A CONVOCATION ON THE FACE OF THE PROFESSION

OPENING SESSION AND KEYNOTE ADDRESS

HONORABLE JUDITH S. KAYE
Chief Judge of the State of New York

On behalf of the Judicial Institute on Professionalism in the Law, on behalf of the New York State Bar Association, on behalf of my Court of Appeals Colleagues (all of whom are here today), and for myself, I am delighted to welcome you to Court of Appeals Hall and to this Convocation on the Face of the Profession.

I think it's most appropriate that this historic Convocation open in this historic place, which is in my experience the most beautiful courtroom in the entire world. It might interest you to know that this building, completed in 1842, originally was intended to house state offices. When it was later renovated and renamed for the Court of Appeals, then-Governor Whitman observed that the building would be devoted to the noblest purpose to which a building or a life can be devoted: the administration of justice. Today's Convocation is fully in keeping with this purpose, for the first time convening the courts, the organized bar and the law schools to brainstorm together about the future of our noble profession.

In New York State, we certainly have come a long way from our profession's humble origins when the entire colony had fewer than 20 lawyers including a dancing master, a glover and a man under a death sentence for blasphemy. From a day when we had fewer than 20 lawyers, New York State now has more than 100,000. New York lawyers can be found in every corner of society. We have law firms of every size, from one to 1,000. We have lawyers in business and nonprofits, lawyers on the Web, large numbers in every level of government and public interest work and, of course, lawyers in academia. And with 15 top-notch law schools in New York State alone, today's lawyers unquestionably are much more sophisticated, much better trained, much better prepared than our forebearers.

But still the profession today faces enormous challenges. Just consid-

er the mind-bending new substantive law issues that society daily deposits on our doorstep -- issues like the right to die, custody of frozen embryos and the very definition of family. Then add challenges of modern technology in a global economy; the growing unmet need for legal services and access to justice; unrivaled competitive pressures; and now the raging issue of multidisciplinary practice.

Stir into the mix public negativism and cynicism, and the loss of public respect. Far too many Americans learn everything they know about lawyers and the justice system from the world of entertainment. Where once we were symbolized by Atticus Finch, today we are more likely to find ourselves cast as the satanic "Devil's Advocate" or snack food for dinosaurs. We seem to have grown accustomed to, indeed totally accepting of, the steady drone of criticism even within our own ranks about the decline and the demise of professionalism.

Perhaps the hardest hit of all are today's new lawyers, the very future of the legal profession. I read recently in a law school publication that law students today should expect to enter one of the most stressful of all occupations. The article went on to describe a Johns Hopkins Medical School study of 104 occupations, concluding that lawyers were the most stressed of all. They are more prone to depression than other professionals, more likely than the public at large to turn to alcoholism. Not the kind of greeting most of us received when we entered law school.

As a matter of fact, entering classes now look very different from what many of us encountered. Nearly half of first-year classes are female. Indeed, this year more women than men actually applied to law school. And still, classes are not sufficiently diverse. Although minority enrollments have increased markedly over the last twenty years, African-Americans remain only a minuscule percentage of the law student body. Asian-Americans and Hispanics even less. And very significantly, minority applications have not increased at all this year.

And speaking of change at law schools, today's entering students face an array of learning choices -- traditional classes, seminars, externships, internships, clinical programs, courses on the Internet and in virtual classrooms, research on computers. The newly admitted lawyer is likely to be listed on a Web site, communicate by e-mail and cell phone, file documents electronically and negotiate and draft agreements over the Web. All of these are wonderful tools. But they happen also to increase expectations. More work, done faster, seven days a week, 24 hours a day.

And what of the cost of a law degree? I understand the price tag may be $125,000 at a private law school today, a whopping 570 percent increase over the last twenty years, leading to substantial debt for many aspiring lawyers. Only ten years ago there was little relationship between debt burden and career choice. That equation has changed radically.

Large New York City law firms today are offering new law school graduates more than $125,000 a year, with bonuses up to $40,000 -- a bonus that alone exceeds a full year's salary of new lawyers at many places, including the Legal Aid Society. The Princeton Review Web site does this telling calculation: "Your monthly payments will be around $1,500. No problem, right? You will be pulling in $2 million a year as a partner by then so why worry." Not much opportunity for public interest work, is there? Not much opportunity for private interest either, I would add.

Perhaps the zenith, or nadir, of it all is the much-heralded disenchantment and disillusion among new lawyers, our future. They are unhappy, unfulfilled, leaving the profession for greener pastures outside the law. Despite the lure of the megabucks, mass market books on alternative career choices for lawyers and stress management for lawyers have become a cottage industry. As former Governor Mario Cuomo recently lamented, "a significant number of young associates choose to leave large law firms for other situations. Sometimes they are enticed by the lure of excitement and quick riches in the dot-com world, the way some were seduced by the investment banks in the 80's. But increasingly, they are lured by a much more elusive search. A search for 'meaningfulness.'"

Is it any wonder, then, that today we all so willingly, so excitedly, so enthusiastically, so expectantly convene here today? Perhaps together we will be able to identify that elusive quality of "meaningfulness" in the practice of law. Perhaps together we will be able to convey for the next generation of lawyers the many rich sources of satisfaction in the legal profession. Perhaps together we will invigorate the values that lead to a proud and effective profession and a morally satisfying individual life. All across the country, courts, the bar, academics and groups like the Conference of Chief Justices and the National Conference of Bar Presidents are encouraging gatherings exactly like this one on just such critical issues facing the profession.

In New York those very concerns led to the formation of an authoritative, independent, permanent, Judicial Institute on Professionalism, one of today's hosts, to ensure that in this state these concerns will receive

high level and continuous attention. And I am so grateful to Lou Craco and to every single member of the Institute[2] for taking on this important project. I am confident those concerns led as well to the decision of our co-host, friend and neighbor, the State Bar Association, to join with us in sponsoring today's Convocation. And again I am grateful to State Bar President, Paul Michael Hassett, and all of his colleagues for their tremendous help in this initiative.

So yes, it is entirely fitting that we gather here today in this historic courtroom for the inauguration of a thoughtful, historic collaboration among various constituents of the profession – including the bench, the bar and the academy.

For me the easy part of these opening remarks has been to gather up and summarize the very distressing news about the legal profession today. It's all around us. But the truth is there is a lot more that is very, very good about the legal profession. And I don't just mean the heroic past of the American Bar in fighting injustice. I mean the overwhelming efforts every single day of upright, dedicated lawyers securing rights for people and ideals for this nation. I have great faith in our ability as a profession to meet the challenge of change, preserving what is best about the past while being creative and open to the future, to assure that we continue to serve the needs of an evolving society.

And I have great hopes for this Convocation. We may not ask, we may not answer, all of the pertinent questions today or tomorrow, but I know that today we will begin an important dialogue about values and influences that shape our profession and that this will be a continuing conversation in which I very much look forward to participating.

And now I have the honor of introducing our keynote speaker this morning, Professor David Wilkins.

Professor Wilkins received his undergraduate and law degrees from an out-of-state University, Harvard. But thereafter his choices have been excellent ones, so we forgive him totally. He clerked in New York City for Wilfred Feinberg, Chief Judge of the Court of Appeals Second Circuit, and in Washington for the late great Supreme Court Justice, Thurgood Marshall. Professor Wilkins joined the Harvard Law School faculty in 1986 and from the beginning his interests have been in the field of ethics

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[2] Chair: Louis A. Craco, Esq. Members: Christopher E. Chang, Esq., Hon. Carmen Beauchamp Ciparick, George J. Farrell, Jr., Esq., Lewis Golub, John H. Gross, Esq., Hon. L. Priscilla Hall, Stephen R. Kaye, Esq., Arthur J. Kremer, Esq., David W. Leebron, Esq., Joseph V. McCarthy, Esq., Hon. Eugene F. Pigott, Jr., M. Catherine Richardson, Esq., Paul C. Saunders, Esq., O. Peter Sherwood, Esq., Hon. Leslie E. Stein, Marc Waldauer, Esq., Stephen A. Weiner, Esq., G. Robert Witmer, Jr., Esq.

and professionalism. He continues to direct Harvard's program on the legal profession.

