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The First Seven Years of Practice

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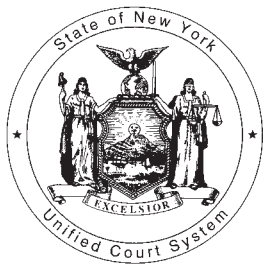

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NEW YORK STATE JUDICIAL INSTITUTE ON PROFESSIONALISM IN THE LAW

JOURNAL OF THE NEW YORK STATE JUDICIAL INSTITUTE ON PROFESSIONALISM IN THE LAW

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FOREWORD

Young lawyers face difficult challenges: How do they become integrated in the profession they have chosen? How do they learn to juggle family and work pressures? Can they even think about starting a family at this early stage of their careers? How do they pay off their college and law school debts? How do they learn to practice law and get necessary feedback about their performance? How do they find a mentor, a role-model? And, after all, is it all worth it? Is this what they went to law school for?

Our profession depends for its survival on its ability to inculcate professional values in young lawyers and to inspire them to the same sense of service, privilege and obligation that our forebears inspired in us. Ours is a noble and honorable profession. Excellent role-models for young lawyers are everywhere. Yet young lawyers face challenges that we never knew and are having a hard time with them. There is a crisis of morale and of worth. Billable-hour pressure is intense and debt-repayment obligations seem overwhelming. There isn't enough time for family or friends or even one's self. In the words of the old song, many young lawyers are asking, "Is this all there is?"

Two years ago, the New York State Judicial Institute on Professionalism in the Law held its first Convocation on the Face of the Profession. In a day-and-a-half dialogue among members of the bar, bench and academy, we examined "the one, sure common experience all lawyers have—the process of being selected for, studying at and emerging from law school." We tried to discern the values that were implied by law schools in the selection and placement of law students and what those values said to candidates about how they might view a life in the law.

Young lawyers who leave the academy for practice find that they are called upon to put those values to work immediately and it is not easy. They, or many of them, find that a "life in the law" may not be what they expected and that they cannot seem to have a life of any kind. They are over-worked, over-stressed, too much in debt, sometimes vastly underpaid and often unhappy. Yet for the most part, new lawyers want to succeed in the profession that they have chosen. They want to be an integral part of it. They want to experience the rich satisfaction that their elders, who have spent their lives in the law, have enjoyed.

Thus, the topic for our second Convocation—Convocation II—was a natural. The First Seven Years of Practice. We chose that period because it is the time frame, in general but with exceptions, during which a young lawyer is considered for partner in many large law firms. We recognized, however, that the first seven years was only a measuring stick, nothing more. We knew that many young lawyers do not join large law firms. They work as single practitioners, in small firms, as assistant prosecutors, for legal services and community-based organizations or for the government. But they all experience, or so we posited, roughly

the same pressures in becoming acclimatized to and making a life in the profession that they have chosen.

As we thought about how to approach this topic, a few things became clear quickly. Paying attention to David Leebron's counsel that we not do the "same old, same old," but approach the topic with a fresh approach from our unique vantage, we drew upon but determined not simply to replicate the many studies that have been done on the quality of life for lawyers, especially by the Boston Bar Association led by Nancer Ballard and the Association of the Bar of the City of New York led by Evan Davis . Our task was not simply to understand how lawyers struggled with quality of life issues but rather how young lawyers can learn to become professionals in the face of such challenges.

Also, we knew that we wanted to hear from the young lawyers themselves. We did not want to preach to them; we wanted to hear from them. What were they experiencing? What problems were they facing? How were the problems different (or were they) for lawyers from different parts of the state? We knew that there were important geographic differences but we were not sure whether they affected the attitudes of young lawyers. To examine those differences, we held three focus groups, in New York City, Uniondale on Long Island and Rochester . We learned from those focus groups that although there are indeed geographic differences, in general, the pressures on and experiences of young lawyers were similar.

What follows is the result of our efforts. In a day-and-a-half Convocation attended by members of the academy, the practicing bar and the bench, we heard from distinguished professors who have studied the acclimatization of young lawyers into the profession. We heard from practicing lawyers who had supervised young lawyers both in firms and in a large legal aid office. We heard from Ms. Ballard and Mr. Davis who told us of their efforts to conduct systematic studies of quality-of-life issues among their members and who, in Ms. Ballard's case, came up with a series of concrete proposals for improvement. Our keynote speaker was F.A.O. Schwarz, "Fritz" to us, whose life in the law Lou Craco called "demonstrative evidence" of the highest ideals of professionalism and public service.

But most important, we heard from the young lawyers themselves. Our young lawyer panelists from a variety of practice experiences attended the focus groups around the state and had the opportunity to talk to other young lawyers about their experiences and, under the expert encouragement of Dean Joan Wexler, shared what they learned with us.

In breakout sessions all those who attended the Convocation were asked to identify the most significant obstacles to professionalism that young lawyers faced and suggest concrete proposals for addressing them. Not surprising, the results were fairly consistent. In no particular order, the three obstacles to pro-

fessionalism for young lawyers were the burden of student debt, the pressures imposed by billable-hour requirements and the lack of mentoring. The concrete suggestions for addressing them, however, ran the gamut from tax deductions to the elimination of billable hours.

Fostering dialogue such as this is an important part of what we in the Institute are meant to do, but it is not the only thing. In the months ahead, we will be analyzing the many suggestions that came out of the Convocation and attempting to synthesize the best of them. There are some, like the issue of student debt, that we can do little about other than to raise the issue to the appropriate level of consciousness. There are others, however, such as the lack of mentoring, that we hope to be able to address in a meaningful way.

We continue to be enormously grateful to Chief Judge Judith S. Kaye for launching and inspiring the Institute and to her colleagues on the Court of Appeals for their continuing support of our efforts. We are also indebted to the deans of the fifteen law schools in New York, the more than 100 bar associations, the law firms and public service organizations that participated in our Convocation and, especially, the young lawyers themselves.. Finally, we are indebted to the members of the Institute's Convocation II Committee, which I was privileged to chair, for their unstinting work in making our second Convocation a reality.

Paul C. Saunders
Program Chair,
New York State Judicial Institute on
Professionalism in the Law

EXECUTIVE SUMMARY

"Convocation on the Face of the Profession II – The First Seven Years of Practice" was held in New York, New York, on November 11 and 12, 2002. It was a follow-up to the first Convocation on the Face of the Profession ("Convocation I"), held in Albany, New York, on November 13 and 14, 2000, which examined the profile of college graduates accepted to law school, socialization of law students into the profession, and graduation and employment as members of the bar.[1] The first day of Convocation II was held in the courtroom of the Appellate Division, First Department, and the second day was held at the House of the Association of the Bar of the City of New York ("City Bar Association").

The Honorable Milton L. Williams, Presiding Justice of the Appellate Division, New York State Supreme Court, First Department, welcomed the speakers and the audience to his courtroom. Chief Judge Judith S. Kaye emphasized that the lawyers of today are different from the lawyers of her generation and that more senior lawyers should not expect younger lawyers merely to do now what they did in another era.

Louis A. Craco, the Chair of the New York State Judicial Institute on Professionalism in the Law ("Institute"), noted that many of the traditional instruments for acculturating new lawyers no longer have the vigor they once possessed. For example, because of the pressures of competition, business methods, and technology, law firms spend less time training young lawyers and nurturing their careers. Mr. Craco gently criticized academics who write about professionalism for describing problems without coming up with concrete solutions.

Frederick A.O. Schwarz, Jr., Senior Counsel at Cravath, Swaine & Moore and at the Brennan Center for Justice at NYU School of Law, gave the keynote address. He emphasized the importance of civic and community service. While cautioning against nostalgia for a golden age that never existed, Mr. Schwarz said that, with some qualifications, it was harder today to get involved than it was 40 years ago. Part of the fault lies with society as a whole: in the 1960s, people were much more idealistic and civic-minded than they are today. Part of the fault lies with law firms: by imposing billable hour quotas and giving hours-based bonuses, law firms are rewarding quantity rather than quality of work, thus decreasing the amount of time available for civic and community work. However, part of the fault also lies with young lawyers themselves: if they chose firms based on their pro bono rankings instead of their profit-per-partner rankings, law firms would change.

1-The proceedings of Convocation I were published in Volume 1, No. 1 of the Journal of the New York State Judicial Institute on Professionalism in the Law.

Mr. Schwarz then proposed ways of moving toward solutions. First, it is necessary to change people's attitudes. Second, information about what law firms are doing or not doing should be collected and disseminated to create incentives for lawyers to fulfill their civic responsibilities and disincentives to discourage lawyers from doing so. Third, the definition of pro bono should be broadened so that it includes non-litigators. Fourth, lawyers should be encouraged to participate in bar association work. When they participate in such work, they should not have to regard themselves as representing their law firm or organization.

Finally, sounding a theme that other speakers would echo, Mr. Schwarz urged young lawyers not to wait to get involved. They should not fall into the trap of waiting until they are 50 before they get involved in pro bono or public affairs.

David M. Becker, former general counsel at the Securities and Exchange Commission, gave the luncheon address. He said that young lawyers – indeed, all lawyers – will be less disaffected if they keep in mind the moral dimension of their professional conduct. It is easy for practicing lawyers to take for granted what they do; they should remind themselves that they help protect individuals against the power of the state or help people resolve their disputes in a civilized manner. Lawyers should always be mindful of what they do; for example, instead of automatically agreeing or refusing to represent a defendant accused of collaborating with Nazis, they should debate the issue within their firm.

Mr. Becker pointed out the tension between zealously representing one's client and, at the same time, not being indifferent to the consequences of that client's conduct. Mr. Becker emphasized the importance of keeping one's mind open to alternative viewpoints, and of performing pro bono work.

The first panel, on "Education in Professional Values and Rules," began with presentations from two academics, Professor Russell Pearce of Fordham Law School and Professor William Sage of Columbia Law School. The two commentators, Candace Krugman Beinecke of Hughes Hubbard & Reed LLP and Daniel Greenberg of the Legal Aid Society, had "real world" experience in training and supervising young lawyers.

Like Mr. Schwarz, Professor Pearce drew a connection between society at large and the legal profession. Just as top executives became less public-spirited and more greedy between the 1960s and the 1990s, so too did lawyers shift from seeing themselves as the conscience of big business and guardians of the public good to seeing themselves as hired guns with no moral responsibility for the actions they took on behalf of clients.

Professor Pearce suggested the following ways to strengthen the goal of promoting justice, fairness, and morality. First, law schools should make ethics a first-semester course with required advanced classes. Ethics should be integrated into the rest of law students' coursework. Second, lawyers should be held

morally accountable for their actions. Third, law firms can set up their own professionalism codes. They can also discuss ethics at departmental meetings. Finally, law firms can make professional values part of associates' and partners' evaluations.

Professor Sage, who has an M.D. as well as a J.D., talked about the differences between a young doctor's first seven years and a young lawyer's first seven years. He pointed out that, unlike lawyers, doctors spend their first seven years in a training setting (e.g., as interns and residents at teaching hospitals). Society funds this training, whereas lawyers' training is left to the private sector. This explains why law firms grew large while medical practices stayed small: only large law firms could afford the costs of training.

Professor Sage said that young doctors get most of their compensation in non-monetary form (viz., training), whereas young lawyers get most of their compensation in monetary form. This is possible because the system that matches graduates of medical school to teaching hospitals is collusive, whereas the market for graduates of law schools is competitive. Professor Sage suggested that young lawyers focus on money because non-monetary compensation (training and the chance of partnership) seems neither meaningful nor realistic. However, other speakers disagreed and said that, when young lawyers choose which firm to go to, training is an important factor. Professor Sage argued that neither the collusion of the medical world nor the competition of the legal world represents the social optimum.

Professor Sage noted that lawyers mostly use their own human capital, whereas doctors use many other resources (e.g., by ordering tests, medicines, and medical devices). Thus, the concept of pro bono is very different in medicine and law. Professor Sage argued that poor people actually have better access to health care than to legal services.

Professor Sage pointed out that, although doctors see themselves as advocates for their patients and lawyers see themselves as advocates for their clients, doctors consult their patients much less than lawyers consult their clients; the doctors' attitude is that they know what is best for their patients. This is tied to the fact that young doctors are given more responsibility than young lawyers. For example, when asked, "Have you ever done an appendectomy?," a young doctor might respond, "Sure, hand me a scalpel." In contrast, at a big firm, a young lawyer might not be permitted to send out a one-paragraph cover letter before it had been approved by a partner or senior associate. Professor Sage also noted that doctors are less comfortable with rules than are lawyers, especially if the rules are created by bureaucrats instead of fellow doctors.

