many people who go unrepresented, or who are not able to do appeals and things like that, because of the limited resources of the organization. One of the things that's necessary is more partnership between the private sector (*e.g.*, large law firms) on the one hand and legal services organizations and law schools on the other.

I have had some partnership around complex cases involving interstate, jurisdictional issues, and things like that, and more of those partnerships would benefit both sides. A lot of corporate lawyers I am working with, and lawyers from large law firms, have found it very rewarding to partner with us and work on the cases. They have resources that help in terms of the appellate work that is necessary, as well as the resources to be able to carry the cases through in terms of what is necessary.

The area of matrimonial law is another area where many poor people are not able to get the kind of representation that they need, and where more of those types of partnerships would be beneficial.

MR. FEERICK

The State Bar Association's Special Committee on Senior Lawyers is looking at all those kinds of models to try to promote and encourage public service.

I agree completely with your point of view. As you know, I have been part of an academic institution. I served as Dean for 20 years. We just populated the school with public service and legal service activity, at least in terms of students.

The challenge is how to get more lawyers involved. The largest part of the profession in New York is small law firms, not big law firms. How do we reach out to this part of the profession? It is a real challenge.

JUDGE WESLEY

The single largest customer in the Second Circuit today is immigrants. We are receiving approximately 55 new immigration appeals a week. By using expedited procedures and ramping up our staff, we are just barely able to keep our head above water with the new cases, but we have a huge backlog of old cases.

The vast majority of those people are unrepresented, and most immigration cases are won at the Immigration Judge level because the record is very difficult to construct. And so there is a huge, gaping hole in our legal system when it comes to those who are here – whether legally or illegally – or those who wish to stay. So many of those cases are lost because of absolutely horrendous representation. All you have to do is type in “malpractice” or “attorney misfeasance” on the internet and you will see it regularly appearing in Second Circuit opinions. We are very concerned about that. I don’t know how you plug that hole. Certainly, it is something that we have talked about. Our Chief Judge discussed it with some of the bar leaders, although not necessarily with Mark Alcott.

Immigration law is not something that people are well-versed in. When people ask me what the hardest thing was when I went from the state to the federal bench, I say that immigration law is a morass. It is impossible to understand because the rules keep changing about every five years. Congress keeps changing all the rules, and you don’t know what is retroactive and what is not. But good legal minds can understand and learn it.

If we were really, truly to address the single neediest group of people in the state, we would identify those who are in deportation and removal proceedings, screen some of their cases, and try to provide meaningful representation at the trial level.

MR. CRACO

I was struck by the extent to which the advent into public service of all four of you had its roots in your youth and the encouragement you got from somebody that it was a worthwhile and exciting thing to do. That will be explored in the mentoring panel this afternoon.

But, if I could mention another elephant in the room, would you comment on this: One of the costs that is associated with the extraordinary diversification of the bar in modern days compared to when some of us started, is the absolutely astonishing and pervasive and deep burden of debt that students carry in law school and seek to remit by going to big law firms for as long as it takes to pay it off – maybe three years – and then go on to do other things. There is scholarship and some anecdotal evidence that that has a very serious impact on the ability of recent graduates nowadays to have the kind of adventurous experience you all described as having had in their youth, and I wonder if you can talk about that.

MR. FEERICK

Before law students have to deal with that challenge on graduation, law schools have a very important obligation and opportunity while students are

being developed to be lawyers, to steep them in the values of the profession, in the kind of opportunities to which members of the panel referred. That way, if in the early going it is difficult to give time because you are dealing with debt, at least the world of satisfaction, the world of making a difference, has already been lodged within the lawyer. We have to look at our law schools and ask the question, what are they doing? They are doing well, but there is obviously a lot more that can be done. That is certainly my orientation, as long as I had the opportunity at Fordham to administer the school.

MS. RICHARDSON

That is an exceedingly serious problem we have, which we have not resolved.

MR. RIFKIN

In the Attorney General's Office, we got a good number of applicants who came to us after they had paid off their law school obligations. Maybe it was six years into their career, maybe it was eight. They always wanted to go to a public office, but they were unable to do it. They had to get the compensation given by a private firm – usually one of the large firms – until a point where they could pay off their law school obligation. It was only five to eight years into their career that they began to do what they truly wanted to do. So that is a major problem.

I serve on the Bar Association's Student Loan Committee, and we have a small program that's underway. My daughter just graduated from law school a little over a year ago. I went to the graduation, and they had things to purchase. They announced that all the money that the law school received would go to a fund to help students who went into public service to pay off their obligations. But these are small items. Nobody has really managed to come to grips with this problem.

It is a very serious problem, and it is only getting worse. And unless somebody manages to change this fundamentally, more and more attorneys who want to go into the public sector will be deprived of the ability to do so.

SENATOR DEFRANCISCO

There have been bills floating around to pay the debts of medical students who want to serve in rural areas. When there is a shortage of nurses, there are bills to help pay for nursing students' debts. I suppose the same concept can be brought up before the Legislature with respect to lawyers. But, as I said, lawyers are not the most popular people to help in the Legislature.

JUDGE WESLEY

Some of the universities have debt forgiveness on a university loan. I know Cornell does, and I am sure some of the others do. Some of the law schools have summer fellowships for 1-L's and 2-L's, where they can go and work in legal aid clinics and other areas and get a stipend. I know of a couple of young people from U.B. who are doing that this year.

The average debt of my law clerks – I asked before I came – is around \$125,000. They are all going to go to large law firms, every single one of them; they are going to Chicago and San Francisco, and two to New York. And they will all get bonuses somewhere in the neighborhood of \$35,000-\$45,000 for having clerked for me, before they even get their pay. They are excited about that, but they know where the money's going: it is going directly to their debt. So they come up with crushing debt, just crushing debt. And that is generally just their law school debt; if they financed their undergraduate education also, it is even worse. So there is enormous pressure there.

But it is not so bad that some of these kids go to the large law firms if the large law firms then said, "You want to go work for the U.S. Attorney's Office for four years? Go ahead. We will even help pay off some of your debt while you are doing that. But come back here. Come back to us." Some of these people are tremendous. There are people walking out of the United States Attorney's Office all the time, just walking into the large law firms, because of the experience they have. These people are enormously well-trained, exceptional people.

MS. RICHARDSON

Okay, it is really warming up, but we have one more question. And then Chief Judge Kaye is going to say a few words again.

PAMELA EDWARDS, ESQ.

ASSOCIATE DEAN OF STUDENT AFFAIRS, CUNY SCHOOL OF LAW

CUNY is a relatively low cost school; that is a real plus for us.

With respect to senior attorneys who want to contribute, we have a program at CUNY called CLRN, which is a Community Legal Resource Network. Recently CLRN partnered with the Queens Supreme Court to provide lawyers to be in the courthouse a couple of days a week, or couple of evenings a week, to help talk to pro se litigants about their claims. That is a way in which senior lawyers all over the state could get involved. As a former litigator, I am sure that there is no courthouse that would turn down an opportunity to have them come talk to their pro se litigants.

MS. RICHARDSON

Thank you.
Chief Judge Kaye.

CHIEF JUDGE KAYE

This has been a fascinating discussion and really a wonderful start to this program. I wanted to thank you all, especially to thank the Institute. We have made the ultimate donation in that Judge Ciparick is one of the members of the Institute.

But what I wanted to do before lunch – and this is kind of an appetizer for lunch – is to just say a word about this courtroom, so that you don't leave here without something said about what is undoubtedly the finest and most magnificent courtroom anywhere in the universe.

In 2006, we started a lecture series at the Court, which has been wonderful. Judge Read and I are the planners. Our first lecture of 2007 will be on May 29th; Justice Stephen Breyer will speak. You are all more than welcome to come.

The entire idea behind the lecture series was to bring the public – not the lawyer public here to argue a case – but to bring the public into the courthouse and try to introduce people more to what we do and what the role of the courts is.

The third lecture in our inaugural lecture series of 2006 was by two of the world's prominent architects, Henry Cobb and Paul Spencer Byard. The lecture was called "The Shape of Justice." By the way, we are going to print all of the lectures; they will all be available. They are available now on the Internet.³ But I thought I'd read you just a little passage before lunch as you transition from this magnificent chamber. These are the words of Henry Cobb, who did indeed say that this was the finest courtroom in America. Here are his words:

Like every work of architecture, this courtroom gives voice to human values and aspirations, as it gives shape to the physical world. And it is the distinctive, revelatory power of that voice, something not flowing from any other source, that ultimately validates architecture's claim on our attention, its appeal to our imagination, and its authority as an indispensable manifestation of our culture.

Look around you now and notice how eloquently this room gives voice to values that underlie the administration of justice in our democratic society. Notice that the room is stately, yet unpreten-

3. Go to www.nycourts.gov/ctappeals and click on the Webcast of "The Shape of Justice."

tious; highly ordered, yet refreshingly non-hierarchical; beautifully crafted, yet materially modest; appropriately ceremonial, yet warmly human.

If I were speaking to you in a lecture hall, I would be obliged to illustrate these points with projected images. But here I need only invite you to enjoy discovering for yourself the myriad details that together constitute the eloquent voice of this room. Wherever you are seated, whether near the bench or fireplace, or in one of the ram's head armchairs, or toward the rear with a sweeping view of the many portraits arrayed around its paneled walls, you are palpably enveloped here in the voice of architecture as spoken by a master of our art.

So have a great lunch.

LUNCHEON PROGRAM

PAUL C. SAUNDERS, ESQ.

MEMBER, NEW YORK STATE JUDICIAL INSTITUTE ON PROFESSIONALISM IN THE LAW

Good afternoon. As you can see, I am going to show you a video of a program that Vince Buzard, who then was the president of the New York State Bar Association, asked us to help him put together. This was a program addressing the issue of professionalism generally; the Judicial Institute on Professionalism and the New York State Bar Association worked together on it. It fits very nicely with the subject of today's and tomorrow's discussion because we asked some of the most prominent and successful lawyers to speak generally about the subject of professionalism and more specifically about what it is that they thought, from their perspectives as life-long lawyers and successful lawyers, that allowed them to become complete lawyers, how they derived their satisfaction or, as Catherine [Richardson] said this morning, what was it that kept them in the game. As you will see, part of the discussion was about the relationship between the practice of law and being satisfied as a professional on the one hand and public service on the other hand. You will see among some of the participants a discussion, maybe even a debate, about that subject.

So, without further ado, I am going to show you this video. I have edited this. This was actually an hour and a half discussion. I have edited it down quite a bit. I think that the participants will be well-known to all the people in this room.

(The video began playing as follows:)

MR. SAUNDERS

The topic of this panel discussion today is professionalism and what it means. In 1953 Roscoe Pound defined professionalism as follows: "The term refers to a group . . . pursuing a learned art as a common calling in the spirit of a public service – no less a public service because it may incidentally be a means of livelihood. Pursuit of the learned art in the spirit of a public service is the primary purpose."¹ Let me begin by asking Lou Craco, who knows as much about professionalism as anybody I know, whether he agrees with Roscoe Pound's definition or whether it is, in a sense, not relevant to today's practice.

1. ROSCOE POUND, *THE LAWYER FROM ANTIQUITY TO MODERN TIMES* 5 (1953).

LOUIS A. CRACO, ESQ.

CHAIR, NEW YORK STATE JUDICIAL INSTITUTE ON PROFESSIONALISM IN THE LAW

One takes issue with the eternal relevance of Roscoe Pound at one's peril, but one of the problems that we have is rooted in the repeated adulation that these two panels have received from both the president of the state bar and our moderator.

The notion of professionalism has been seen from time immemorial as sort of an elitist notion that the panjandrums of the bar pass on in all their wisdom to everybody else. Pound was speaking at a point in history when there was just beginning to be the hint of a change over the horizon in the formulation of attitudes about professionalism that derived essentially from the notion that white gentlemen of a certain class behaved a certain way, and that that was the root of the notions of professionalism and decorum that transcended the basic minimalist issues of ethics.

It is obvious that since then there have been huge changes in the demography of the profession, all of them in my view greatly to the good, and that the felt understanding which the profession was able to indulge itself in for many generations before that time that gave it a unity and coherence and sense of purpose and value have to be reexamined.

The reason we are here is to continue that process of reexamining what it is about our calling, what it is about what we do, what it is about our role in society that makes it valuable to be lawyers. What, if any, coherent set of values and behaviors is there that ties us all together as a bar but also helps us understand what it is we do for American people?

The root of the thing is that in an America that is as diverse as ours is, as fluid as ours is, there is, in fact, identifiable a single kind of cohering value about which I can talk for hours and have been known to do so, but that is a respect for law. We manage to bridge all sorts of economic, social, cultural, religious and other gaps in our society by a respect for the rule of law. And the rule of law cannot be an abstraction. It is something that in fact is delivered by lawyers to clients in their everyday practice. The cohering ideal is that whether we are in litigation or in transactional practice or whatever it is you want to describe as a legal job, we have individually and collectively the business of delivering to the American people over time and in what we do the rule of law. And how we do that either adds to or detracts from the collective American respect for that rule of law.

So, when you talk about its being a public service, that is a description, not a normative value. We do it all the time. We do it well or badly, but we do it. The question that we need to explore and continue to explore is how we do it and what it means in that context.

I will finish by saying this: it is a cluster of values, and attempts to confine it to four or eight core values smacks to me of Chinese communist programs, the eight values that do this and that and the other thing. There is a cluster of values that makes it to each and all of us valuable to be a lawyer at this time in our history. And the reason why we have programs like this is to continue exploring what those values might be at any given time in life.

MR. SAUNDERS

At the risk of doing what you said we should not do, which is to define a couple of values, let me put first to Michael Cardozo, and then to Dean Feerick, Dean Kronman's four articulations of what makes the law a profession. He says:

What makes the law a profession?

My answer to this question has four parts. . . .

The first is that the law is a public calling which entails a duty to serve the good of the community as a whole, and not just one's own good or that of one's clients. . . .

The second is the nonspecialized nature of the practice of law. The legal profession remains, to a surprising degree, a generalist's craft . . .

A third source of the lawyer's professionalism is related to the second one. A moment ago I said that the goal of legal education is not to impart a body of technical knowledge but to develop certain general aptitudes or abilities; the ability, for example, to see facts clearly, and to grasp the appeal of points of view one doesn't embrace. To do this requires more than intellectual skill. It also requires the development of perceptual and emotional powers, and hence necessarily engages parts of one's personality other than the cognitive or thinking part. . . .²

The fourth and last of the characteristics that, according to Dean Kronman, make the law in my view a genuine profession concerns – and this is the one I find the most intriguing –

time, and the location of law within it. Every activity has a past. Every activity therefore has a history, which can be studied and

2. Anthony T. Kronman, *Foreword: Chapman University School of Law Groundbreaking Ceremony*, 1 Chap L Rev 1, 3-5 (1998).

written down in books. I am sure that even pin-making has been studied by historians. But the law has a special relation to the past. The law's past is not only something that can be observed from the outside; it also possesses a value and prestige within the law itself.³

MICHAEL CARDOZO, ESQ.

CORPORATION COUNSEL OF THE CITY OF NEW YORK

I feel much more comfortable with the way Lou Craco articulated what our profession is. I am particularly struck by Tony Kronman's comment that one of the aspects of our profession is the "nonspecialized nature of law practice." Of the practicing lawyers in this room, I may be one of the few who is not specializing, because as corporation counsel I cover virtually every area, but the practice of law today is obviously very specialized. That is part of the challenge that we face today.

I agree that part of the definition of our profession is that we bring to what we do the recognition of the need to be analytical, to have the appropriate perceptions, to appreciate, as he called it, the past and the history. But the first value that he articulated, that it is a public calling to serve not just our clients but the community as a whole, is basically what Lou Craco was saying. I would focus on that aspect of our values. It does seem to me, at the risk of contradicting a noted Yale dean, that some of these other things don't quite fit how I would conceive of the profession.

JOHN D. FEERICK, ESQ.

DEAN EMERITUS, FORDHAM LAW SCHOOL

I have no trouble with Pound's statement. It is a group activity in the service of others, in the service of the public, no matter what you do. And that is the honor and dignity of our profession.

In terms of the dean at Yale, like Michael I have no difficulty with the different areas except the nonspecialized nature of law practice. A lot of attorneys do wonderful work, important work, and serve the public by virtue of their expertise and talents in particular areas. And there is nothing wrong with that.

In terms of training at law school, today we have in our law schools much more than just passing along technical information and knowledge. We have clinical programs. We have history courses. I did a course last fall on the history of the language of the Constitution. When you look at the history of the development of the law, you come to be animated by the importance of the law

3. *Id.* at 5-6.

in holding a society together. So I like number four. I like number one, but I would rather not get into those kinds of definitions. I really like the concept that we serve others. That has been my notion for 45 years and that is what I go to my grave with.

MR. SAUNDERS

Marty Lipton, do you agree that it is not necessary to be a generalist to be a true professional?

MARTIN LIPTON, ESQ.

WACHTELL LIPTON ROSEN & KATZ

I hope so.

I endorse the service concept, which is best illustrated by the people on this panel. Every person on this panel is serving the community, has served the community, continues to serve the community. We are not just practicing law. We recognize that the practice of law, being a lawyer, is more than just that. It is using the skills and position that lawyers occupy in society to serve and to better society as a whole. That is the essence of what we talk about when we think and talk about the profession of being a lawyer.

MR. SAUNDERS

Judge Raggi, Michael Greco, who is currently the president of the ABA, says that the lawyer who contributes to the public good is a fulfilled, complete lawyer and the one who is truly a professional. Would you agree with that?

HONORABLE REENA RAGGI

JUDGE, UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

“No” is not really an option as an answer, is it? So I assume that more than “yes” is desired with respect to that. Of course. Listening to the gentlemen who have spoken so far, the thought that goes through my mind is no matter what kind of a lawyer you are, you serve the public interest, because the purpose of the law is to help us decide how we live together in a civil society. So whether one is a criminal practitioner who strives to either put people in jail or keep them out and protect their rights, whether you are a constitutional lawyer thinking great thoughts about due process and equal protection, whether you practice torts and worry about how we compensate each other when we injure each other or how we enforce our agreements through contract law – I mean, the person who decided what side of the street we drive on, all contributes to

helping us live together in a civil society. So, of course we are a profession committed to public service.

MR. SAUNDERS

Let me make it a bit harder for you. You may have alluded to this. All of the panelists have engaged in public service of one kind or another. Is it necessary for a lawyer to engage in public service in order to act for the public good?

JUDGE RAGGI

Do you want to help me out with what you mean by “public service”?

MR. SAUNDERS

I mean, for example, serving on the Second Circuit.

JUDGE RAGGI

Those of us whose paychecks come from the government always think we are involved in public service, but of course there are lawyers who are on bar committees and who teach – I mean, there are many ways to be in public service. The point I was trying to make was that everybody who files a complaint is to a degree involved in public service. So, yes, you have to be involved in public service to be a part of this profession, but there are a lot of different ways to do that.

MR. CRACO

You have touched on a very important point. The question as put is: to be a true professional, does a lawyer have to engage in public service?

MR. SAUNDERS

Or to do the public good. Assume that doing public good is part of being a professional. Does that mean engaging in public service?

MR. CRACO

The answer that I would give is an emphatic no. It is absolutely important for lawyers to use the platform that they have to do extracurricular things as all of us have done in one way or another; however, operating effectively as a lawyer within the system, engaging in private practice, is a public good. Lawyers who cannot because they have not got the time or money should not think that they are not doing the public good if they are engaged in effective private practice, for all the reasons that Judge Raggi said. We formulate in our private practice a civil society. We create the peacekeeping mechanisms by which disputes are

resolved. Stephen Carter, a professor at Yale, says the primary lawgivers in American society are the lawyers – not the judges, not the legislators – because if someone comes to you with a transaction or a problem, you tell him what his possibilities under the law are. You deliver the law to him. That is a public good. And doing it well is a public good. And in that sense I do subscribe to the Pound definition of public service, so long as it’s understood as not being something extra but as being something absolutely intrinsic to what we do every day in private practice.

MR. FEERICK

I agree with what Lou just said, but I would like to go one step farther. When our cities and communities are dealing with conflict and poverty, it’s not enough for us to just see professionalism as lawyers simply doing our practice well, even though that is a very important public good. We have a responsibility to be engaged in the evolution of law and providing access to justice and improving systems that are not working. I can tell you from 45 years of work out there that there is a tremendous need that only lawyers with our backgrounds and expertise can address. We have a responsibility to participate in some way, all the way, in that area.

MR. SAUNDERS

Tony Kronman appears to agree with you in part.

Let me put another statement of Dean Kronman’s to Mike Cooper and ask him to comment on it. Tony Kronman said that the ideal of the lawyer-statesman, which I take to mean the lawyer as a public servant, is an ideal that is dying in the American legal practice.⁴ He says. “As it does, lawyers will find it harder to believe their work provides intrinsic fulfillment of any kind. . . . The result is a growing sense, among lawyers generally, that their yearning to be engaged in some lifelong endeavor that has value in its own right can no longer be satisfied in their professional work.”⁵

MICHAEL COOPER, ESQ.

PAST PRESIDENT, NEW YORK CITY BAR ASSOCIATION

I’m not as pessimistic as Tony Kronman. There are pressures on lawyers in their private practice as there are pressures on people in other professions – pressures of competition, pressures of cost – that impede and make difficult one’s ability to devote part of one’s talents and time to the other aspects of being a professional. I still believe it is possible for people to do that. When I was

4. ANTHONY T. KRONMAN, *THE LOST LAWYER* 2-3 (1993).

5. *Id.* at 3.

President of the City Bar, there were so many members of the Association who were either solo practitioners or in very small firms who somehow found the way to make time to participate in bar association affairs.

Every man, Francis Bacon said – if he had lived 400 years later, he would have said every person – is a debtor to his profession.⁶ You owe back to your profession some of the privilege that you have of being a lawyer. And every lawyer also has an obligation. It is prescribed both externally by the Code of Professional Responsibility⁷ and internally by the personal codes of ethics of most lawyers I know to assist people who cannot afford counsel. There are a lot of lawyers who are scrambling in their private professional lives, whether they are solo practitioners or in big law firms, who still find the time to do that. I take great pride in them, and I am more hopeful for the future than Tony Kronman.

MR. SAUNDERS

Ken Standard, it seems to be the case that lawyers believe that they do not have enough time for their private lives. In a study done by the ABA in 1990, only 56 percent of those in private practice agreed that they had enough time to spend with their families. The *National Law Journal* did a survey a couple of years ago and reported that more than half – 54 percent – said that they did not have enough time for a personal life.⁸ How have you been able to balance the demands of your profession on the one hand and your personal life on the other hand?

KENNETH G. STANDARD, ESQ.

PAST PRESIDENT, NEW YORK STATE BAR ASSOCIATION

I haven't.