But the bare bones C.V. doesn't at all tell the story of Professor Wilkins' work -- his insightful and thought-provoking writings on ethics, professionalism and the often seemingly conflicting roles of the minority lawyer, particularly the African-American lawyer, in the profession and in the community. For several years, he has been conducting and publishing research on black lawyers at the corporate bar – the subject of his forthcoming book. Professor Wilkins has spent most of his career writing about the very subjects that we hope to address in this Convocation, so we are thrilled to have him here with us today.

You need only glance at the titles of some of his articles to know both of his skill in turning phrases and of his willingness to tackle tough issues: "Rollin' on the River: Race, Elite Schools and the Equality Paradox," "On Being Good and Black," "Straightjacketing Professionalism," "Making Context Count: Regulating Lawyers after Kaye Scholer," and "Two Paths to the Mountaintop? The Role of Legal Education in Shaping the Values of Black Corporate Lawyers."

Professor Wilkins.

PROFESSOR DAVID B. WILKINS
Kirkland and Ellis Professor of Law and
Director of the Program on the Legal Profession
Harvard University School of Law

It is a great pleasure for me to be here in this august hall. I do have some New York connections and therefore I feel a kinship with this gathering. Not the least of which, my mother was born and bred in New York City so I do feel a special connection here. When I was invited to come here, I was both honored and inspired by the concept that brings all of you together here today. But I would be a little disingenuous if I didn't say that as the date grew closer, my trepidation about coming here increased and for reasons that actually have nothing to do with my talk, but that I know all of you will understand: On Wednesday, my wife and I adopted a beautiful baby boy! My son was born on Sunday in Fort Worth, Texas. And in order to be here today I had to fly yesterday from Fort Worth to Boston, where I missed my connection to Albany, and had to fly to JFK and landed in Albany at one o'clock this morning! So I hope

you won't mind my saying that I would not have come today unless I had a very special reason – and that reason is the company I would be keeping at this conference. The company here on this dais and in this room is really quite extraordinary. Quite frankly, in my judgment, there is no better group to address the pressing issues that are facing the legal profession today.

Because I come here under these circumstances, I hope you won't mind if I use the birth of my new son as a way to frame my talk and also to say some things that I think may be hard for us to hear. But I think it's only if we speak hard truths about our profession that we have an opportunity to move forward on the substantial agenda that all of you have come together here today to address.

I start with this idea. As I'm sitting there with my new son, I had a lot of time to watch CNN. Two o'clock in the morning, four o'clock in the morning! My son was born on November 5th, two days before the election day which I've now taken to calling Ground Hog Day, because we are going to keep reliving it over and over again like in that Bill Murray movie. And the question is: Will I ever be able to tell my son that we have a new President of the United States? And if we do, will it be *because of* or *in spite* of lawyers? It must not have escaped the notice of those of you in this room that the public's attention has quickly shifted from the question of the electoral college to the question of lawsuits. And the question of whether or not this election is going to be "saved" or "stolen" by lawyers taking the issue to court. In fact, as I came in this morning, someone (who I won't name) said to me only half-jokingly: "I'm surprised you are here. Half your faculty is in Florida." To which I responded, "The other half is on CNN."

The fact of the matter is that lawyers are intrinsically involved in what is going to happen in this historic moment in our constitutional democracy. But what is also clear is that the public is very nervous about this fact. The current crisis highlights what for me is a deep paradox about where we are today as a profession. On the one hand, the public desperately wants what lawyers have delivered so well over the last 200 years of our democracy. What is that? The rule of law, individual liberty, order and justice, well functioning markets, a stable polity, a sense of individual autonomy and fairness. These goods are more in demand today than they have ever been, by a wider number of people not just here in our country but all around the globe. But at the very same time, the public is deeply

skeptical about whether we as a profession will deliver these goods or instead bring their opposite. Will we subvert the political system? Will we thwart individual rights and liberties? Will we sell our soul to the market rather than making well-functioning markets? And most frightening of all, as the Chief Judge has so eloquently put in her opening remarks, the group that in some ways is the most skeptical about the profession's ability to deliver on its traditional promises are young lawyers – the very group upon which the future of the profession depends. I have the great honor of training young lawyers for a living. And I can assure you that what the Chief Judge has said better and more succinctly than I could is indisputably correct. Young lawyers are very worried that they will not be able to live fulfilling, rewarding, satisfying and morally integrated lives in the law. As a result, admissions to law school are down, attrition from the profession is up, and cynicism and disenchantment is rampant.

Now what's the problem here? I think the problem is simple to state, but quite difficult to remedy. The problem as I see it is this: Not long ago, the legal profession had a very coherent, attractive and believable account of why the best and the brightest young people should want to spend their careers in the law. I won't spend a lot of time on that account because it's very familiar to you. But let's just tick off some of its elements. Law was a public profession, connected integrally to public service and the public good, both when lawyers were acting in their public capacity but also when lawyers were acting in their capacity as representatives of individual clients. Law was a generalist occupation in which one could learn a great set of skills that were transferable to a wide range of circumstances. It was a profession that was intellectually satisfying and stimulating, allowing one to work on important problems for clients in need. It was a profession with reasonable opportunities for advancement – where people could work their way up and as they worked their way up they had more stability, more security, more opportunity for public service. It was a collegial profession in which the members of the bar, although adversaries at some level, also saw themselves as united in a common cause. It was a financially rewarding profession. Perhaps not the most financially rewarding, but one in which one could earn a reasonable living and have a sense of financial security that would increase as one moved up in one's career. It was a prestigious profession, one that had the respect and appreciation of the public that it served.

Well, I don't think I have to tell those of you in this room that sadly,

much of this story is no longer credible to the people who we are trying to have join us in this profession. Nor, as we sometimes like to think, is this just a matter of perception. The bitter truth is that many of the traditional virtues and rewards of a life in the law have become increasingly hard to obtain as the legal profession has grown larger, more competitive, more focused on the bottom line, and more entangled in more and more kinds of problems. Given these changes, it is no wonder that young lawyers no longer believe that the satisfactions that have come to define so many of our professional lives are likely to characterize theirs. Now this is a deep problem.

The profession has tended to react to this problem in one of two ways, and you will forgive me if I exaggerate a little bit here. The first is the way in which I'm probably going to be tempted to respond to my son when he learns how to talk and begins to say no to me all the time and ignore all the things I say. And that is simply just to repeat our original message louder and more forcefully, as if those we seek to convince didn't hear us the first time. And, when law students and young lawyers stubbornly continue to refuse to believe us, to lament that things were much better in the "good old days" and to wonder in amazement why these young people don't appreciate "our values."

The second is to throw up our hands, and say that there is nothing we can do so let's just embrace the market wholeheartedly and pay these skeptical new lawyers to come. And if we just up the salaries high enough, if we just give them more perks – maybe even stock options! – they will come.