Paul C. Saunders, the Convocation Chair, noted that medical students take the Hippocratic oath either at graduation or at the beginning of medical school. The Hippocratic oath – and, at those schools where the oath is administered at the outset, the issuance of a white coat – inducts medical students into their pro-

fession. In contrast, the oath that young lawyers take when they are admitted to the bar is far less integral to their training. Can law schools invent something equivalent to the Hippocratic oath? For example, ought law students be asked at the outset of their studies to sign a pledge to abide by certain rules of professional conduct? This may be discussed at a future symposium on how professionalism is and should be taught at law schools.

Mr. Saunders also pointed out that, while both doctors and lawyers serve others, everyone agrees that it is a social good to help the ill get well, whereas not everyone agrees that what lawyers do (e.g., defending criminals or helping big corporations) is a social good. Thus, it may be socially acceptable to bend the rules to help a sick patient but not to help a big corporation. A subsequent speaker, Mr. Greenberg, suggested that this difference is due to the fact that "people feel the doctor didn't make the patient ill, but people often feel that the lawyers made the problems that they are trying to solve."

Ms. Beinecke, the chair of a Wallach, Street law firm, emphasized that, while professionalism is obviously important, lawyers must not lose sight of the values of advocacy and client confidentiality. She also stressed that being ethical is not only the right thing to do, but the smart thing to do. This is because; the best and the brightest will not be attracted to the legal profession if it is held in low esteem; lawyers are in the business of giving advice and clients will be less likely to take their lawyers' advice if lawyers are not respected; and, pro bono work is interesting and may help combat burnout among young lawyers.

Although some people argue that ethical training at law school or law firms comes too late because young people's moral fiber should already be formed by that stage, Ms. Beinecke noted that the ethical issues faced by practitioners are hard and complex. As she put it, "If I don't know all the answers after 30 years, why should somebody know all the answers coming right out of law school?" Hence, it is important for law firms to stress ethics at their orientation for new lawyers and to continue discussing ethical issues thereafter.

Ms. Beinecke noted that actions are more important than words. She suggested that, as part of their hiring process, law firms demand that law students have demonstrated a commitment to ethics and pro bono. In addition, when evaluating their lawyers, law firms should consider the lawyers' stature in the profession (e.g., bar association and pro bono work), not just their stature with their clients.

Mr. Greenberg, the President and Attorney-in-Chief of the Legal Aid Society, said that the solution to the problem of not enough pro bono was simple: law firms should give associates bonuses for doing x hours of pro bono work instead of bonuses for billing a huge number of total hours. (Mr. Greenberg did not address the problem of where the money to pay bonuses would come from if all associates did several hundred hours per year of non-paying work.)

Mr. Greenberg, whose wife is a physician, pointed out a difference between

medicine and law: medical journals give practical advice (e.g., reduce heart attacks by giving patients aspirin), whereas law reviews are filled with long, abstruse articles that no one except the tenure review committee understands. This is because practice is not respected in legal academia: writing articles about what lawyers actually do, and how they could do things better, will not help professors get ahead in the academy. Mr. Greenberg urged that more practical articles be written about the legal profession.

Mr. Greenberg noted that, even if a law firm gives back a lot of money to the community by doing pro bono work, what is important is what the law firm did to make the money in the first place. Therefore, he suggested the creation of a consortium of ethical law firms – firms that would subscribe to a set of principles that go above and beyond the current Model Rules and Model Code; firms that would refuse to engage in practices that, while technically legal, should not be done. If this idea succeeded, a corporation that went outside this ethical consortium would signal to its shareholders and the public that it was engaged in something underhanded.

The second panel, "Obstacles to Professional Fulfillment," consisted of six young lawyers from various practice settings and geographical regions: Kristin Koehler Guilbault, an associate at Whiteman, Osterman & Hanna in Albany; Kimberley D. Harris, a litigation associate at Davis Polk & Wardwell; David P. Miranda of Heslin Rothenberg Farley & Mesiti, P.C. in Albany, who chairs the Young Lawyers Section of the New York State Bar Association; Mary T. O'Flynn, an Assistant Corporation Counsel for the City of New York; Matthew J. Sava, a litigation associate at Shapiro Mitchell Forman Allen & Miller, LLP, a small firm in New York City; and Jessica F. Vasquez, Director of Projects at the National Latino Alliance for the Elimination of Domestic Violence. These young lawyers, together with the moderator, Dean Joan G. Wexler of Brooklyn Law School, had attended focus groups around the state. Thus, they expressed not only their own views, but also the experiences of the other young lawyers who had attended the focus groups.

Ms. O'Flynn noted that many of the participants at the focus groups were already on their second or third job, even though they were seven years or less out of law school. She pointed out that this experience was different from the career trajectory of more senior lawyers, who went into the work force thinking that they would work for one firm for their entire career.

Ms. Harris said that, at large firms, young lawyers had a lot of supervision but not much responsibility; hence, they often felt stifled. In contrast, at smaller firms, government agencies, and public interest organizations, young lawyers had no supervision and a huge amount of responsibility, which was very stressful. Ms. Harris suggested that employers adopt a happy medium between the two extremes.

Ms. O'Flynn emphasized the importance of mentoring: the focus groups

members who were mentored had a much more positive work experience than the ones who were not. Ms. Harris noted that most focus group participants did not have any one person whom they aspired to be like; instead, they created composite role models, taking one good feature from partner X and another good feature from senior lawyer Y. However, an audience member, Deborah Henry, later criticized composite role models as unrealistic. Ms. Harris also said that mentoring worked best when it was self-initiated, i.e., when young lawyers tried to find mentors on their own instead of having one assigned to them. Mr. Miranda pointed out that solo practitioners and young lawyers at small firms could turn to their bar associations for mentors.

Mr. Sava spoke about work/family issues, and Ms. Guilbault and Mr. Miranda described the impact of law school debt on career and personal choices.

Ms. Vasquez and Ms. Harris discussed ethics and professionalism. Ms. Vasquez said that when her supervisor wanted to do something that she believed was unethical, she resolved the issue by calling the ethics hotline of the New York State Bar Association. She mentioned an issue that came up at the focus groups, namely, that lawyers do not trust their adversaries, so they document every phone call. Ms. Harris talked about the importance of the orientation program at Davis Polk, which stressed civility.

Ms. Vasquez pleaded for more respect for public interest lawyers, who are often not perceived as "real" lawyers.

Mr. Miranda spoke about the importance of pro bono and bar association work. Ms. Harris, who is a mother, said that work and family responsibilities unfortunately made it impossible for her to be involved in bar association activities.

In response to a question from a member of the audience, Derryl Zimmerman of the Committee on Law Student Perspectives at the City Bar Association, Mr. Sava said that about half of the focus group participants just fell into law school – they didn't know what else to do with a liberal arts degree – and half were already in careers and went to law school because it would advance their career goals. The 50% who went to law school with a specific purpose were more satisfied with their careers than the 50% who just fell into law school. Another audience member, Michael Cohen, said that law school career services offices ought to do a better job of steering students into jobs that matched their interests. However, a dean at Cornell Law School, Charles Cramton, said that career services offices today provide many more services than they did fifteen, ten, or even five years ago.

In response to a question from Susan R. Bernis, a former Chair of the Young Lawyers Section of the New York State Bar Association, Ms. Guilbault said that at the focus group she attended, which was held upstate, pressure to bring in business was not cited as a problem faced by young lawyers.

An audience member, Rosenberger Auslander of Carter, Ledyard &

Milburn, raised the glass ceiling issue. Ms. Guilbault said that if firms invest in their female lawyers by allowing them to go part-time while their children are young, that investment will be amply rewarded. G. Robert Witmer, Jr., a member of the Institute, similarly said that firms will become diverse not only because it is the right thing to do, but also because it is in their self-interest: a diverse firm will have contacts than an all-male, all-white firm would not have.

On the second day of the convocation, E. Leo Milonas, the president of the Association of the Bar of the City of New York, welcomed the participants to the House of the Association.

The first member of Panel III, "Practices that Advance Education and Address Obstacles", was Nancer H. Ballard, who has chaired the Boston Bar Association's ("BBA") Task Force on Professional Challenges and Family Needs and the BBA's Standing Committee on Work-Life Balance. She is also a member of the BBA's Managing Partners' Initiative and a resident scholar at the Women's Studies Research Center at Brandeis University.

Drawing on the various research studies that she has done, Ms. Ballard said that the concerns raised by lawyers in their first seven years were debt, training, competition among peers, the number of hours and the need for single-minded devotion to one's work, the messages given by firms about pro bono, inability to make the world a better place, lack of control over one's time, lack of mentoring and role models, and ethical issues.

In response to these problems, the BBA started the Managing Partners' Initiative. The managing partners of 21 of Boston's largest law firms answered questions and agreed to adopt at least one "best practice" identified by the process. They also meet twice a year to follow up on the programs they have implemented.

The managing partners said that the following factors create stress: attrition, which has an adverse impact on mentoring and on the client contact opportunities that mid-level and senior associates are given; competition; loss of collegiality; and loss of control.

The Managing Partners' Initiative identified the following best practices: mentoring, which must benefit both the mentor and the person being mentored; honesty in feedback and reviews about the firm's expectations; training and professional development; intellectual interest; flexibility and autonomy; diverse career paths; respect; empathy such that associates realize that partners face tremendous economic uncertainty in running their firms); justice, fairness, and ethical values.

The managing partners said that they would support best practices in their firms through communication (e.g., the war stories told at the firm should not all be about people who sacrifice their personal life in order to work long hours), participation, rewards (e.g., sending out an e-mail celebrating a colleague's pro bono or community achievements; the e-mails should not all be about great trial

successes or great mergers), and coercion (e.g., saying that it is unacceptable to refuse to work with someone because she is pregnant or on a part-time schedule).

The second member of Panel III was Evan A. Davis, the immediate past president of the Association of the Bar of the City of New York, which undertook a lawyers' quality of life study during his presidency. One of the rules of this study was that no one could recommend a best practice unless it was something that was already working at the recommender's workplace.

The study recommended a work assignment process that makes sure young lawyers get good, challenging work while not being overloaded. The study suggested having assignment partners and forward-looking reports on time availability, and counseling young lawyers on calendar management. The study emphasized that, for the assignment system to work, partners must cooperate instead of pulling associates in different directions; hence, collegiality is very important.

Feedback is also important. Reviews must be detailed and must name names. The best thing to do is not to wait until an evaluation; instead, at the end of a project, the junior and senior lawyers should go out to lunch and talk about what went well and what didn't. Upward reviews (i.e., allowing more junior lawyers to evaluate more senior lawyers on their effectiveness in training and supervision) are also recommended.

The City Bar Association's study recommended a formal, across-the-board mentoring program. Mr. Davis noted that at his firm, Cleary, Gottlieb, Steen & Hamilton, the program in which senior associates mentor new arrivals has been very successful; the harder part is getting partners to mentor the more senior associates. Firms must create incentives that make mentoring attractive.

Finally, the quality of life study recommended a flex-time program that is not limited to childcare or health issues.

Mr. Davis decried the upward creep in lawyers' hours, while understanding the reasons for it. He was hopeful that the competition for young lawyers would temper the countervailing incentives to work them too hard.

While he was president of the City Bar Association, Mr. Davis tried to get young lawyers involved in pro bono and bar association work. In order to do so, it was necessary to persuade law firm management. Mr. Davis told law firms about the practical benefits of bar association work; for example, it can help build leadership skills and lead to happier lawyers.

Mr. Saunders noted that, when he first started interviewing applicants, they asked how much responsibility they would get and how soon they would get it. Now, they ask how much training they will get and what kind of mentoring program the firm has.

Mr. Saunders also emphasized that mentoring is a two-way street. While many people think of mentoring as older lawyers teaching younger lawyers, the more senior lawyers should also listen to what the younger lawyers are saying.

The first commentator on Panel III, Henry M. Greenberg, spoke from his experience in the public sector, where lawyers today, compared to the 1960s or 1970s, get less pay, less prestige, and less job security. Unlike the private sector, the government does not have the money to reward outstanding performance with $20,000 bonuses. Hence, managers of government lawyers need to praise good work. They should also seek feedback from younger lawyers. For example, they can ask young lawyers to make budget-neutral recommendations to improve the workplace. In addition to leading to practical suggestions, this initiative shows younger lawyers that management cares about them.