MR. SAUNDERS

Is that just something that we have to live with?

MR. STANDARD

It *is* something many of us have to live with. I really did not become very active in bar association and other community service activities until the youngest of my children was in early adolescence. My wife was a stay-at-home mom for the first 15 years or so of our marriage; then she went back and completed

6. FRANCIS BACON, THE ELEMENTS OF THE COMMON LAWS OF ENGLAND, Preface, first page (1630).

7. See EC 2-25.

8. *A Measure of Satisfaction: What America's Lawyers Think About the Profession and Their Peers*, NAT'L L. J., May 28, 1990, at S11.

her education. At one point I had my wife and three kids in school. I made a serious effort to be home a couple of nights a week to help with homework and to have dinner with the family. I coached my sons in a variety of sports and we took vacations and so on, but as my children got older and my wife had her own career, then I was able to devote more time to bar association activities and other community service. I probably spend 25 percent of my time on a variety of volunteer activities.

MR. SAUNDERS

John, you have sometimes been described as a quintessential professional in that you have had a very active and continue to have a very active practice, you have been a very prominent academic, and your career in public service is second to none. And I judge from your remarks earlier that you intend to do this until the day you die, that you have derived a good deal of satisfaction from your career as a lawyer. How do the rest of us go about achieving even a portion of the satisfaction that you clearly have received and obtained in your career as a lawyer?

MR. FEERICK

Thank you for the question. I want to go back to where we started. Roscoe Pound had it right, a common calling in the spirit of public service. When we are sworn in as lawyers, we make a promise to the public – as I read that promise – that we will do all we can to provide access to justice for people who have difficulty gaining access. We make a promise that we will evolve our law, we will get rid of procedures that don't work or produce unfairness. And we have insights and expertise that nobody else has that will keep evolving our system so that it will always be fair and just. We also make a commitment to make sure that the public understands what we do, understands what our judges do, understands what our courts do. I spent all of yesterday with Vince Buzard at a program that the Chief Judge sponsored and heard that large segments of the public out there do not know what we do. They do not understand our legal system. They do not understand what our judges do.

No lawyer can claim to be a professional if he or she is not participating somewhere on the continuum of obligations that we assume when we become members of the bar. We are all mentors and role models. We do not have to be 60 years old to be a mentor. We can be a mentor at 30 years, at 20 years, at 25 years, because in all of our work we are relating to people.

So, in answer to your question, you can move around. You can be involved in homelessness. You can be involved in law reform. You can be involved in teaching in a classroom. It is everywhere. All we have to do is just

walk down the street, and we will find a satisfaction that we would never know was there.

I did some homeless work during the last three years thanks to Michael Cardozo and the Legal Aid Society. I met a little girl in a shelter that I was evaluating. She gave me a little drawing, and it was a beautiful drawing which I have at home. And it says, "Don't forget me." All over are people who need us. All we have to do is take that step. And it does not have to be at any kind of public level. I don't think that is where it's at. It is just doing good. And it is a great profession. I hope to be able to come back here 45 years from now and tell you what I am doing.

(Whereupon, the video ended.)

PANEL II – MENTORING

JOSEPH V. MCCARTHY, ESQ.

CONVOCATION CO-CHAIR

MEMBER, NEW YORK STATE JUDICIAL INSTITUTE ON PROFESSIONALISM IN THE LAW

The first panel this afternoon is on mentoring. Mentoring has been discussed by the Institute probably 100 times, as to what is it, who should be mentoring, what a mentor is, and whether or not we need lawyers to mentor other lawyers, or whether it is just the other people who influence their lives. Certainly this morning we heard how our panelists were influenced by their family members and the people outside the law who influenced them to go into public service.

This afternoon we have on our panel Marion Hancock Fish, an attorney from Hancock & Estabrook in Syracuse, New York. She comes from a well-known legal family. She practices trusts and estates work, is very active in bar functions and community service, and has been an adjunct professor at the University of Syracuse School of Law.

We also have Lesley Friedman Rosenthal, who is Vice President, General Counsel, and Corporate Secretary of Lincoln Center for the Performing Arts. She is currently the chair of the Commercial & Federal Litigation Section of the New York State Bar Association. This is her second appearance with us; she participated in the Summit on the Internet and the Practice of Law that Chris Chang chaired.¹

We also have Christopher Thomas, a partner from Nixon Peabody, and a former public defender, which will bring an interesting perspective to our discussion this afternoon. He has written several legal articles and is very active in bar functions.

With that, I am going to turn it over to them to discuss what mentoring is. I seriously ask the question: Can a single practitioner obtain mentoring the way we do in the larger law firms?

For more than 30 years, I have been a partner in a medium-size law firm in Buffalo. To me, mentoring was simply the partners who on a daily basis discussed with me how they would proceed on a case, how they would act in a courtroom, and what they expected of me when I came back from the courtroom.

I had a senior partner who was probably considered to be the most outstanding gentleman in western New York in the courtroom. He was loved by everybody because he was really a gentle trial lawyer, and he set the precedent

1. See 2 J.N.Y.S. Jud. Inst. Prof. Law 93 *et seq.* (2002).

for our firm. That was my mentoring, and it did not come to me through a formal program, but I will turn it over to the panel now to discuss it.

MARION HANCOCK FISH, ESQ.

HANCOCK & ESTABROOK, LLP

I want to thank Joe, and especially thank Judge Kaye and Mr. Craco for their leadership. I would also like to thank all of the volunteers and the staff of the court system for having this wonderful convocation.

I have to say, I am in awe to be here in this courtroom today, just having a voice. This is the courtroom where my father reached the pinnacle of his career serving on the Court of Appeals, and it is certainly a wonderful opportunity for me to be here today.

I lived with my mentor. I grew up with him. My father was a wonderful mentor and grew up with his mentor, my grandfather. My grandfather, in fact, grew up with his mentor in the law, his grandfather, my great-grandfather, Theodore Hancock. So there is a long tradition of legal practice and legal profession in our family. I kind of fell into it, and it was genetic. As John DeFrancisco mentioned, there is definitely a genetic trait there, and I got it. It has been a wonderful thing for me.

I have a very distinct memory of having a conversation with my father when I was about 14 about what I might do in my life. I thought maybe I would be a lawyer. Of course, I had the opportunity to see my father in his practice, and I could see by his example that practicing law was something that brought him respect. It provided an opportunity for him to be a community leader. Sitting around the dinner table, I could tell that it was an interesting, intellectual challenge at times, which had value.

I also had a thought, maybe a bit different than the way he ever thought. I hoped that by becoming a lawyer, *i.e.*, having a profession, I would have an ability to control my career, and that would be a lifestyle choice. It would be something that I can do or not do, or do a little bit and then do more as my life evolved. My father agreed that a career in the law could be flexible like that. Of course, this would have been a conversation back in the '60s, and at that time law firms were just beginning to wrestle with women as career lawyers.

He encouraged me, and I pursued it and it came to be. I have been very fortunate. In the career decisions that I have been able to make, and the opportunities that have been afforded to me, there has been quite a degree of flexibility. I worked full time for a couple of years. Then I started a family, and I didn't work at all for about four or five years. And then I worked in a variety of part-time jobs. Finally, about 18 years ago, I went to Hancock & Estabrook, where I practice now; at first I worked there on a part-time basis until our children were a little older. I have been able, and I feel very fortunate that I

have been able, to have that kind of transition into full-time work. I am now a partner.

In thinking about mentoring, I am realizing that I probably did not take opportunities to be mentored in a way that might have helped develop my career beyond even where I am today, because when I was at work I had to get my work done, and then I had to get home to do my work at home. I feel that I may have in some way lost out on some of the mentoring opportunities. And again, because I was at Hancock on a part-time basis, I wasn't really able to participate in much formal mentoring at the office. Also, in trusts and estates and transactional work, you don't necessarily have the type of mentoring that Joe [McCarthy] talked about in litigation. Perhaps litigation lends itself better to traditional ideas of mentoring.

Now, I am clearly in the role of being a mentor, and that's great. I'm working with some associates in trusts and estates and mentoring them in a pretty formal way. But I'm also working with other young attorneys at our office (both associates and partners) in other aspects of mentoring, not necessarily which case you're working on and what your assignments are, or which court you're working with, but more just getting to know them and encouraging them and becoming a friend and supporter, a cheerleader.

My special interest is making sure our young associates are interested in what's going on in our community. Whenever there are opportunities, I am always encouraging them to get involved. Those opportunities are not necessarily directly related to their practice. For example, we have a push to get people to live in downtown Syracuse. There is a program coming up in May, and I am getting a couple of our young associates roped in doing some voluntary work with that event. That type of thing is a great way to network with other people in the community.

I see this as something that I now have time to do. When our children were younger, I frankly did not have as much time to do it. Now, I do find that I am able to do more of that, which is great.

There are other opportunities for mentoring in the New York State Bar Association and the Onondaga County Bar Association. I currently chair the Continuing Legal Education Committee for the Trusts and Estates Section. That is a great way to mentor because I can dole out a lot of assignments for speaking and writing. At the T & E section meetings, you meet young people interested in that area of practice. Asking them to speak at a class is a great way to bring them along, to give them some encouragement and ask them to get involved. So that is an easy way to be an active mentor. That section is a very collegial, wonderful group of practitioners, so I enjoy it. It is work, but a lot of fun and a great way to interact with some of the younger attorneys.

On Thursday I am spending the day at the Princeton Club because the New York State Bar Association has a program for women in the practice of law. That is another opportunity for some mentoring, but directly related to women.

I probably lost out on some mentoring when I was working part-time, and our office did not really reach out. I probably could have reached out more for some mentoring opportunities. What I hope to do with this information today is to be more proactive as a mentor back at the office, and also seek out some additional mentors for my future. It is never too late to be mentored.

LESLEY FRIEDMAN ROSENTHAL, ESQ.

VICE PRESIDENT, GENERAL COUNSEL AND SECRETARY, LINCOLN CENTER
FOR THE PERFORMING ARTS

My name is Lesley Rosenthal, and I love being a lawyer.

I start out a lot of talks that way: sometimes to the kids in my son's kindergarten class, sometimes to fifth graders, often to other groups of practicing attorneys and professionals in other disciplines. I recommend that opening to all of you as a way to start a talk about your life and the law. You can substitute your own name.

It is a great time to be passionate about being a lawyer. We have a Chief Judge of the State of New York whose heart beats with passion for the law. Rumor has it she brings slip opinions to the beach with her when she goes on vacation. And being at the top of your game, or in the prime of your profession, as this convocation is being called, means that you get to do what you love to do for a living. That is certainly true in my case.

I love being a lawyer for a lot of reasons. Being a lawyer is exciting. It's challenging. It's complex. It's inherently a social activity: you're interacting with other people. It's an opportunity to lead. It's also an opportunity to learn – a lifelong learning process, as Marion [Hancock Fish] mentioned.

I love explaining the law to my non-legal colleagues. I was in a practice setting at Paul, Weiss for 13 years where I was one of about 500 lawyers, and then about two years ago I moved in-house to Lincoln Center for the Performing Arts, Inc., where I am one of 500 employees and I lead a very small group of in-house attorneys. People are looking to me to explain legal aspects about what they do in order to enable them to produce the arts at the very highest level.

I recently went around, literally from department to department in my organization; to the programming folks, and to the marketing crew, and to the staff who handle the facilities and operations of our concert halls. I did bring doughnuts with me to encourage attendance. I put on a little talk called "When to Drop the Lawyer a Dime: Legal Literacy at Lincoln Center." It was really just to share with them what the legal context of the organization was.

Yes, it is a not-for-profit organization. But it is a corporation, and it is subject to the laws of the state of New York, the federal government, and the municipality. We are subject to employment laws; across Lincoln Center's 12 constituents, we have about 17 collective bargaining agreements with nine different labor unions. We have trademark and copyright issues. We have tax issues, even though we are not-for-profit. We own and/or operate 16.3 acres of real estate on the Upper West Side of Manhattan, so we have real estate issues and construction law issues. We floated a bond, so we've got high finance going. There is a wide variety of things that keep me passionate and engaged in what I do every day.

Now, what makes people passionate about law or anything? And what can we, as prospective mentors, do to kindle a passion for the law and a passion to serve?

I was really moved by the testimony that we heard earlier today from these incredible public servants about what makes them tick, what has made them go into a life of public service. I wanted to mention, because I'm a mother also, that it really does start with your own family. As a parent, I have watched my 8- and 10-year-old sons develop their own passions. They are watching me be passionate about what I do. It doesn't mean that I need to be at home with them full time. Maybe they catch some of my passion about the law by listening to a conversation or by having a dinner-table conversation with me about some trademark issue that is puzzling me. They may have an opinion on it, too.

When my 10-year-old, who loves to bake, decided he was going to bake cookies and bring them down to the public library after Hurricanes Katrina and Rita and sell them and give the money to the Red Cross, I was so touched. It came from within him, this passion to serve, and linking up his passion for baking with his compassion for the hurricane survivors is just mind-blowing. As mentors, our job is to kindle the passion and connect it up with the compassion in the public service, and just have it generate its own spirit.

I wanted to talk a little bit about work/life balance, even though I know that is the topic of the next panel. You can't get away from it. Framed as work/life "balance," it sounds very much like an either/or proposition, a zero-sum game. If you are working, then your life is out of balance; and if you are doing your life thing, you may be giving up on your work opportunities. I don't think of it that way. With a nod to Ellen Galinsky, who is the head of the Families and Work Institute, I don't call it the work/life balance; I call it the work/life synergy.

I call it work/life synergy because you can take those moments, like your kids playing the cello at a senior residents' home or developing the baking talents of a younger person, and use that to catapult you to the next stage in your own workday the next day, and vice versa. The lessons you learn in analysis, in discipline, in role-setting, you can bring home and apply to your family life.

And it works the other way around, too. It has just been tremendous for me to be able to do both at the same time.

I can do it because of the women before me in the law who have blazed a trail – who have made it possible, for example, for me to take a year off after the birth of each of my children and go back to the job I had and to be paid for part of that time and retain my health insurance benefits for a good part of that time. And then, once I returned to work, it meant so much to me to be able to work part-time when my children were young. That is something that was handed to me as part of the employee manual by the time I arrived at the firm. That is, again, due to the people who came before me. Our generation is indebted to the folks who blazed the trail. We have a reciprocal obligation to continue to foster and mentor those opportunities for those who are coming afterwards.

I wanted to talk a little bit about earlier influences. I was moved by the fact that a number of the other panelists mentioned their immediate relatives and teachers. Senator DeFrancisco called it a “genetic defect.” Judge Wesley mentioned his mother’s participation in politics. Richard Rifkin used the phrase “hugely influential” when talking of his father. And of course, there is Marion Hancock Fish’s experience, growing up in and around this courtroom. In Dean Feerick’s case it was a political science teacher. In Chairman Craco’s case it was a Latin teacher.

In the 21st century there are many ways to create protégés; you don’t really have to be related to a person who was a lawyer in order to be mentored by them. Now, there is the old-fashioned way. And if you’re fortunate enough to be the child of a great attorney, that’s wonderful. But you could be “adopted” by a great attorney as I have been. And you will hear a little more about that later. There is grafting. There are hybrids. Just as the technology of human reproduction has evolved, so have the techniques of mentoring and fostering a career.

The programs at the law schools that we were hearing about earlier today are terrific for promoting a public spiritedness among budding attorneys. The programs within the law firms that we heard about are also really terrific, affording people opportunities to perform public good while at the law firms. But I truly think it needs to start earlier than that, and that tomorrow’s leaders need to be influenced now. Although the kids whom I am literally mothering may or may not become attorneys, I have made it a point to get into their classrooms. I gave a talk on civil rights law to my fifth grader’s history class a few weeks ago. To see the look on this white girl’s face when she got to see what the Tuskegee airmen went through, heroic in battle and coming back to face segregation at home, it was mind-blowing. You can touch these kids and leave an imprint for a really long time.

When my stepfather, who is a Navy veteran, went into my other son’s kindergarten class on Veterans Day, he talked about his service on an ice breaker

ship in the Navy, and it sure was exciting for the five-year-olds to think about a secret military expedition to the North Pole. It's great to have veterans in our schools on Veterans Day, so I am thinking, where are we lawyers on Law Day? Where are we telling those great "war" stories, as we love to do, to the kindergartners and the second graders and sixth graders? We really need to get in there early.

I have a number of personal mentorship stories of my own, starting with a music teacher of mine when I was about 12. I asked him if he thought I should become a lawyer or a professional violinist. Without skipping a beat, he said I should become a lawyer. I hope very much that that was not a commentary on my musical talent or lack thereof, but rather the esteem in which he held the bar.

There have been a number of other non-lawyers along the way who have at various points given me really good advice about continuing in the practice of law and how I might do that best. And that leads me to want to make sure that the public understands what we do as attorneys, to keep up the full-court press that Chief Judge Kaye has been pressing, and former NYSBA President Vincent Buzard and current President Mark Alcott, through a program of public service announcements. We lawyers can be mentored and encouraged by people outside of our profession who hold our profession in regard.

So now let me get to the two most influential mentor attorneys in my career to date. One was United States District Judge for the Southern District of New York, Shirley Wohl Kram, whom I clerked for right after law school. After my two-year clerkship, I was bound and determined never to go into private practice. I went into law school wanting to be a public interest lawyer and/or academic. I never even interviewed on campus for a single law firm job. And the Judge said, "Just go to a law firm for a few years and pay off your debts; you will receive fabulous training, you can do pro bono work, and you can build up your Rolodex while you're there." You know what? It turned out she was right.

I'm not saying this is a path for everyone. It happened to be a really good steer in the right direction for me. I did need to pay off loans and did need to build up a Rolodex. I did need to build up my skills. Even more importantly than that, I got a chance to become the general counsel of a tiny nonprofit dance company - which led me, of course, to have at least something to talk about during my job interview for my current job.

I did some juvenile rights work for the Legal Aid Society while I was at Paul, Weiss. I worked on political asylum cases on behalf of Tibetan Buddhist monks under the auspices of the organization then known as the Lawyers Committee for Human Rights.² Then I became the outside general counsel for the

2. Now known as Human Rights First.

Child Care Action campaign, as my interests and passions moved more in the direction of kids and family.

But probably the biggest pay-off of the law firm job was the opportunity to meet my most influential mentor and to become involved in the New York State Bar Association. That gentleman is sitting in the front row; he is our current New York State Bar Association President, Mark Alcott. Mark claims it was not by chance, but it still seems to be one of those divine intervention moments when he selected me to be the secretary of the Commercial and Federal Litigation Section, of which he was about to assume the chairmanship. Through that organization I had the opportunity to meet other attorneys active in bar association service, to learn more about what the Bar Association means and is and does. Through that activity, for example, I had the opportunity to serve on a task force that came up with the idea of the Commercial Division of the New York State Supreme Court – a place where commercial cases could be heard with a specialized forum for case management, for the heavy demands of discovery, motion practice, and to really make sure that the state of New York was maintaining its stature in the forefront of commercial jurisprudence.

Mark Alcott has been so much more than a mentor; he has been a friend and a supporter. My favorite moment I love to tell about Mark Alcott is one October day about 13 years after I arrived at the firm, he received an e-mail from another partner, saying that the general counsel job had opened up at Lincoln Center. He forwarded that e-mail to me with one single word: “Interested?” I was floored. I am still floored by the potency of the mentoring relationship – that it can come down to one word that is standing between you and your dream job. I was also floored because it was preposterous that I could have this job. But the more I thought about it, the more I knew I needed to try for it. Mark’s confidence in me at that time was a huge factor in my going in there and pitching myself to them as their next general counsel.

I wanted to say a few words about the use of 21st-century technology and mentoring, but I think I should turn over the discussion at this point to other panelists.

CHRISTOPHER D. THOMAS, ESQ.

NIXON PEABODY, LLP

Thanks, Lesley. I am a partner at Nixon Peabody and I am located out of the Rochester and New York offices.

I have a complicated relationship with my profession; sometimes I absolutely adore it and love it, and other days I wonder where I went wrong. I look to my mentors at both of those times. When I am loving it, I have my mentors to thank for it; and when I am not loving it, I have my mentors to retreat to and seek guidance from.

I looked up the definition of mentor. We all know what the definition is, but I looked it up in Merriam-Webster nonetheless. It is “trusted advisor, counselor and teacher to another, usually in a profession.” I think we would all agree with that general description. But I think we would also agree, based upon our own individual situations, as well as what we heard from previous speakers at this dais this morning, that our parents are our formative and perhaps our primary mentors. Every panelist who has been up here thus far has said words to the effect that their family members set them on the path that they are on now, and that subsequent mentors along the way picked that person up, almost like a baton in a relay race, and took that attorney to the next point in the race. I have been fortunate to have been the baton and to have had some strong and perceptive runners.

I will give you a little background about myself because that sometimes gives a sense of where it is that the words are coming from a particular speaker. It allows one to analyze the words for bias, motive, and the other things we litigators are all always looking for.

My parents are both immigrants who came to this country with 50 dollars and a dream for a better life. They became school teachers in the public schools in Rochester, New York. At no time in their 35-year careers did they ever make more than \$50,000, but there was a civic spirit in our house at all times.

Dinnertime was the time to discuss public affairs. One of the things that I noticed early on during those discussions around the dinner table when I was 5 to 10 years old was how often attorneys were mentioned as being opinion leaders and thought-drivers in the discussions, whether they were political discussions or social discussions. That stuck with me. My parents did not push me towards law, but made it a point to underscore the important role that attorneys play in our society.

I went to public school in Rochester. I went to the University at Albany for undergraduate and had the good fortune of working for the university throughout my tenure so that I was able to pay my way through, not even owing my parents money, which frankly became important later on in my career. I then traveled a bit and went to University at Buffalo for law school. There I had the good fortune of having student assistance for public interest law. Again, I was able to work my way through without any debt to anybody. That fact gave me something that the panelists were talking about earlier, which is the freedom to choose: the freedom to choose what I wanted to do and where I wanted to do it, and not be bound to a particular salary.

I didn't just come up with that by myself. I had a mentor who advised me about the value of going to an Ivy League school, where I would have to borrow a lot of money, versus a state school, where I would not have the same credential, but which would provide me with different options. My interest was public interest law. The thought of coming out of school with \$100,000-\$150,000

worth of debt was a driving factor in that decision. I looked to and actually listened to a mentor who advised me at that section of my life. It was a key decision, one that was absolutely essential in my ability to do what I wanted to do.

I tested the private firm world after my second year. I worked for a big firm in Philadelphia and received the job offer that we all crave after our second year going into the third year. We want to be able to slouch off in our third year and know that we have a job. I can recall to this day the disbelief that was in my father's voice when I told him that I would be turning down a job that would have had me making by an order of probably 50 percent more in my first year than what he made in his last year. Even though I reminded him of those conversations around the dining room table, he was not persuaded for a couple of months. He finally saw my happiness in the work that I was doing when I ended up working for North Country Legal Services up here in Plattsburgh, helping low-income people with a variety of issues. He saw my joy and recognized that he had raised me well, and that it was because of him that I was doing what I was doing.