Predictably, neither of these approaches has worked very well. The first is not very effective because today's new lawyers did hear us, but they also see what is going on. And what they see is a complex picture. On the one hand, what they see are the changes in the realities of the market for legal services and the way in which senior members of the profession behave in ways that are not consistent with what they are telling their juniors to do. Just like with your child. You tell them to do one thing but if they see you doing another, they are not likely to listen. Moreover, they also know that many parts of the good old days weren't so good after all. The fact of the matter is that the older model of professionalism was born at a time in which many of today's lawyers couldn't have become lawyers. To understand this point, one need only look at the portraits hung around this room, this wonderful august room, and then look at those of us on

the dais today. Thankfully, there is a big difference. With no disrespect to Lou Craco who is seated on my left, 50 percent of this morning's speakers would not have been admitted to the bar in the "good old days." And few of Judge Kaye's predecessors could have imagined that a woman could become Chief Judge of this august court.

Moreover it's not just that the old days we sometimes venerate were connected with certain exclusionary practices. They were also characterized by a set of understandings and relationships that tended to put lawyers artificially on top. The traditional model of professionalism posited a sharp dichotomy between professionalism and the market. But the roots of this dichotomy rest on a set of market relationships that were, in their traditional form, protectionist in that they allowed lawyers substantial freedom from competition and autonomy, and from meaningful supervision and review from both clients and the public at large. As a result, the question is not whether law is a business. Law has always been a business, and those of us who believe in the market economy should be happy for that. I have never seen a regime in which lawyers were separated from the marketplace – in which individual clients don't hire lawyers and lawyers don't compete with each other and with other professionals – in which lawyers protected the kinds of values that have made me proud to be a part of this profession today. So lawyers, of course, are working in the marketplace. The problem today is that the market model within which lawyers work, the model of the contemporary legal profession, is one of nineteenth century capitalism without the nineteenth century protectionism that allowed that model to flourish.

Take for example the large law firm. The model of professionalism of the large law firm is one that was created by the great firm of Cravath Swaine & Moore at the turn of the century. A model in which a firm could (1) hire top law school graduates, (2) bring them into the organization, (3) train and develop them, (4) see which ones were going to be the ones who were the best, (5) promote those to partnership, (6) help the others transition into other occupations and (7) have a stable organization that would exist because the lawyers and the clients of those firms were in a stable, long term relationship with each other. That model worked very effectively for a long time. But it worked in part because there were not that many large law firms. Lawyers and clients were in a relationship in which the clients were not all that sophisticated about legal matters, in which they didn't have other professionals advising them on their prob-

lems, in which the ratio of partners and associates was sufficiently small so that the promise of training (that young lawyers coming along would be trained in the ways of being a lawyer) was a credible one and in which the firms themselves had a certain insulation from competition.

Almost none of those things are present anymore. Lawyers at large law firms increasingly operate in a competitive marketplace in which there are many large law firms seeking to hire the same students. And it's not just large law firms who are seeking to hire those students but also increasingly accounting firms, investment banks, consulting firms, and in-house legal departments. Moreover, the clients are more sophisticated, have more of a sense of their own interest and are putting more pressure on the law firm to deliver those interests.

In such a world, the old model has broken down. It's one thing when you hire five or ten lawyers to try to socialize them into your law firm. It's another thing when you hire 100 lawyers or 150 lawyers. Moreover, the young law students themselves are increasingly sophisticated about their own careers and their own potential. They are looking to try to find ways, in the Judge's phrase, to create meaning in their lives.

So the problem is not that law is a business today and it wasn't a business yesterday. The problem is that the business model that the large law firm is currently using is roughly speaking nineteenth century sweatshop capitalism. Firms take people in, grind the excess value out of them by working them as hard as humanly possible, and then after eight-to-ten years throw ninety percent of them away. Now the problem with this model is not that it is a business model, but that it is a <u>bad</u> business model that has been abandoned by most successful businesses today. Ask yourself what are the most successful businesses today? I think most people, despite the dip in the NASDAQ, would have to say it's the technology companies. These companies are increasing productivity and growth by attempting to develop their most important resource which is the human capital of the people who come to them. And how are they doing it? They are doing it by giving young people a substantial stake in the enterprise, offering them the possibility of a meaningful future, giving them flexibility in all the ways that have become a kind of caricature from dress to work style to hours, by unleashing their creativity, and by giving them the opportunity to see themselves as developing a meaningful career.

Needless to say, the dot-com revolution has not escaped the notice of the legal profession. Our response, however, has been to treat the exodus

of young lawyers to high tech companies as simply a matter of money that can be remedied by cranking up salaries. And crank them up we did – to a level that I think no rational person running one of these organizations believes is sustainable. Moreover, it sells these young people short. It treats them as if all they can see is the starting salary and that all they are interested in is the financial returns.

Now I'm not saying young lawyers aren't interested in money – just as I'm not saying older lawyers aren't interested in money. But as important as money is, it doesn't capture the whole story. After all, at a time in which law firms and investment banks are paying more money than they ever have before, these organizations are nevertheless experiencing the largest attrition rates in their history. Why? Because young lawyers and bankers are searching for the kind of careers that they no longer believe are possible in today's law firms and investment banks. So the "bribery" strategy, to put a blunt point on it, is not going to be effective. And it's not going to be effective, not just because lawyers are never going to be able to pay as much as entrepreneurs. But it's also not going to be effective because it's missing something that is deeply important about why the old model is no longer credible to the people we are attempting to convince to join us in this profession.

Well, if you are with me so far – I appreciate that so far this has not been a rousingly optimistic talk – the question is what can we do? The first and most important step is what has brought you all here today: to establish a conversation on thinking about a new model of professionalism for the twenty-first century. In approaching this task, we must not forget Chief Judge Kaye's important admonition that whatever new model we create must never abandon the great traditions that have made a legal career rich and rewarding: traditions that have brought our nation to where it is today. But it is not enough simply to rest on our past accomplishments. If we are to remain vital, we must find new ways of thinking about lawyers and their integration into society. And for want of a better phrase, I am going to suggest that instead of thinking about an opposition between the markets and the profession, I think we need to begin thinking about "market professionalism." I use this phrase for a couple of reasons. First, it highlights that lawyers are integrally a part of the market and that the market helps to shape the opportunities for service and professionalism that lawyers encounter. But it also emphasizes that lawyers must be more than simple market actors. Society legitimately expects lawyers to

help check the excess of the marketplace and to be responsible for market failures, i.e., the failure to make legal services widely available; to make opportunity equally available for all those who enter the profession; and the danger in a global era that law will become just another tool for creating economic and political advantage. That's what people are worried about when they see lawyers descending on Florida. They are worried that somehow law, instead of providing an ordered means for resolving our democratic difficulties and creating the foundation for maintenance of our democratic order, will instead be turned into a tool for subverting these crucial public goals for private advantage. By thinking about the market and professionalism as inherently linked, perhaps we can begin to understand how these two important but often contradictory forces can be balanced so that lawyers can fulfill all of the roles that we and society expect of such an important and honorable profession.

Well what might that mean? To begin, it means that we must rethink some of the traditional ideals that have been so much a part of our profession. For example, one of the most hollowed ideas in our profession is the idea of professional autonomy and independence. And for a good reason. An independent legal profession is a bulwark of democracy and the most effective method for preserving individual liberty that anybody has thought of so far. It is also one of the chief appeals of a professional career: that one has control over one's mind and one's time. So autonomy is justifiably a core professional ideal. Nevertheless, we have to think what autonomy means in the complex world of the twenty-first century. In a world of increasing client sophistication, of "beauty contests" and "bake-offs," of growing pressure on lawyers to fulfill what clients want, no matter what it is they want, lawyers need to be autonomous not just from the state but also from their clients. Not ignoring clients. This is not the paternalism of the past where the lawyer always knows best. But in a world of increasing client demands, we must remember that true professional autonomy means that a lawyer must be both the client's representative and the representative of the public order.