Mr. Greenberg suggested that lawyers can learn about leadership skills from their corporate clients – there is a whole world of management science that lawyers usually do not know about. New management techniques are particularly needed when dealing with today's young lawyers, who are Gen Xers.

The final speaker on Panel III was Anne C. Weisberg of Catalyst, a nonprofit organization whose mission is to advance women in business and the professions. She made a powerful business case for change in the legal profession.

First, the number of people aged 24-34 (i.e., the people who go to law school) is shrinking, and the percentage of women and minorities at law schools is increasing. Law firms are in a war for talent with other employers such as consulting firms. They therefore need to make themselves attractive to the current generation, whose goals are different from those of previous generations. For example, 84% of Gen Xers, both men and women, rated having a loving family as important, compared with 21% who rated making a great deal of money as important. The number one reason for female lawyers, and the third reason for male lawyers, in choosing their current employer is work-life balance.

Second, the costs of attrition and dissatisfaction are huge. Turnover costs law firms almost 200% of an associate's salary.

Third, an improved workplace often leads to improved customer satisfaction and an increase in stock price. Companies that have appeared on Working Mother's "Best Companies to Work For" list or won Catalyst awards for advancing women and people of color have outperformed their industry peers.

Fourth, law firms' clients will demand diversity. Clients also hate turnover.

Having discussed why change is necessary, Ms. Weisberg turned to how to make change. She emphasized: senior leadership commitment; communication because people interpret silence and mixed messages as negative; and, measurement and accountability systems because what gets measured gets done.

The breakout sessions were asked to address the question, "Identify the three most significant obstacles to professional and personal fulfillment in the first seven years of practice. What can be done about those obstacles and by whom?" Mr. Craco emphasized that the breakout sessions should consider the needs of seven-lawyer Hamilton County as well as the needs of lawyers at big New York City firms; he noted that 80% of lawyers in New York State practice in groups of fewer than ten.

All of the five breakout sessions mentioned law school debt as an obstacle.[2] The proposed solutions included loan forgiveness programs by law schools, governments, and bar associations; educating students about the impact that debt will have, with the hope that students might choose state schools with lower tuitions or private schools with well-funded loan forgiveness programs; federal and state tax deductions for interest on student loans; eliminating the third year of law school and replacing it with a public service internship; and the bar asking law schools whether a law school should be a profit center within its university.

The obstacle with the next highest number of mentions was lack of mentoring/role models, communication, and support. Proposed solutions included giving CLE credit for mentoring, encouraging young lawyers to get involved in bar associations so that they can find their own mentor, tying partners' compensation to their success in mentoring and supervision, having bar associations set up mentoring programs for solo practitioners and lawyers in small firms, reaching out to retired lawyers who can provide mentoring, and having regular evaluations. To combat the isolation created by technology, people can walk over to their colleagues' office and talk to them face-to-face instead of sending an e-mail. More broadly, to combat isolation, firms and bar associations can have more social events, and senior lawyers can try to get to know younger lawyers as people (e.g., by asking what they are interested in outside the law).

The third most frequently mentioned obstacle was the billable hour/time constraints/ work-life balance. Solutions included counting pro bono hours and time spent on bar association activities, perhaps with a cap toward billable hour quotas; switching from hourly billing to project billing; having the top 20 law firms establish criteria other than the billable hour for valuing associates' work; permitting associates in slack practice areas to move over to busier practice areas; implementing better time-management techniques; encouraging telecommuting; and, having a part-time partnership track.

In closing, Mr. Craco noted that the reforms of one era may become the problems of the next. For example, the much-attacked billable hour was seen, at least by in-house counsel, as an advance over "block bills" that said, "For professional services rendered, $2.5 million." Mr. Craco also pointed out that the solutions to the problems mentioned at the convocation would not be easy. For example, if attrition were reduced, law firms would have to reduce the size of their incoming classes and/or promote even fewer associates to partner. The former would leave in the lurch those law school graduates who needed big-firm salaries to pay off their loans, and the latter might exacerbate the glass ceiling problem. Mr. Craco pledged that the Institute would work on the issues raised by the convocation but cautioned that this work would not necessarily result in a flashy report in six months.

2–Breakout sessions are summarized both by the moderator of each session in the transcript of the Closing Session and by the breakout session reporter in a Summary.

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 a Trustee of the Clients' Security Fund (now the Lawyers' Fund for Client Protection), 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.

HONORABLE MILTON L. WILLIAMS

Milton L. Williams is the Presiding Justice of the Appellate Division, First Department. He received his undergraduate degree from New York University and his law degree from New York Law School. Before becoming a lawyer, he served in the Navy and the New York City Police Department. Justice Williams practiced in both the private and public sectors before being appointed to the bench in 1977. Among other things, he has held the positions of Supervising Judge of the New York County Criminal Court, Deputy Chief Administrative Judge in charge of the New York City courts, and Associate Justice of the Appellate Division, First Department.

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

Frederick A.O. Schwarz, Jr. is a senior counsel at Cravath, Swaine & Moore and at the Brennan Center for Justice at NYU School of Law. He received his undergraduate and law degrees (both magna cum laude) from Harvard and was an editor of the Harvard Law Review. After clerking for Chief Judge J. Edward Lumbard of the Second Circuit, Mr. Schwarz served the government of Northern Nigeria as Assistant Commissioner for Law Revision. Mr. Schwarz has also been the Chief Counsel for the Senate Select Committee on Intelligence, the Corporation Counsel of the City of New York, and the Chair of the New York City Charter Revision Commission. Mr. Schwarz is a director or trustee of numerous institutions, including the Natural Resources Defense Council, the Vera Institute of Justice, the NAACP Legal Defense Fund, and Common Cause/NEW YORK. He was also one of the founding trustees of New York Lawyers for the Public Interest.

LOUIS A. CRACO, ESQ.

Louis A. Craco is the senior partner of Willkie Farr & Gallagher in New York City where his practice has centered on litigation and arbitration. He is Chairman of the New York State Judicial Institute on Professionalism in the Law, having been appointed by Chief Judge Judith S. Kaye upon formation of the Institute in 1999. Previously, from 1993 to 1995, he chaired the Chief Judge's Committee on the Profession and the Courts, which recommended, among other things, the creation of the Institute. From 1982 to 1984, Mr. Craco was President of the Association of the Bar of the City of New York; he is a Fellow of the American College of Trial Lawyers and the American Bar Foundation and Life Member of the American Law Institute. Mr. Craco received his undergraduate degree from the College of the Holy Cross (magna cum laude) and his law degree (cum laude) from New York University Law School, where he was a Root Tilden Scholar.

LUNCHEON PROGRAM

DAVID M. BECKER, ESQ.

David M. Becker is a partner in the Washington, D.C., office of Cleary Gottlieb Steen & Hamilton, where his practice focuses on SEC and other investigations, corporate governance issues, and a broad range of SEC regulatory matters. Mr. Becker joined Cleary Gottlieb in 2002, following his service as General Counsel of the Securities and Exchange Commission. During his more than three years at the SEC, Mr. Becker counseled the Commission on virtually all the enforcement, rule-making, and regulatory actions that it took. He was particularly active in advising the Commission on matters related to corporate governance and accounting and disclosure. Before becoming SEC General Counsel, Mr. Becker worked at Wilmer, Cutler & Pickering. He received his undergraduate and law degrees from Columbia University and was editor-in-chief of the Columbia Law Review. He then clerked for Judge Harold Leventhal of the D.C. Circuit and Justice Stanley Reed of the U.S. Supreme Court.

PANEL I – EDUCATION IN PROFESSIONAL VALUES AND RULES

Presenters:

RUSSELL G. PEARCE, ESQ.

Russell G. Pearce is a Professor at Fordham University School of Law, where he teaches professional responsibility, advanced ethics and public interest law, remedies and legal process. He was a law clerk to the Hon. Jose A. Cabranes and served as an associate at Friedman, Frank, Harris, Shriver & Jacobson, a staff attorney at the Legal Aid Society, and General Counsel to the New York City Commission on Human Rights before turning to academia in 1990. He received both his undergraduate and law degrees from Yale University.

WILLIAM M. SAGE, ESQ.

William M. Sage is a Professor at Columbia University Law School, where he teaches health law, regulatory theory, and professional responsibility. He received his undergraduate degree from Harvard University and both an M.D. and a J.D. from Stanford University, where he was Note Editor of the Stanford Law Review. Mr. Sage was a resident at the Johns Hopkins Hospital and a corporate associate at O'Melveny & Myers in Los Angeles before joining the Columbia faculty in 1995. He has published both law review articles and articles in peer-reviewed medical journals, and has spoken at numerous conferences.

Commentators:

CANDACE KRUGMAN BEINECKE, ESQ.

Candace Krugman Beinecke is the chair of Hughes Hubbard & Reed LLP, where she practices corporate and securities law. She received her undergraduate degree from New York University and her J.D. from Rutgers University School of Law. She is a director of ALSTOM, a trustee of various First Eagle mutual funds, and a director of the Merce Cunningham Dance Foundation and Jacob's Pillow Dance Festival.

DANIEL L. GREENBERG, ESQ.

Daniel L. Greenberg is the President and Attorney-in-Chief of the Legal Aid Society, which has a staff of 800 attorneys and 800 support personnel. Before joining the Legal Aid Society, Mr. Greenberg was Director of Clinical Programs at Harvard University Law School and Managing Attorney at MFY Legal Services; he also taught fourth and fifth grade at a public school in Harlem. Mr. Greenberg received his B.A. from Brooklyn College and his J.D. from Columbia University School of Law.

PANEL II – OBSTACLES TO PROFESSIONAL FULFILLMENT

Moderator:

JOAN G. WEXLER, ESQ.

Joan G. Wexler has been Dean of Brooklyn Law School since 1994 and has taught family law, federal estate and gift taxation, and trusts and estates. She joined the faculty in 1985 and was the Associate Dean for Academic Affairs for six years before being named Dean. She received her undergraduate degree from Cornell University and her law degree from Yale University; she also has a master's degree from Harvard University. After graduating from law school, Ms. Wexler clerked for Judge Jack B. Weinstein of the U.S. District Court for the Eastern District of New York, worked as an associate with the firm of Debevoise & Plimpton, and taught at New York University School of Law. Dean Wexler was the Vice President of the Association of the Bar of the City of New York from 1996 to 1997; she is currently a Vice President of the Federal Bar Council. Among other things, Dean Wexler is a director of the New York Women's Bar Association, a member of the American Law Institute, and a member of the board of the Practicing Law Institute and the Fund for Modern Courts.

Panelists:

KRISTIN KOEHLER GUILBAULT, ESQ.

Kristin Koehler Guilbault is an associate at Whiteman, Osterman & Hanna in Albany. She practices in the areas of health care and corporate law, labor and employment, and school law. She received a B.A. (cum laude) in zoology from the University of Vermont, where she was a member of Phi Beta Kappa, and a J.D. from Albany Law School, where she was Article Editor of the Albany Law Journal of Science and Technology.

KIMBERLEY D. HARRIS, ESQ.

Kimberley D. Harris is a litigation associate at Davis Polk & Wardwell. She graduated magna cum laude from Harvard College, received her J.D. from Yale University Law School, and clerked for the Hon. Charles S. Haight, Jr., of the U.S. District Court for the Southern District of New York. Since joining Davis Polk, Ms. Harris has worked on a number of ongoing criminal investigations.

DAVID P. MIRANDA, ESQ.

David P. Miranda is a litigator at Heslin Rothenberg Farley & Mesiti P.C., where he practices intellectual property law, with particular emphasis on Internet-related issues. He received his undergraduate degree from the State University of New York at Buffalo and his law degree from Albany Law School. Mr. Miranda is a recipient of the Capital District Business Review's "40 Under

Forty" award for community service and professional achievement. He is the Chair of the ABA's Subcommittee on Trademarks and the Internet, the Chair of the New York State Bar Association's Electronic Communications Task Force, and a member of the board of directors of the Albany County Bar Association.

MARY O'FLYNN, ESQ.

Mary O'Flynn is an Associate Corporation Counsel of the City of New York. She received her B.A. from Fairfield University and her J.D. from the Catholic University of America, Columbus School of Law. She has a strong background in public interest law, having worked for the Alliance for Justice, D.C. Child and Family Services Agency, and Columbus Community Legal Services.