From North Country Legal Services, I went to the public defender's office in Monroe County. One of the main reasons was frankly, money. The stock market tanked, and I was told that my \$20,000 salary was going to be cut to \$16,000. At that point I got a call from Ed Nowak, who is the public defender in Monroe County, asking if I wanted to try cases for him. I jumped on that opportunity, again on the advice of a mentor. Two mentors, actually. One was my dad, who said, "Are you kidding me, you are going to take a \$4,000 pay cut off \$20,000?" The other was a professional mentor who said, "You will never regret the cases that you try. There will be very few other attorneys who will have tried as many cases as you if you go to the public defender's office." Great professional advice; great personal advice.

In the course of the next five years at the Monroe County public defender's office, I tried all manners of cases; everything from violations in front of just the bench, to major felonies in front of juries in Monroe County. There is simply no other experience for doing trial work than doing trial work. It has set me up to where I am now, which is a partner at a civil law firm, doing primarily civil work.

I want to start focusing our discussion on the mentorship methods that I received both at North Country Legal Services and at Monroe County public defender's office; it is what I call the conscription method, *i.e.*, you get a senior attorney, who is conscripted, to provide mentorship to the new attorney. In my case, the senior attorneys who were conscripted to assist me did not view it that way. They viewed it as an opportunity to guide and help develop a young attorney who was eager and also very mistake-prone. They saw a spirit and an interest in the practice of law and dedication to the client base that is being

served, so that both of them said: “I’ve made the mistakes this guy is about to make. I’m going to take him and make him my own and help to bring him along.”

Those sorts of professional relationships work only if there is a top-down mandate and a bottom-up willingness to accept it. There are, I’m sure, scores of examples of that sort of method that have completely flamed out because top management within whatever office it is says it but doesn’t really mean it. So there are no guts to a program like that. On the other hand, plenty of those sorts of relationships have flamed out when the mentee is completely disinterested in learning from somebody, or there is a disconnect when it comes to the personalities.

I was lucky in that both places had a very strong culture of mentorship. I think it is because both places rely on relatively new attorneys at first. At both places, there were attorneys on staff who had been practicing for 20 and 30 years. But the town and city court cases were being handled by people who were maybe one to three years out of law school, and they needed help. For that reason, the institutions recognized that in order to do the best thing by their clients, they needed to have real mentoring programs that were institutionalized.

One of the things that we did that I benefited from at the public defender’s office in particular was this mentoring process called “podding.” I was told that the concept came from a whale pod. Every week we would sit down: two (sometimes three) senior lawyers, myself, and one or two assistant public defenders at about the same level that I was at. We would go through all of our cases that were becoming ready for trial because there simply was not an issue or a cross-exam or a piece of evidence that had not been handled by somebody else in that office in the exact same way that I was going to do it, or they would give me some good insight about how to make a particular cross-exam work and that sort of thing. To the extent that any of you are in offices that would lend themselves to that kind of a process, it is extremely valuable, especially for newer attorneys, especially for trial practices, to learn from senior lawyers who have been there, done that, and done it successfully.

I would look to those senior attorneys as both guides and advisors. If I had a fight with a judge, my mentors served as psychoanalysts, both of the judge and for me. It worked out to keep me in the office, to keep me engaged in the game, and to keep me fighting hard for my clients, and not to get cowed simply because I had a judge beating down on me.

Since I have left those offices, I have entered into “true mentorship,” with no conscription involved. It is just me picking somebody or somebody picking me, and developing a genuine, professional relationship that has two layers to it. One layer is the professional layer, *i.e.*, how to handle civil cases and how to make my way through firm politics – the compensation process, client issues, that kind of thing. The other level, which sometimes has been embodied in the

same mentors and sometimes has not, is the personal perspective – attorneys who are perhaps 10 years further ahead from me who have gone through the issues of trying to balance their work and their lives, *i.e.*, trying to basically keep strong relationships at home at the same time as keeping clients happy. That sort of advice has been invaluable.

I have a spouse who has an extremely high-pressure job and is extremely dedicated to it. We have two young boys who are extremely dedicated to baseball and all things boy, who are looking for their mentors – the guy who can throw the whiffle ball on a regular basis for them to take their batting practice. Well, that's me. Billing 2100-2200 hours a year and doing 500-700 hours of client development work on top of that was creating an inordinate strain on my family life. What I have done is to take a reduced role in my partnership while still bearing the moniker of partner. I told my managing partner that I wanted to take a straight-line reduction in my pay and a straight-line reduction in the hours commitment. It is not an easy thing to do because it is so counter-cultural. But it is something I did both with my domestic mentor (my spouse) and my professional mentor within the office and also outside the office.

It is a work in progress, as our lives are. I feel as if I am at the stage in the relay where the baton is being passed yet again, and with this new phase in my life I am concerned about the baton falling to the track. But with the skills that I have and the partners that I have, I should be able to make the transition, and with the assistance of some of these fine mentors that I have, make it to the next phase.

STEPHEN A. WEINER, ESQ.

MEMBER, NEW YORK STATE JUDICIAL INSTITUTE ON PROFESSIONALISM IN THE LAW

I was wondering what the panel's thoughts were on the chances of success of formal mentoring programs at medium and large firms, consisting of a situation where each partner, for example, had assigned a certain number of associates to be monitored, and the program had some real teeth in that senior management supported it. Perhaps partners would be required to file reports periodically as to what they have done. Do you think a program like that would work, or do you think it would be undermined by the types of personal conflicts that you referred to, or unwillingness to be mentored?

MR. THOMAS

In my office, it would be extremely difficult to get something like that implemented, much less to have it operate in a coherent, smooth fashion. Part of the reason is that mentoring is something that senior partners of law firms take on when they have the time to take it on, and it has to fit into an extremely

busy schedule. We are all so busy that we would instantaneously run into significant problems with making the weekly meetings.

The more likely scenario is something that is not rigid – something that starts out like the conscription method that I talked about, but with a selected group of people. We all know senior people within our law firm who, whether because of their personality or their interests, should simply not be around young attorneys. So firms should identify the partners who are willing to be mentors. Having that initial willingness helps to foster the possibility of success. Then firms should try to match the mentors up with associates who maybe have a similar temperament, or would benefit from that particular attorney's guidance because they are in the same practice group. That kind of program would have some possibility of success. We would probably want to have some elbow room in how we were to execute that sort of program.

MS. FISH

Nixon Peabody sounds a lot like Hancock & Estabrook in that regard. My partners would reject a system that was too rigid. A rigid system will probably not succeed because the relationship has to have some naturalness about it if there is going to be effective mentor/mentee interaction. Like your office, we have volunteer partners who want to do it, who are stepping up to do it.

Beyond one-on-one mentoring, a firm can have some social activities that involve the whole office, all of the partners. It can also engage attorneys in affairs outside of the office – things that are happening in the community. Getting people out in the community is a type of mentoring because mentoring is a broadening experience, exposing young people to all sorts of things that are going on. There are opportunities for all lawyers to be able to participate that way.

At Hancock, mentoring is really fairly informal. And I'm sure that none of the groups that have raised their hand and are actually assigned or conscripted, are filling out any report about their activities, so it's casual in that way.

MR. THOMAS

Reports could undermine the relationship. One of the things that I value about my mentors is that I have almost a priest-penitent relationship with them.

MR. WEINER

The report I had in mind could be as simple as, "Yes, I met with so-and-so for half an hour." Reports could just help to make sure people are doing it. I realize there are confidentiality issues.

MS. ROSENTHAL

There are a few keys to making it work, if you want to institutionalize a mentorship program rather than naturally let relationships spring up. One is to try to find that sweet spot between passion and compassion. So if a partner and an associate share a common bond in terms of love of bar association work, or interest in human rights, or in corporate governance matters, or in juvenile justice, that might be a really nice touch-point for them to work on a project together.

A second key would be just as Chris was saying, that there needs to be a “mutual confessional” aspect to it. It is very hard to apprentice oneself to a partner who doesn’t ever admit that he or she ever made mistakes. If you feel as if the person with whom you are speaking never made mistakes, it’s going to be awfully hard for you to confess to having made one or to confusion. Thus, if there could be some kind of privileged character in that mentoring relationship, that could be quite helpful. Otherwise, you are just marketing yourself to another partner.

The third point is that if you really want to put teeth into it, one of those teeth needs to be green. I am talking about tying a successful mentoring relationship to the compensation system, in terms of putting in the time and having the results to show for it.

ELEANOR S. STEIN, ESQ.

VISITING ASSOCIATE PROFESSOR, ALBANY LAW SCHOOL

I had two colleagues who clerked for this Court – one was a man, the other was a woman. They were both very talented. They left the court at the same time and went to the same firm. A couple of years later I was having lunch with the woman, and she told me she left the firm. I asked her why. She told me a story about one of the senior partners of the firm they had both been at, who was talking to her about his relationship with the male former clerk. He said, “I really love working with so-and-so; he reminds me so much of myself when I was that age.” That is a perfectly charming remark. But the conclusion she came to was that there was absolutely nothing she could do in her career that would ever remind this senior partner of himself as a young attorney.

I’m telling you that story to point out that the danger of an informal mentoring process is that we all tend to replicate ourselves as socioeconomic groups, as gender groups, as race groups, as ethnic nationality groups. That may be a natural human tendency, but it also contributes to the lack of diversity at the higher levels of our firms and of our profession; in terms of gender and in terms of race and in terms of national origin. I don’t have a solution, but it is something we need to be aware of and factor in when we look at how the mentoring process works.

SETH ROSNER, ESQ.

MEMBER, NEW YORK STATE JUDICIAL INSTITUTE ON PROFESSIONALISM IN THE LAW

I want to come back to Steve Weiner's question. When I heard it, I thought of one of the most irritating things that happens to me every time I have dinner at a restaurant. The waitperson introduces himself: "Hello, my name is Daniel, and I will be your waitperson this evening." I'm just wondering about a mandatory mentoring situation that doesn't take into account the sense of obligation it imposes on the mentee. That bothers me. "Hello, I'm Seth Rosner, and I'm going to be your mentor for the next 14 years." That doesn't work.

We haven't talked very much about the varying contexts in which mentoring occurs. Family is the most significant; I agree with all of the panelists here. It's my own background. My father was a lawyer, and I became a lawyer because I saw the joy he got at the dinner table every night after telling us what he had done that day. In addition to family, you've got law school mentoring opportunities. In the law firm practice area, you have large firms where there is obviously mentoring; if you're at a small firm, mentoring is probably going to occur through bar associations.

I would like to ask the panelists what they believe the mentees with whom they have been working as mentors expect out of the mentoring relationship.

MS. ROSENTHAL

Since I arrived in-house at Lincoln Center, I have taken on a number of pro bono interns who are law students, recent graduates, or even in a couple of cases people in transition, 10 years or more out. They are done with law firms for sure and think they might want to move in-house, or have been at home with a child full time for several years, but they are not entirely sure of their next move. They will work with me on a volunteer basis while they try to find the way to the next spot. What they are looking for is some guidance. The best way I know to give them some guidance is by (a) giving them projects that are pitched towards their areas of interest, and let them find out if they are, in fact, interested in the area, and (b) pitching them projects in areas they are not necessarily so interested in, because you just never know.

It would also be a fair question to ask the group: What could be expected of the mentee? What does it take to be a good mentee?

MS. FISH

Being a good mentee is feeling comfortable enough with yourself and your colleagues that you can go down the hall and knock on somebody's door, and that's not always an easy thing to do. If there is anything we should be doing

right as senior people in our office, it is making sure that the younger folks feel comfortable, because it's never going to happen unless there is that comfort level.

I want to get back to the comment about diversity that was made. As a T & E lawyer practicing in Syracuse, New York, I really don't have the opportunity very often to work with attorneys of color. There are only a handful of attorneys of color practicing in Syracuse. However, there are financial planners and people in the finance industry of color. When I have an opportunity, I try to promote these people. I've had actually some very rewarding experiences with local persons of color in the financial industry.

It is definitely an area that the legal profession needs to work on. Why do we have such low numbers? I don't know if Syracuse is particularly unique in that area, but there is such a small number of attorneys of color practicing, particularly in the Trusts and Estates section. Our statistics would probably show that relative to other sections, the T & E section is pretty white-bread.

But it is definitely an issue of concern to me, and where I have an opportunity, I am looking to encourage and mentor in any way that I can reach out. It may not be a lawyer, but somebody else who is related to my practice area. Our office is woefully inadequate that way. It is just an issue, and we need to do a better job of addressing that.

MR. THOMAS

During a vacation, my family and I stopped at Luray Caverns in Virginia. It struck me partway through the tour that the guide who was taking us through the cavern was a pretty good analog for what a mentee is looking for from a mentor. Most of the young associates who come to us are one or two years out of law school. Often they are straight out of law school. To them a law firm is truly a completely unlit cavern. Other than where the entrance is, they have no idea of anything else. The role that I try to play as mentor is to flash the light around a little bit, show them where the slippery spots are, and show them the really spectacular things that the firm has to offer, as well as some of the pitfalls that need to be avoided.

More specifically, as a mentor, I try to help my mentee delight other internal clients that he has, to delight other senior partners who are assigning work to this particular associate. Another role I try to play is to explain the organization, give my mentees a sense of how the place runs. Why it is that their billing rates are what their billing rates are. That is not something that they get during their orientation. It is important for even a new lawyer to understand the business of law because it's how, in some ways, they are being measured.

I tell my mentees that their first and foremost goal is to develop as attorneys, to learn to develop good work product, to develop good work habits, and to be aggressive in their advocacy. They also need to understand the organiza-

tion and advance their career by understanding that it is a business as well. That guidance role, that advisor role, that teacher role is important on both of those fronts.

MR. ROSNER

You are the only one coming close to describing an obligation to get involved in discussing professionalism issues with mentees; I find that kind of curious.

PAUL C. SAUNDERS, ESQ.

MEMBER, NEW YORK STATE JUDICIAL INSTITUTE ON PROFESSIONALISM IN THE LAW

I have a comment and question.

My comment is that we did our second convocation a couple of years ago; that was a convocation addressing the first seven years of practice.³ We had a panel of young lawyers who came from a wide variety of different practices,⁴ and they told us that mentoring actually came in two flavors.⁵ The first flavor was a role model: somebody to look up to, someone about whom they said, “When I grow up, I want to be like this person.” That was interesting to them, but not nearly as important as the second aspect of mentoring, which was enlightened or compassionate supervision. They wanted senior people to be interested in their work: what they were doing, how were they doing it, what were the problems of doing what they were doing. Not so much a person to look up to, but somebody who was senior who would be interested in their work. When we talk about mentoring, it is important to keep those two aspects in mind.

My question is: What is to be said for group mentoring? The Monroe County Bar Association has or had a group of women who would meet periodically and have dinner or discuss things that were going on in the practice of law from the point of view of women. I don’t know if you call that mentoring or not. In my firm, all of the women lawyers have lunch together once a month with no particular agenda – just a kind of affinity group where they discuss the practice from their particular point of view. I wonder what the members of the panel would think about group mentoring as an alternative or as opposed to one-on-one mentoring.

MS. FISH

It sounds as if you are talking about my book club. Mentoring can be just that; it can be just having a conversation with a group. It may be in your

3. See 3 J.N.Y.S. Jud. Inst. Prof. Law (2003).

4. *Id.* at 57.

5. See *id.* at 59.

profession or it may not be. I get a lot of valuable feedback from discussing issues with my friends, who may not be practicing law.

I know of women's groups like the groups that you spoke of – women in business, some of whom are lawyers – that will get together and talk about some issues they are dealing with. Any group like that can serve in a mentoring role, just bouncing issues off of them, getting some feedback and different perspectives.

I never thought about that in a formal way in an office, but why not? We had something akin to that with a lunch group that used to meet on a pretty regular basis. For 20-30 minutes, everyone would touch base and have a casual conversation about what was going on. Some of it might be related to something going on in the firm, such as a case, or something that was happening locally. It was a great conversation, and everyone participated – associates, young partners and senior partners.

After a while, people stopped going, but it is definitely something that we could think about reinstituting. Again, you can't mandate it. There has to be a naturalness to it, but that is definitely something to think about.

BARBARA A. SHERK, ESQ.

DIRECTOR OF ACADEMIC SUPPORT, UNIVERSITY AT BUFFALO LAW SCHOOL

I have a question about mentoring, particularly in regard to large law firms. I teach at the University of Buffalo, and I am of counsel to a litigation firm in Buffalo. It is important to know that the profile of law students is changing. Their average age is increasing, and a large majority have graduate degrees. Many of them have profound life experiences – running businesses and all sorts of things. I speak from my own experience because this is my third career.

I had no mentoring in terms of getting into the law. I was in medical school, and the doctors in my class said, "You sound like a lawyer," because we criticized each other's work. That was not a compliment, but it sent me to law school.

When I graduated, I went to a small firm – mid-size by Buffalo standards. I was very fortunate to have a mentor at the firm who really fast-tracked me and was able to give me opportunities that I don't know I would have experienced at a large law firm.

I became chair of the Ethics Committee of the New York State Bar Association very quickly. I now chair a subcommittee at the A.B.A. and travel across the country. I meet partners in large, high-profile national law firms who say they doubt that even in their mentoring programs they would have recognized or fast-tracked someone like me. I know that I am not an unusual specimen.

MR. THOMAS

Going back to Mr. Saunders' question, I think the concept of affinity groups and group mentoring is essential not for specific skills. The role that I have with my individual mentee is oriented to writing; how to take a deposition, how to do a cross-examination, that sort of thing. I would simply have no credibility talking to our attorneys-of-color group or the gay and lesbian attorneys in our office. It just wouldn't work. For that reason, affinity groups are really essential to mentor and help groups who have traditionally been unrepresented in making their way through this otherwise dark cavern that we call the law firm, and to have people who have come from similar backgrounds as them in doing so. So, affinity groups are essential in retention, as well as in terms of providing a social fabric, a social network, that otherwise is sorely lacking in most large, mainly male, mainly white law firms.

MS. ROSENTHAL

Chris, with all due respect, I disagree with you on one point. That is, people can mentor very effectively, even in group settings, people who are not an exact genotypic match. Certainly there are some mentees who will respond best to the role modeling of a person with whom they identify closely, but I don't think that gives the rest of us a "free pass" to leave mentoring up to others. I have really made it a point through bar association activities to promote the bar association lives of persons of color, of gay and lesbians, of older attorneys who have come to the profession later. The Bar Association Section that I lead recently created a funded fellowship for a minority 1-L student to become a commercial litigation intern in the Supreme Court in Manhattan within the Commercial Division Justice Chambers. We created a pioneer award for an attorney of color named the Hon. George Bundy Smith award. It is terribly important that every person take responsibility for mentoring, regardless of what group they or the prospective mentees are. There are so many effective ways to do that.

CHRISTOPHER E. CHANG, ESQ.

MEMBER, NEW YORK STATE JUDICIAL INSTITUTE ON PROFESSIONALISM IN THE LAW

I would like to follow up on something that Seth Rosner raised, namely, the discussion of professionalism in the mentor/mentee relationship, particularly within the context of solo practitioners and young attorneys. The question I have is: Do any of you have a view of how that would be approached?

The reason I ask is that we at the Institute have seen over the years – and I think Lou Craco shares this view – that there are a lot of young attorneys across the state who are operating as solo practitioners, who do real estate closings, who

are handling substantial sums of money by doing closings. The money sitting in the escrow account and the temptations that come along with that are enormous.

My question is: Do you have any views of how bar associations or whatever other organizations would go about approaching that, because these solo practitioners do not have the structure of a Paul Weiss or Nixon Peabody?

MS. FISH

You are talking about the “briefcase lawyer” or, more accurately, the “laptop lawyer” – someone who just got their degree, just got admitted to the bar, and now they’re practicing on their own, and it is really scary. I don’t know anybody personally who is doing that, but there are several attorneys in our community who are practicing that way. It has got to be a challenge. How do they reach out and get some guidance? I don’t know. It is something we have been talking about at the Onondaga County Bar. That kind of mentoring has to be done on a very local basis. Of course, doing that in Syracuse or Rochester might be a little easier than figuring out how to do it in Manhattan. But these young attorneys do need help.

Obviously, the CLE that they are going to be required to do every year is an opportunity, but how far does that take them? Maybe the CLE needs to be revamped a little bit. Maybe more of the early continuing legal education for these attorneys should be directed toward the practice of law – not just an area of expertise, but how to manage their practice. Maybe we, as senior attorneys, need to start developing some programs that will really be helpful and some creative mentoring structures for these attorneys who are on their own. It is definitely a problem. We are seeing it in Syracuse, and I’m sure all of the other communities are seeing it as well.

MR. THOMAS

I’m thinking about a specific program in Rochester that has been quite successful; it’s called the Inns of Court. The reason it has been successful is that there is a judicial component to it. The local judges from the federal and state courts agreed to participate.

Basically, the way the program is set up is that there are groups of approximately six new lawyers who are assigned to a more senior attorney and a judge. The more senior attorney is normally hooked in with the bar association in some way, shape or form, whether they are with my firm or any of the other great firms in town. What happens is on a monthly basis these new attorneys, many of whom are not connected with a law firm, will meet with the judge and the senior attorney, and we will talk about an issue of the day.

New attorneys, whether they are with a big law firm or solo, want to know judges, or a judge at least, so that is the hook to get them in. The senior attorney can play the role of introducing the newer attorney to the bar association. New attorneys who are perhaps practicing without a safety net – other than hopefully having purchased a malpractice policy – are well-served by getting hooked in with the Bar Association of Monroe County, where there are all sorts of support mechanisms: everything from if you want to use a conference room for free for a deposition, there it is; if you want to get your malpractice insurance, there is a group policy; if you want your health insurance policy, that's where it is; if you run into trouble with drugs and/or alcohol or mental health issues, there's the Lawyers Helping Lawyers Program that is run out of the Bar Association. But the first hook, that nicely baited hook, is the fact that there is judicial participation, and then a nice integration into the Bar Association.

MR. MCCARTHY

Has anybody thought of tying groups like the Inns of Court into CLE so that lawyers would get credit that would encourage them to join those groups and participate in that kind of mentoring?

MR. THOMAS

I don't know, but Mary Corbitt of our Bar Association might.

MS. RICHARDSON

We have been talking about cities. We have been talking about Rochester and Syracuse and Buffalo and Binghamton, but what about Livonia? What about the attorneys practicing in the smaller areas? The local bar associations in cities really need to reach out to those lawyers in Lewis County and serve them. They have to provide some mentoring because there are a lot of lawyers out there who don't have a bar association that has an executive director. If a bar association has an executive director, that means it's run pretty well and deals with a lot of issues.