Now this is an old notion, and as I stand here next to the Chief Judge of this august court, I know that this is a notion with which we are all familiar. But there is a problem today. And I bet, though I could be wrong, that that problem is represented in this room. What's the problem? The problem is that this notion I'm talking about – perhaps because it's been talked about as the role of the lawyer as "officer of the court" –

is too often embraced only by those lawyers who appear before courts. In other words, there is a tendency to think of the lawyer's public role as only the advocate's role. And even then, only when the advocate actually appears in court. Now the Chief Judge will probably tell me even here the lawyer's public role is in trouble. The larger problem, however, is that most of what goes on in our legal system takes place outside of court. Most lawyering is transactional, advising in the office, structuring. Increasingly, what lawyers are doing is working together with others to structure complex economic relationships that have a deep and profound effect on what our political and social life is going to be like. And the lawyers who do this work often do not see that they are connected to this public tradition. Or to put the point more diplomatically, the young transactional lawyers coming through the ranks don't believe that the older lawyers who are their supervisors and mentors see their work as being bound by a public purpose.

Let me just give you an example. I did a panel last week for my 20th reunion from law school on global law firms. Not surprisingly, one of the big issues that came up was multidisciplinary practice. And I said one of the things that I see that is missing in the whole multidisciplinary debate is the question of whether or not multidisciplinary practice will be good or bad for the ability of lawyers to play a useful and socially constructive public role as they advise the economic actors who are shaping our society. We hear a lot about whether multidisciplinary practices will be good or bad for clients, and I think that's an important issue. But we don't hear nearly as much about the public side of the ledger. For example, will lawyers and accountants working together be better or worse for overall compliance with the public purposes of the Internal Revenue Code or of the Securities Code? Yet, if we truly aspire to be an "independent" profession, such questions are at least as important as how multidisciplinary practices are likely to affect client service.

Well, public concerns of this kind might seem obviously relevant to those of us in this room, but at least one recent graduate engaged in transactional practice at a prominent New York law firm felt otherwise. "Look," he said to me, "that kind of talk is fine for discussions about lawyers who are litigators, but transactional lawyers don't have those obligations. A transactional lawyer's only obligation is to do the transaction correctly."

Lest you think this is an isolated incident, a year or so ago I went to

an Executive Committee meeting of the Association of the Bar of the City of New York. I asked everybody around the room to introduce themselves and to say whether they were litigators or transactional lawyers. Ninety percent were litigators. Now in a world in which transactional practice is increasingly important on all sorts of levels, we need to think creatively about how lawyers should understand their public responsibilities in the world of transactional practice.

We must be similarly creative about our understanding of autonomy. We often think of lawyers as autonomous professionals in the context of lawyers working alone. I often say that what was wrong with my Professional Responsibility class was that it always focused on what "I" should do. How would "I" decide this issue. What stance would "I" take. What would "I" tell the client. Well, this focus on individual decision making is understandable given our profession's traditional focus on solo practice. But solo practitioners are a declining percentage of our profession. Most lawyers work in some form of organizational setting for organizational clients, where they work in teams. They analyze only a part of the problem. They have a specialized responsibility. The question is, in a world in which lawyers work in teams, how are lawyers to be autonomous and to exercise independent judgment? This is a particularly pressing issue for young lawyers who will not just be members of teams, but will be the junior member of teams. We do very little to teach young people how to exercise responsibility, judgment and integrity as junior lawyers. And not surprisingly the message they take away is that they are powerless to do so. That they should just follow orders. And if they don't like the orders they are given, their only choice is to leave. This is not an effective way to think about professional autonomy for the twenty-first century.

Consider another of our issues: the development of professional careers. There used to be a standard idea about how professional careers developed based on a clear division of authority between the academy and the profession. Law schools taught students how to think like lawyers and the profession was supposed to teach them how to become good lawyers. Neither part of this traditional understanding is working very well today, but because I come from the academy, I want to stress what we in legal education need to do to uphold our part of the bargain.

To begin, what it means to think like a lawyer is being radically changed as lawyers exercise more and more different kinds of responsibilities in different kinds of environments. It's not to say that the great rigor of the analytical thinking of the case method should be abandoned. I

could never say such heresy in the place where Benjamin Cardozo once sat. But it is to say that the boundary lines between law and other forms of knowledge – whether it's economics or strategy or sociology or politics – are blurring and that lawyers are expected to exercise judgment in a much wider range than simply being those people who know how to analyze legal documents and legal precedents. Law school has to prepare students to meet these new challenges. But we must go further. The one thing that law school has never prepared graduates for very well is how to build successful, satisfying and rewarding careers. The academy has simply taken for granted that if you have the professional degree, you will be able to find your way in the profession. Today, we know that this is simply not the case. To address this deficiency, law schools must begin systematically to study and teach about the profession.

The most amazing thing about law school is the lack of attention to the realities of legal practice. With no offense to the great jurist at my side and those in this room, law school is mostly about judges. We do a pretty good job of teaching students how to become Supreme Court Justices (or, better yet, Judges on the New York Court of Appeals!). Some of our students will obtain such lofty heights – but not too many. Most of them are going to become lawyers. Law schools presently do a poor job in helping students prepare for the new challenges that await them in the profession.

Clinical education, the great revolution in legal education in the last thirty years, has certainly helped. For the first time lawyers are at least beginning to be introduced to the basic skills of lawyering. At present, clinical education is too narrowly focused on litigation when, as we know, most lawyers most of the time do not appear in court but exercise a whole range of other sorts of skills. Fortunately, the exclusive focus on litigation is beginning to change. What isn't changing, however, is our failure to teach students about the institutions and organizations within which they are going to have to develop and exercise the skills we teach them in clinical education. As a result, we don't teach them how to make very informed choices. And we don't teach them how to make decisions in institutional contexts.

In my judgment, this isn't just a pedagogical failing, it is an ethical failing. It's an ethical failing of the law schools with respect to the three major constituencies to whom law schools owe their allegiance. First and foremost, it is an ethical failure to our students who we leave to learn about the profession from each other, from the legal press and from those

people who are trying to recruit them for jobs. Needless to say, none of those sources of information are adequate and each has its own biases.

Second, it's a professional failing to the profession itself. We have left the legal profession to determine for itself how changes in the market for legal services are playing out and how the profession might best respond to these changes. You would think that in a time of unprecedented uncertainty that the profession could look to the academy for guidance. But the academy has cut itself off so much from the profession and devotes so few resources to studying the profession that it has very little to say that is meaningful to the profession when lawyers come looking for guidance.

And, finally, the academy has failed in its ethical obligation to the public – to those people the legal professional ultimately must serve. As much as we want to have professionally satisfying and rewarding careers, the purpose of the legal profession is not to make lawyers happy. The purpose of the legal profession is to deliver those fundamental goods that I started off talking about – the rule of law, well-ordered markets, individual liberty, integrity and freedom – that the public both expects and demands. And yet by not studying the profession and not engaging in an open and honest dialogue about where the profession is and what ends it is serving and where the problems are, and instead retreating to a kind of citadel in which we say that we know what is best for the public, we in the academy have cut off the public from the very source of information that might allow them to both understand the importance of the profession and to work with us to make the profession better.

Well, how is the academy going to move forward on correcting these ethical failures? This is where the profession comes in. We can't study and teach about the profession unless the profession allows itself to be studied. Now this is much easier said than done. Confidentiality is deeply ingrained in our professional conscientiousness. Moreover, "the" legal profession is actually made up of many different sub-professions – different lawyers in different kinds of settings – each of whom have their own interests and problems and are located in their own increasingly vulnerable competitive positions.