MATTHEW J. SAVA, ESQ.

Matthew J. Sava is a litigation associate at Shapiro Mitchell Forman Allen & Miller LLP in New York City. He received his B.A. from the State University of New York at Albany and his J.D. (magna cum laude) from Albany Law School, where he was executive editor of the Albany Law Review and a research assistant to Professor David D. Siegel. Mr. Sava then worked for Skadden, Arps, Slate, Meagher & Flom LLP and clerked for the Hon. Carmen Beauchamp Ciparick.

JESSICA F. VASQUEZ, ESQ.

Jessica Vasquez is Director of Projects at the National Latino Alliance for the Elimination of Domestic Violence in New York City. She received her B.A. from Bryn Mawr College J.D. from New York Law School. Ms. Vasquez was a Soros Post-Graduate Fellow at the Center for Battered Women's Legal Services, and then a staff attorney at New York Legal Assistance Group. Among other things, she is a member of the Domestic Violence Task Force and the Women and the Law Committee of the Association of the Bar of the City of New York and has spoken at several conferences.

OPENING REMARKS – DAY 2

E. LEO MILONAS, ESQ.

E. Leo Milonas is a litigation partner at Pillsbury Winthrop LLP and the current president of the Association of the Bar of the City of New York. Before joining Pillsbury Winthrop, Mr. Milonas served on the bench for 26 years, including as an Associate Justice of the Appellate Division, First Department (1982-98), and Chief Administrative Judge of the State of New York (1993-95). Among other things, Mr. Milonas is a director of the Legal Aid Society and of Judges & Lawyers Breast Cancer Alert. He is a graduate of Brooklyn Law School.

PAUL C. SAUNDERS, ESQ.

Paul C. Saunders is a partner at Cravath, Swaine & Moore, where his practice includes complex litigation and international arbitration. He is the chair of the committee of the New York State Judicial Institute on Professionalism in the Law that organized this Convocation. He is also a Fellow of the American College of Trial Lawyers. Before joining Cravath, Mr. Saunders served as a captain in the United States Army Judge Advocate General's Corps. He is a former co-chair of the Lawyers' Committee for Civil Rights Under Law and is currently a member of its board and of the boards of the Office of the Appellate Defender and Volunteers of Legal Service. Mr. Saunders is also chair of the Constitution Project and a former vice president of the Legal Aid Society. He received his undergraduate degree from Fordham University and his law degree from Georgetown University.

PANEL III – PRACTICES THAT ADVANCE EDUCATION AND ADDRESS OBSTACLES

Presenters:

NANCER H. BALLARD, ESQ.

Nancer H. Ballard is a counsel in the environmental department of Goodwin Procter LLP, where she represents numerous companies in multi-insurer coverage disputes, and a resident scholar at the Women's Studies Research Center at Brandeis University. She chaired the Boston Bar Association Task Force on Work-Life Balance, which produced Facing the Grail, an implementation plan for addressing work-life issues in the legal profession. Ms. Ballard received her B.A. from Ithaca College and her J.D. from Northeastern University. She authored an article in the Cornell Law Review which was chosen as the best article on hazardous waste published in 1991.

EVAN A. DAVIS, ESQ.

Evan A. Davis is a partner in the New York office of Cleary Gottlieb Steen & Hamilton, focusing on litigation and dispute resolution. He is also a past President of the Association of the Bar of the City of New York. Mr. Davis received his undergraduate degree (cum laude) from Harvard University and his J.D. (magna cum laude) from Columbia University, where he was editor-in-chief of the Columbia Law Review. After graduating from law school, he clerked for the Hon. Harold Leventhal of the D.C. Circuit and Justice Potter Stewart of the U.S. Supreme Court. Before joining Cleary Gottlieb, Mr. Davis worked as General Counsel of the New York City Budget Bureau, Chief of the Consumer Protection Division of the New York City Law Department, and Watergate task force leader of the impeachment inquiry of the U.S. House of

Representatives Judiciary Committee.. From 1985 to 1991, he served as counsel to Governor Mario M. Cuomo. Mr. Davis was a candidate for the Democratic nomination for Attorney General in 1998.

Commentators:

HENRY M. GREENBERG, ESQ.

Henry M. Greenberg is a partner at Couch White, LLP. Prior to entering private practice, he held different posts in the state and federal government, including General Counsel to the New York State Department of Health, Counsel to the Lieutenant Governor of New York State, Assistant United States Attorney for the Northern District of New York, and law clerk for then-Judge (now Chief Judge) Judith S. Kaye of the New York Court of Appeals. He currently serves as chair of the New York State Bar Association's ("NYSBA") Committee on Legislative Policy, a fellow of the New York Bar Foundation, a trustee of the Historical Society of the Courts of the State of New York, and a member of the Syracuse University College of Law Board of Visitors and the Advisory Group to the New York State and Federal Judicial Council. He is a former chair of NYSBA's Special Committee on Student Loan Assistance for the Public Interest and Committee on Attorneys in Public Service.

ANNE C. WEISBERG, ESQ.

Anne Weisberg is a director in Advisory Services at Catalyst, where she advises corporations and professional firms on issues affecting women's career advancement. She directed Women in Law: Making the Case, Catalyst's pioneering study of the career experiences of women in the legal profession. She has also worked on Catalyst's study, Two Careers: One Marriage, and is the co-author of Everything a Working Mother Needs to Know (Doubleday 1994). She received her B.A. Phi Beta Kappa from the University of California at Berkeley, and her J.D. cum laude from Harvard University Law School.

BREAKOUT SESSIONS – PARTICIPANT DISCUSSION

Moderators:

SUSAN R. BERNIS, ESQ.

Susan R. Bernis is Claims Vice President at Royal & SunAlliance in Farmington, Connecticut. She received her B.A. from the State University of New York at Oswego and her J.D. from the State University of New York at Buffalo. She was a litigation associate at a law firm in Rochester before going in-house at an insurance company. Ms. Bernis is active in the New York State Bar Association; among other things, she was the chair of its Young Lawyer Section.

HARVEY FISHBEIN, ESQ.

Harvey Fishbein is a partner in Gould Fishbein Reimer & Gottfried, LLP, a Manhattan firm with a diverse practice, specializing in criminal defense, civil litigation, and probate and estate administration. He received his B.A. degree from Syracuse University and his J.D. with honors from George Washington University. Mr. Fishbein has worked for the Legal Aid Society, as a solo practitioner, and as counsel to the Public Administrator. His bar association activities reflect his interest in legal representation for the indigent.

JENNIE R. O'HARA, ESQ.

Jennie R. O'Hara is a Contract Manager/Attorney at American Express Travel Related Services Co. She is also the chair of the Young Lawyers Committee of the Association of the Bar of the City of New York. She received her B.A. from Johns Hopkins and her J.D. (cum laude) from Syracuse University, where she was associate editor of the Syracuse Journal of International Law and Commerce. Her experience includes both private and government practice.

SETH ROSNER, ESQ.

Seth Rosner practices law in Greenfield Center (Saratoga County) and New York City in the fields of business law and legal ethics and professional conduct, and writes and speaks nationally on ethics and professionalism issues. He is a member of the New York State Judicial Institute on Professionalism in the Law and the committee that organized this Convocation. He has an A.B. from Wesleyan University, a J.D. from Columbia University Law School, and an LL.M. in comparative law from New York University School of Law, where he was a Ford Foundation Fellow. From 1961 to 1989, Mr. Rosner was an adjunct professor of law at N.Y.U. Law School. He was a member of the American Bar Association Board of Governors from 1997 to 2000. Among other things, Mr. Rosner is a life trustee of the Jewish Home & Hospital for the Aged in New York City.

CHARLES M. STRAIN, ESQ.

Charles M. Strain is the managing partner of Farrell Fritz, P.C., one of Long Island's largest law firms. His practice concentrates on corporate, banking, and real estate law. Before joining Farrell Fritz, Mr. Strain was counsel to a large banking institution. He received his B.A. (cum laude) from Washington and Lee University and his J.D. from St. John's University School of Law. He is actively involved in many civic organizations, including the Tilles Center, Winthrop University Hospital, the Long Island Coalition for Fair Broadcasting, and the Family and Children's Association.

REPORTS FROM BREAKOUT SESSIONS and CLOSING REMARKS

A CONVOCATION ON THE FACE OF THE PROFESSION II: THE FIRST SEVEN YEARS OF PRACTICE

OPENING SESSION AND KEYNOTE ADDRESS

LOUIS A. CRACO, ESQ.
CHAIR, NEW YORK STATE JUDICIAL INSTITUTE
ON PROFESSIONALISM IN THE LAW

Good morning, everybody. My name is Louis Craco, and I have the pleasure of being the Chair of the Institute on Professionalism in the Law.

I have the pleasant duty of introducing the Presiding Justice of the Appellate Division, First Department. Milton Williams is our host in this loveliest – or second loveliest – of courtrooms, depending on whether you're talking to Judge Williams or the Chief Judge. Now, I have a problem since I have both of them on the dais, but you notice how I left it a toss-up for them to decide.

Justice Williams has been the Presiding Justice of the Appellate Division, First Department, for the last year. Prior to that, he served seven distinguished years on the bench as an Appellate Division Judge. And before that, he was the Administrative Judge for the City of New York. It's my pleasure to introduce him, so that he may welcome you to the hospitality he is so gracious to afford us today.

HONORABLE MILTON L. WILLIAMS
PRESIDING JUSTICE, APPELLATE DIVISION, FIRST DEPARTMENT

Thank you.

Before I welcome you, I would be remiss if I didn't publicly thank the person who is responsible for all of this. Our Chief Clerk Catherine O'Hagan Wolfe is the person who is really responsible for all of this, and I'm deeply indebted to her.

On behalf of the Justices and staff of the Appellate Division, First Department, I would like to extend our heartfelt welcome to Chief Judge Judith Kaye, Chairman Louis Craco, and the members and guests of the New York State Judicial Institute on Professionalism in the Law. We are honored to have you.

I commend Chief Judge Kaye for her leadership in addressing this important issue and for her selection of such a distinguished chairman and members of the Institute. Her approach instills great confidence that this issue will be given the careful and consistent attention necessary to improve our profession's performance in this area.

It is appropriate that this Court serve as a host of this Convocation. Our role in setting and implementing policy for the admission and discipline of lawyers, as well as our extensive continuing legal education program, make this a perfect setting in which to explore issues regarding professionalism in the practice of law. In point of fact, for the year 2001, the First Department admitted more attorneys – 2,820 – than any other Department, and disposed of 3,049 disciplinary matters.

Specifically, we are here today to consider the issues facing lawyers in the first seven years of practice. As all of you now know, the rigors of law school and the bar exam are a walk in the park compared to the myriad professional concerns facing a young practitioner.

It is my hope that during the events and discussions over the next couple of days, you will always be mindful that our profession is the fulcrum of society: the counsellors, negotiators, advocates, legislators, and scholars that keep America functioning as a healthy democratic society. More often than not, members of our profession are its leading citizens at every level and manner of endeavor. This constitutes power, enormous power. But the responsibility that comes with that power is equally enormous. We must govern our profession wisely, or the ability to do so may be taken away from us. We must never forget that we enjoy our power and influence at the pleasure of the society we serve.

Once again, I'd like to welcome you to the Appellate Division, First Department, and thanks for coming.

MR. CRACO

There are in this state and in this judicial system a relatively few people who truly need no introduction, which is usually the preamble to an extended one. I will forbear from that because the Chief Judge really doesn't need that introduction. I will say this: the Institute which has called this Convocation into being was itself called into being by her and her commitment to the professional ideal. The notion that it might be made practical in the actual lives of individual lawyers is the life spark of this Convocation and all the work we do. For that, we are profoundly grateful, not to speak of her years of service as a leading judge of the state.

Ladies and gentlemen, may I present the Chief Judge of the State of New York, Judith Kaye.

HONORABLE JUDITH S. KAYE

CHIEF JUDGE OF THE STATE OF NEW YORK

Thank you, Lou. And thank you, all of you, again.

It's not possible for me to be in this courtroom without an intensely personal feeling. This is where I was admitted to the bar. I suspect it's true for so many of us here, and I'll just share one personal little story with you. The day I was admitted to the bar here in the First Department, I was seated in the front row. I was so excited to be picked out of the group and seated in the front row, and I was crushed a few years ago to find out that back in the early 60s, all of the women were seated in the front row. And I might say they didn't take up very much room in the front row area either. How wonderful it is to see how changed the face of the profession is today and hopefully will continue to be.