MS. FISH

That is where technology can definitely be utilized; they are using their laptops and they are on the Internet. With the technological capabilities of the New York State Bar Association and local bar associations, we can go a long way to reaching out to those people who are practicing in Livonia or wherever.

MS. ROSENTHAL

It's really true. It's a great connectivity device. It's a great equalizer. Peer-to-peer does not just apply to Napster anymore.

MS. FISH

She wants to be on YouTube, that's what she wants.

MS. ROSENTHAL

Our section recently started a web site where people can post comments about Commercial Division cases that have recently come down. We also have "The 10 Best Work Practices of Outside Counsel" by in-house counsel. Even if you are that solo practitioner in Livonia, you may be interested to hear what other people are thinking about and learn from their mistakes and experiences, and then maybe kick in a comment or two of your own.

I haven't yet checked out YouTube in this connection, but I have checked out MySpace. How many MySpace profiles do you suppose contain the phrase "bar association"? How many people think that it's more than 10,000? (Showing of few hands from audience.)

Yes, it is. It is 14,300. We should be there, if we're not already.

The State Bar Association, through its CLE organization, has made available CLE programs through the most modern technology so that everybody can keep up with their CLE credits and with their learning.

I've been urging the State Bar Association to do more in terms of supporting web conferencing and web casting of House of Delegates meetings and committee and section meetings so that people can really stay interconnected with one another using technology.

MS. FISH

There are the list serves of the elder law section. They are so active, actually, that it is kind of annoying. The Trusts and Estates section just launched theirs not long ago. That is a very easy way to get information. It is not always correct, but you can ask the question again and then hope that you are getting the right answer. It is a wonderful way for people to connect. After using it for a while, you begin to recognize the folks who are posting. There is no reason why we shouldn't use resources like that much more than we are.

MARK H. ALCOTT, ESQ.

PRESIDENT, NEW YORK STATE BAR ASSOCIATION

I wanted to comment about two of the issues that have come up. One has to do with this idea of conscripted or forced or artificial mentoring. It is

doomed to failure for two reasons. First, if the relationship is not a natural one, then it is going to be a canned 15 minutes of awkwardness every two weeks. That will not serve any purpose. Second, since lawyers are busy, if it is a forced relationship, mentors would regard it as simply one more administrative task, and it will come lower on the totem pole than getting your diary slips on time. Unfortunately, it cannot work.

But what can work is a mentoring relationship that arises naturally out of a working relationship. A working relationship, in my experience, comes first. You are working together on a case or matter or project or an extracurricular activity, and from that develops a natural mentoring relationship. That way, the advice or candid conversation can take place during an off-moment in the cab, on the way to court, or wherever it is, rather than in some artificial conscripted moment.

Now, why am I bothering you with the obvious? Unfortunately, one can only have those kinds of natural relationships with one, or two at the most, mentees. And since the ratio of potential mentees to potential mentors in a law firm of any size can be four to one, six to one, eight to one, that means a lot of people need mentoring. I don't have a great solution to that, other than that we should not look solely to partners or senior partners to be mentors. We have to have mid-level associates mentoring younger associates.

My other comment is that the ability to mentor comes with experience. Usually experience is a function of age, but it is not always a function of age, as we have heard today. We have lawyers entering the profession who are perhaps older than people who would be their natural mentors, and we should keep that in mind. Moreover, there are younger lawyers who have more experience in certain areas than their seniors; in particular, I am referring to technology. One of the ideas that I have encouraged our Senior Lawyers Committee to work on is to have younger lawyers mentor older lawyers on technology, because for sure, they have more experience and knowledge.

RICHARD G. MENAKER, ESQ.

MENAKER & HERRMAN

I am in private practice in Manhattan and with the Office of Legal Services of the Hudson Valley. I provide legal services for the several counties in New York City and west of Manhattan and the Bronx.

I would like to pose to the panel a distinction and see whether it resonates at all: a distinction between an experienced professional's duty to train and being a mentor. Because – and Mark Alcott's remarks provided kind of a predicate for this – there might be a proposition that all lawyers, after they have obtained a certain amount of experience, irrespective of the context in which they work (in public service or in private practice), have experiences and oppor-

tunities to have made mistakes themselves and seen how others have done really good jobs in some aspects of the law. They therefore can and have a duty to train those they work with, or others within the profession with whom they come in contact. It is a natural part of being more senior in the context of legal work.

On the other hand, mentoring is something that maybe works or not, depending on a variety of circumstances. It's hard to make yourself a mentor, and often hard for mentees to find the right person, or it just happens that the mentoring occurs. I wonder if the panel would like to comment on this distinction.

MR. THOMAS

I can't say I have really thought about it that way. It is interesting. It is sort of the difference between strict liability and negligence; something you have to do versus something you want to do.

More senior attorneys do have an obligation, regardless of whether they are in public service or private practice, to pass on the ways that they have become successful within the professional context. I understand the distinction being made, where mentoring also has the social component to it (the ability to make your way through the social construct, which is a public defender's office or legal aid office or legal office or law firm), versus the lead practitioners at any one of those legal entities providing training to their newer people.

I agree that the more senior, the more seasoned, the leading practitioners within a law entity do, in fact, have a duty to both their personnel, as well as to the lawyer-at-large, if you will, to do just that. That doesn't mean they have got to hold the young associate's hand as they weep over getting the first draft of their memo back that has been ripped apart by the senior partner, but I would adopt that.

MS. ROSENTHAL

If the partners at a firm are too busy to take on more than one or two mentees, there's a network of alumni of that firm who may have gone on to do fascinating things. Indeed, what the alumni are doing may be of more interest to the associate in the long term than what the partner is doing. There are ways that people can use their networks further toward the end of mentoring; for example, they can use their clients. If one of your alumni has gone in-house and you think that an associate might be interested in developing another relationship with that alum, patterning their career after the in-house counsel, or the alum has gone into public service or is doing government service, more to the good.

MS. FISH

Yes. The mentoring does not have to be at the office; it could be through the New York State Bar Association, the county bar association, or through the alumni.

That ties in with what Chief Judge Kaye was saying. It will be interesting to see what we will do with all these lawyers who are forced to retire at age 62 or 65. Where are they going to go? How can we let that resource disappear? We have to utilize that. Mentoring is one of the things that we could be looking toward.

HONORABLE LESLIE E. STEIN

MEMBER, NEW YORK STATE JUDICIAL INSTITUTE ON PROFESSIONALISM IN THE LAW

I have had both the benefit of many forms of mentoring and the opportunity to be a mentor in many forms. Our conversation this afternoon has focused on the senior partner/junior associate modality. However, mentoring takes many forms, including going out and speaking to the kindergarten class, or that group of woman law students, or career programs. Those kinds of outreach activities lead to a student – or, in my case, interns – coming up. They get to know me and my law clerk, and they come back and we hear from them. It is an opportunity for those small firms or solo practitioners, or people in less populated areas to actually meet someone and have an opportunity to reach out and become a mentor. It is also a perfect opportunity for the bench, the bar, and the academy to work together to provide those opportunities. Especially talking about professionalism, it brings alumni not just from law firms, but alumni from the law schools out into the law schools or out in the community.

The Inns of Court are terrific, but they are available to only a small handful of people. How do you reach the associate at a large law firm who has a billable hour requirement and a family? What about that young man or woman who may need the mentoring the most? How do we entice them? Mark Alcott said you can't force mentoring, but maybe we can force it.

My question to the panel is: What do you think about forcing mentoring? Not, "You're going to mentor this person." But what if everyone who had to sign an attorney registration form had to sign something that said they met with either a less experienced lawyer or more experienced lawyer for some hours a year, and provided mentoring or obtained mentoring services?

MS. FISH

The mandatory requirement for Continuing Legal Education is a small step in that direction. But to go beyond that and require something more formal, I don't know. I don't know what other states have done in that regard.

FREDERICK A. O. SCHWARZ, JR., ESQ.

MEMBER, NEW YORK STATE JUDICIAL INSTITUTE ON PROFESSIONALISM IN THE LAW

Part of becoming a good lawyer is being a good professional, but part of it is also being an effective human being. To be sure, older people are not necessarily wiser human beings. However, we should not forget as we talk about mentoring that it should include lessons about how to handle people and how to deal with difficult human situations, as well as how to deal with difficult professional situations.

CHRISTOPHER J. CADIN, ESQ.

STAFF ATTORNEY, LEGAL SERVICES OF CENTRAL NEW YORK

You also have to understand that you can't be afraid to ask for help. I do Social Security disability law. I used to do Medicaid and Medicare law. I get calls from private attorneys who need help, and I am perfectly willing to give them help. I have even testified at a trial in a domestic relations case on what's going to happen to the son's S.S.I. benefits. I have done this all for free with the idea of helping out a fellow lawyer and showing them, "You are going to enjoy working with legal services, so don't be afraid to ask."

MS. ROSENTHAL

We should all consider it a personal mandate to answer those telephone calls when they come in. If somebody calls out of the blue to say, "I'm interested in getting into arts law," I make it a point to find 15 or 20 minutes to sit down with that person.

MR. THOMAS

Our federal public defenders, local legal aid offices, and county public defender's office are terrific about doing exactly what you are suggesting, about being available to answer the quick question, and the not-so-quick question about the sentencing guidelines, for instance, or what's the latest law on this particular defense or other. That is a huge sort of mentoring service that folks who are in the legal services world provide as a real genuine and valuable service to private practitioners, who are doing the work on a more limited basis than you do on a day-in and day-out basis.

In terms of Mr. Schwarz's comments about life lessons, that is probably where I have received the most valuable mentoring. I can always open the CPLR or Federal Rules and figure out what I need to do on this particular motion or this piece of evidence. But getting someone else's perspective on how to handle a particularly difficult client issue or internal issue within my firm is

something that I can't open up a book and do. Having somebody who has the perspective and the gravitas that I trust and look up to, to help guide me through, has always been the thing that has been most helpful to enable me to avoid most – not all, but most – of the landmines that are around in our practice.

ALYSON MATHEWS, ESQ.

LAMB & MATHEWS LLP

I am on the executive committee of the Young Lawyers' Section. One of the things that we are very eager to get started is a 10-minute Podcast, *e.g.*, a 10-minute video on how to do a real estate closing that can be downloaded to your iPod. We borrowed the idea from the Texas Young Lawyers group. If anyone is interested, let me know.

I think the Young Lawyers' Section is the only section of the bar association that actually crosses all of the fields. I have been involved in the executive committee for about a year and a half, and I have found it invaluable.

We have spoken a lot about mentoring. But I'm wondering if you can get to the next level and ask for mentees to get involved in bar associations and pursue that type of service.

MS. FISH

Most definitely. I am always looking for opportunities for our young associates to get involved with the New York State Bar Association and the county bar association, and I am not shy about asking them. Invariably, they want to do it because they know they are going to learn. It is an opportunity for them to advance their own expertise in a particular area and to network with other folks. And it's easy.

It is great that you [Ms. Mathews] have taken the steps you have, because you are now meeting a number of people you would not otherwise meet, and that is a great opportunity for you. I have been there, done it and it was wonderful for me. I definitely encourage it. Our office is very supportive of bar activity; it is a great way for the young people to feel connected.

Again, it's difficult for those attorneys who are in rural or remote areas, but they can do the Podcast.

MS. ROSENTHAL

It's great that these entrepreneurial ideas are coming out.

The Commercial and Federal Litigation Section recently ran its first-ever program serving minority litigation attorneys and we ended up with 260 registrants. We were able to do that because we came up with a never-before-used

model of how to pay for the program so that anybody who wanted to came for free. From a budgetary standpoint, it ended up being break-even, which is ideal for a nonprofit group like the Bar. And it was win-win, because there were 260 well-served attorneys, and our section was able to offer membership to 260 people we had never met before.

PANEL III – PURSUIT OF AN INTEGRATED LIFE IN LAW

JOSEPH V. MCCARTHY, ESQ.

CONVOCATION CO-CHAIR

MEMBER, NEW YORK STATE JUDICIAL INSTITUTE ON PROFESSIONALISM IN THE LAW

The final panel today is going to deal with integrated life in the law. That opens the door to a lot of different perspectives as to what the law means to us. When I started practice, people told me that the law was a jealous mistress. Over the years that has been true, but I hope as we get to my age in the practice of law that we have time for other wonderful things. I am trying to enjoy life now, and I am waiting patiently for a phone call to tell me that I have a new grandchild.

So with that I would like to introduce the panel for our final session. First is Christopher Cadin from Syracuse, New York, a career attorney for Legal Services. He has been very active in the bar communities and he continually, on a regular basis, gives presentations to seniors on Social Security and other legal issues facing them.

Next we have Daniel Alonso. He is a litigation partner at Kaye Scholer, was formerly Chief of the Criminal Division at the U.S. Attorney's office, was a clerk to Judge Bellacosa, and is currently the Chair of the New York Hispanic Bar Task Force.

Finally we have Flor Colón, counsel to Xerox. She is responsible at Xerox for all of Latin America and she is extremely active in bar association and community activities.

DANIEL R. ALONSO, ESQ.

KAYE SCHOLER, LLP

“An integrated life in the law” is a terrific phrase, but it's incredibly vague. I'm not going to talk about integrating professional and personal life. I think my colleagues may have something to say about that. I'm going to talk more about integrating the practice of law with public service pursuits and pro bono type pursuits. Think of it as a junior version of what you heard this morning from these giants of the profession – John Feerick and Richard Wesley and the others who were up here. They are what some of us can only aspire to some day. This will be a mid-career version of the thoughts they expressed. It's kind of funny to even talk about this topic with people like Lou Craco and some of the people who were here this morning. For example, Judge Kaye is a walking personification of an integrated life in the law in all senses of that term.

To an extent, the people who are here are a self-selected group. If you are sitting in these chairs, you believe in an integrated life in the law and you believe this is an important thing. So it's important to be able to generalize to the rest of the profession.

I'll do what other folks have done. I'll describe myself a bit to give you a perspective of where I'm coming from. I'm the first lawyer in my family. I myself am an immigrant. I was born in South America, and my parents are from South America as well. I grew up speaking Spanish in the home and never met a lawyer until I was a senior in college. The only reason I went to law school is because I asked somebody, "What do you have to do to become an Assistant District Attorney?" and they said, "You have to be a lawyer first." So, I said, "Okay, I guess I'll go to law school."

After having read about the cases and exploits of Robert Morgenthau and Rudolph Giuliani in the mid '80s, I thought it would be great to go to law school. So I went to NYU and spent basically my entire time there focused on getting a job with Mr. Morgenthau, which I was fortunate enough to do, and spent five years as an A.D.A.

Then I kept reading the really interesting dissents of a particular judge from the Court of Appeals, Joseph Bellacosa, and thought he would be really fun to work for, so I wrote him a letter and he hired me. I came up here for a year – this was obviously a great place to work – and then I became a federal prosecutor for nine years, during the last three of which I supervised all the prosecutors in the office as criminal chief. That was a terrific, though administrative, experience.

When I ultimately decided I wanted to get back to doing cases, I finally went into private practice. I went straight to Kaye Scholer, where I've been for the last year and a half. I realize that skipping a period of time as an associate is not the ideal model to advise everybody to do, but it worked for me. I'm very happy in private practice now, and I did it a different way.

From the very beginning, ever since law school, I've been very involved in bar association activities and all sorts of other bar and public policy related work. When I was in law school, I heard of an internship at the New York City Bar Association's Criminal Advocacy Committee. I applied to be their intern and did that for a year. Then when I became chair of that committee 12 years later, I made it a point every year to call up the president of NYU's chapter of LALSA [Latin American Law Students' Association] and say, "I want you to send me two people who are really interested in criminal law," and they would be my interns for the year.

I've done a bunch of other things as well. I currently chair the City Bar Association's Council on Criminal Justice. And, as Joseph [McCarthy] mentioned, I was the chair of the task force of the Hispanic bar associations in New York that studied the topic of judicial selection in New York, which is obviously

a hot topic right now. We issued a report in January, and I've testified before the Assembly Judiciary Committee and a special panel of the Senate Judiciary Committee. So, I've been involved in civic type activities. I also served on Governor Spitzer's transition on one of the policy advisory committees.

I could not imagine being only in private practice or only in public service. That is the message that I would send out, not necessarily to you folks because you're converted, but to younger lawyers and younger people. It's hard for me to have a fulfilled life in the law if it's just about practice. Now, some people's personal life doesn't allow them to do extracurricular legal activities. The answer to that is to wait for the time in your life when you can. For example, when you have young kids, you might not be able to do it, but when your kids become older, it becomes a lot easier to do.

The law is a profession that really lends itself to these kinds of public service activities. They remind us why we all went to law school. It's exciting – on the Criminal Justice Council, we deal with the cutting-edge criminal issues of the day, such as trafficking legislation and problems with the collateral consequences of convictions, about which there is a big push in the City Bar Association now. We deal with all of those issues. You also get to deal with issues on a civic or public policy basis, which might not be what you do during the day.

Interestingly, when I chaired the Criminal Advocacy Committee, I was a prosecutor, and some of the things that we proposed were pro-defense. It wasn't necessarily what a prosecutor's office would push, but the great thing about bar association activity is that you get to do what you think is right. So, it's important for people to encourage that kind of service and other nonprofit board and pro bono service. A couple of the folks I met today are on boards of legal services corporations around the state, which is incredibly important.

But I see a lot of people in my firm, in the prosecutor's offices, and in the public defender's offices, where I know a portion of my professional colleagues are, and I ask them, "What do you do besides work at Legal Aid all day, besides being associated with Kaye Scholer, besides being a partner at my rival law firm across the street?" The answer often is, "I don't do anything. I don't do that stuff. I spend a lot of time flying around the country pitching business, talking to clients, that kind of stuff, but I don't really do bar association stuff." Often I'll ask, "Why? Why don't you do that stuff? What is it about it that doesn't interest you?" And the answer often is, "People say, it doesn't really get you business."

We need to send out the message that it's nice if you get your name out there, and occasionally something will work for your business, but that can't be the reason you do this. I do it and I hope other people do it because it's fun, because it's the right thing to do in the sense that you're pushing policies that you personally think are good for the state and for the country and for the courts. And, yeah, sure, it's nice to have people know your name and then

maybe they'll send you business, but that's a lesser motivation for why people should do this.

I encourage associates all the time to do bar association work. I try to get people involved. There are three Inns of Courts in New York City. The City Bar Association has one of them. I've gotten half a dozen to a dozen people to join at the entry level. The Inns of Court, by the way, fit this convocation perfectly. They are all about professionalism, and they are all about mentoring. It's the whole thing. As someone mentioned, though, the Inns are a limited group because their memberships are limited. So it's not a complete solution, but it is a great thing if you can get involved in it at any level. There are three levels. There are associates, there are barristers, and there are masters. As you progress through your career, you are in a different stage of mentoring within the Inns of Court.

You [Mr. McCarthy] mentioned this judicial selection task force that I was on. That report was drafted largely by Kaye Scholer associates. I was able to get them involved in doing that, and they loved it. It was a really fun project. They came to all the meetings and deliberations. When it came time to testify, they were there. They did a lot of hard work on it, and they got a lot of the credit for it, and their experience so far after two years of practicing law has been much the richer as a result. And I guarantee that the associates who helped me on this will be leaders of the bar one day. They are terrific.

This kind of encouragement is easy. Bar associations are asking for help all the time. Tell your associates. Tell the junior lawyers in your organizations.

Large law firms have made strides in recent years at putting value on pro bono work and putting value on programs that balance work and personal life, like part-time and good parental leave policies. I don't think they have done so much for bar association policies. A lot of civic duties and civic activities that associates might participate in, they might think they don't have time because they'll get penalized if they don't have billable hours. My firm gives you equal credit in terms of bonuses for pro bono hours. They ought to do the same kind of thing for bar association and other civic activities, because that's what the future leaders of the profession will be doing. It has just been so great for me.

We talk about mentors. I have met a lot of my mentors whom I try to emulate doing this kind of work, people who I want to be – Zachary Carter and Joseph Bellacosa, for example – people whom I've met through my career, and a lot of them through this kind of work. So, law firms need to make that commitment.

People who say they don't have time to do it, the only real good excuse for that is that your family life doesn't allow it. Other than that, it's almost a duty of every lawyer to try to make the law better, so everybody should push young people not just to be better lawyers through the kind of mentoring programs we were talking about before, but to serve, to give back to the profession, and not

by just pro bono. I really mean policy service and bar service and things like that.

I want to say one thing in terms of influences. Everybody was talking about influences. My parents were a huge influence in my life, and I don't want to minimize that. Parents were mentioned by others earlier. A big influence for me was Governor Cuomo. When I graduated from Cornell in 1987, he gave the commencement speech. Governor Cuomo said to all these people who were on their way to Wall Street, "You've got to go into public service. It's the most rewarding thing in the world. Each and every one of you needs to live a fulfilling life." He gave one of his powerful speeches, which I never forgot. It's one of those things that was really a nice influence on me. I thought I would throw that out since politicians haven't been mentioned here as an influence. He was definitely one. I got to tell him that when I met him years later.

FLOR M. COLÓN, ESQ.

OFFICE OF GENERAL COUNSEL, XEROX CORPORATION

I started my career in private practice at Nixon, Hargrave, Devans & Doyle (now Nixon, Peabody) in Rochester and left there eight years ago to go to Xerox. I've had a couple of different positions at Xerox but I am now international counsel. I have lawyers across Latin America, South America, Central America, and Brazil who report in to me. I act as the liaison between the affiliate's legal department and the centralized corporate legal department.

I've been married 15 years to another lawyer who has a busy, crazy life like mine. He was the head of Eliot Spitzer's Rochester office for three and a half years and left in January to become Chief Legal Officer of the Rochester Institute of Technology. So he's in-house again, having worked for the attorney general for three and a half years.

We have two daughters who are aged 12 and 9. Both are dancers – competitive dancers at that, so I spend five weekends a year in April and May at dance competitions. I left one this weekend and am going to Syracuse for another one this coming weekend. Because I believe that part of my responsibility as a parent is to know what is going on in the school day, I am a class parent for my younger daughter's class. I chaperone school dances for my middle-schooler and check out what's happening in middle school. So, I have a busy personal life.

In addition to that, I decided long ago that part of my obligation as a citizen – professional as well, but really part of being a citizen generally – was to be involved in my community. I do that in a variety of ways; some are bar-related, many are not. I have volunteered as a lawyer for the Volunteer Legal Services Project of Monroe County and am actually a board member of that organization. I'm also a board member of the Children's Agenda (an advocacy

organization in Rochester advocating children's programs) and the SUNY Brockport Foundation. I am an officer of the local chapter of the Association of Corporate Counsel. And, over the course of many years, I have held committee positions for the Greater Rochester Association for Women Attorneys. So, integrating my personal, professional, and civic life is truly an everyday challenge.