Given these obstacles, studying the legal profession will inevitably be difficult. But without studying the legal profession, we will never be able to help the profession cope with the problems of the new century. We therefore need a new partnership between the academy and the profession. That is what brought me from Fort Worth to Boston to JFK to Albany to this courtroom on my son's seventh day of life. I came here

because I think you have the possibility of creating such a partnership here. Indeed, in what I say not to flatter you but because it is the truth, this is the most important venue for building such a partnership. Why? Because despite the fact that the salary raises may have started on the west coast and there are a lot of lawyers in other parts of the country, there is no question that New York is the leading center of law and lawyers in the world. And that the models of legal practice that have been created here are becoming the dominant models around the world.

So you are it – ground zero, so to speak, of the changes that have happened and the possibility of creating a new model for the future. But it's not going to be easy. There are so many obstacles in the way of our taking a candid look at ourselves, opening up a dialogue among this group, and beginning to include those who currently are not here in this room but who must be a part of the dialogue if we are to achieve the kind of change that we are looking for: the transactional lawyers (and those people who use transactional lawyers and who regulate transactional lawyers); the young people – my students and the students of the other great law schools here; and, most important, those who depend on and use our services. We need this to be a dialogue that is open to all if we expect to be able to come up with solutions that are acceptable to all.

I have confidence this can be done. The American legal profession has been ingenious at solving problems for other people around the world. I'm confident that if we use some of this ingenuity to look at our own problems as critically, openly, and as candidly as we encourage our clients to look at theirs, that one day – perhaps 25 years from now – I will have the great pleasure of watching my son being sworn in to be a member of a profession about which we all can be proud. Thank you all very much for your time.

LOUIS A. CRACO, ESQ.
Chair, New York State Judicial Institute on Professionalism in the Law

Old habits die hard. So whenever I approach this podium I begin, as I was trained to do, “May it please the court.” And I hope it does.

My name is Louis Craco; I'm the Chairman of the New York State Judicial Institute on Professionalism in the Law and I want to greet you here today. First, though, it is a hallmark of professionalism that lawyers

keep their promises, and I must tell you that we induced our keynote speaker to join us today upon the promise – on which he has obviously detrimentally relied – that we would release him in time to swiftly cross Massachusetts and arrive in time in Cambridge for his two o'clock class. His generosity with his time has put that promise in peril. But the Chief Judge has offered him her car and her driver and her siren. And in my conversations with David in Cambridge, which were marvelous, it seemed to me that it was the siren that got him. Now that I know that it's a two o'clock bottle, as well as a two o'clock class, it seems urgent, David, that we excuse you with our thanks.

Our thanks also go, most imperatively, Chief Judge Kaye, to you and to your colleagues on the Court for the encouragement and endorsement of this enterprise that is implied by the extraordinary and indeed unique hospitality that you have granted us in this hall today. I want to mention, and thank too, our colleagues from the New York State Bar. Many of them are serving important roles over the next two days. I want to thank them for that, for the support and hospitality that they will give us at lunch today and throughout tomorrow at their Center. In particular, I want to thank President Paul Michael Hassett for causing all that cooperation to occur with such good style and good will, and more deeply, for his role in the work of the National Conference of Bar Leaders, which sponsored the call for a dialogue such as we initiate today.

As I said, we are the New York State Judicial Institute on Professionalism in the Law. We are really delighted to sponsor this program, not only because of its intrinsic worth, but also because the work of this conference vividly depicts the Institute's own reasons for being. I have twice used the name in full of our Institute. It is not a name that trippingly falls off the tongue – even of its Chairman. We are seldom called all of that. There are a number of nicknames, but most frequently we have been referred to as the "Ethics Institute."

I have resisted that nomenclature with something like religious fervor because it has seemed to narrow too much the ambition of the Institute, since we regard professionalism as including, but much transcending, ethics. But in this, as in many other things, I may have been entirely too stiff-necked.

Aristotle, who coined the whole idea, after all, taught that ethics was the authentic expression in behavior of a culture's "ethos," its fundamental character and understanding of itself. Ethics is etymologically, theoretically and practically dependent in a radical way on who we think we are

as a community and what we think we are about. In that sense, we are indeed an ethics institute.

The Institute, in proposing to act on those larger terms, has its work cut out for it. It is commonplace to observe (and it has just been observed), or to point out with alarm (if your disposition tends you in that direction), a long and daunting list of changes that now beset the world of lawyering. The vast increase in the sheer number of lawyers; the much greater and growing diversity at the bar, the economic pressures and the economic opportunities that are so different in degree as to be different in kind from anything before, and which are spread so very unevenly over the lawyer population: competition, specialization, interstate practice, international practice, Internet practice. One could go on and on and write books about it, and books in fact have been written about it.

It does not matter whether these changes are seen as good or bad, any more than it matters whether one thinks that the sun rising in the east is good or bad. What does matter is that these forces, separately or even more in the aggregate, exert huge centrifugal stresses that threaten to splinter the very notion of a common ethos in the modern legal profession. In such confused times as that, it is important – more important than ever – to get one's bearings by an act of self-scrutiny.

That exercise is an ingredient of genuine and legitimate professionalism in any event. A number of years ago, Judge Arlin Adams, as he then was, wrote this, which we have rather taken as a keynote of the Institute. "All professions, especially one as central to American life as the legal profession, should undergo a continuing process of self-evaluation. Any group that does not engage in such an exercise loses much that makes it a profession – a shared set of principles and customs that transcend self-interest and speak to the essential nature of the particular calling or trade."

And last year at London, Dean John Sexton, in a marvelous speech, used twice a dense and packed formulation of the same idea. Speaking of the form of legal education today, in terms that are equally relevant to the practice of the profession today, he said he believed "that reflection and vigilance will be necessary if we are to notice and maintain what we consciously or subconsciously cherish about what we now do."

That necessity is all the more pressing in an era of turbulent change. The Institute's reason for being, and its mission in a nutshell, is to serve as a catalyst and occasional manager of that continuing process of examination and self-evaluation, of reflection and of vigilance.

In taking up that challenging task, it seemed to us to be a good idea

to begin at the beginning, at the point where new entrants to the profession are selected and introduced to a life in the law.

Calls for a dialogue between the academy and the bar have abounded in recent years. My good friend and neighbor, Bob MacCrate, sounded that note several years ago. Judge Edwards, Dean Kronman, the National Conferences of State Chief Justices and of bar presidents, and my dear friend John Feerick, to whom we owe the spark that ignited this conference, all have called for such a dialogue. And, in responding to that call, it struck me and my colleagues on the Institute, that a good place to begin the dialogue was on this fundamental issue.

Both the law schools and the practicing bar have an inescapable role to play in explicitly or implicitly forming the values of new professionals. Consider the law schools for a second. The same pressures that have put stresses on the lawyers of the world have put stresses, and sometimes eroded out of existence, the acculturating institutions with which you and we were familiar when we entered the profession. The mentoring roles of first jobs in law firms, in public offices, in clerkships, all of those have been put under equally great stress. But, it remains the one sure common experience of new entrants to the profession that they go to law school and pass through it on their way to the profession.

Some have therefore said that the law schools are the "gatekeepers of the profession." That notion is firmly rejected by many institutions. They regard that as misdescribing their function and greatly exaggerating their abilities to influence the values of their students. Interestingly, the notion that the law schools are the "gatekeepers of the profession" is rejected in other quarters for a different reason. Leaders of the practicing profession, like Bob MacCrate, have taken the view that – while recognizing the unifying effect of the law school experience – the gatekeeper's role belongs to the courts whose oath alone constitutes one a member of the profession. I mean to duck that controversy entirely.