Mr. Presiding Justice Milton Williams, thank you so much for hosting this terrific Convocation on this very, very special and solemn day.

And Lou Craco and all of your terrific members of the Judicial Institute on Professionalism in the Law, thank you for what you are doing and for the prospect of what lies ahead from this absolutely great initiative.

One final personal reminiscence and that is, I'm looking out on Fritz's wife Rickey. I had the pleasure of performing their marriage ceremony some years ago, and I need to tell you that she is a molecular epidemiologist. It took me a long time to master that, so I just wanted to share that with all of you.

I am so pleased to be here today for the kickoff of the second biennial Convocation sponsored by this magnificent Judicial Institute. The first one, which was in the year 2000, centered on education from college through law school, and now we pick up where the first one left off by focusing on the initial seven years of practice. Looking out on my great colleague on Court of Appeals, Judge Ciparick, I can tell you that the number seven is a magical number for me and for you as well I'm sure.

I feel uniquely qualified in one way to talk about the first seven years of practice because I am the only mother and grandmother on this morning's panel. And the unique qualifications that I have in mind have nothing to do with the definition of grandmother that appeared in the New York Times last week, which was: she is "the magnificent one with presents in her suitcase who thinks I'm a genius if I put my shoes on the right feet, and who stuffs me with cookies the moment my parents' backs are turned."[1]

Today, I'm not handing out cookies and my suitcase contains no presents because it's packed for Albany for this week's session of the Court of Appeals, which also explains why Judge Ciparick and I cannot be with you for what prom-

1-Natalie Angier, Weighing the Grandma Factor: In Some Societies, It's a Matter of Life and Death, N.Y. Times, Nov. 5, 2002, at F1.

ises to be another fascinating, interesting and above all highly, highly productive program.

My unique credentials as mother and grandmother are, however, relevant in the sense that I raised children in one era and now I am closely watching the growth of my grandchildren in another and very distinctly different time. To be sure, many of the basics are the same, but the changes in society, in our culture, in education, in medicine, science, technology, law – the list goes on and on – present entirely new challenges that call for entirely new responses.

So it's logical that a program on the formative years of lawyer professionalism, when so much is learned, should look at circumstances surrounding the new lawyer of today and answer questions like who is the new lawyer of today; what are his concerns; what are her expectations; what background and professionalism, if any, do new lawyers bring to their first job? Or perhaps I should say first jobs because these days, unlike the 1960s, when I joined the bar, new lawyers will very likely have more than one job during their first seven years. This Convocation will explore the concerns of the new lawyer of our new century like heavy debt, pressure to log in tremendous billable hours, balancing work with personal life, incorporating pro bono work or bar association or civic activities. Concerns like these, often existing in an environment where competitive pressures are unrivaled, where the bottom line seems to drive everything that is above it, are quite a lot for a new lawyer to manage.

Understanding the new lawyer is a prerequisite for meaningful personal and professional development today. It may also be a prerequisite to keeping talented lawyers in our profession. So many of them seem to be leaving our profession.

A program like this is a good way to remind the more senior lawyers among us that they must avoid assuming that today's new attorneys have the same pressures and concerns that we had when we started or that today's new lawyers would do well to solve their problems the way we solved our problems in an earlier day. "Why can't they just do what I did?" is a very common reaction for us, the more senior lawyers. Well, maybe some can. Maybe some should. Maybe some will. But being open to other possibilities for the long run may mean better law firms, better practices, better professionalism.

This afternoon, the Convocation is going to look at ways professional values are taught and how they are learned, and that is not necessarily the same process, as we well know. Those of us who are long past our first seven years of practice may remember exactly how, when and where we learned our lessons about professionalism, and I sure do. Bob MacCrate, I remember where I learned my lessons about professionalism: from you at the law firm of Sullivan & Cromwell. Wasn't I a lucky person?

Our experiences may be very different, but I suspect that for many, it

depended on the luck of the draw, which matters we were assigned, which supervisors we had, rather than our formal training or mentoring programs. Again, however, we promise not to fall into the trap of thinking things are or should be the same today as they were in an earlier day.

This Convocation will examine where we go from here by examining research studies, success stories or disasters, best practices that are now available.

The breakout sessions of the first Convocation led to excellent proposals for bridge-building between the legal academy and the practicing bar. And I am enormously grateful to the Institute for starting us on the road to better bridge building with that community. The breakout sessions of this Convocation, I'm sure, will again inspire initiatives to advance the professional development of new lawyers in a new world.

Lastly, I note that the Institute's invitation to this Convocation suggested that to help encourage an active dialogue between junior and senior members of the bar, attendees bring a new lawyer with them. How many of you here are new lawyers? Welcome. I'm so pleased to see you. Doing that is also symbolic of something larger: the great possibilities that may flow if each and every experienced lawyer, especially those in leadership positions and practice settings, made a commitment to nurture the professional development of our newest colleagues.

I thank you very much for inviting me here today for organizing this splendid Convocation on the first seven years. I look forward to your recommendations and to implementing every single one of them.

MR. CRACO

Thank you, Chief Judge Kaye.

It is not very often, frankly, that I get the Chief Judge to say in public, "I will implement whatever you suggest," and I'd like the reporter to mark the record in this regard. I promise to come back with a couple of things.

First, I would like to briefly introduce the Institute. Then, I will briefly introduce the approach that we intend to take in the work of this Convocation. And then third, I'd like to introduce an idea or two that have been formative in our approach, both to our work as an Institute generally, and to the particular work of this Convocation.

The Institute was created in 1999 by an administrative order of the Chief Judge to act on work that had gone on before which had discovered in New York State that there were two key notions about professionalism.

The first was that, contrary to all the lawyer jokes and all the disparagement one heard in private and public conversation, the professionalism of lawyers in New York State was high and that it needed to be encouraged and reinforced and nourished on a continuing basis.

And the second was that the pressures on fundamental professional ideals, which had called into question the professionalism of lawyers in the state in the first place, were continuing, were changing, were emerging and were of a character that would defy the traditional mode of dealing with such crises, that is, episodic blue ribbon commissions that would come on the scene and make recommendations and disappear. Thus this Institute, which is permanent, not temporary; which is authoritative, not amateur; which is diverse in the gathering of practice settings and points of view which constitutes its members and which is committed to a dialogue between the practicing bar and the academy in grappling with the issues of professionalism.

We must confess, however, that a comprehensive definition acceptable to all of the word "professionalism" has eluded us. We have tried. Some described thick, some described thin, some described vertical, some described horizontal versions of the notion of "professionalism."

The old definitions of professionalism which emerged from a very different profession were full of notions of elitism and guild protection, and they have ceased to function well. They are obsolete as sources of a professional ideal as a result of many factors, of which surely one has been the healthy opening up and democratization of the bar.

Nevertheless – and this is the first notion that is seminal to what we try to do – there are certain intrinsic hallmarks that insistently emerge about what it means now as before to be an American lawyer. We are engaged in a learned profession. We are engaged in a helping profession. And we are engaged in an occupation that is inescapably public in character.

The key notion is that we help clients one by one by putting at their service our special knowledge and craft and judgment. In the aggregate, we cause a system to function in which public goods are delivered in the private ordering of affairs in a responsible, reliable and efficient way, and in which public and private disputes are resolved peaceably and in a way that evolves a body of law to guide affairs in the future.

These values imply possession by the lawyer, in the role of either advisor or advocate, of a special competence. There is a qualitative relationship between the advisor or advocate on the one side and the client on the other that is fundamentally different from the nexus that exists between the buyer and seller of goods.

Finally, however imperfectly internalized or appreciated by an individual lawyer at an individual time, we are engaged in a public enterprise, and that entails individual and collective obligations and constraints.

While those hallmarks have not been fashioned into a comprehensive, persuasive definition of professionalism, we use them in the aggregate, for lack of a better term, as our "professional understanding."

With the Convocation that took place two years ago, we began a series of dialogues with the academy to examine what professionalism might mean, what it might become, and how it might be fostered among lawyers. We decided to begin at the beginning. We looked, as the Chief Judge said, at the set of issues clustered around entry into modern American legal practice: who goes to law school (the issues of expectation and selection); what happens to them when they get there (the issue of socialization in law school); what happens to graduates as they emerge from law school (the issue of assimilation). Embedded in all of those were issues of diversity and debt and career choice, experiences in law school and outside of it, aspirations, expectations and deviations from both.

This Convocation, as the Chief Judge said, picks up where the last left off. We will explore over the next couple of days the myriad forces that influence the professional understanding of newly emerging lawyers in the formative years of their practice.

These new lawyers have emerged into the practice at a time when it has for more than a decade been experiencing profound change. The prospect of those changes will continue, and the velocity of those changes will increase and exert unremitting centrifugal forces on the core values.

In the heavy and confused seas into which these new lawyers emerge, how do they plot and hold a course towards a professional understanding of their own that defines their work and careers and that is at one and the same time, realistic, fulfilling and worthy of public and personal self-respect? How do they develop and sustain a coherent and satisfying concept of what it means to be a lawyer?

Many of the traditional instruments of acculturation for new entrants into the bar no longer have the vigor that they once possessed. Pressures of competition, business methods and technology, for example, have diminished the role of law firms as the training centers and career building institutions they once were. Many bar associations have seen declines in membership driven at least in part by similar pressures on the time available to young lawyers for discretionary endeavors.

The sheer number of lawyers coming into the practice in recent times overwhelmed the capacity of law firms, District Attorney's offices, in-house counsel's offices, public defender's offices and such other organizations of acculturation to absorb them, leaving many to hang out their shingles or form small firms of novices. It is the lucky ones among them who find mentors in the practice to help them grow in competence and professional understanding.

I must say in a dialogue which is meant to be frank – candor, of course, is the canon of this courtroom – that what the eroding institutions of professional initiation have been unable to supply, the growing academic literature on lawyering has not replaced. It is probably unfair to think that it would. It is the

special role and opportunity and responsibility of legal scholarship to hold up a mirror to the practicing bar and offer well-reasoned critiques of what is reflected there. That task the academy has performed with vigor and distinction.

But it is, I must say, with some frustration that one reads a lengthy, careful, thorough analysis entitled "The Law Firm as a Social Institution: Ethical Perspectives on Legal Practice" in a leading law review by an outstanding scholar in the field, eagerly anticipating the section entitled in the index of the article, "Alternatives," only to find this at the end:

> This is not the occasion for a full-scale blueprint of alternative formulations of professional roles. That is a larger enterprise and one approached with some wariness. ... Until professionals are willing to engage in constitutive projects, the existing order wins by default. "But what's the alternative?" will remain the stopping point in too many discussions of legal ethics.[1]

Often the scholarly criticism of how lawyers practice is fundamentally a critique of salient features of the legal system in which they practice. The adversary system and the way in which legal services are distributed come to mind. This can be scant help to those, especially new lawyers, seeking their own self-identification, who must take the system as they find it and make their way into it.

Yet all these challenges to the way law is practiced emanating from the law schools do set an agenda of professional introspection and reform that is most valuable. And it is, as David Wilkins of Harvard, who was our keynote speaker last year, reminded us, a high-stakes game. The way he put it was: "One does not need to invoke much hyperbole 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." [2]

With an apology for the kind of thing I was just talking about, he goes on to say: "Although scholarly research should not aim directly at this goal, it is only through a 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 has a greater interest in the success of that project than the current members of the bar."

We regard it as central to the Institute's mission to take up the challenge laid down by the scholars, to examine the actual practice lives of young lawyers and to devise practical approaches to nourishing their best professional instincts and creating conditions in which those instincts can flourish.

We need to keep in mind two propositions when we take up this work.

1–Deborah L. Rhode, Symposium on the Law Firm as a Social Institution: Ethical Perspectives on Legal Practice, 37 Stan. L. Rev. 589, 638-39 (1985).

2–David B. Wilkins, The Professional Responsibility of Professional Schools to Study and Teach About the Profession, 49 J. Legal Educ. 76, 92 (1999).

First, there is unlikely to be a set of measures, much less rules, that will fit all situations or last very long in a profession in such flux as ours is. We should be looking for an array of ideas and strategies that can be adapted over time to encourage the professional understanding under various conditions in various settings, under various stresses, some of which are now only dimly perceived. After all, we are a profession in evolution, and we ought to be able to create the adaptive mechanisms by which that evolution could come to pass.