Why do I do it? It is very personal. My parents were Cuban immigrants. They came from Cuba in 1960 and didn't speak a word of English; in fact, they still don't speak a word of English. So, I grew up in a household where we spoke Spanish. When I went to school, I learned to speak English and switched every day from English to Spanish, depending on whether I was in the house or out of the house. My parents came to this country with some very strong principles. One was hard work and the importance of an education, though they were not educated. They knew how important education was and instilled that in my brother, my sister and me. I, as the oldest, of course went the most conservative path and became a lawyer. My brother is the drummer for Guns & Roses and has been very successful at that, and my sister works in video promotions for J Records (the record label created by Clive Davis). So, when we sit around the dinner table, I'm hearing about the tour in Europe and video promotions in California and I say, "Yes, and I read a brief this morning." But for me there was no choice.

In addition to hard work and education, my parents had a strong belief in the importance of family. Last but not least, giving back to your community was always discussed in my house. You had an obligation to do that. Really not because I was a lawyer or a doctor or a seamstress or a carpenter, but because I was a human being and that was part of my obligation as a human being. So, pursuing an integrated life was really an obligation – and I say pursuing because I'm still striving very hard to figure it out.

Over the years I've made a lot of mistakes. I've had times when I thought about how to get more involved in work and less involved in civic activities, or more involved in personal life and less involved in work. It has always been a personal challenge, but I've come up with some pointers that I try to remember and follow.

My first pointer has always been to choose wisely. One of the things I've come to learn, having made many mistakes, is that you have to be passionate about what you choose to do in your civic life. You have to pick organizations that mean something to you. You have to pick causes that are important to you. When I was in private practice, it was very important to be part of organizations where you could have client development and where you could meet captains of industry and bring in business. But I learned very quickly that I had more fun sitting on the board of the Ibero-American Action League helping Latinos who needed to figure out how to get Medicaid or how to go through the welfare process or how to apply for food stamps than I ever did sitting on the United

Way corporate board, because that wasn't my passion. And so, one of the things that I learned early on, having made those mistakes, was that I needed to make sure that I was picking organizations that truly meant something to me, because it's only then that you actually find satisfaction and put your best effort into it.

In addition to choosing wisely, I have a rule that I clearly never follow, and that is don't over commit. One of the things I also learned early on in my career is that in Rochester, which is a fairly small community, non-profit boards are constantly looking for diverse candidates. They are always looking for Hispanics and African-Americans and women to come and sit on their boards. And so, when your name gets out there, what ends up happening is that you're called constantly to sit on boards or serve on committees. Very early on, I realized that I was over committing. I was doing way too many things. It was quite stressful and not at all enjoyable and I realized that there are times when you have to cut back. Every couple of years, I try to reassess the boards I'm sitting on, the committees I'm sitting on, how is my family life going, how is my marriage going, am I spending too much time outside of the home. You have to constantly have an assessment process that you follow and make sure that you really are not only giving of yourself in the way you want to, but you're actually benefiting those organizations that you've chosen to become a part of.

We have talked about technology on and off. Technology for me is both a blessing and a curse. I have a BlackBerry and a cell phone, and there are days when you can work literally 24 hours. However, about a year after having a BlackBerry, I learned that it has an auto "on and off" feature. You can actually make it go off at eight o'clock at night and have it go back on at seven in the morning. So that's what I do.

The BlackBerry gives me a lot of freedom. When I take my daughter and her friends to the dance studio, I don't have to worry about leaving at three o'clock because when I get to the dance studio and they get out of the car, I sit in the parking lot and quickly look at my messages. I take my cell phone and check my voicemail messages. I'm able to feel that I did not cheat my employer of time because I left early. I take work home. Sometimes it gets done and sometimes it doesn't, but technology for me actually is very helpful. I have on-line access to my e-mail account at the office. I use it on the weekends if I think I need to look at a document or print something. That has been how technology has given me the freedom I need to live my life the way I want to live it.

You have to be flexible in pursuing these three aspects of your life. I have found there are times when I'm spending more time working on one project versus another. I find there are times when I am spending more time with my kids than on my civic life. There are times when I can't make a committee meeting. But I have to feel comfortable at all times that I'm doing the best I can at fulfilling all these obligations I've imposed on myself in a way that allows me to forgive myself if I can't make a committee meeting one day.

One of the things that I am extremely grateful for is that I have finally learned that I can ask for help. My husband and I compare calendars all the time. We have one daughter who is on the school bus at 7:15 a.m. and one who is on the school bus at 8:30 a.m. There are times when we have conflicting meetings and one of us will say, “I’ll move that meeting so I can put Claudia on the school bus, and you can move the afternoon meeting so you can be there to pick up somebody.” So the ability to have people around you who are willing to help and pitch in is something that is critical to making all of this work.

I agree with Lesley Rosenthal that there is no real “balance” and that it’s more about synergy. It’s more about feeling satisfied with the way you’re meeting your personal life and the way you’re living your professional life and the way that you are living your obligation as a citizen, and being able to feel as though you are living a full life in the best possible way you can.

The final item I want to talk about is the satisfactions and challenges of pursuing an integrated life. I have found at times a lot more challenges than satisfaction and at times more satisfaction than challenges. So, again, I don’t think the concept of balance exists for me; what I find is that it’s easy to feel pulled in different directions. For years, especially when I was in private practice, when I was at home I felt that I should be at work, and when I was at work I felt that I should be at home. I never felt that I was meeting the needs of all of the various people in my life. What I have come to realize is that that feeling doesn’t necessarily ever go away. I always feel that maybe I could be a better mother or maybe I could be a better wife or maybe I could be a better lawyer. That’s healthy, to some extent, because it keeps you thinking about what you’re doing and it keeps you interested in making things better for all of your constituents.

About two years ago, I thought, “What about me? What about being able to do things that I actually like doing? How do I fit myself into this whole equation?” I found a creative way of doing that. A partner at my firm had a daughter who was taking piano lessons, and he decided at the age of 50-something to take piano lessons with his daughter just so that they would have something in common. So, I was sitting with a bunch of “dance moms” one day and I said, “You know, that tap dancing thing looks kind of fun.” We talked to the director of the studio and said, “We want adult tap dancing classes.” Much to my surprise she said, “Okay.” So, we have a group of six dance moms who tap dance on Wednesday nights. We dance in the recital with our children.

I have found that not only is tap dancing great fun for me – I love doing it and these women have become my girlfriends. My daughters love the fact that I tap dance. They’ll come home and they’ll show me their routine, and when I come home, they want to see my routine and, you know, I tell them I’m having trouble with my “Cincinnati.” Then they show me how to perfect my Cincinnati. It brought to my mind what this partner said to me years ago, namely,

that I have found – really quite by accident – something that I share with my daughters that keeps us talking, not just about tap dancing but about all kinds of other things, about school and boys and friendships, and it’s because we tap dance, because we have this one common bond that puts us all at the same level. So, what started out as something that I wanted to do for me has actually ended up being a great opportunity to connect with my two girls, and I’m very grateful.

I try to make room for my date nights with my husband. We try a couple of times a year to go away for a night because one of the things that’s easy to forget is this other person whom you happen to be living a life with. You find at times you’re caught up in work and what your kids are doing, and you forget each other a little bit.

One of the reasons that I have never slowed down this pace is because I convinced myself for a while that maybe as my kids got older it would be easier. I thought maybe if I pull out of all these extracurricular activities I can wait until they’re a little bit older. I talked to a lot of people and asked, “Does this make sense if I stop now and maybe come back in five years?” What they said, which has proven to be very true, is that it never really gets easier. Your kids get busier as they get older. And so, if you’re waiting for the day when it’s easy to jump in, you’re likely to find that the day may never come, because you will just find that your life gets crazier and your kids’ lives get crazier. You have to make room for it today, because it may very well never be easier to get into it.

I have found great satisfaction in being a member of my community both in the profession and outside of the profession. I can’t imagine trying to live my life without all of my constituents being part of it, because I have found that I have grown as a lawyer and as a person from being involved in all of these various activities in all of these various ways.

As Daniel Alonso said, we’re all converts here, so it’s easy to talk to all of you. I would like to be able to figure out a way that we can communicate this really well and clearly to those in our profession who have never taken the time to become a part of their communities.

CHRISTOPHER J. CADIN, ESQ.

STAFF ATTORNEY, LEGAL SERVICES OF CENTRAL NEW YORK

I used to do Irish step dancing, but I haven’t done it in a long, long time. So, it’s nice to hear that somebody is still physically active.

My name is Chris Cadin. I’m an attorney with Legal Services. I’ve been with Legal Services since 1975, though I had two years when I thought I needed a break in 1989 to 1991 when I went to teach law in France. Flor Colón talked about having a passion for what you do. I have a passion for working for Legal

Services and always have. It's my home. It's my life. I have found, like Lesley Rosenthal, that I love being a lawyer. It's me.

In 1975, I was a VISTA lawyer in southwestern Oregon. It was an incredible experience. When I moved to southern Oregon, I didn't have a car. My boss picked me up at the airport and took me around to find a place to live. I was making only \$200 a month and was on food stamps, so I could not afford much. The first place I saw was this one-room place where the bed pulled down from the wall. That was kind of scary for me, but I thought, "This is something I can afford and I've got to be responsible with my money, so I've got to take this place." The landlady asked, "What do you do?" I said, "I'm a lawyer." She looked at me and said, "I don't rent to lawyers." I was thinking, "Thank God."

I stayed with my boss for a couple of nights, and then she introduced me to some people at her church who had a place on the South Slough. They had a basement that they were thinking about renting out. I asked them what the rent was; they said, "200 bucks." I said, "All I'm making is \$200." They said, "You're a lawyer. You should be making a lot more than that." I said, "Well, I am a Legal Services lawyer and a VISTA volunteer." So, they reduced the rent to \$50 and it was a great place. It had no tide. I could go clamming and crabbing. They had a boat.

I didn't have a car. One of the people from whom I was renting was a teacher; I used to go in to work with her. Not having a car was an interesting experience because if you know southwestern Oregon, the court for Coos County is in Coquille, which is a half-hour south of Coos Bay. Not having a car, having to go to court was not always fun, especially in the winter when it was raining – and it constantly rained. So, I got one of those yellow hats and I would hitchhike. One time I got picked up by my client. He was on a motorcycle. I rode on the back of the motorcycle with my suit and briefcase and my yellow hat and raincoat. And he said, "All you had to do was tell me you needed a ride and I would have picked you up at the office." So, it was a wonderful experience.

After a year of being a VISTA volunteer, I got married. My salary increased to \$600 a month, and I had a car. My wife, who is French, was making about \$300 a week as a teacher. She had gone to law school in France and she's thinking, "I'm marrying an American lawyer. I'm going to have a lot of money." And, lo and behold, she's coming to southwestern Oregon and living on the South Slough of the Pacific Ocean, a beautiful place, but she's thinking, "Oh, my God, what did I do?"

I grew up in Syracuse, and my family was all in Syracuse. Syracuse is about halfway to France, so my wife said, "Why don't we go back to New York?" So, we went to New York and I was fortunate enough to work at Legal Services in Geneva, New York, and then I came to Syracuse and worked at Legal Services of Central New York, where I've been since.

At one point in my early forties, I decided that I needed a break, and my mother-in-law was not doing very well. She was a saint. She had so many wonderful stories about the French resistance. She didn't speak any English. She loved me and I loved her. Her French was a Belgian French with a mix of patois, neither of which I can speak, so we communicated very well by smiling. We spent two years living with her, and I took a little bit of care of her. My wife took care of her. I taught. My wife taught. I missed practicing law.

I would go to the American embassy in Paris because I was teaching law but hadn't brought law books with me. I would go to the embassy's law library, which was not very good, and copy some things. Then I would talk to people there. I did get offered a position in Paris, which would have meant a lot of money. Paris is a beautiful place, but I couldn't afford living in Paris, and the suburbs of Paris were somewhat dangerous. My wife didn't want to move to Paris because she is from northern France.

So, thinking about being a lawyer again, I decided I was going to come back to New York. I came back to New York, and as luck would have it, there was a job in Legal Services of Central New York again, which they offered to me right away. We didn't even have furniture when we came because we weren't sure we were staying. I was going to come and my wife was going to say hello to my family, and we were going to decide whether we were going to stay in New York or go to Paris. Since I got offered a job, I said, "I got a job. I have to stay here." She asked, "How much are you going to make?" I said, "I don't know," and I didn't know. I added, "but it's doing Legal Services work." So, we stayed. We somehow or other bought a house. Well, we ended up having a house in Oregon. We sold it, put the money in the bank, and used it to buy a house in Syracuse. For about three weeks we had no furniture because our furniture was being packed up and sent from France.

The incredibly important thing about integration of life and the law is the people with whom you work and the respect that you have for your colleagues. Because we had no furniture, people in my office gathered some together. One person gave us a bed, some people gave us chairs, we had a table, and somebody was smart enough to give us a microwave. One nice person gave us four cognac glasses. The people in the office said, "Cognac glasses? What do you need cognac glasses for?" I said, "You have to have cognac glasses. It's important. It's style. If you have cognac, you have to have the right one at dinner before you go to bed." So, it was a wonderful experience, again, with people whom I worked with. By this time there were some new people.

Earlier today, Chris Thomas talked about his work at North Country Legal Services. It's true that the majority of my friends from Oregon, Syracuse, Rochester, and Albany who are in legal services have 25+ years of experience. In my office we have people with 25 to 30 years of experience. It's almost half of us. The other half is 1 to 2 years of experience. The problem for the 1 to 2 year

people is, unlike my experience when I was in VISTA – VISTA had a loan forgiveness program that helped me pay back my loans when I was in VISTA making \$200 – the new lawyers in my office, who are absolutely wonderful and who are just super to talk with, are wondering if they can stay in Legal Services.

I and the other people who have more than 25 years of experience get so excited about what we do. It's being able to help people, being able to communicate with people, being able to do the job that we do. We're so lucky. We don't have to worry about billable hours. We don't have to worry about clients, whatever the stories are in the private bar. Two of these lawyers were asking me the other day why I stay in Legal Services. I laughed. I thought of my clients. My life is so much better than theirs, even when I was making \$200 a month.

When I was in Oregon, I used to do intake in the food stamp line because I was getting food stamps and didn't have a car. These people became my friends. They were very nice people. They just didn't have any money. And I didn't have any money. Unlike my first potential landlord, they didn't care that I was a lawyer.

In New York, too, it's just such an incredible feeling to be able to help people and to explain things to them. I used to have a very bad habit of using 15-letter words when I wrote letters to my clients. Other attorneys in the office would read my letters and say, "You can't send this out. These people can't read."

I had a Social Security client for whom I got disability. He was almost seven feet tall. He never made it past the third grade. His mother wouldn't let him go to school because he was supposed to take care of the house because she was an alcoholic and couldn't do things, and he was also afraid that she was going to start a fire in the apartment. So, he never went to school and couldn't read. The thing he wanted to do most was to learn how to read. So, part of my time with him, to talk about his disability case, was to teach him how to read. We had magazines in our waiting area and I would say, "Take a magazine and let's take a look at some of these words." So, we spent some time reading and it was wonderful, absolutely wonderful. I don't know if he knew a lot of lawyers, but he said to me that I was the first white lawyer who ever had respect for him. That's what we as lawyers need to do: to respect first ourselves, be honorable to ourselves, respect our clients, and respect our coworkers.

I can tell you an incredible number of stories. I had a client who lived in a tree. I won his Social Security case and got him \$65,000 retroactive money for a mental impairment. He wouldn't accept it because he considered himself a cancer patient. He didn't have cancer, but that's why he thought he was disabled. He refused the \$65,000. It got sent back to Social Security. Incredible. I see him every once in a while walking around. I say, "Hey, how are you doing?" It breaks my heart that I couldn't reach him and explain to him that he should

take this money and it's okay. I couldn't reach him. He's still living in a tree in Lafayette, New York, and then in the winter living in the rescue mission.

I applied my lesson from that client to another client for whom a court appointed me to do a brief. I never sent her a copy of the brief. I normally do, and I try to explain it in easy English, but I never sent her a copy of the brief because in order to show that the Administrative Law Judge was wrong, I had to show that she was an incredibly depressed woman with a learning disability. I don't know if I won the case, but I should win the case, especially since the judge asked me to write the brief, but I didn't send that to her. I didn't send it to her because I respected her and I didn't want her to be offended by me. Maybe I'm too sensitive to that now. I try very hard.

I'm going to tell you another Oregon story. In my office, all that I had was two beanbag chairs and the Oregon statutes. I didn't have a desk; I didn't have a phone. My first client was a domestic relations client. In Oregon, the only ground for a divorce is "I want a divorce." That's it. There is no community property. This woman had been kidnapped by her motorcycle gang husband outside of a bar in, I think, North Bend, Oregon, and taken to Idaho where the marriage age was younger. They got married and then they came back to Oregon. So, she was doing this motorcycle ride up and down the Oregon coast. Finally she decided she didn't like living that way and wanted a divorce. She wasn't making any money. She comes into Legal Services, and it was my intake day. So, we're sitting down on these beanbag chairs and she's explaining her story to me and I'm thinking, "This is really awful." Two weeks later I get a desk, some chairs, and a bookcase. She comes into my office and says, "I don't like this. I like the beanbag chairs better."

She also said, "I've got to go because my husband is looking for me and I'm in hiding." I said, "Where are you going to go? You've got to make sure that you stay in touch with me because the court is going to schedule this and we've got to get down to court." She said, "I'll let you know." The very next day I hear motorcycles outside my office and I'm thinking, oh, my God, this couldn't be. And it was. The husband came into my office. First he came upstairs and said, "Where's Cadin? Where's his office?" He came storming down and he had a big knife and he stuck it in the center of my desk and said, "Where's my wife?" I said, "I don't know, but I'm getting out of here and I'm calling the police, so you can stay or not, but the police are going to come." I got right out of there and called the police. They came right away and he left.

Flor Colón emphasized passion. I have so many stories. When I come home, my children ask me to tell the stories or I tell the stories to my wife. So, my wife sort of understands that leaving work at 6:00 p.m. is early, and I usually get there between 7:30 a.m. and 8:00 a.m. Clients know I'm there and they call me, because the switchboard doesn't turn on until 9:00. I work on weekends and I enjoy what I do.

When my youngest daughter was playing soccer, I was a soccer dad. I figured that's what I can do on Saturdays, because my wife was teaching on Saturdays.

Flor Colón said she communicates with her daughter through tap dancing. My oldest daughter is now in law school in England, and the second to last time I saw her was in France. She brought over her English books, and we sat down for the two weeks that I was there in France talking about English law. This week, she's at a wedding in Philadelphia. She called and said, "Dad, I've got statutory construction and sovereignty," which are two books from British law. She said, "I can't wait to have you read them." So, I connect with my daughter by reading British law.

As lawyers, we have the potential to get so excited about what we do because we can help so many people. We perceive things. We know how to talk. We know how to handle things. We know how to present things. We can give that excitement to other people.

Working with the bar association in Onondaga County is absolutely wonderful. I have met great people there. Catherine Richardson used to chair that bar association before she went to the New York State Bar Association, and she has been incredibly helpful to me in Legal Services. The bar association itself has always been helpful to Legal Services.

For those of you who may not know, Ronald Reagan did not like Legal Services. George Bush the first was okay, but George Bush the second doesn't like Legal Services either. For a while they continuously proposed zero budgets for Legal Services, but the U.S. Senate continuously brought it funding. Funding is a constant issue for us.

I don't really worry about my salary because I'm working, so I get something. So, I'm glad, but I am worried about the two young lawyers in our office who have \$200,000 in debt. My school loan is paid off, and my house is going to be paid off in two months. But I'm worried about them.

I am able to get attorney's fees in Social Security Disability cases from federal court when I win a case and it doesn't come out of the client's money. So, since it doesn't come out of the client's money, I hand over the voucher to my director and I say, "This is for the Julie fund" or "This is for the Crystal fund." Julie is a Skadden Fellow in my office and absolutely wonderful. But what are they going to do when she's done?

My office is such a wonderful place. We're all family. We like working together. We watch out for each other. When I go to France for vacation, people watch my cases. When somebody else goes to California or someone else is on vacation or is sick – we have a paralegal in the office who has now been in the hospital for a month with a stroke – we take over their cases.

There's a health nut in our office (a brand-new attorney) who decided to get people into walking, which is wonderful. We have a circular hall in our

office and we do case reviews while we are walking. Alternatively, we go to the museum and go over cases and say, "What's this judge going to do on this case?" It's mentoring. It's talking. I have a lot of fun, and this person also has fun. Last week we had two other attorneys join us in this. They don't do disability law, but we have them engaged in school law. So, we talk about that. We try to integrate the walk with a topic.

I don't see my wife and kids often. When I tell my wife I'm coming home early, she says "okay" and then doesn't believe me. But my wife is absolutely super. She's my best friend. She has promised me that some day we will retire in France. So, with that, it's great to be a lawyer and, Lesley [Rosenthal], thank you for making that comment. I love being a lawyer, too. Thank you.

ELIZABETH EDDS KOUGASIAN, ESQ.

DIRECTOR OF PLANNED GIVING, CALVARY HOSPITAL

Calvary Hospital in the Bronx has a unique mission. It does compassionate care; it is an end-of-care hospice for adult cancer patients. As director of the planned giving program there, I have a team of volunteer lawyers who are on-site and at my disposal to help promote the program. What is interesting is that we are not getting people just from large firms. We're also getting people from midsize and small firms, as well as solo practitioners. So, it's not the culture of the firm that's pushing them or driving them to the decision to do something that augments their life, but really the mission of the organization.

I've done development work in a few other places, but at no other place have I seen a group of committed lawyers who work to the degree that this group does as a united front. As Flor Colón was saying, the thing that is important is that as professionals and as lawyers we find things that resonate with us and allow us to extend our professional passion. In this case, oftentimes they have a professional or personal reason for coming to Calvary. They've had a friend or family member with cancer. Also in the trusts and estates field it's working with a field of law that has end-of-life consequences. It's a unique opportunity where they are able to merge both their professional and their personal experiences together.

I would like to acknowledge the responsibility of charities on the receiving end of volunteers who are trying to integrate their life and trying to give additional purpose to their work. We have a responsibility to package volunteer opportunities so that people can do it in a way that's productive and meaningful for them. I think one of the panelists said that an opportunity for public service is the opportunity to reach out and grow skills and serve the community. Charities realize there's a responsibility to make it work. And it's not a cookie cutter approach, but finding ways to plug lawyers in around their busy schedules as well.

SETH ROSNER, ESQ.