What can be said, without any significant dispute I think, is what Dean Kronman wrote in the course of a much longer and much more contentious book about the condition of the legal profession. He said, "It is in the law schools' classrooms that lawyers are introduced to the culture of the profession and here their professional self-conception first takes place." I would add that it seems equally clear that law schools shape their statement of relevant values in their admissions and placement offices as well as in their classrooms.

The practicing bar also plays a role in the process of initiation. What new entrants read about practice and practitioners in the trade press, what they see and learn in clinics, in internships, in summer associate programs, all go toward shaping their view of what a lawyer is and what they might become.

Some say that in this examination they see sheer greed. Chief Justice Rehnquist, accepting an honor at the Association of the Bar of the City of New York two years ago, gave a speech in which he said the profession had gone wrong and the essence of its going wrong was that it was now devoted to "money getting."

On the way up to my delightful visit with David Wilkins in Cambridge, quite by happenstance, a retired senior partner of an important New York law firm sat down next to me and asked me why I was going to Boston. I told him. He proceeded to tell me what he thought had happened to the profession. His view was that corporate lawyers, in the span of our careers – his professional lifetime and mine – had reached a point – he wasn't quite sure where it was – where the lawyers made more money than their clients. At that point, he said, it had seemed a good idea to the generality of corporate lawyers to keep score of their achievements, not by building up their reputation, by which they had formerly been reckoned, but by building up their bank accounts.

Others point, instead of greed, to an increasingly instrumental and specialized practice as making the very idea of a common calling simply incoherent.

One can view all these signs and portents and conclude that a combination of negative attitudes among scholars and self-absorbed behavior among practitioners has fatally compromised the ethos of the American legal profession. That, again to borrow from Dean Kronman, the lawyer is indeed "lost." Or one can conclude that an important opportunity for engagement between the academy and the bar has arisen, one that is both vital and urgent, and one that calls for a combined effort at that reflection and vigilance of which Dean Sexton spoke. The Institute believes that this is a moment of opportunity, not a moment of collapse. At the very least, the stakes are too high not to test that more optimistic thesis.

David Wilkins, in a law review article he wrote last year, defined those stakes and alluded to them somewhat again today. Speaking to his colleagues in the academy and urging on them the partnership which he urged on us today, he wrote, "One does not need to invoke much hyper-

bole to put forward a credible argument that the legal profession's survival as an independent profession depends upon its ability to articulate a persuasive and public-regarding justification for its privileged place in society. Although scholarly research should not aim directly at this goal," he said, "it is only through systematic and disinterested examination of the issues at stake that a model of legal practice suitable for the new millennium is likely to emerge. No one," he argued, "had a greater interest in the success of that project than current members of the bar."

This Convocation is meant to stimulate that collaborative examination and to lay the groundwork for a continued and sustained endeavor along those lines. We are quite clear that the questions that we raise in the course of the next day-and-a-half will not be answered in the next day-and-a-half. But the challenge is laid down to a long-term effort, which we begin.

We are deeply grateful to you all, and specifically and most importantly to those who will participate as our presenters and commentators, for responding to the invitation to join in starting that important task today.

Some 26 years ago in this courtroom, the Court decided In the Matter of Freeman[3] . In the course of that decision, Chief Judge Breitel wrote of bar associations that "professional associations justify their existence to the extent that they further the standards and the ideal" of the profession. We are delighted to have the New York State Bar Association as our collaborator in this conference and it's my pleasure now to introduce to you the President of the State Bar, whose zeal in the pursuit of those ideals is indefatigable and legendary. May I present to you Paul Michael Hassett.

PAUL MICHAEL HASSETT, ESQ.
President, New York State Bar Association

Thank you, Lou, and welcome on behalf of the New York State Bar Association to all of you. We are very pleased to be able to collaborate with the Judicial Institute on Professionalism in the Law (note I didn't use the shorthand title) in presenting this Convocation and in extending to you the hospitality of our Bar Center where we will adjourn for lunch this

[3] Matter of Lincoln Rochester Trust Company (Freeman), 34 NY2d 1, 8.

noon and then tomorrow for all the programming. I am also very pleased to be in this most beautiful courtroom in the world. I have never argued a case in this courtroom. I am one of those non-litigators of whom Professor Wilkins spoke and so it's not likely that I will ever do so. It also is not very likely that I will often have this view from this end of the room, although my predecessor, Jim Moore, made it to the short list, so "Hey, you never know."

I would like to take just a few minutes to talk about a topic that is not exactly within the program for this morning or for this Convocation, but is certainly relevant to the broad subject of legal education. I was privileged this summer to attend the annual meeting of the American Bar Association as a representative of the New York State Bar and, as I am sure you all know, that meeting began in New York in July and then continued a few days later in London. The London program opened with a fascinating ceremony at Royal Albert Hall, capped by a welcoming address by Prime Minister Tony Blair. The rest of the week was highlighted by various receptions and luncheons in places that the ordinary visitor to London would never get to see. Since I was traveling on behalf of the Bar Association, I felt somewhat responsible to do a little bit more than attend these few receptions. In looking forward to this Convocation, I decided to attend the program sponsored by the ABA Section on Legal Education and Admission to the Bar. The program was entitled "Out of the Box: Thinking about the Training of Lawyers in the Next Millennium," and the keynote address was a very thoughtful presentation, to which Lou Craco has referred, by John Sexton, Dean of the New York University Law School.

I attended the program and was so impressed with Dean Sexton's speech that I procured a copy of it from his office and read it again. It was even more impressive the second time. I thought it might be appropriate to recount for you a few of the very insightful and provocative suggestions he made that summer afternoon in London. Some of you may have read his paper. Others may have heard of it, but I suspect that many of us have not, particularly those of us who are not directly involved in legal education.

His address was the outgrowth of a meeting last spring sponsored by the Association of American Law Schools and consisting of 48 legal educators from six continents. It was easy in such a setting to contrast the American model of legal education, consisting of a three-year graduate

program, with the variety of legal education viewed from a global perspective. The argument can be made that since almost all American law students complete their required courses by the end of the first year and that thereafter most courses are elective, the American model should be reduced to at most two years. Dean Sexton suggested that, whether or not one accepts this argument, it is apparent that the future will bring more variety in legal education than we see today. He forecasts that "within two decades we will not insist upon a three-year graduate legal education as a predicate to taking the bar." He further predicts that more students will pursue specialized degrees than the general J.D. degree, universal in today's law schools, and that there will be a variety of processes leading to certification as a specialist in a program requiring less than a three-year legal education.

He then outlined some of the trends which will advance changes. The first of these is globalization. Clients, who are represented both by American lawyers (with an American law school education) and often in the same transaction by European lawyers (with a different educational background), will compare the product of the two systems and ultimately challenge the American system. In addition, the tendency towards specialization in the practice of law and the tendency towards the consolidation of lawyers with other professionals in multidisciplinary practices will be heightened and will amplify the challenge of the present structure of American legal education. In Dean Sexton's words:

> First, in a world where specialization is prized, a law school experience consisting of a "general" first year followed by two years of unguided electives, must be justified as preparing the student for a desired mission. Second, in a world where talented graduates without law degrees can move into high prestige, challenging and financially rewarding careers at consolidated professional entities where they can "counsel" clients, three years of law school training must be justified – both to the prospective students who must pay the tuition, and to society, if society is to continue erecting rules that require such an educational structure. In neither case is it obvious, if it is true at all, that the American model of legal education, at least as presently constituted, will be justified to most inquirers.

Another significant influence on law school education is, of course, the growth of technology, leading perhaps to law schools offering their entire course of instruction "on-line." Dean Sexton decries the "depersonalization of the educational process and the concomitant devaluation of inspiration and serendipity" and finds that prospect, again in his own words, "downright chilling."