Second, we should avoid the seductive temptation, which I suspect will rear its head again and again in the next couple of days, to obsess about glamorous issues: the SEC's latest proposals to require lawyers to report client misconduct or multi-jurisdictional practice, or multi-disciplinary practice or whatever. All of those raise serious issues which penetrate to the heart of certain professional concerns. But rather, our focus should be on what Michael Kelly has called "the real frontier of professionalism and legal ethics," which he describes in a way that forms a framework for our agenda over the next couple of days: as constituting "the domain that worries lawyers because it most deeply affects the character of their professional lives. This is not a world of the flashy case or the melodramatic client but the day-in, day-out struggle to build a life in the profession that resolves the competing demands of economic stability and the values of collegueship, craftsmanship, and professional statesmanship."[3] That's what this Convocation is about.

Finally, we senior lawyers owe it to our young lawyers, we owe it to those who follow them, we owe it to the future of the profession that they represent and to the public at whose sufferance we have the authority to be a profession at all, to address those issues with wariness perhaps, with modesty surely, but also with patience and imagination and hard thinking and good will. This is the work we hope this Convocation will begin, though acknowledge we must that it cannot conclude it.

To set the table, as it were, for the discussions that will follow, we have the great good fortune of having induced Frederick A.O. Schwarz Jr. to offer the keynote address for this Convocation.

Fritz, as I prefer to call him, and he prefers to be called, is a magna cum laude graduate of both Harvard College and Law School who has spent the great bulk of his professional career at perhaps the paradigm of the big firm, Cravath, Swaine & Moore. But along the way, he has been also Corporation Counsel of the City of New York. He has been chief counsel to the Senate Select Committee on Intelligence. He serves now as a senior counsel to the Brennan Center on Law and Justice. He has commenced and prosecuted with success census litigation on behalf of the City of New York designed to preserve the integrity of the voting

3– Michael J. Kelly, Lives of Lawyers: Journeys in the Organizations of Practice 19 (1994).

system and he is still at it with litigation on campaign finance.

That's not to talk about the fact that he is a trustee of such varied things as the National Resources Defense Council, the Vera Institute of Justice, the NAACP Legal Defense Fund, and Common Cause New York, nor that he has served as a trustee of a list of worthy institutions that would consume the entirety of the time allowed him if I read them. But a couple, to give you an example: the Fund for the City of New York; the Fund for Modern Courts; Experiment in International Living; and, not surprisingly, F.A.O. Schwarz Toy Store.

He is a winner of the Whitney North Seymour Award for Public Service in the Public Interest by the Trustees of the Federal Bar Council, the Civil Leadership Award of the Citizen's Union of the City of New York, and the Liberty Award of the Lambda Legal Defense Fund.

That's not why he is here. He is a modest man and will be embarrassed by what I say next, but that's just tough. He is here as a demonstrative exhibit. He is here because Dean Anthony Kronman, in his book The Lost Lawyer, believes the lawyer statesman is extinct. He is not. Fritz is here because the things we are about and the things we are talking about are embodied in his career. He is here because he not only talks the talk but he walks the walk.

Ladies and gentlemen, it is my great pleasure to introduce Fritz Schwarz.

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

Senior Counsel, Cravath, Swaine & Moore

Senior Counsel, Brennan Center for Justice at NYU School of Law

That was very kind and, Lou, I appreciate that very much.

I could just leave because you and the Chief Judge said everything that needs to be said, really. But before I leave I have a few things to say.

I particularly remember the wonderful collegial lunches I had with Milton Williams when I was a youngish corporation counsel and he was a youngish administrative judge. Pleasure from those kinds of human things is a big part of the practice of the law.

I have been toying in my mind for how, after I said a couple of other things about the Chief Judge, to refer to the fact that she had married me and my wonderful wife. I started by saying, well, I might say that Judith Kaye married me, but I said, no, that wouldn't quite sound right. Then I might say Judith Kaye performed the legal task of marrying me and my wife, and that wouldn't quite sound right either. It was a deliciously human, a wonderfully human thing that you did for us, Judge.

And, you know, there has been a lot said about what you have done for the bar and for the bench. It's fair to say that as an administrator of a judicial system, state or federal, there has been no person who is the match of Chief Judge Judith Kaye since, in the 1940s and '50s, Chief Justice Vanderbilt of the New

Jersey Supreme Court revolutionized the judicial system there and gave thoughts to the rest of the nation.

And, Lou, in addition to thanking you for what you said about me, the same thing is true about you. You have done all those things and you have been a fantastic leader of the bar as reflected by the fact you were chosen to head this Institute.

Now, noticing, Evan Davis, your presence and Leo Milonas's presence back there, Judith asked me to say that this is sponsored also by the Association of the Bar of the City of New York, a truly great organization.

I come today – not to talk about every Convocation topic, because how could I? Or how could I do as well as Lou in his succinct remarks did? But I come today to praise the lawyer's role in civic and community affairs and to worry whether less is being done today, whether it is becoming harder for lawyers, particularly young lawyers, to do as much in civic and community affairs as they would like to do.

I would like to start by telling a story of my own young life as a clerk for Judge Lumbard in the Second Circuit.

In the spring of 1961, during my clerkship, I faced a choice of what to do the next year. Should I proceed directly to Cravath or should I spend a year helping the Region of Northern Nigeria (what we would call a state) organize its statutory law in the wake of the establishment of a new nation with a new federal constitution?

A number of distinguished and accomplished New York lawyers advised me about that choice. To a man – and there were no female leaders of the bar at that time. Women were just beginning to come into the bar, as they now are doing even more, thank goodness. But they, to a man, advised me not to go to Nigeria. "If you go to Nigeria," they said, "you will never become a real lawyer."

Well, I didn't think much of that advice. I had pretty much decided on going to Nigeria. But to check my judgment, I decided to go across the hall to the chambers of Judge Learned Hand. I had become friendly with Judge Hand during the year and he had given me other advice. Thus, for example, I once asked him for his secret for good powerful writing. He said: "Take your first draft and substitute short, direct words with Anglo-Saxon roots for longer, sometimes more subtle words descended from the Norman French." I'm not sure that's always good advice, or that Hand always followed it for that matter, but it may help to account for the way he articulated his response to my query when I described the never-becoming-a-real-lawyer objection to him: "It sounds like pure bullshit to me."

I. THE QUESTIONS

So, as we heard this morning, two years ago this Institute convened to ask whether our law schools were doing all they could to prepare law students for a life in the law. And this year this Institute has convened to ask whether the experience of new lawyers during their first seven years of practice is preparing them for their lives in the law.

There are lots of young lawyers who are not satisfied with the professional lives they are leading.

Of course, this is not something that recently burst forth like a new comet in the sky. To the contrary, as, for example, revealed in the late Professor Gerald Gunther's biography of Learned Hand, the young Hand, practicing in Albany at the turn of the 20th century, a little more than a hundred years ago, complained that as a litigation associate and even as a junior partner he rarely got into court.[1] And when he did so, more often than not it was to hold the bags of the senior partner. He was pigeonholed as a brief writer and, quoting his words, he did not get to see "the active side of the profession, in contact with clients."[2] After four years of practice, the young Hand wrote: "I am really getting to feel that something must be done or all my years will be gone with nothing to show for it."[3]

Call it burnout or malaise or unfulfilled dreams, the problem of professional dissatisfaction among young lawyers is by no means new. We should keep that in mind over the next two days and resist the urge to engage in false nostalgia for some imaginary golden age.

But the questions before this Convocation are questions that, even if they are not new, cry out for answers now. These questions include:

- Are young lawyers meeting the needs of the profession? Is the profession meeting the needs of young lawyers? And most importantly, is the profession, young and old alike, meeting the needs of our society? Of our nation?
- If we are falling short of our aspirations, where does the fault lie? Does it lie with employers? With the profession as a whole? With our society in general? With young lawyers themselves? Or do all bear some fault?
- Even if our profession's aspirations remain lofty, is it, as a practical matter, becoming more difficult today to become a "real lawyer"?
- And what does it mean to be a "real lawyer"? That is the first question I shall attempt to address.

1–Gerald Gunther, Learned Hand: The Man and the Judge 56 (1994).

2–Id. at 69.

3–Id. at 59.

A. WHAT DOES IT MEAN TO BE A "REAL LAWYER"?

What does it mean? What happens or should happen in a young lawyer's early years?

1. A Foundation

Well, first, of course, there is a foundation to build to become a good lawyer, let alone a "real" lawyer.

At law school – or at the "academy" to use Lou Craco's more august term – the young lawyer learns to think like a lawyer. In the first years of practice, the young lawyer learns to act like a lawyer.

Thinking and acting cannot, of course, be so neatly divided. A student begins to understand how to act in school. And practicing lawyers continue to learn how to think in their early years of practice and hopefully can learn more every day of their lives. But, still, early years of practice are filled with lots of learning about how to act as a lawyer.

But it's not just learning. It's learning by doing; learning technical skills; learning practical skills; meeting the needs of clients; meeting the demands of courts or of commercial transactions; learning how to master and present facts; how to write papers, whether briefs or prospectuses; developing and sharpening oral skills; learning to work as part of a team.

And it is more than technical and practical. For in my view, you cannot be a good lawyer unless you know history, you know literature, you know current events, you know science, you know the songs of your time, and you know the emotions that underlie the Bible, that inspired Martin Luther King. For a real lawyer, the great books have a larger role to play than the Bluebook.

All of this is vital for lawyers trying to understand the context of a problem, trying to see their way to creative solutions and – perhaps most importantly – trying to understand and empathize with people.

All this is what emerges, sometimes directly, sometimes only in a much more subtle way, as you try to persuade someone to see the facts and the law in a way that serves your client's interests and justice at the same time.

Just focusing on popular songs, as a relatively minor example, I have found it useful in appellate and trial court arguments to quote Bob Dylan and the Rolling Stones. Not to actually sing the words, I hasten to add – as all who know my abysmal singing voice would hasten to demand – but rather to try to use apt lines to make points in response to questions at oral arguments. Thus, "You don't need a weatherman to know which way the wind blows." And, "You can't always get what you want. But if you try, sometimes you can get what you need."

But there is more than knowledge, more than technical skills. There is also a lot of hard work. The law is a "jealous mistress" – I look up at Justice Story, whom I am now quoting, whose name is up there on this beautiful ceiling – the law is a "jealous mistress and requires a long and constant courtship. It is not to

be won by trifling favors, but by lavish homage." That's not from a song. That's what Justice Story told Harvard Law School students in 1829, in his speech on "The Value and Importance of Legal Studies."

And so it is, and so it always has been. Perhaps the more so today in an era when information is infinite, when access is instant, when clients are impatient, and when competition among lawyers is increasing. So, as I press today my theme that being a real lawyer is much, much more than becoming a good technician, we must not turn a blind eye toward the reality of hard work pressing down upon the brows of young lawyers.

Hard work, often drudgery, cannot be avoided. But even if it occupies much of our time in – but not only in – the early years, we must not let it appropriate all of our aspirations.

Perhaps some of you know the story of Admiral Lord Nelson at the Battle of Copenhagen. At that naval battle against Napoleonic fleets in the Baltic Sea, he consciously avoided receiving a signal to retreat from his commander-in-chief by putting the telescope he used up to his right eye, an eye that had been blinded in an earlier battle. "I have only one eye. I have a right to be blind sometimes." And so he ignored the signal.

By some rights, Nelson's act was reckless – although he won the battle – and indeed, insubordinate. And I would not have you draw from this parable the moral that the pursuit of a higher justice, however defined, should lead you to the neglect of more mundane matters. The point is the more general one, that some risks are worth taking.

Never turn your eye away from the lawyers' goal of civic and community service.

2. Beyond the Foundation

Particularly that is so because you are lawyers here, here in America. Here all questions of public policy, great and small, from the country hamlet to our huge city, can, and usually do, involve the law.

The story of America lies in the law. The Declaration. The Constitution. Our constant struggle to open doors to all our people. Here in America no prince, no religious text, no normative ideology, no caste or clan, dictates our lawful conduct – although all play some role. Here law is the story. And lawyers tell the story. Every day, every step of the way, lawyers can be, and often are, involved in trying to move America toward a better, fairer, fuller life.