MEMBER, NEW YORK STATE JUDICIAL INSTITUTE ON PROFESSIONALISM IN THE LAW

You three [members of Panel III] and all seven of the panelists who preceded you have obviously had extraordinarily satisfying careers in the law. Maybe, Chris [Cadin], yours may have been the most personally satisfying from the way you've described it.

My daughter, who is now 38 years old and a mother of one, is talking about going to law school. Five weeks ago, I was at a Saratoga County Bar dinner sitting next to a friend of mine, a very prominent trial lawyer in the Capital District. I mentioned this to him and he said to me, "If you were starting today, knowing what you know today, would you be a lawyer?" I thought for a second and I said, "If I knew that I could have the kind of career that I've had with the opportunities of law practice and public service and so on, or something analogous to that, there would be no question, but I've seen some stuff in law practice that didn't make me happy." My friend said, "When my two sons were in college, they were talking about going to law school. I have seen so much bad lawyering and judging and been under such tension in the courts and in my practice that that evening I said to my wife that I would rather pay for my two sons to go to Denmark for a sex change operation than to have them be lawyers." That sounds pretty extreme, but he was serious. Neither of them in fact did become lawyers.

So I ask you the question he asked me. If one of your children came to you and said, "I want to go to law school and I want to be a lawyer," what would you say?

MR. CADIN

My daughter is in law school in England and wants to do international human rights. She wants to do Guantánamo and things like that, asylum and refugee work. I'm quite proud of her. I'm glad that she wants to be a lawyer. I would like my second one to be a lawyer, too, but I think she's more of a psychiatrist.

MS. COLÓN

My daughters haven't asked yet because they're 12 and 9. I don't know what they will want to do, but I would absolutely support them if they want to do that. What I would probably do is tell them to pursue, irrespective of money, whatever career they really want in the law.

I was born and raised in Manhattan and went to Brooklyn Law School. At law school, I worked for Legal Aid doing a clinic for a year and a half. I worked in a domestic violence unit at the Kings County D.A.'s office. And I really,

really wanted to work for Legal Aid upon graduation. I was lucky enough to have gotten a scholarship, so I went to law school free of charge with a stipend to live on.

When I was graduating and had a job offer from Nixon, I made the mistake of going into private practice first. Everybody said to me, “You really should go to private practice first and then go into public service.” So I thought, okay. It was easier to move from private practice to public service than the other way around, at least back in the late ’80s when I was being counseled. I did that and, not surprisingly, I never left private practice to do public service.

So, what I would tell my daughters today would be to think about what you really want to do and to do that and not be seduced by the money in private practice, which is exactly what happened to me.

MR. ALONSO

My son wants to be Batman, but he’s three years old. So he hasn’t come to me yet.

There is probably a higher likelihood of happiness if somebody does something that’s not that lucrative out of law school, *e.g.*, if you go to Legal Aid, Legal Services, or become an A.D.A., all the various permutations of public service jobs you can do. My evidence is anecdotal: my friends who went into public service really seem to like what they do, and I love what I did. It was the greatest job in the world, what I did with the government. It was a different phase of my life. I’m happy doing what I’m doing now, but everyone I knew loved it.

In private practice, it is a bit hit or miss. Some people really do love it. I try to mentor associates as much as I can and I believe it when they tell me they love what they’re doing, but a lot are not that happy, particularly in other firms. That gets back to one of our themes. I would say to my son, yes, but I would carefully mentor what he did and make sure that he had mentors every step of the way so that if he took a misstep he could correct it.

MR. ROSNER

May I ask a follow-up question? I didn’t have an opportunity to ask my friend in detail why he made that comment, why he had that reaction. Can you think of a few factors that might have prompted that kind of a response? That was a pretty strong response.

MR. CADIN

When I was doing housing law, I was in City Court almost constantly, defending against evictions. There was an attorney in Syracuse City Court who was pretty awful. People would complain about him because he was so awful.

He was demeaning. He used bad words. He was not a very pleasant person. We at Legal Services actually got along with him because we would appeal him and he had to spend money on the appeal. We taught him, “Don’t argue with us. Just work with us.” And so, lo and behold, he would work with us. But I’ve seen – not too many, but I’ve seen lawyers who are not very nice, who don’t respect other lawyers or even the court, who don’t come forward with information that they should be coming forward with, and make it a game and very unpleasant.

If you hadn’t told me otherwise, I would have thought your friend must have been in the matrimonial bar, which seems to corner the market in unpleasant people. But it has not been my personal experience. And the rotten lawyer I used to deal with turned out to be a very nice person once we beat him in court.

MR. ALONSO

It’s tough out there, what goes on. I think I know. Not everyone gets to have these great jobs in Legal Services or the U.S. Attorney’s Office. A lot of people have to hang out a shingle or work for a firm that might not be right for them and do the type of work that is not their first choice or even their fifth choice. A lot of people aren’t that happy when they come out of law school doing it.

This person mentioned a bad experience with a judge. Judges, like any other group of human beings, can be uneven. There are problems there like everywhere else, so I could see frustrations. That’s why whoever is starting out should be well mentored and able to be guided and told, “Hey, maybe that’s not the best thing for you.”

MS. COLÓN

There have been moments in my career where if you had asked me I would have said there’s no way I’m going to have a child be a lawyer, just because it was a moment in time, there was a bad day at work or a bad court decision that I got when I was a litigator. So I wonder to what extent the comment may have been just his state of mind at that time on that day and not a reflection of his entire career experience.

JOSEPHINE M. BASTONE, ESQ.

BRONX SUPREME COURT

In talking to people who are active in bar associations and in civic organizations, I find they’re the ones who, going back to what you said earlier, have passion both for the law and the other activities that they’re involved with. The

attorneys whom I ask, “Why aren’t you involved?,” are also the ones who take forever to get anything done. The ones who love what they are doing seem to have prioritized and have time to do other things, whereas those who do it just as a job are taking their time with everything. They never get anything done.

HAL R. LIEBERMAN, ESQ.

HINSHAW & CULBERTSON LLP

I’ve listened to and admired a lot of the things that you’ve said because it reminds me of some of the observations I’ve made. I was a Legal Services lawyer for about 13 years and spent a lot of time in government and now I’m in private practice. I’ve been fortunate in a lot of ways.

I work with lawyers in law firms counseling them, and I see a lot of the dysfunctional part of the profession. What we really haven’t acknowledged is that not only are there some unhappy lawyers, but there are some severely depressed lawyers. There have been some informal studies – and I don’t know what the statistics are – on drug and alcohol abuse, broken marriages, a lot of disaffection with the life of the lawyer by many lawyers.

This is probably a controversial thing to say, but we probably have too many lawyers. There are something like 175,000 lawyers in New York State now. I think there are over 250,000 lawyers in California, many of them in marginal practices. What we’ve got in this room and reflected in your comments are very well-integrated, successful and relatively happy people, but we’ve got a lot of problems in the legal profession.

I wonder if the well-rounded experience is one of the reasons why we’re relatively happy compared to our brethren and sisters who are not. Unfortunately, there are a lot more unhappy lawyers than happy lawyers. At least that’s what I’ve observed; maybe I see the underside of the profession. But the unhappiness in our profession worries me a lot.

I don’t know why exactly I went to law school, but I’ve loved being a lawyer. Part of the reason for that is because I’ve had the opportunity to do a variety of things and follow my passions and do things that didn’t involve making a lot of money for a long period of time. But I worry about the future of the profession, and I don’t know whether conferences like this are going to solve that problem. It’s a more systemic problem than simply people not getting the public service opportunity early in their careers. There are some other things going on here. Nevertheless, for some who can be saved, if that’s the right word, obviously the public service experience is a wonderful experience and one that I wish all the people coming out of law school can have.

One of the things we haven’t really talked about is that, unfortunately, there aren’t enough jobs. Yes, there are volunteer opportunities for public service, but there really aren’t enough entry-level and early-on jobs for young peo-

ple. A lot of people who go into private practice, by the way, don't necessarily get jobs at Wall Street firms either. They go into small firms.

It's very easy to graduate from law school. We have an inordinate number of law schools in New York State today. If you graduate in the top half of your class from not one of the elite law schools, what are the opportunities? Basically hang out a shingle. That's it. It has its own set of issues and problems. So, there are a lot of issues that I worry about.

MR. ALONSO

In your experience – and you omitted the part about your career where you were chief counsel to the disciplinary committee – are the lawyers getting in trouble the ones who hang out shingles?

MR. LIEBERMAN

Most of the lawyers who get in trouble are in fact people in small or solo practices. I think there are other kinds of things that happen in larger firms, but they are covered up and we don't see them as much. I don't think that that makes one group better or more ethical than the other.

The profile of the lawyer who got in a lot of trouble in my day as a government prosecutor was the white male in his fifties with a declining practice and kids in school and lots of things happening, and alcohol was often a factor. We once did an informal survey in our office of the number of cases we were handling that seemed to involve substance abuse; it was a very high percentage.

MATTHEW LEE KLETTER, ESQ.

I have something optimistic to say. I've been an entertainment lawyer for approximately 20 years, working in the record industry. Maybe one of the reasons I was invited here was that I had the opportunity to mix my avocation with my vocation.

There was a period of time in the mid-1990s when clients of mine were performing in Manhattan all the way down from the southern tip in Battery Park City up to Tavern on the Green. Every night of the week a different client was performing somewhere. As their attorney I was able to both represent them and enjoy the performances at all kinds of places, including CBGB's. So, I've had a really glorious experience with it on that level, even up here in the Albany area going to concerts at Saratoga, what they call SPAC [Saratoga Performing Arts Center], and seeing numerous clients of mine perform.

Then all of a sudden came 9/11 and Napster, and the record industry began collapsing. By now we live in a world where Tower Records no longer exists and the record industry for all intents and purposes is gone. Ms. Colón's brother may be in the Guns & Roses band, but that's kind of what is happening

today. Someone will want to see some old '60s or '70s band that has decided to have a reunion, like The Who, perform. That's how people today are picking music or debating what is going on with hip hop or American Idol. It's certainly nothing like what those of us in this room grew up with, where for many of us our coming of age was identified with the next Simon & Garfunkel record or the next Beatles record or the next Rolling Stones record.

Today the industry has largely collapsed. And so, as a lawyer I got confronted with the challenge of how to reinvent myself now that the industry that I'm in no longer exists. Many of us in the record industry have been confronted with that challenge. I'm pleased to report that the opportunities are plentiful. In fact, I'm here because I'm being encouraged by people in the Westchester County Bar Association to pursue a public service career.

Contrary to what some in this room have said, I'm finding that there are opportunities for people to become legal guardians, guardians ad litem. Increasingly in each county, there's an emphasis on expanding the list of people who can qualify for those opportunities. It's no longer acceptable in many counties if it's just a short list of people who can serve as guardians ad litem or legal guardians.

I went to a seminar recently conducted by Judge Scarpino in Westchester where 50 of us were invited to participate in becoming guardians ad litem for the Westchester County Surrogate's Court. I thought, my goodness, somebody can become an 18-b lawyer or a guardian ad litem. They could look around at all these different agencies that need attorneys to represent people where perhaps the counties are not paying what the lawyers could be charging necessarily, but if they were on the various lists, between their private practice and what they bring in with those government opportunities, they could make a go of it.

What's incredible about law is that really the opportunities are plentiful. If a person in midstream decided that they wanted to go into international law and maybe take a placement overseas in London or Tokyo or even China, if they went and knocked on the doors of various corporations and law firms and said, "I'm interested in doing this type of work," the likelihood that they would be taken seriously is high. So, I'm very pleased that I chose this profession. I'm proud to be part of it.

LOUIS A. CRACO, ESQ.

CHAIR, NEW YORK STATE JUDICIAL INSTITUTE ON PROFESSIONALISM IN THE LAW

Part of the problem that we're confronting here is that some of us whom you were talking about, the Feericks and me and others, lived in a very lucky time.

I want to pose a question arising from a particular piece of law. When I was a junior associate, I was on the Federal Legislation Committee of the New

York City Bar Association and worked with a couple of people there, actually going down to Congress and helping to draft the 1963, 1964, and 1965 Civil Rights Acts. And I wasn't a partner in the firm. When I became president of the City Bar Association many years later, I was impressed by the fact that the committees were populated almost exclusively by partners from the firms and not by the associates as I had been.

Dan [Alonso], you are encouraging people in your firm to get involved in the bar association. Are there structural things that the state, city, or county bar associations ought to be doing to create opportunities for those people to have meaningful participation rather than just as interns and ancillary to people who are already partners in the firm and thus give to the people who are three to five years out of law school, at the point where they start to get disillusioned about what the practice is all about, an opportunity for the kind of service that you're talking about?

MR. ALONSO

The answer is yes. Before I give you my brief observation on that, I just want to say you were lucky in another way. The City Bar Association, once upon a time, was one of the only games in town. The country has gotten bigger around it. I don't think the Federal Legislation Committee is being asked as often these days to help Congress draft federal legislation.

With respect to what we can do, I'm not sure if it's in writing, but it is certainly passed on to all the committee chairs that we're required to populate our committees diversely in every sense of the word, and that includes length of years as a member of the bar. We are specifically not supposed to have just partners or the equivalent. My committees always have had a smattering of very young people who are either associates or associate age or level. So, in the City Bar Association, at least, your observation of that may have been one committee that is not representative. They certainly beat it into us that you're supposed to get people from a cross section of the bar – private, public, ethnic, racial, older, younger, all levels of experience, different kinds of practice; prosecution, defense, if you're a criminal committee. We really try to do that, and every association should encourage that.

MS. COLÓN

That is a great idea to mandate that there be a diverse group of people in your committee. You have to also make sure that it is actually enforced, so someone has to be overseeing those committees and looking at the makeup and take to task a chair of a committee who doesn't have an integrated, diverse committee.

MR. CADIN

The Onondaga County Bar Association is very creative. It has a lawyer in the courtroom program. Somebody earlier was talking about judges. A judge from the federal court is pretty active in it as well. And to get a federal judge to do this kind of work, the clients as well as the lawyers are excited.

Also, in my office there's a consumer clinic. Every week the bar association sends over two attorneys and they handle cases and meet with clients. There is also one at a local church for domestic relations issues.

DINNER PROGRAM

LOUIS A. CRACO, ESQ.

CHAIR, NEW YORK STATE JUDICIAL INSTITUTE ON PROFESSIONALISM IN THE LAW

Good evening, everybody. I want to thank you all for coming to dinner, and I want to thank particularly the people who served as panelists today. They were really remarkable. As I have said to Chief Judge Kaye on more occasions than she probably remembers, one of the pleasures of the job to which she assigned me all those years ago, is the sheer excitement that you get from listening to stories of the kind we heard today. It is a very encouraging thing.

There are many lawyers who are depressed and unhappy and conflicted and in various kinds of pain. The endeavor to try to think deeply how that pain might be relieved, how that morale might be changed, is itself a good one and an interesting and exciting thing to be involved in. But to be involved in it with colleagues like the ones I have had the pleasure of being with all these years, and with the people who come to these events, who Seth Rosner pointed out tend to be the happy ones, is a revitalizing experience. Chief Judge Kaye, thank you again for that really very encouraging span of years.

I would like to thank particularly the judges of the Court of Appeals; Chief Judge Kaye, who joins us tonight, and Judge Smith, Judge Graffeo, Judge Read, Judge Jones and Judge Pigott. I pause on Judge Pigott, whom we claim as an alumnus. When Judge Pigott was a Justice of the Appellate Division, Fourth Department, he was on the Institute and we prized his contribution for the few years he was there. Then he became Presiding Justice of the Fourth Department and stayed only one more meeting with us after that because of the press of duties.

At this meeting, he told me a story which I have retold as widely as people will permit me to do. Apparently, after he was promoted to the PJ's job, a friend of his had a party to celebrate the event, at which the young daughter of the host was present. The host introduced Gene to his daughter, saying, "This is Justice Pigott, he is a real judge." To which she responded, "Really? Which channel?"

I left off of my list of judges, Judge Carmen Ciparick, a member of the Institute for years, and I left her for last for two reasons. One, I'm turning the podium over to her. Two, I want to thank you Carmen, for the years of wise guidance and good judgment, and the sheer companionship and participation you have given to the Institute, which is really remarkable, and we feel very warm about it. So thank you very much. Among the various contributions Judge Ciparick has achieved for the Institute, she procured our speaker for this evening.

HONORABLE CARMEN BEAUCHAMP CIPARICK

ASSOCIATE JUDGE, NEW YORK STATE COURT OF APPEALS

Thank you. It certainly has been wonderful working with you, Lou, over the last few years. And thank you, Catherine Richardson and Joe McCarthy, for putting together such a wonderful program. We have had terrific panel discussions, and the participants have been stellar. We thank the State Bar Association once again for hosting our dinner. They hosted us at lunch today also, and will be hosting us tomorrow. So we thank them for allowing us to invade their beautiful home.

Just arrived from Washington – lucky for us his plane was not delayed – is Jeremy Travis, a longtime friend of mine, who is now President of John Jay College of Criminal Justice of the City University of New York in Manhattan. I say longtime friend because I first met President Travis 29 years ago in 1978, when I was a candidate for a Criminal Court Judgeship in New York City and Mr. Travis was a member of Mayor Koch's Committee on the Judiciary. I was approved by the Committee and appointed Judge of the New York City Criminal Court, and the rest is history.

As for Jeremy Travis, our distinguished speaker, he received a BA cum laude in American Studies from Yale College and an MPA from New York University Wagner Graduate School of Public Service. He began his career as a legal aide and paralegal and was inspired to pursue his studies in criminal justice. He was Executive Director of the New York City Criminal Justice Agency from 1977 to 1979 and served six years at the Vera Institute of Justice. During that period of time I met Mr. Travis. He was inspired to go to law school and earned his JD cum laude, again from NYU, Chief Judge Kaye's alma mater.

He began his legal career serving as law clerk to then-U.S. Court of Appeals Judge Ruth Bader Ginsburg. During the '80s and early '90s, Jeremy Travis was primarily employed by the City of New York, serving first as Special Counsel to the Police Commissioner of the New York Police Department, and later Deputy Commissioner for Legal Matters for the New York City Police Department. Jeremy Travis also served as Special Advisor to New York City Mayor Edward I. Koch as Assistant Director for Law Enforcement Services for the Mayor's Office of Operations.

In 1990 Mr. Travis served as Chief Counsel to the U.S. House Judiciary Subcommittee on Criminal Justice, which was chaired by then-Representative Charles Schumer. In 1994 a great opportunity for someone so dedicated to criminal law and criminal justice opened up for Jeremy Travis: President Clinton nominated him to serve as Director for the National Institute of Justice, which is the research arm of the U.S. Department of Justice. Following that assignment, President Travis served four years as a Senior Fellow affiliated with the Justice Policy Center at the Urban Institute, a nonpartisan economic and

social policy research organization in Washington, D.C. There he launched a national, cutting-edge criminal law research program, re-invigorating the agency and managing to increase the growth of the annual budget from 25 million to 120 million dollars.

He's a teacher, lecturer and author of many works, including *But They All Come Back: Facing the Challenges of Prisoner Reentry*. When he returned to New York in 2004, Jeremy Travis became the fourth president of John Jay College of Criminal Justice of The City of New York, and we in New York are so fortunate to have him back.

President Travis suffers the same affliction many of us in the room suffer – we heard this talked about today – where you just can't say no. When Chief Judge Kaye asked him to make a presentation last year at an OCA [Office of Court Administration] conference on disproportionate minority representation in the criminal court system, President Travis was at the ready, providing us with in-depth analysis of statistics on in-take probation demands. On May 3, President Travis will deliver a keynote address at the 19th annual meeting of the National Consortium on Racial and Ethnic Fairness in the Courts, hosted by the Franklin Williams Commission.

So when this Institute was looking for a speaker, we approached President Travis and asked him to speak before the group and tell us why he has stayed with the criminal justice game for 30+ years and still loves what he does. He was most eager to address us, although today also included a gig in Washington, D.C., and I understand he is going back tomorrow to Washington to testify at a congressional hearing on gang violence. So President Travis, we are so pleased you are joining us this evening in another great capital city. Thank you for taking the time, and I wish to extend thanks from my colleagues at the Court, most of whom are here, as well as members of the Institute who are here. We appreciate your visit and look forward to your inspiring remarks.

JEREMY TRAVIS, ESQ.

PRESIDENT, JOHN JAY COLLEGE OF CRIMINAL JUSTICE
OF THE CITY UNIVERSITY OF NEW YORK

Good evening. Thank you, Judge Ciparick, so much for that warm introduction. We have known each other for many years and found many ways over the years to collaborate as friends and colleagues.

You may have heard Chief Judge Kaye whisper, "He's an easy mark." But I am an easy mark when it comes to obligations, both professional and personal. So I'm delighted to be with you here tonight, to be in your presence and to share some thoughts that are on my mind. It is nice to be with Chief Judge Kaye and other members of the Court of Appeals, members of the bar association and others who are here.

This gives me a welcome opportunity to share some thoughts about how fortunate we as New Yorkers are to have had the leadership of Chief Judge Kaye over these past several years. On this particular occasion, when we come together to reflect upon the leadership challenges facing the legal community, I would like to express my admiration and gratitude to Chief Judge Kaye for her inspired leadership. It's hard to imagine a better example of leadership that the legal profession has ever seen. She can justifiably look back on her tenure and count an impressive list of enduring accomplishments.

We all probably have our favorite reforms. It sounds like one of those Letterman Top 10 exercises. I will go right to number one, and I have said this on every occasion that presents itself about Judge Kaye: it's her championship of problem-solving courts and justice. This new approach to the administration of justice fundamentally alters the function of the courts in our society, the role of judges in resolving disputes, and the impact of the law in promoting justice. We have watched it evolve over the years, as it seemed to take shape and get a foothold in the way we think about the role of the courts. This is a revolutionary concept that helps us think differently about what judges do, about the function of courts in our society, and on a fundamental level, what justice is to the extent we think about justice being more than resolution of a case, more than resolving conflicts and settling differences between parties, and really getting to some core dynamics underlying whatever it was that brought that conflict into the courtroom.

The problem-solving methodology is a very powerful idea and is taking root all across the state. It's a national idea. It has been talked about in academic circles and has been the subject of writing and colloquia around the country. As lawyers of this state, we should be very proud of our Chief Judge, who is the national spokesperson for this powerful new idea that will outlive all of us, and we started it here in New York. I want to dedicate a special moment to Chief Judge Kaye for that contribution to justice. Thank you.

I am hoping it is not further cause of depression, but I have a serious topic. It is a leadership challenge. I want to lay out a proposition, which is an advantage of accepting an invitation like Carmen Ciparick's. For someone in my line of work, it gives one a good excuse to put one's thoughts together, things that are on one's mind. This evening, as a continuation of the talk I gave at the Judicial Institute a few months ago and will give again in May, I would like to share some reflections on the single most important leadership challenge facing the legal community today, namely, the nexus between our criminal justice system and our pursuit of racial justice.