Despite questioning the survival of the three-year graduate model of education, Sexton suggests that we must strive to maintain it even in the face of these challenges. He contends that the fact that the American legal educational model has persisted almost unchanged for over one hundred years suggests there is a well-entrenched goal which would explain this persistence. To Dean Sexton, "[t]he United States is a society based on law and forged by lawyers. The law is our great arbiter, the principal means by which we have been able to knit one nation out of a people whose chief characteristic always has been diversity. Just as the law has been a principal means for founding, defining, preserving, reforming and demonstrating a united America, our lawyers have been charged with setting the nation's values. The role of the lawyer is that of a fiduciary for, and conscience of, the civil realm – for if lawyers do not play that role, nobody will."

A little later we will take a brief look at a couple of other significant publications regarding the profession which come to the same conclusion.

It would be impossible to consider the nature of legal education in the next century without a discussion of curriculum content. Dean Sexton offers considerable comment about content, as well as style of instruction, that is, the contrast between the traditional instructional method, the clinical method and interdisciplinary instruction. But since curriculum is not within the scope of our inquiry at this Convocation, I will not delve into this discussion to any extent except to say that Dean Sexton insists " . . . our schools have sought to instill a respect for the rule of law and a sense that law is the product of reason, not power," and that the curriculum must be designed to produce graduates who will serve society in the role that he describes.

Dean Sexton concluded his analysis by returning to the question of whether the appropriate law school curriculum commands three years, or two, or four, but that his own view is that "three years is about right for adequate coverage and gestation; if anything, three years may not be enough." And he continues, " . . . one important element of the diversi-

fied world of legal education that is emerging is a version of the three-year graduate model which I believe will be useful and important, even in tomorrow's world."

I began a few minutes ago by telling you that I attended this most interesting discussion in London last summer with a view towards our gathering here today and tomorrow. But as I said at the beginning, I recognize the scope of our inquiry may not encompass these challenging ideas that Dean Sexton has advanced, but I do not see this Convocation, however, as an end in itself. On the contrary, I hope it will be but a continuation of the dialogue between legal educators and practicing lawyers about the course of American legal education. If we are to accept John Sexton's provocative challenge that American lawyers have been charged with setting the nation's values and must continue to function as fiduciary for and "conscience of the civil realm," then this discussion must certainly continue. Thank you.

LUNCHEON PROGRAM

PAUL MICHAEL HASSETT, ESQ.
President, New York State Bar Association

I am sure you are all well aware that the reason we are gathered here today can be found in a document entitled "Legal Education and Professional Development: An Educational Continuum," which was a report of the ABA Task Force on Law Schools and the Profession: Narrowing the Gap, and published in July 1992. No one refers to that report by its cumbersome title. It is known to the organized bar and to the legal academy as the MacCrate Report, after the chair of the Task Force, Robert MacCrate. Likewise, this past spring the New York State Bar Association Special Committee on the Law Governing Firm Structure and Operation issued the most definitive and scholarly work on the subject of multidisciplinary practice both in the United States and throughout the world, entitled "Preserving the Core Values of the American Legal Profession — the Place of Multidisciplinary Practice in the Law Governing Lawyers." No one refers to that document by its full title either. Most of us routinely refer to it as MacCrate II after the chair of that special committee, Robert MacCrate.

We refer to these documents as we do not just because Bob MacCrate chaired those committees but because without his leadership, his intellect and his insight, it is quite likely that neither report would have been written. In fact, a careful reader of each report will discover a common foundation - the existence of a single public profession of the law in the United States unified by its organization, by its education and by the skills and values associated with the profession. The education of lawyers and the development of their skills and values are the responsibility of the organized bar and the academy of the law and are precisely the motivation for our conference here today and tomorrow. Bob MacCrate's part in our enterprise is obvious to readers of those reports.

Bob's service to the profession is possibly without parallel. He has been President of both the New York State Bar Association and the New York Bar Foundation and has chaired and worked on numerous commit-

tees for our association. He has been President of the American Bar Association, the American Judicature Society and the American Bar Foundation, and Chair and member of numerous committees of the ABA as well. In every assignment he has undertaken, Bob has shared his knowledge and his pride in the law and the profession with his colleagues and has promoted the improvement of the legal system throughout his career. The challenge to the profession contained in the MacCrate Report in 1992 initiated a dialogue among the practicing bar, the American court system and the American law schools. In the intervening years, more than 20 states have held conclaves on legal education to continue the discussion.

In February of this year, the National Conference of Bar Presidents, the National Association of Bar Executives, the National Conference of Bar Foundations, and the Deans' Workshop of the Section of Legal Education and Admissions to the Bar gathered during the American Bar Association's mid-year meeting in Dallas, Texas. Over 500 bar leaders and law school deans participated in a conference entitled, "A National Dialogue on the Legal Education Continuum" and produced 10 separate workshops, each focused on a separate topic which collectively tackled the major issues involving the profession and legal education. The purpose of the program was to provide a national forum for bar association leaders and deans to discuss their respective roles in teaching competence, professional skills and the values of the profession and to generate a sustainable action plan for working together for the future education of lawyers. It was the expectation of that conference that bar leaders and deans would explore avenues reassuring commitment to the advancement of those goals.

At a joint luncheon of the NCBP, NABE and NCBF, Bob MacCrate was the principal speaker. The pride in his voice was evident as he said, "How rewarding it is to find, in the year 2000, law deans in their workshops grappling with the latest issues to confront the profession relating to multidisciplinary practice and to find this joint assembly engaged in a national dialogue on the legal education continuum that the Task Force defined in the summer of 1992."

We gather here today in a continuation of that dialogue, begun in the MacCrate Report of 1992 and continued through the various State conclaves and the NCBP meeting in Dallas last winter. And this is hardly the end of the discussion. I sincerely hope that at the conclusion of this conference tomorrow afternoon we will already have begun to plan for the

future and that this dialogue on legal education and the profession will be a continuing one in New York State. If it is, it will be because of Bob MacCrate, whose vision and enthusiasm for improving the legal system planted the seeds for this inquiry. It is my great pleasure to recognize his many contributions to the academy and to the profession and to our society. Please join with me in expressing our thanks to a true legend of our profession, Bob MacCrate.

ROBERT MacCRATE, ESQ.
Chair, American Bar Association Task Force on Law Schools and the Profession, 1989-1992

Thank you, Paul, very much for those extremely generous remarks.

Friends, convocations are for conversation. I would like to say a few words about my conversations with law schools over the last 15 years.

In January of 1987, I ventured a suggestion to the House of Representatives of the Association of American Law Schools that the law schools and the Bar Associations together re-examine the overall relationship between legal education and the legal profession that lies behind "the face of the profession" that you address today. I suggested that the examination be done against the backdrop of the profound changes that were taking place in the practice of law and in professional activity throughout the United States and the world. I stressed that any such study should be a joint undertaking, noting that virtually every advance in professional standards and in the performance of legal institutions had been the product of such joint cooperation.

I pointed to the quest for professional identity, both by lawyers and by law teachers, that can be traced from the 1820's and 30's when David Hoffman published his Course of Legal Study with its Fifty Resolutions with respect to Professional Deportment, a course of study that has given direction within the United States for 160 years, and through the decade of the 1870's when the movement to organize and unify the legal profession in the United States took form, while the movement by legal educators to become a full-fledged, legitimate part of university learning grew.

Over the ensuing years, from the 1870's to the 1980's, the warmth of the relationship between academic lawyers and practicing lawyers

repeatedly waxed and waned, as each group sought, in their respective spheres, to define the professional ideal. But one thing was clear, that no significant advance in identifying the role of the profession, in lifting its standards, in strengthening the education of lawyers, or in improving the quality of the law had ever been accomplished without strong cooperation between academic lawyers and practicing lawyers. I opined that the quality of law in professional performance varies directly with the extent to which academic lawyers participate with other elements of the legal community in law reform, judicial improvement and general professional activity.