One hundred and seventy years ago, de Tocqueville referred to lawyers in America as "the sole enlightened class that people do not distrust,"[4] and said that "the American aristocracy is at the attorney's bar and the judge's bench."[5] I

4– Alexis de Tocqueville, De la Démocratie en Amérique 370 (François Furet ed., GarnierFlammarion 1981) (1835).

5– Id. at 369.

somehow doubt if today most people in America would say exactly the same thing. And I remember in Nigeria that if one person felt bothered by another, they would say, "You lawyer me too much."

If lawyers have declined since de Tocqueville – not in importance, but in esteem – it is, I suspect, because our profession seems to have drifted away from its roots in civic and community affairs.

There are, of course, many ways in which lawyers can fulfill their civic, community and public responsibilities. More of this later. But first, we should ask another question.

B. IS IT HARDER TODAY TO BECOME INVOLVED?

You're expecting me to say "yes." My answer is a yes, but with four "buts".

I don't have to belabor the yes part. It helps explain this Convocation. It is spread across the pages of The American Lawyer. And it is a primary theme of the recent letter from associates at the law firm of Clifford Chance, who complain, in effect, that pro bono work gets "don't ask, don't tell" treatment. "Don't ask" for it, and "don't tell me about it if you do it." That particular firm, however, does not stand alone. The same issues arise and exist in quite a number of firms.

But there are the four "buts".

First, lots of lawyers are directly serving the community and the public interest, and doing so full time. Many lawyers work for government offices, for public defender offices, like Legal Aid. Lawyers fight full time for the environment, for social justice, for human rights, for civil liberties, for civil rights. And lawyers advise the abundance of not-for-profits with which this city and this nation are blessed.

Second, I personally do not know enough to say much about whether it is harder today for lawyers in communities across this vast state other than in New York City to become involved in civic and community affairs.

Third, in pointing to problems we should not fail to praise progress. Many law firms today probably take on more big pro bono litigation than in earlier years. Also, organizations like the Federalist Society – while pressing an agenda that does not happen to be mine – deserve praise for being active in including many young lawyers, and indeed law students, in an analysis of public policy questions.

The fourth and final "but" goes back to what I said earlier about false nostalgia. When I was lucky enough as a young associate in the '60s to involve myself in a host of outside activities, there were not then, at least as I remember it, many other young lawyers doing the same sorts of things.

Still, I do believe that 40 years ago, the profession had a clearer, more focused commitment to public, civic and community affairs. Then there were

more senior lawyers who served as role models for mixing private and civic, community and public work. For example, in this city alone, there was Cyrus Vance of Simpson Thatcher; Simon (known as Judge to all of us) Rifkind of Paul Weiss; Orison Marden of White & Case; Frances Plimpton of Debevoise & Plimpton; Bruce Bromley of Cravath; and Robert MacCrate of Sullivan & Cromwell. And others outside New York City were role models for the young lawyer – Lloyd Cutler in Washington, for example.

These were lawyers who were not content with relying on the good foundation of technical legal skills they unquestionably possessed. They tried – and succeeded – at building on those foundations, not trailer homes, not gaudy trophy houses, but cathedrals, temples of justice, as impressive in their own way as the courtroom in which we meet today.

To say they served as role models is not to say that their models were widely followed. But there was definitely a community of interest between society as a whole and the upper echelons of the legal profession that seems to have dissipated somewhat during my professional lifetime.

C. WHERE LIES THE FAULT?

So where lies the fault? Society as a whole, the profession, employers, and young lawyers themselves all have some responsibility, jointly and severally, for dampening somewhat the public spirit of young lawyers.

1.Society as a Whole

To start with the society as a whole, the public's thirst for civic and community involvement waxes and wanes through the decades.

When I started and Judge Kaye started as a lawyer and Lou Craco started as a lawyer, it was at a high point. The moon was full.

A young new president began his term by urging Americans to "ask not what your country can do for you; ask what you can do for your country." The Peace Corps and Vista, its domestic equivalent, offered outlets for idealistic young Americans. Voting participation was much higher than today. New nations were breaking free of colonialism. The civil rights movement was dramatically demanding long-denied rights, testing the honesty of America's promise of democracy.

The civil rights movement and the buoyancy of the times, in turn, inspired movements for women's rights, for the rights of gays and lesbians, the rights of the disabled and of immigrants. With the Warren Court's recognition of an accused's right to trial and appellate counsel, an entire area of the practice of law – criminal defense – acquired a public dimension.

New laws, passed in response to civilian pressure, gave us a better chance to preserve and protect the environment. The Vietnam War raised powerful

emotions. Congress dared to investigate abuses of the intelligence agencies. The Legal Services Corporation was founded – and then later defended against savage budget cuts by leaders of the bar, particularly from New York City.

Lawyers, young as well as old, played major roles in all of this. Yes, they saw it as their duty but they also enjoyed it. And from the fulfillment of these roles came some of their most abiding professional satisfaction.

But then the civic spirit seemed to congeal a bit. Voting rates dropped sharply. Cynicism grew as money played a greater and greater role in politics. Floods of simplistic slogans masquerading as "issue" ads drowned out real discussion of important issues during election campaigns. The clarity of the civil rights movement gradually become more complicated. Tax cuts, mostly for the rich, displaced social justice as the prime civic good.

And it has not gotten better.

Some positive things happened after September 11. Fighting back in Afghanistan was not only the right thing for America to do, but also liberated the Afghan people from a totalitarian government.

But to me, what is most telling and most disturbing is what our national leaders did not do in the weeks and months after September 11. Here was a country aching for inspiration, willing to sacrifice, willing to ask what it could do for the country. The answer? Keep on shopping.

With the nation as a whole turning away from idealism, becoming more cynical, increasingly obsessed with money and short-term returns at that, is it really a surprise that lawyers seem to get involved in civic and community affairs less?

2.The Profession and Private Employers

What about the profession and private employers? It seems fair to say that private employers and the profession as a whole largely mirror society as a whole: Less emphasis on public good. More emphasis on private gain.

To say that something is common, however, is not to say that it is good. As good tort lawyers, we know, as Justice Holmes opined, that "what usually is done" is not necessarily "what ought to be done."[6] Our concern here is with the normative, not the norm.

There is no doubt that increased emphasis upon compensation, upon firm earnings, have turned out to make it harder for young lawyers – almost all lawyers, in fact – to play a meaningful role in civic and community affairs.

How should we think about making money and the law? And how should someone who, for many years of his career, had the fortune to work at a very successful firm address this subject?

I'm not here to condemn the profit motive. Although it can and frequent-

6– Texas & Pac. Ry. v. Behymer, 189 US 468, 470 (1903).

ly does get out of hand, the profit motive will and should be with us as long as people desire the best for themselves and their children and, as we were saying, their grandchildren as well.

Nonetheless, there are useful points to make about compensation structure. As Paul Krugman recently noted in a New York Times Magazine cover article,[7] the multiple separating the pay of ordinary American workers and the compensation of the CEOs of many corporations has become obscene, far greater than it was even 20 or 30 years ago. This is traceable to the lack of independence of corporate directors. Lawyers can do something about that.

And it's not just the amount of compensation, but the way the compensation is paid through, for example, stock options that can generate an obsession with short-term profits. Haven't the lessons of the last few months brought home the point that obsession with short-term profits can rot and corrode the health of the entire economy?

Now let's ask similar questions about our own profession. Are there structural problems with the prevailing compensation system, at least at some places? I believe the answer is yes.

Suppose young medical residents – dedicated, well-meaning professionals who work every bit as hard in their first seven years as young lawyers and for much less pay – received bonuses based on the number of operations they performed or the number of prescriptions they wrote. What effect would that have on the number of unnecessary appendectomies or the dispensation of antibiotics? And if the bonuses were paid by the hospitals where the surgeries were performed or by the drug companies that manufactured the pharmaceuticals, would it not be plain why the bonuses had been structured in these ways?

Well, increasingly we hear of law firms doing what is effectively the same thing. Many are not rewarding young lawyers for the quality of their work or the efficiency with which they do it. They are not even rewarding young lawyers for the number of briefs they file or the number of prospectuses they write. Rather, many law firms pay bonuses based upon the number of hours associates spend getting work done for paying clients, and many more require associates to reach certain targets or quotas of billable hours every year in order to remain in good standing at the firm. The two devices, hour-based bonuses and annual targets, are simply carrot-and-stick versions of the same thing.

Does this system encourage associates to pad their hours? Probably most do not. Some may, as the ABA Commission on Billable Hours suggested this year, saying:

In a perfect world, everyone would have enough work to meet their goals and everyone would also bill the required hours appropriately. But in the real world, with required hours, many associates recognize that they must do what-

7– Paul Krugman, For Richer, N.Y. Times, Oct. 20, 2002, § 6, at 62.

ever is necessary to satisfy the hourly requirement.

But assume that padding does not occur. These compensation devices still send a frightful message to young lawyers. Yes, hard work is absolutely necessary to be a good lawyer. Yes, young lawyers who want to advance in a firm must show that they are tough enough, resilient enough and determined enough to work very hard for sustained periods when their "jealous mistress" beckons. Yes, compensation often serves as a useful spur to achievement. But it is one thing to expect and to respect hard work from associates. It is quite another to communicate that expectation as an annual hourly quota or targets.

The rewards of long and hard work should be an appreciation of the quality of that work and its result. Firms should find ways to communicate that appreciation when the work is genuinely good and the appreciation sincere. But when a firm tells the lawyer in his first years of practice that the size of a discretionary bonus will be a function of how many hours it took him or her to do the work assigned, all that is communicated is that young lawyer's professional contributions are valued solely in proportion to their immediate, short-term contribution to firm revenue. That will sap from any but the most philistine young lawyer any sense that he or she has engaged upon a worthy and fulfilling career in a socially useful profession.

That, more surely than the strain of successive 60- to 70-hour weeks, will lead to dissatisfaction and cynicism and the gnawing sense that the young lawyer is "measur[ing] out [his] life," not "with coffee spoons," but in tenths of an hour. (That's a little quote from T.S. Eliot.[8] I'm sure several of you recognized it.)

The danger of these compensation devices is exacerbated when they are coupled with compensation systems for partners that stress hours and not accomplishments. These compensation devices and systems cannot help but contribute to a decline in the amount of civic and community work private lawyers are willing to take on.

3. Young Lawyers Themselves

Let me now turn, however, from young lawyers' employers to young lawyers themselves.

Young lawyers are not helpless. They are not like pieces of driftwood tossed every which way by the currents of economic and social change and the tide of employers' demands. Just as public spiritedness waxes and wanes within society as a whole, so too with young lawyers. In my experience interviewing young applicants, I have found that there have been years in which applicants have expressed their dreams and pushed for answers.But there have also been years when applicants are like mice, and timid ones at that. It does not have to be this way. Young lawyers have real power even in a down market and they should use it.

Young lawyers can choose where to work. They can find out how a prospec-

8– T.S. Eliot, The Love Song of J. Alfred Prufrock (1917).

tive employer compensates its associates and partners. They can find out how much pro bono work a firm does. To its credit, The American Lawyer not only tracks firm profitability but also more recently has begun to rank firms by their commitment to pro bono work. Similarly, Bill Dean's regular column in The New York Law Journal highlights stories of exemplary pro bono work. As they interview at firms, young lawyers can determine the degree to which firms actually respect and encourage civic and community involvement.

But, of course, young lawyers at a firm should not rely on employers to spoon-feed them all opportunities for civic and community activity. There is a whole world outside of the firm. Young lawyers who look can find much on their own: a world that is waiting for help from lawyers. What firms should do is respect, honor and encourage young lawyers who take those opportunities.

II. TOWARD SOLUTIONS

What are the solutions or – I don't think I can say "the solutions." Let's think about moving towards solutions.

A. ATTITUDE

It all starts with attitude. Without will, without determination, without passion, there will be a dulling down of the profession, playing less of a role in our civic and community life. The will, the determination and passion must – and I have faith will – come from lawyers young and old.

It would be nice if this will, this determination and this passion came from all lawyers. Experience teaches that it won't. Some have always been driven by a desire to do more. Some see a lawyers' call broadly. Others don't.

What this Convocation can do is to help add somewhat to the numbers of those who see their calling broadly, to try to help remove obstacles in their way, to inspire more lawyers – both young and less young – to aspire, to spend energy and talent on civic and community needs; not only on making more money.