At this convocation, we are reminded that one of the most gratifying attributes of the legal profession is our willingness to engage the issues of criminal justice and debate in our legal profession the meaning of our constitution's guarantee of equal protection of the law. We take seriously allegations of racial

disparities in the operation of our criminal justice system. We recognize the importance of developing a profession that better reflects the racial, religious, national, and ethnic diversity of our country. We celebrate the legal profession's contributions to the abolition of Jim Crow Laws and the establishment of statutory protections for women and minority groups. We are justifiably proud of the legal profession's contributions to America's pursuit of racial justice.

Yet every student of American history knows that the relationships between minority communities and the criminal justice system are very complicated and replete with distrust, patterns of discrimination and racial violence. We need only remember such iconic events as the racially defined reactions to the acquittal of O.J. Simpson, or the urban riots of the 1960s, to portray the depth of this divide. More recently, we witnessed the uproar over the shooting of Sean Bell, an African-American man killed by police officers last year in connection with an undercover investigation at a night club in Queens.

Some of the anger expressed by the African-American community following incidents such as the Sean Bell shooting reflects more than the realization that another black man has died in a police shooting. In a broader sense, this anger is fueled by an overarching concern about the interactions of the criminal justice system with minority communities in general and the African-American community in particular.

We have entered a new and disturbing era in the relationship between minority communities and our system of laws; one that is fundamentally different from our past, and fundamentally more difficult to change. In this modern era, the criminal justice system has penetrated more deeply into communities of color, in ways that threaten to undermine the legitimacy of the entire rule of law.

This new reality is characterized by two phenomena. First, we have entered an era that scholars are calling "the era of mass incarceration," with historically high rates of imprisonment that fall especially hard on the African-American community, distorting every dimension of community life. Second, we currently enjoy low crime rates – historically low crime rates, notwithstanding the recent increases in violence across the country. For this reason, it is more difficult to question the wisdom of these aggressive crime policies and criminal justice policies, because advocates of these policies claim these policies are responsible for our low level of crime.

If these two assertions are true, the challenge we face is to develop a framework for engaging in thoughtful and constructive debates that will lead New York State and the nation to a new set of criminal justice policies that will keep our crime rate low while reducing our reliance on the criminal justice system (especially on imprisonment) and enhancing the respect for the rule of law. If we can achieve these goals, we will have advanced rather than impeded our nation's pursuit of racial justice.

Let me take a few moments to unpack these assertions. To understand the magnitude of the incarceration phenomenon in America today, consider a simple statistic. Since the early 1970s, we have more than quadrupled the rate of incarceration in America. That is not the number of people in prison; that's the number of people per 100,000 population in prison in America. A generation ago when most of us started in our legal practice, we held about 110 people in prison for every 100,000 inhabitants. Today, we incarcerate about 486 people per 100,000.

The rise in prison population has been a constant fact of American life. Every year since 1972, we have added to the nation's prison population. In times of economic expansion, in times of recession, in times of war, in times of peace, when crime rates were going up, when the crime rates were going down, every year we have added to the nation's prison population. It is true that New York State's prison population came down a bit, one of the few. Not by much. Nothing, frankly, to be proud of. America now enjoys the dubious distinction of having the highest rate of incarceration, not only in the Western world, but in the world.

As this audience certainly knows, the fourfold increase in incarceration rates in America has not been spread uniformly across the American population. Rather, the increased number of individuals, mostly men (about 90 percent of the prison population is male), sent to the nation's prisons has come from a very small number of communities in urban America, mostly communities of color. These communities are already struggling with socioeconomic disadvantage and the challenges of poor schools, inadequate health care, high crime rates and weak labor markets. These same communities are now losing large numbers of young men – and a much smaller number of women – who are being arrested, incarcerated and returned home by the criminal justice system at record levels.

This year, we expect about 650,000 individuals, or about 1,700 a day, seven days a week, to be released from our state and federal prisons and returned home. This number of 650,000 a year is four times the number who made a similar journey a short 25 years ago.

The consequences for these communities – African-American communities in particular – are profound. Today, more than 10 percent of African-American men between the ages of 25 and 29 years old are in prison, compared with 2.4 percent of Hispanic men and 1.2 percent of white men. Assuming no changes in the incarceration rates, nearly one in three African-American men, and one in six Hispanic men, will be sentenced to serve at least a year in prison at some point in their lives. This has really deleterious consequences in the states that have enacted laws saying you can't vote for life if you have a felony conviction. Eight or nine states that have this law have disqualified people from voting for life. As a result, a quarter of African-Americans in those states cannot vote for life.

Much of this disparity is being attributed to the nation's war on drugs. Between 1980 and 2001, the incarceration rate for most serious crimes – murder, sexual assault, robbery, burglary, and assault – rose significantly but not dramatically. What do I mean? Incarceration rates for those crimes rose between 66 percent and 361 percent. That is a big increase. But over the same 20-year period of time, the incarceration rate for drug offenses grew well over 900 percent.

Most of that growth, beginning in the mid-1980s when the crack epidemic exploded upon the streets of urban America, can be traced to the rise in African-Americans imprisoned for drug offenses. Beginning in 1987, the number of blacks admitted to prison convicted for drug offenses skyrocketed, nearly quadrupling in three years. By 2000 it had reached a level 26 times the level in the early 1980s. By contrast, over the same period, the number of whites admitted for drug offenses approximately doubled, and the number of Hispanics increased only by half.

The community-level consequences of the era of mass incarceration, particularly this ramping up of drug enforcement activity, are deep and profound. Some of my colleagues at John Jay have conducted research in East New York, Brooklyn, on what we call high incarceration blocks, *i.e.*, blocks where the residents are highly likely to be sent off to prison and returned. High incarceration blocks are the blocks experiencing high rates of incarceration every year: one in eight men between the ages of 16 and 44 will be arrested and sent to jail or prison each year. If you do that each year, year after year, prison becomes a predictable, likely experience in the lives of men on those blocks.

According to another study published in Chicago by the North Lawndale Employment Network, approximately 70 percent of the men in North Lawndale have a criminal record. Clearly, in neighborhoods such as these, growing up male most likely involves one or more experiences with the criminal justice system.

Another way of looking at this new reality is to ask how much we are paying for the incarceration of the men from these blocks. Typically, the annual cost of incarceration is \$26,000 to \$40,000 per inmate. At some point someone says you might as well send him to Harvard.

There is another way of thinking about prison costs, and this is a very provocative analysis by my colleagues Todd Clear, Eric Cadora and Charles Swartz. They took the costs of incarceration (Rikers or Department of Correctional Services) and assigned those costs in a mathematical way to blocks where people lived before being arrested. They estimated that the taxpayers of New York State are spending three million dollars a year to incarcerate the men arrested on this block I just referenced in East New York, and other blocks like it. That's one block after another after another. We spend over 60 million dollars a year to incarcerate men drawn from the 75th Precinct in Brooklyn and sent up

to the Canadian border or Rikers Island. The costs are just enormous. If we thought about it, we could certainly think of other ways to spend the money to reduce crime rates and produce justice.

Let's think about a third way of understanding this sobering new social reality, which is to examine the ripple effects on the relationships between young men and young women in these communities I just described. I have been very informed by the work of Donald Braman, who is now a law professor, but as an anthropologist examined the impact of mass incarceration on family and community life in Washington, D.C. He coined the phrase "gender imbalance." Simply put, there is a shortage of men in these communities, both in a quantitative sense (since there are fewer men compared to women) and in a qualitative sense (since many of the men who are available are less marketable, to use a crass metric, because of their involvement in the criminal justice system). According to Braman's analysis, he's looking at the 10 percent of women in Washington who live in the neighborhoods with the highest incarceration rates, and in those communities 12 percent of the men on any given day are behind bars. In these neighborhoods, there are fewer than 62 men per 100 women.

We have a very limited understanding of the implications of this reality, but we can all imagine the impact of this reality on dating relationships, on the notion of growing up male and female, on patterns of family formation, and on the levels of female-headed households, on relationships between women and the workplace, and the accumulation of family wealth. Women have to take on an even greater responsibility for providing for their families.

The high rates of incarceration in minority communities are accompanied by high rates of law enforcement activity. I don't want to talk just about arrests; I also want to talk about some other activities. I will talk about three different types of activity: arrests for low level drug offenses, "stop and frisk" activities, and revocations of parole for violations.

In a recent article in the *Journal of Criminology and Public Policy*, three scholars documented increases in arrests for the offense of criminal possession of marijuana in the fifth degree, known as smoking marijuana in public view. For those who are taking notes on such things, it's section 221.10 of the New York Penal Law. From 1980 to the early 1990s, the New York City Police Department made about 1,000 arrests for this offense per year. Starting in 1994, however, these arrests began to increase dramatically, reaching a peak of 51,000 in the year 2000 in a short six-year span, and then dropping a bit to levels of about 40,000, where it left off. In the year 2000, this was the most common misdemeanor arrest in New York City, accounting for 15 percent for all adults arrested in the city.

From the perspective of impact on minority communities, it is noteworthy that slightly over half the arrests in 2000, 52 percent of the arrests, were African-American. This was at a time when the population was 23 percent African-

American. Thirty-two percent of the arrests were Hispanic when the population was 25 percent Hispanic. Even more troubling in terms of fairness of the criminal justice process is the research finding that even after controlling for prior arrests and convictions – because there are differences in those two attributes when the judge looks at the case – black defendants were more likely to be detained at arraignment, more likely to be found guilty, and more likely to be sentenced to jail as compared to their white counterparts.

So without having any discussion about the merits of this law enforcement policy, we can see that there was significant ramped-up enforcement activity on a very low level offense, particularly in minority communities.

The police practice of stop and frisk presents another case study of penetration of the criminal justice system in communities of color. In 1999, then-Attorney General Spitzer conducted a study of stop and frisk following the public uproar around the police shooting death of Amadou Diallo. The Attorney General's report found that although African-Americans made up only about a quarter of the population in New York City, half of the people stopped by the police were black. Hispanics comprised a quarter of the population, but a third (33 percent) of all stops.

When you do statistical work, you have to be careful because the question is always: What is the denominator? Where are you enforcing the law? But at this gross level we can say that African-Americans were over six times more likely to be stopped and frisked than whites, and Hispanics “only” four times more likely.

The researchers conducting the analysis then controlled for the location of the stop (*e.g.*, the police precinct) and crime rates of those precincts. But they still found, as we had seen with marijuana arrests, that minorities were subject to police stops at a significantly higher level than whites.

There is a third criminal justice practice added to the high levels of law enforcement activities in communities of color. We now have many more of our fellow Americans under criminal justice supervision than ever before in our nation's history. In 1980, for example, there were 220,000 individuals under supervision by parole agencies in this country. By 2000, that number more than tripled to 725,000, an all-time high.

Over the same 20-year period, the nature of supervision also changed significantly. We now watch people more closely. We impose more conditions on their liberty and send them back to prison more frequently for violating their conditions of supervision. We now use new technologies such as drug tests and electronic bracelets to keep tabs on people. We impose curfews more frequently. We take fewer risks with parolees, and as a consequence, are much more likely to cite them for parole violations and send them back to prison. In the late '70s, early '80s, state prisons admitted approximately 27,000 parole violators to

prison. In 2000, the same states admitted approximately 203,000 parole violators – a remarkable seven-fold increase.

I've touched upon only a few indicia of the high level of penetration of the criminal justice system in communities of color. We could add others, such as exclusion of drug offenders from public housing, the denial of voting rights to probationers and parolees, or the fact that eight percent of all minor African-American children have a parent in prison today. We could expand our frame to include the number of children in foster care due to parental incarceration, the pipeline between prisons, jails and homeless shelters, or the practice of suspending students from public schools for minor rule infractions.

As leaders of the legal and criminal justice communities, it is incumbent upon us to ask whether these realities square with our notions of justice, comport with our sense of fairness, and – very importantly – withstand the test of effectiveness.

Many of these practices are defended by arguments that they contributed to our nation's declining crime rates and are now necessary to keep those crime rates low. These are really important public policy questions. There is some research in the area, which admittedly is incomplete, but it does not provide much support for those assertions. For example, the consensus among research scientists is that the rise in incarceration in America explains only about a quarter of the drop in violent crime rates. An analysis of the increase in arrests for smoking marijuana in public found no correlation with the crime decline in New York City. A study by the RAND Corporation in the 1980s found that intensive supervision did not reduce crime. A more recent study by the Urban Institute found that individuals placed on parole supervision were just as likely to recidivate as those who were released from prison with no supervision. Although we now supervise people much more intensely, it did not reduce crime. Why are we supervising people the way we are now supervising if they are no less likely to be rearrested?

We need to create an open discussion within the criminal justice policy community about the future direction of our system of law enforcement and criminal justice. We need to examine the costs and benefits of each law enforcement and criminal justice policy and weigh each policy against alternatives, particularly those that do not perpetuate the system's penetration of communities of color. We need to move beyond a narrow examination of the issue of police use of force, as important as that issue undeniably is. We need to move beyond a statistical analysis of the racial disparities in the operations of the criminal justice system, as important as this analysis undeniably is. We need to examine the criminal justice system as experienced in the lives of those who are subject to the rule of law, particularly those who experience the enforcement of the law most acutely.

If the lived experience of an African-American male growing up in urban America is that he is frequently subjected to stops and frisks that are not justified, then our system of laws has lost a measure of legitimacy. If the high rates of incarceration and reentry are damaging an entire community's ability to raise its children, keep families together, accumulate wealth, and sustain the dream that the next generation will be better off than today's, then our system of justice has lost its way.

When considering these issues, I am reminded of a sobering assessment once made by Dr. Manning Marable, the prominent scholar of African-American history at Columbia University. He said that we have now entered the fourth chapter of the African experience on the American continent. The first chapter was slavery, the second was Jim Crow, the third was residential segregation in the North, and the fourth is the era of mass incarceration. Of the four, this fourth chapter may be the hardest to reverse. Unless we take a hard look at the state of justice in our country, we face the distinct possibility that the era of mass incarceration will become a permanent part of the American landscape.

The war on drugs continues without victory in sight. Even though we now experience the lowest crime rates in a generation, we have not witnessed a peace dividend through lower rates of incarceration. Instead, with the exception of a few states, including New York, the growth of America's prison population continues unabated. I fear that we have mixed our historical disdain for the criminal as the other with our deeply ingrained racist stereotypes, a mix then compounded by our fear of crime, with the result that the issue of mass incarceration, and the penetration of the law enforcement and justice systems in communities of color, seem to be far removed from our political discourse.

I hope that the individuals assembled in this room – leaders of the bar, leaders of civic life in New York, leaders of our state government – can use their influence and intelligence to help New York chart a different course. If we can do this, I'm certain the nation will follow our lead. Thank you very much.

MR. CRACO

A modest dissent from only one thing our speaker said, for the totality of which we are grateful, and that is this should not be perceived or felt as a discouraging or depressing thing for this audience.

Some of you have listened to me talk about what it means to be an American lawyer. At this point, the heart of my thesis is that we lawyers are the ones who are the custodians and deliverers of the rule of law in this society, and that more than anything, the society in which we live depends upon the practice of lawyers to mitigate the kinds of things that our speaker tonight just talked to us about. The emergence in such telling detail of another challenge is another opportunity for us all to be a source of encouragement about what it is to be a lawyer at this point in time.

For that challenge we thank you, and we are very grateful that you took the time to come here and present it to us. Which is not to say it is easy or fun, but it is important, and that is one of the reasons it's important to be a lawyer.

OPENING SESSION – DAY 2

M. CATHERINE RICHARDSON, ESQ.

CONVOCATION CO-CHAIR
MEMBER, NEW YORK STATE JUDICIAL INSTITUTE ON PROFESSIONALISM IN THE LAW

Good morning. We are so happy that you are back with us. Without further ado, I would like to welcome to the podium again Mark Alcott, the president of the New York State Bar Association and our host here today.

MARK H. ALCOTT, ESQ.

PRESIDENT, NEW YORK STATE BAR ASSOCIATION

Thank you, Catherine. Good morning, everybody. As you of course know, one of the goals of this convocation is to address the needs and opportunities of seasoned lawyers who, through the benefit of age and experience, constitute the leadership of the profession. The focus groups that were conducted throughout the state raised as one crucial question the following: What keeps mature lawyers in the profession, in the game, for 20+ years?

I have reached the stage in life where anyone who has been practicing for a mere 20 years seems downright youthful, so I am going to address that question with an emphasis on the “plus” part of “20+.” What keeps seasoned lawyers, mature lawyers, gray lawyers as I sometimes call them — what keeps them going across the decades and into their senior years? After all, as we know, the practice of law is a stressful, demanding occupation. It interferes with family commitments and with other satisfying personal pursuits. So it’s understandable that many lawyers who approach or reach their sixties are ready to transition away from the demands of private practice and devote their energy to other pursuits, or to retire. In fact, some of them do just that.

For example, our friend Catherine Richardson has retired from the practice of law. At the risk of bodily harm, I will reveal that she was 62 at the time of her retirement. According to recent press accounts, which is the only reason that I can reveal all of this, it took her, in her own words, “about a nanosecond” to adjust to the life of a retired lawyer. She maintains an office at her firm and she is of course, deeply involved in the community and in the profession as a leader of the New York Bar Foundation and as one of the leaders of our bar association.

According to Catherine’s account, as reported in the press, the benefit of retirement is that she gets to linger over that second cup of coffee in the morning. Meanwhile, she remains active, but not as a practicing lawyer. It was

mandatory retirement, as I understand it, in Catherine's case, but that was a decision that she was ready to accept and a transition she was ready to make.

Many of my colleagues are facing this same issue. There are about a million lawyers practicing in the United States, and the demographers tell us that a significant number of them are baby boomers. They are approaching or have even entered their sixties. A full 25 percent of American lawyers, 250,000, will be approaching traditional retirement age by the year 2011. That's an interesting and sobering statistic.

What are they going to do? Whether they merely cut back, working fewer hours, spending more time away from the office, whether they leave private practice to devote themselves to pro bono work or public service or to teach or work in-house, or whether they embrace retirement fully and leave the profession to go and smell the roses, transitioning in whatever form should be their decision. That is the heart of my message to you today.

As you heard yesterday, to address the needs and opportunities of lawyers in that phase of their professional lives, I've created a special committee on senior lawyers at our bar association. I hope it will evolve into a section. Its mission is to explore and make available board memberships, pro bono opportunities and job opportunities, to offer career counseling, networking, and a full menu of options for gray lawyers who are not ready for full-time golf or shuffleboard.

Many seasoned lawyers are not ready to stop practicing or even to slow down. They want to stay in the game 30, 40, or even 50 years after their admission to practice. One of the bar associations on Long Island, either Nassau or Suffolk County, has an award that it gives every year to someone who has been in practice for 50 years, and lately there has been more than one annual honoree.

There are many others who would like to continue practicing well into their gray years but are prevented from doing so by mandatory retirement policies at their firms. Mandatory retirement based only on age has largely disappeared from most sectors of our economy; in fact, it has been prohibited by statute. But it remains deeply entrenched in the legal profession. It's particularly ironic and unfortunate that as we are living longer and healthier lives, these mandatory age-based retirement policies not only remain, but the witching hour is actually getting younger.

Make no mistake about it. Mandatory retirement based solely on age constitutes age discrimination. It would be unlawful in the legal profession but for an anomaly: the victims are law firm partners. The law, as it has been interpreted to date, is that law firm partners are deemed to be employers rather than employees and, therefore, they're not entitled to the benefits of the age discrimination statute.

Now, even that may be changing. In the *Sidley Austin* case, the Equal Employment Opportunity Commission has argued, and the Seventh Circuit has held, that when a lawyer is a partner in a firm whose management policies are tightly controlled by a small management committee or a single managing partner, that lawyer might be a partner for many purposes, including sharing the firm's earnings and having relative autonomy with respect to her practice, but she is not deemed to be an employer for purposes of the age discrimination statute.¹

As you may have heard, the court has remanded the issue for a factual determination as to whether or not the partner or partners in question should be treated as employers or employees.² The issue turns on whether the individual in question controls the management policies of the firm. If the person does, then she would be deemed to be an employer, but if she doesn't, then she would be deemed to be an employee. To that, I would make only one comment: If someone is involuntarily forced to retire, how can it possibly be argued that that person was in control of the management policies of the firm?

So, the direction in which the law is moving, albeit rather ponderously, seems fairly clear. That should raise warning signals for law firms and partners. But there is a larger issue here, and it's the larger issue that I want to raise and explore with you and with the profession.

Society has made a judgment in every other field that we are not going to put people out to pasture solely because of age. That is the public policy of the United States. The legal profession should not be fighting a rear-guard action against this public policy. On the contrary, the legal profession should be at the forefront of fair and progressive employment policies.

Gray lawyers are the last group against whom discrimination is, at least at this moment, legally permissible. They're also among the last group against whom discrimination based on age is socially acceptable. The fair-minded, tolerant client or partner who would never say "this matter must be handled by a white lawyer," "this matter must be handled by a male lawyer," or "this matter must be handled by a gentile lawyer," evidently does not see the unfairness in saying "this matter must be handled by a younger lawyer," or "I don't want this older lawyer on my case." So, ending mandatory retirement policies will take more than changing the law, and we in the Association are not advocating for a change in the law. Ending mandatory retirement based on age will require a change in culture, a different mindset, and that is what we seek.

To launch the dialogue that I hope will lead to such a change, I appointed a special committee on age discrimination in the profession to examine the issue

1. See *EEOC v Sidley Austin Brown & Wood*, 315 F3d 696, 702-07 (7th Cir 2002).

2. *Id.* at 707.

of mandatory retirement. Its report was issued some months ago³; it said that mandatory age-based retirement is an unacceptable practice in the profession, and it called for an end to that practice.⁴ The report, which I commend to you, and which is on our website,⁵ is very groundbreaking and eye-opening. It addresses, in particular, the argument that is always made on the other side: that you have to force older lawyers out to make room for the younger lawyers who are coming up, so that they can get their slice of the pie. The report says what I firmly believe to be true: The senior lawyer who is active, engaged and productive, and is performing well, will increase the size of the pie, to the benefit of the firm, its clients, and the other lawyers.

The committee found that gray lawyers bring important qualities to the table – the capacity to mentor, which we heard about yesterday; credibility and visibility in the profession; long and deep client relationships; a reputation in the community; and great credibility with judges and regulators. All of these factors can be marshaled for the benefit of the firm.

So, the committee concluded with something that is not very radical. The committee concluded that gray lawyers should be judged and evaluated by their partners and by their firm the way every other lawyer in the firm is evaluated and judged – based upon performance, based on what they contribute to billable matters, to firm administration, to recruitment, to firm reputation and visibility.⁶ These are the factors that we use year in and year out to judge younger lawyers. We should use the same factors to judge senior lawyers and not say we're going to ignore all that and judge older lawyers on one thing only — chronology.