I expressed the fear that in our respective parochial concerns we might be losing sight of this lesson in history.

I concluded my remarks to the assembled law teachers that day in 1987 by saying that it was of considerable urgency that we face together the issues coming before the profession as we sought to preserve the identity and aspirational unity of an increasingly diverse profession; that if a single public profession of shared basic values of learning and service, engaged in a myriad of diverse activities and fractionated by specialization, was to survive into the 21st Century, the academic lawyer working with other members of the legal profession must play a central role in perpetuating the ideals and values of that profession.

The response to these remarks made in early 1987 was most gratifying. In the course of the next year, Justice Rosalie Wahl of Minnesota, the then-chair of the ABA Section on Legal Education and Admissions to the Bar, created the Task Force on Law Schools and the Profession: Narrowing the Gap, which I had the privilege to chair. She charged us to determine what skills, what attitudes, what character traits and what qualities of mind are required of lawyers to sustain and preserve the profession as a respected, client-serving, problem-solving, public calling.

We approached our task from a quite different direction than prior studies of legal education in the United States. We started by looking, not at law schools, but at American lawyers, all lawyers, the total profession in all its dimensions.

The Task Force presented its overview of the legal profession against the background of how the idea of a single profession of law had developed in America and how, over the decades, with the active support of the bar, organized in each of the 50 States and Territories, the law schools, then numbering 177 across the United States, became the unifying expe-

rience for the great majority of lawyers, and the Judiciary in each State and Territory became the profession's gatekeeper for that jurisdiction.

In direct response to Justice Wahl's charge to determine the skills, the attitudes, the character traits and the qualities of mind required of lawyers today, we developed a conceptual statement of the skills and the values that we thought all lawyers should seek to acquire, wherever a lawyer might work, and that promote the competent and responsible practice of law. We found that the endless articulation by word and by action of professional standards and ethical norms—by Hoffman, Francis Lieber, Judge Sharswood, Arthur Von Briesen, Judge Jones in Alabama, Reginald Heber Smith and ultimately by the American Bar Association—had helped create a durable identity for the profession and to affirm the abiding nature of its central values.

Our Task Force concluded that the skills and values of competent and responsible lawyers are in fact developed along a continuum that neither begins nor ends in law school. Rather, the development starts before law school, reaches its most formative and intensive stage during the law school years, and continues throughout the lawyer's professional life. Thus, we entitled our report "Legal Education and Professional Development — An Educational Continuum."

Since the publication of our report in 1992, right up to today's Convocation, there has been continuing dialogue regarding the building of this educational continuum.

To underscore the role of the law schools in the educational continuum, the Task Force recommended that the basic Accreditation Standard for educational programs in law schools be amended to expand on the previously limited objective stated in the Standard: to qualify graduates simply for "admission to the bar." Since 1993, adopting the Task Force's recommendation, Standard 301(a) has provided:

> A law school shall maintain an educational program that is designed to qualify its graduates for admission to the bar *and to prepare them to participate effectively in the legal profession* (new language in italics).

I cherish the ideals of a single public profession of law in America, bound together by shared learning, acquired skills and particularly by professed values.

Those ideals were raised and nurtured by the legal profession itself: by Hoffman, by Lieber, by Sharswood, by Von Briesen, by Jones, by Smith and by the organized bar. Only the profession can ensure their vitality, but the survival of professional values is heavily dependent upon the law schools beginning the process during that most formative and intensive stage of lawyers' professional development, as well as upon the courts and all segments of the profession holding fast to a value-centered concept of law in society, dedicated to the rule of law and to a common enterprise of transmitting from one generation of lawyers to the next that shared learning, those acquired skills and the professed values of what is for many of us even today a beloved profession.

I might add one little footnote. I brought these two volumes of David Hoffman's Course of Study that were presented to me by the ABA Task Force back in 1992. They have been on my bookshelf ever since. But I thought I really ought to show them to someone and it seemed to me that this was a particularly appropriate place to bring them.

Thank you.

LOUIS A. CRACO, ESQ.
Chair, New York State Judicial Institute on Professionalism in the Law

Some of you out there have had the privilege that I enjoy of not only knowing Bob MacCrate from his works, but being his friend. There are 400 families in the little village of Plandome, Long Island, one of them is the MacCrates and another of them is the Cracos. We have been friends and neighbors for all these years. I want to tell you that that's a privilege of a rare sort as well. Bob does nothing by halves, not his reports to the bar and not his letters to the trustees of the Village of Plandome about zoning problems, which since my wife is a trustee of the Village, adorn not our bookshelves but our kitchen counter.

But Bob does not do things by halves and it seems to me I wanted to add to the observations of Paul Hassett two points which have, I think, just been demonstrated to you and that are important to our work. The first is, this is not a task that we are setting about today for the short-winded. This seminal report is a number of years old, it has legs as they say in Hollywood, it endures, it withstands analysis, it invites further analysis.

But this is a beginning in New York of a combined effort that will require personal and institutional stamina from those who start on it. Bob has evidenced that in everything he has done.

The second thing, I think, that was evident from what you just heard and what has been evident to me around the village and around the bar is that it is just no good, folks, for us to come together and talk about these professional values if we do not embody them. The thing above all else, with all his reports and all his other efforts, that Bob MacCrate has done for the American Bar is to encourage us by who and what he is. Bob, I want you to know that point has not been lost on those of us who admire and love you.

As to the remaining sessions, it seemed appropriate to try to capture the insights about the formative process of law school in three, roughly chronological segments.

The first panel will look at the process by which law schools select their inductees and what happens to them in the process of being admitted to law school, why people go to law school, what constrains them and the like. It is obvious that nobody who isn't chosen to go to law school will wind up a lawyer 25 years from now influencing the face of the profession. So the selection process itself is value-laden, and we are going to examine that in a variety of ways in the first panel.

The second panel is going to talk about the process of acculturation that occurs in law school; the value messages that are transmitted by the way law schools conduct themselves and conduct the educational enterprise. We are perfectly aware in both of these panels of something that is a crucial fact and an important asset to this conversation — amongst the 15 law schools in New York State, we have law schools of a huge variety of points of view, of constituencies and of attitudes, of purpose and of style. We replicate in New York State, thereby, the condition of American legal education across the country. Thus, New York is a peculiarly apt laboratory for us to try to study these questions. There will be differences between the law schools about both the admissions process and the educational enterprise that we hope to explore and to consider in these first two panels.

The third panel will examine the exit process, the process by which career-influencing choices are made both by the law schools and by the law students. Choices are influenced by what the students have encountered in their experience with the law. We will look at their predictions of

the law experience as they go through law school and encounter work experiences. Debt will figure in this, cultural diversity will figure in this, and economic issues will figure in this. We have no illusions that these three snapshots of what is essentially a moving picture adequately contains everything that has to be said about each of these features. So one of the things that we can expect to happen is some overlap from one discussion to another about these issues.

Those Breakout Sessions will not be focused on the particular content of a particular presentation that you have heard. The moderators of those panels will have two questions that are both thematic across all of the panels and penetrating enough to get a discussion started. We are going to try to capture your input in those Breakout Sessions by having reporters present in the ALI sense of the word, who will report briefly at lunch here tomorrow, very briefly, on the salient points made at each of those Breakout Sessions. All of this — I come back to the beginning point like a good transactional lawyer should — is an extension and a continuation of the bar and the academy's picking up of the challenge laid down by Bob MacCrate a few years ago and, again, I thank you Bob for setting us on this course.