The report was unanimously approved by NYSBA's Executive Committee. It was unanimously approved by our House of Delegates. For those of you who may not know it, you are sitting in the room which is used for House of Delegates meetings. I have stood at this podium many times, to address the House and to preside over the House, and I can tell you that unanimous approvals do not happen very often. So, this is now the public policy of our profession, and I hope our law firms will accept it.

Of course, adopting an individualized, flexible policy towards retirement doesn't mean that no one will ever retire. This Convocation is about professionalism, and part of being a professional is knowing when to leave. That is a decision that, as professionals, we should make graciously and wisely; but it should be done by choice, as it is in every other profession, not by mandate. So,

3. New York State Bar Association, Special Committee on Age Discrimination in the Profession, *Report and Recommendations on Mandatory Retirement Practices in the Profession* (January 2007).

4. *Id.* at 29-30.

5. Go to www.nysba.org. Go to "News Center," then "Reports." The report is available either by topic (age discrimination) or committee.

6. Report (*supra* note 3) at 30-31, 35.

I hope we have sparked a dialogue, and that the profession will take a hard look at this issue.

The astute among you recognize that I have not answered the question that I posed at the beginning of my talk, which is what has kept me in the game for 20+ years. I'm going to conclude by answering that question, and I will do it by telling you an anecdote.

Some years ago, I was invited by a group of European lawyers to appear at their annual meeting and argue a model case as it would be argued in a U.S. court. There were also going to be two British barristers who were going to argue a similar case as it would be argued in a British court. People would take notes and compare, and a good time would be had by all. I asked, "Where is this meeting taking place?" They said, "Venice." I said, "I'm coming." In advance of the meeting, I took a full week of vacation in Italy with my wife. We ultimately arrived in Venice, where we had a wonderful suite at the Danieli Hotel overlooking the Grand Canal.

So, it was quite glorious, but ultimately it was time to pay the piper. There was a moot court to argue, and I had to get ready. I had all my papers with me, and I sat down at the desk and began to prepare. My wife was on the balcony sipping a cappuccino, watching the gondoliers, and enjoying the magic of Venice. She kept calling to me, saying "Come out here. Look at this. This is fabulous." I said, "No. I can't. I have to prepare my case." Gradually, I became excited about the case; I couldn't help myself. I started pounding on the desk with my fist, saying, "I'm going to dazzle them with this argument! They'll have no answer for this!" My wife couldn't believe it. She said, "What are you doing? Are you crazy? You don't even have a client. It's all hypothetical. How can you ignore Venice for a moot court?" And then it dawned on her. She said, "I guess you really love what you do."

So, that's why I'm still in the game. My hope for all of you is that, however your career progresses and whatever you decide to do with your career at the various transition points, including after twenty years, including after thirty years, including when you're in your sixties or beyond, your spouse or companion or friend will always be able to say to you, "I guess you really love what you do." Thank you very much.

MS. RICHARDSON

Thanks, Mark. That was great.

I have to correct one thing. It's the media; they never get anything right. I did retire at 62, but it was not a mandatory retirement. We do have mandatory retirement within our firm, but it is at age 65. Interestingly, of the last nine people who have retired, seven of them retired before 65.

I was on Mark's committee. It was really fascinating, and I hope it starts a lot of dialogue on the issue.

The Judicial Institute on Professionalism, Joe McCarthy, and I want to thank all of you who have participated, and we'll do some work in the next hour or so for your thoughtful input, because it really will give us a basis for what we're going to do next.

How we serve our clients, whether in private practice or government or the courts, has been changing. It appears from our panelists, though, that the key values of our profession, however you might enumerate them, are there to be inculcated in the next generation of lawyers and the generation after that. However, the manner in which this inculcation is going to happen probably will change.

Dean Friedman certainly warned us that while there has been growth of the law as a business, we can't just pick part of the business model. We really need to look at the whole thing and make sure that there is training – and some people have asked if training and mentoring are the same or whether they are different things. But we're going to have to be very careful of that or we will have the erosion of the values that have made the practice of law different from the practice of other professions. Now we just have to figure out how to take Dean Friedman's message and get it out, especially to the middle and large firms.

There is no doubt from listening to all our panelists yesterday and your dialogue with the panelists that we have all found a profession that we're enthused about – as Mark said, that we love – where we can make a difference. Whether as attorneys practicing in law firms, in-house counsel, judges, academicians, legislators, government attorneys, or public interest lawyers (and of course there is that passion for practicing law that we saw in Chris Cadin), we just need to figure out how to pass it on and help the next generation find their way of passing on these values.

We are now going to break up into two groups. Joe and I gave each group two questions. If you have the time and the energy and the enthusiasm to answer both of them, that would be great, but we gave you a little choice so there might be variety in it. We're going to spend some time in discussion. You select a reporter and at the end of 1¹/₄-1¹/₂ hours, we'll come back here and get the reports from the two groups.

REPORTS FROM BREAKOUT SESSIONS AND CLOSING REMARKS

M. CATHERINE RICHARDSON, ESQ.

CONVOCATION CO-CHAIR

MEMBER, NEW YORK STATE JUDICIAL INSTITUTE ON PROFESSIONALISM IN THE LAW

Would you please read your questions?

DANIEL R. ALONSO, ESQ.

KAYE SCHOLER, LLP

Question one was: Can bar associations or law schools create mentorship programs for solo or small firm practices; if so, what would they look like?

Question two was: How can we effectively utilize senior or experienced attorneys to promote mentoring and/or public service?

We approached these questions a little bit as one, because they are related. Not all mentorship programs, of course, require senior or experienced attorneys, but we all agreed that senior and experienced attorneys are a crucial part of a good mentoring program.

The answer to question one is a resounding yes. There was a consensus in the group that certainly bar associations can create mentorship programs for solo or small firm practices, and that law schools have a role in that, as well.

Several of the attorneys in our group said that a problem with establishing a good mentorship program is lack of participation by the mentees. There is a perception otherwise, but a lot of times people who you might think would seek out mentorship opportunities don't, either because they think they don't need it, or because they don't know about it, or because they don't feel that they have the time. There were a number of complaints, if you will, about that issue.

One informal mentorship program that we heard about was really terrific. Raymond Perini and Maureen Hoerger, who have a law firm in Suffolk County, have an internship program, and they will take in whoever asks, pretty much. They will take people who are either interested in law school, or just out of government or Legal Aid who want to be criminal defense lawyers in a small firm setting. They will take them under their wing and show them the ropes. By that, I don't mean the ins and outs of the Fourth Amendment; I mean the ins and outs of getting into the jails, the ins and outs of filing motions to suppress, the nuts and bolts of how to practice in a small firm setting in criminal defense.

Interestingly, Maureen told us that they are not even up to capacity. In other words, you don't have as many people as you hoped to help. That was a

recurring theme. There is a perception among all who have substantial experience that people need mentorship because law schools don't necessarily train people to practice law. Yet apparently, the most likely mentees are not taking full advantage of mentorship opportunities. Professor Nancy Maurer of Albany Law School told us that she believes existing programs within law schools (*e.g.*, clinical programs) are under-utilized.

When I was at NYU 14 years ago, I thought the school pretty much trained me on the nuts and bolts. I tried a case before a jury before I graduated. Hopefully things have only gotten better since then.

COMMENT FROM THE AUDIENCE

We are utilizing clinical programs much more than in the past. Nationally, that can be a significant part of preparing students to become lawyers. It's now connecting the students and giving them ongoing mentorship throughout their careers. We are hoping that what will happen is partner leadership.

MR. ALONSO

You told us about an interesting publication which has best practices for teaching students to be lawyers. It's coming out shortly. Why not tell us about that?

COMMENT FROM THE AUDIENCE

The best practices for legal education will be available shortly. The focus is on preparing students for the profession of practicing law. The web site is <http://cleaweb.org>.

MR. ALONSO

It was suggested that one possible motivator might be to get CLE credit for mentorship-type activity. There weren't a lot of specifics how that might be achieved. My own view is that a motivator should be practicing law the right way, perhaps being more successful than you might otherwise be; but sometimes it seems that that may not be enough, and it was suggested that CLE credit might help.

A well-administered bar association mentorship program has to have three key elements. The first is a hand-picked leader of the program. The president of the association might be familiar with someone who has stature in these small-firm and solo practice communities. That person might chair a small firm committee to administer the program. The second element is that the program would appoint mentors who would only be people who were approved or hand-picked or tapped by the chair because, as we heard yesterday, not everybody is cut out to be a mentor. The third element is to match interested mentees with

mentors based on areas that they need help on, or areas of expertise. For example, you don't want to match somebody who is saying, "What I really need is the best software package so I can make my small practice the most efficient" with somebody who doesn't know how to turn on the computer. You want effective matching to have it work.

The New York State Bar Association has a mentorship program and committee that does this. The Inns of Court model was raised as a mentoring model, and it's worth considering.

The Inns of Court is a national movement; it has chapters all over the country.¹ As I mentioned yesterday, there are three chapters in New York City. Each chapter is attached to a bar association. The New York County Lawyers Association, the Federal Bar Council and the New York City Bar Association have chapters. I'm a member of the New York City Bar Association chapter.

As I mentioned yesterday, there are three tiers of membership. It's a great way to be mentored, but it is limited in membership, unfortunately. There are about 100 members per chapter.

One of the pillars of the Inns of Court is to have full membership participation in each meeting. It is obviously impossible to do that, but we try to get as many as possible. We meet mindfully. Every member is assigned to a team which has members of all different levels, and each team puts on one program a year. Some of these teams become very close friends and even dine together when they plan their programs. This creates terrific mentorship opportunities.

For those who throw it out as perhaps the answer, I don't think it's the answer. It is one part of the way to tackle this. It provides great opportunities, but it is not going to solve whatever issues there are in terms of mentorship for small and solo practices.

Anyone on the team want to add anything? Did I leave anything out?

COMMENT FROM THE AUDIENCE

If I can mention one thing in terms of CLE credit, we discussed having it for both mentors and mentees. That would be a way of increasing participation from both sides.

MS. RICHARDSON

Thank you.

Group Number Two.

1. www.innsforcourt.org

MARC WALDAUER, ESQ.

MEMBER, NEW YORK STATE JUDICIAL INSTITUTE ON PROFESSIONALISM IN THE LAW

We had two questions. We really covered only one of the questions, and I'll tell you about the other question very briefly at the end. The question we primarily addressed was: How do we integrate partnership between firms and legal services (*e.g.*, the Skadden Fellowship, which is money donated to assist in providing legal service to the poor)?

This question assumes that we should integrate a partnership between firms and legal services. That was taken as a given. We know it's a win-win situation to match up. We have lawyers who want to do pro bono, and we obviously want to try to meet the needs in all areas of the state. We obviously have individual clients who need the assistance. We have organizations that want to provide the services.

Our discussion focused on two areas of the mechanics. First, we pretty much ruled out having one central agency being in charge of the entire state, because there are so many differences in terms of size of firms and concentration of needs.

Second, we discussed the VOLS (Volunteers of Legal Service) program in New York City and whether it would be a good idea to have Syracuse, Rochester, Buffalo, larger places, smaller places, adopt that model. In Onondaga County, which is where I'm from, the way of going about doing it might be to go to our bar association and mention that there are a lot of things going on in the New York City area that might be of assistance, and let our bar association run with it.

As we heard from Dean Friedman in the keynote address, law is a business, but it's not a very efficient business and it has to be made more efficient. Likewise, the delivery of legal service to the poor is a business; and in many ways, that too has to be run more efficiently. Rather than having 55 different clients and going in 55 different directions to provide that service, if there is a prototype on the ground which has a pretty good organizational structure set up for delivery of services and is actually operating in New York City, why not utilize the Institute's state-wide knowledge and background to help link it up? That was fundamentally what we came up with on that question.

The other question was: How can we take advantage of technology in enhancing the areas of mentoring and/or public services and/or integrated life in the law?

Although it wasn't directly related to either of our questions, one of the members of our discussion group had a good point, namely, that our CLE system penalizes young attorneys who are interested in very focused areas. The bridge-the-gap programs are good for generalists but not specialists.

ALYSON MATHEWS, ESQ.

LAMB & MATHEWS LLP

The problem is that for the first two years, you can only use transitional credits toward your CLE requirements. However, a lot of specialized CLE programs offer only non-transitional credits.

MR. WALDAUER

It is something to be aware of. It is a valid point.

TAKEMI UENO, ESQ.

ASSISTANT, NEW YORK STATE JUDICIAL INSTITUTE ON PROFESSIONALISM IN THE LAW

Although Question Number One addressed only the partnership between firms and legal service organizations, a number of people in our group suggested also bringing in law schools, *e.g.*, students under the supervision of clinical professors to provide those legal services.

MR. WALDAUER

Thank you.

MS. RICHARDSON

Thank you, Marc. Thanks to all of you who hung on until the end. We came away with great ideas. You have given the Institute a lot of food for thought. I hope it raised your interest in being part of the process. Thank you.

Before you go, if Chief Judge Kaye could tell you how wonderful her building is, I feel that I can tell you how wonderful the Bar Center is. I know some of you are in the Bar Center for the very first time.

The Bar Center, which was built in 1971, incorporates the facades of six brownstones that were built in the early 1800s (1-6 Elk Street). It also retained some other aspects of the brownstones. For example, if you go up to the office on the third and fourth floors, those are the original crown moldings. Then the architects blew out the back of it and put in an efficient office building for our administration. We have 125 or 130 employees.

There were renovations in the 1990s. Now, there is a formal entrance on the back, as well as the front.

The building is about 37,000 square feet. We are in the public area, which is about 9,000 square feet. They kept the administration in the back, so the area we are in can be used by members of the public without disturbing the administration.

If you have time, you might take a minute to go in the Peck Room, which is up off the lobby to the right. That was part of the 1990 renovations and features a mural by Richard Yaco. It illustrates what it would have been like to step out onto Elk Street about 1876, and what it would have looked like with Academy Park right across the street.

If you go out to the right and go down the hallway, they restored the original period pieces at 6 Elk Street. They researched all the wallpaper and carpeting. The wall paper is a typical 19th-century design, and there is a stained-glass window by Denise Leone.

Going down to the Gallery of the Bill of Rights, we have art work by Norman Laliberte.

But again, I'm very proud of this building. It has served us well. Thanks a million, everybody, for coming. It was great.

SUMMARIES OF BREAKOUT SESSIONS

BREAKOUT SESSION I

MODERATOR: **DANIEL R. ALONSO, ESQ.**

KAYE SCHOLER LLP

REPORTER: **SHEILA M. MURPHY**

PARTICIPANTS:

JUSTIN M. BLOCK, ESQ.

PROFESSOR MELISSA LYNN BREGER
DIRECTOR, FAMILY VIOLENCE LITIGATION CLINIC
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RACHEL HAHN, ESQ.
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STEPHEN A. WEINER, ESQ.

MEMBER, NEW YORK STATE JUDICIAL INSTITUTE ON PROFESSIONALISM IN
THE LAW

Participants of Breakout Session I engaged in a discussion about mentorship and addressed the following two questions:

- 1) Can bar associations or law schools create mentorship programs for solo or small firm practices?
 - a) If so, what would those programs look like?
- 2) How can we effectively utilize senior or experienced attorneys to promote mentoring and/or public service?

A group member commented that her law firm — a criminal defense practice — provides a summer internship for high school, college and law school students. The program is designed to expose students to the daily life of a lawyer in the event that they are considering a career practicing law. The firm also has an “adopt a young lawyer” program, where they mentor former assistant district attorneys in the private practice of criminal law. The program’s goal is to provide practical tips to the young lawyer in order to show how a case is developed from a defense perspective. Often, the attorney is permitted to “second seat” the partners on a case. This mentoring relationship typically lasts one to two years. It was noted that only five attorneys have taken advantage of this program since its inception.

A participant suggested that a mentee should want to have a relationship with a mentor in order for the mentorship to work. Another participant commented, however, that a structured mentor-mentee relationship sponsored through a local bar association or law school for solo or small firm practitioners would be one way to create a demand for participation in mentoring. The offer of CLE credit to a mentee who participates in such a program for a certain

number of hours would show the value that mentorship is given by the profession. Another group member agreed, but suggested that both the mentor and mentee should be given CLE credit as an incentive for mentors to get involved as well. Bar associations could also allow mentees to choose their mentors based on areas of interest or practice. Judges could be involved in these programs as well.

One participant stated that his local bar association has a mentoring program that is not utilized, so perhaps these relationships need to be started earlier when students are in law school. Another local bar association has a committee dedicated to mentorship and they have a successful program where students meet with practicing lawyers for round-table discussions about the practical aspects of lawyering. However, it is problematic when attorneys do not admit their mistakes, and those are things that would be helpful for young lawyers to hear about.

Mentoring programs could mirror the “Inns of Court” model, which host round-table discussions. Another suggestion was made, that schools should host informal mentoring sessions, consisting of “conversations” with groups of students to talk about anything – which one participant plans to do next semester at Albany Law School. Clinical programs at law schools could be involved as well. A group member stated that these programs are currently underutilized. One participant mentioned a best practice guide for clinical professors teaching students how to be lawyers titled “Clinical Legal Education.” Career placement offices in schools could also provide these opportunities in an effort to get students involved in mentor-mentee relationships sooner, as well as developing programs for students of color who want to practice in large private law firms.

The discussion focused next on other sources of mentors. It was noted that senior and retired attorneys may have more time and interest to give to mentees. Another option mentioned is for schools to have volunteer programs, where lawyers who graduated from the school could speak to a class about their experiences practicing law. Other options include offering malpractice insurance to lawyers who mentor lawyers, or offering them free CLE. This would provide an economic incentive for attorney-mentors to get involved. One participant, however, was skeptical about this approach, since he doesn’t think CLE would reduce the attorney’s risk sufficiently.

There was a suggestion that mentees take advantage of the NYS Bar Association’s web site, and perhaps start a blog for those who are more technology-inclined and may not be able to participate in formal mentoring relationships.

The group discussed the idea that young lawyers have a telephone number they can call when a problem or ethical issue arises. Although bar association hotlines are available for ethical questions, many attorneys do not know when their problem is an ethical one. Also, one can only use these hotlines if one is a member of that bar association. Perhaps bar associations can set up a program

with volunteer lawyers, where lawyers can call with any practice questions or dilemmas they may have. It could be a service provided electronically.

Collegiality was discussed as a cornerstone of the profession. A participant stated that many law students don't realize that the bar is there to bring people together, to learn together, to augment morale, and to enforce professionalism. Therefore, attorneys should look more to their local bar association for support. Another participant found that young lawyers graduating from school today are more aggressive and there is less collegiality among this group. Mentoring can help young lawyers with their communication skills and provide practical assistance to them.

BREAKOUT SESSION II**MODERATOR: MARC WALDAUER, ESQ.**

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Breakout group II engaged in discussion about how to integrate partnership between firms and legal services.

The discussion began with a focus on Volunteers of Legal Services (“VOLS”). It was noted that, since 1984, VOLS has matched New York City law firms with poor people who have legal problems. VOLS is very popular at law firms and is a good way for non-litigators to do pro bono. VOLS also links law firms with schools. A participant suggested that law firms be matched with senior citizen centers, too. Some lawyers make “house calls” to help the aged.

A group member pointed out that firms can provide legal services directly to the poor, without going through a legal services organization; for instance, a firm can “adopt” a hospital and provide legal services to the hospital’s patients (*e.g.*, children; AIDS patients who need wills). Other firms help incarcerated mothers avoid termination of their parental rights. There is also a microentrepreneur program in Bronx County.

One of the participants said that legal services organizations used to be overwhelmed by the volume of Housing Court cases. Now, however, they handle the difficult cases, and law firm volunteers handle the easier cases. Another participant said that the opposite might work, too. In other words, complicated cases that require a lot of resources can go to large firms.

The group concluded that VOLS is a model that can be used in other parts of the state besides New York City. A participant who has been associated with VOLS cautioned that it would not cover the whole state; however, it will cover metropolitan areas. He said that the entity to approach to get things started is the local bar association. In addition, one should get a real pillar of the legal community to recruit in-house lawyers and another pillar of the legal community to recruit law firms. The VOLS commitment is 30 hours of pro bono work per lawyer per year.

Participants noted that when organizations like Legal Aid and In Motion (formerly Network for Women’s Services) provide training, insurance, and CLE credit for volunteers, it is especially helpful for small-firm lawyers and solo practitioners.

One participant asked if the New York State Bar Association could be a central resource so that there would be one place to go to if people need legal services or if lawyers want to volunteer. Alternatively, he suggested a central call center. Another participant asked if law schools could help with administration and structure; a participant with academic experience recommended talking to the clinical professors about this.

The group also discussed that www.probono.net lists pro bono opportunities and has useful forms. Another participant indicated that it is important that [probono.net](http://www.probono.net) includes immigration law because federally funded legal services organizations are not permitted to do immigration law. They are not permitted to bring class actions, either.

A participant with academic experience suggested setting up a web site so that students who go home for the summer after their first year of law school could connect with a local lawyer to do pro bono work.

It was pointed out that many non-law-related organizations (*e.g.*, Catholic Charities) deal with social problems. Perhaps bar associations can match volunteer lawyers with those organizations. It was also noted that Monday Night Law (a legal clinic at the New York City Bar Association) includes referrals to non-legal organizations.

One participant asked if law secretaries could do more pro bono. Another participant who works for the court system pointed out that court attorneys have to get various permissions to do pro bono, such as getting permission from the Presiding Justice. A participant who works for the NYC Corporation Counsel said that her office has a list of pre-cleared pro bono activities.

The discussion next focused on the issue of coordinating pro bono (*e.g.*, setting up a central call center) and how it would be paid for. A participant from New York City said that bar associations already do a lot of coordination. However, a participant from upstate said that many small bar associations do not have administrative ability – many don't even have an executive director.

Group members suggested that pro bono be funded out of bar association dues or from contributions from organizations that make money from CLE. However, a group member who has headed a bar association said that bar associations usually just break even on CLE. She noted that bar associations have contributed free CLE for training programs.

The group discussed a centralized call center and that it would be a huge endeavor. The cost is not so much the call center itself as gathering information about all the pro bono projects in the state. A suggestion was made to break coordination down by Appellate Division instead of having one center for the whole state. Another participant suggested a clearinghouse in each county. A participant from the judicial system asked if the Office of Court Administration could be the coordinator, because it has the infrastructure, the budget, and the statewide presence.

It was noted that VOLS does not require a huge infrastructure – it has only four employees in New York City, and receives some grants from foundations.

Getting back to the question that the group had been asked to answer, a participant suggested asking legal service providers which holes need to be filled.

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