Being a good lawyer is necessary but not sufficient. Let's try to be real lawyers, as well.

B. THE POWER OF INFORMATION

When I was investigating the FBI and CIA for the United States Senate in the mid '70s, I saw a line from the gospel according to St. John emblazoned on the huge left Wallach, in the entry hall of the CIA headquarters in Langley: "Know the truth and the truth shall set you free."

That this motto appeared on the walls of an institution devoted to secrecy and, on occasion, to misinformation, did sometimes strike me as ironic. But in the context of this Convocation, the quote has special force.

This Convocation could wisely focus on ways in which information, accurate information about what lawyers and law firms are doing, or are not doing, could be collected and disseminated to create both incentives for lawyers to fulfill their civic missions, and disincentives to act in ways that discourage lawyers from doing so.

C. THE DEFINITION OF PRO BONO

If pro bono is defined too narrowly, it risks excluding large segments of the bar and also failing to honor much work that serves civic and community interests. Surely it is true that lawyers, like doctors, have a special obligation to serve the poor for free. With that said, it's not all. There's lots more. Moreover, pro bono ought not to be conceived of in ways that leave nonlitigators out.

Pro bono is a house with many mansions. There are plenty of corporate lawyers, real estate lawyers, tax lawyers and trusts and estates lawyers who yearn to do more. They too need lights to guide their way.

D. A SOMEWHAT DIFFERENT APPROACH TO BAR ASSOCIATION WORK

When I was New York City Corporation Counsel, I wrote a memorandum about bar association activities to all the 600 or so lawyers in the office. The memo urged them to participate in bar association work. But what may be relevant to this Convocation was how it said or suggested they should participate.

My thought was that in their bar association work, they should not regard themselves as representing the City. To be sure, they had an obligation to consult with colleagues and with clients who were City officials, to be certain they understood how a particular proposal would affect the City, their client. But once that was understood, I believed and said they should take positions based upon their own best judgment. Was that position correct? If so, should it become a standard for all lawyers? And if the profession embraced that as an ethical norm, would it help bring back a better sense of what it means to be a real lawyer?

E. THE PRESSURE OF MONEY

Back to the pressures of money for just a minute. I really don't know what more to suggest about ways to alleviate the pressure of profits pressing down upon the brows of those who want to do more civic and community work. This is easy to decry but hard to address.

Time, I believe, will help.

The larger society will some day – hopefully sooner rather than later – move back to more passion for public good. Law firms will, I believe, increasingly come to realize that in their own self interest they should stop crimping their future supply of talent by failing sufficiently to honor civic and community work. And they will also come to realize that until they move back further toward the ideal of the real lawyer, all lawyers at the firm will be less happy than any want to be.

III. SOME MORE ADVICE TO YOUNG LAWYERS

I'd like now to talk a little bit to young lawyers from my own experience.

Well, you can't always get exactly what you want, but if you try, sometimes you can get what you need. The subject of this Convocation is, in substantial part, why you may want civic and community work, why you need civic and community work, and how you can try to get there.

A. DON'T WAIT

There are, of course, many, many ways to serve the public interest. You can work in government. You can work as a judge. You can work in or for a not-for-profit organization that serves the poor, protects civil liberties, promotes civil rights, preserves the environment or watches government. You can take on pro bono projects, big matters or small. You can do that inside or outside your law firm. All are satisfying individually. What is not satisfying is to stay on the sidelines. Don't think you can wait until you are, say, 50, to seek and then to find an opportunity to serve a broader public. If you wait that long, time, opportunity, skills, all will have passed you by. You may have become a wonderful lawyer, but you will not, it seems to me, have developed either the reputation or the different skills, both human and professional, that make you a natural choice for the most difficult challenges in public life.

So don't wait.

B. BE BOLD – BE NOT AFRAID

And be bold. Be not afraid.

When I came back from working in Nigeria, I developed a great interest in the struggle against apartheid in South Africa. Only a few years earlier, a hundred or so peacefully demonstrating black South Africans had been shot by the government in the Sharpeville massacre. The episode caused a financial crisis. People actually thought – how prematurely in retrospect – that the revolution was at hand. Money was flowing out. Investments were slowing.

Then, ten American banks decided to make a public gesture of confidence in the South African regime by announcing a consortium loan to the apartheid government. The America Committee on Africa used this to publicize a campaign about the evils of apartheid and urged churches, synagogues, universities, unions, students and so forth to withdraw their money from the banks.

I was then a member of the board of that committee, and in 1966, as a third-year associate, wrote a magazine article exposing the horrid facts about apartheid, describing the bank boycott and advocating the departure of American companies from South Africa.

As it happened, one of the banks was a major client of my firm, and many clients did business in South Africa. But what I did not hurt my career. In fact,

I still believe employers will admire independence, passion and courage. And if they do mark you down, maybe you are working in the wrong place anyway.

C. CAST YOUR BREAD UPON THE WATERS

When in 1975 I was lucky enough to be chief counsel for the Special Senate Committee (the Church Committee) investigating the FBI, CIA and other intelligence agencies, I had not previously known any of the 11 senators.

Later, I found out that I had been recommended to them by Burke Marshall. In part, that recommendation may have stemmed from work I had done for IBM where Burke had been general counsel. But more I believe it was because Burke knew of my interest in public matters and personally knew of my pro bono work.

The point is to cast your bits of bread upon the waters. Do so for the sake of the work itself. But know also those bits of bread may come back to you in slices and then in loaves.

If I have tried to stand for anything, it is that you can mix the public and the private; that you can aspire to take on the hardest private legal challenges and the hardest public legal challenges – in the first seven years, in the next seven years, and in all the years and decades that follow.

IV. CONCLUSION

And now to finish.

In other speeches I have had the privilege to give to similar groups, I have used a quotation from a speech by Oliver Wendell Holmes to illustrate the overarching point I have been trying to make in my remarks today. He did this in a gender form that we today wouldn't do, but I am still going to read it. "As life is action and passion, it is required of a man that he should share the passion and action of his time at peril of being judged not to have lived."

It is hard to disagree with such a sentiment, and not only because Holmes expressed it so beautifully. Benjamin Franklin similarly wrote that when his life was over, he hoped it should be said that he lived usefully, not that he died rich.

Holmes warned of being judged; Franklin focused on one's reputation after death. But I am not advocating involvement in public affairs as a way for you to pad your obituary. No; the pursuit of happiness here and now is the most powerful reason to aspire to be a real lawyer.

Aristotle taught that happiness lay in using the talents one has to achieve excellent ends. For the real lawyer, that includes civic and community service. It is satisfying. It makes you whole. And it makes you happy. It has done so for me.

LUNCHEON PROGRAM

DAVID M. BECKER, ESQ.
FORMER GENERAL COUNSEL, SECURITIES AND EXCHANGE COMMISSION

Thank you very much for that kind introduction. Distinguished friends, I am, in truth, a bit daunted to be here speaking before the Institute on Professionalism and this select group of such accomplishment and erudition. It helps to have left the government. When you join the government, all sorts of people start telling you that you're smarter, wittier, and better looking than you ever knew. At the same time, though, it seems as if everything you do is publicly dissected, criticized, and found to be utterly wrong-headed. When you leave, though, the reverse happens: you lose your good looks, your cleverness, and your intellect; but somehow your wisdom gets restored. So as one who has recently gotten older, uglier, dumber, but nonetheless wiser, let me share with you a few thoughts.

Once again, a series of financial scandals has raised the issue, in Judge Stanley Sporkin's now-famous words, of "where were the lawyers?" It is an issue worthy of serious study and contemplation, beyond just the epigrammatic. It has gotten some serious study already by the organized bar; it is addressed, in part, in the recently enacted Sarbanes-Oxley Act, and it has been addressed again recently by the Securities and Exchange Commission in proposing new rules of professional responsibility for lawyers appearing before the SEC.

In one sense, it's not immediately clear why we should even ask where the lawyers were. After all, while there are some allegations concerning some lawyers in particular cases, there is not, so far I can tell, much evidence that our financial scandals have been caused, in any significant part, by repeated failures on the part of lawyers to perform their established professional duties.

One doesn't read, in contrast with the apparent failures of auditors, that time and time again lawyers failed to do something they were required to do and that, as a result of these failures, they let fraudulent conduct go forward. Similarly, even as to new rules, while there have some suggestions of the "who knows" variety – "who knows what would have happened if these rules had been in place?" – there are few serious suggestions that new legal duties for lawyers will do very much to prevent corporate scandals of the type we have seen in the last year. That, by the way, is not to argue against these proposals, which I happen to think are on the whole quite sound, but merely to point out that they are unlikely to have much impact on deterring financial fraud.

There are several reasons why the public has focused anew on lawyers. One reason, I think, has to do with how astonished and demoralized so many people have been to find that an elaborate system of rules, bodies, and gatekeepers did

not stop these frauds from happening. We have, after all, a rather complex variety of legal contrivances that are designed to prevent corporate fraud. They include boards of directors, audit committees, auditors, voting requirements, internal controls, independence requirements, listing standards, codes of ethics, and securities analysts, to name just a few. Taken together, these contrivances made a rather extensive and complex antifraud machine. The machine notwithstanding, however, Enron, WorldCom et al. still happened.

To a large extent, many of the reform efforts occasioned by the scandals consist of adding new features to the antifraud machine. Some of these involve making sure the machine is composed of the most up-to-date, super-strong materials. By insisting that boards of directors, audit committees in particular, and auditors are entirely and unquestionably independent from management, one hopes we will ensure that these pillars of the antifraud machine are not corrupted because they are somehow beholden to those whom they are supposed to police. Other efforts seek to improve the machine by making it more elaborate. As a result, we now have more duties for audit committees, requirements to add disclosure controls and internal financial controls, new requirements for management and auditor testing and evaluation of controls systems and, most famously, requirements that management certify as to the truthfulness of their company's disclosures and the adequacy of the companies' control systems.

With all that, recent reform measures are aimed almost exclusively at secondary actors – people who don't engage in fraud, just people whose jobs it is to watch, govern, or supervise those who might, and people whose job it is to watch, govern or supervise the watchers. It's fine to enlist these various secondary actors in the fight against fraud, but since we are dealing with secondary actors, almost by definition it is battling at the margins. It has always seemed to me that where the goal is to prevent people from breaking the law, the most useful things government can do are to increase the likelihood that those who misbehave will be found out and to work at the cultures and attitudes that allow misconduct to thrive. Both are fairly expensive and long-term propositions, but there are no available shortcuts here. And if we want to protect people from being bilked, educate them more and don't make it too easy for them to believe that their own imprudence is just someone else's fault.

For now, the efforts at improving the antifraud machine probably represent the best, collectively, we will do. I predict that they will be successful, in the sense that we are unlikely to see a repeat of scandals of this magnitude in the decade ahead. Of course, in the coming decade, we are also unlikely to see a recurrence of the unparalleled market boom of the late 1990s, and, as a result, we are also unlikely to see the recurrence of unprecedented opportunities to reap almost unimaginable riches through sharp practices. And investors, lawyers, accountants, and analysts – having been badly burned – will all for at least until

memories fade be more protective of themselves and their reputations.

To the extent lawyers are part of the antifraud machine, reasonable efforts to diagnose and repair the machine include an examination of lawyers. The public perception, not entirely without foundation, is that lawyers are everywhere. The public believes that nothing of significance, at least nothing of economic significance, happens without active involvement of lawyers. Large corporations, it is thought, have legions of the best and the brightest lawyers. Major transactions do not happen without extensive participation by lawyers, and corporate disclosures are often drafted and vetted by teams of lawyers. And, after all, the business of lawyers is law. With so many people engaged in researching, papering, opining on, and disclosing corporate transactions, the public assumes that the answer to the question "where were the lawyers?" is that we were right there in the room. And with the premises chock-a-block full with lawyers, it is argued, how could the lawyers fail to notice the guy with the mask, the burglar tools, and the large bulging sack who was tiptoeing out of the house? Add to the mixture the public's traditional distrust of lawyers as, fundamentally, clever but amoral blowhards focused on their own fees and little else. That's why lawyer jokes have been with us just about as long as have lawyers. Probably the principal value of the Internet is that, for the first time, one can see collected all the thousands of lawyer comments through the ages. They range from Balboa's plea to King Ferdinand not to allow lawyers in the New World because "not only are they bad themselves, but they also make and contrive a thousand inequities," to Milton Berle's observation that "most attorneys practice law because it gives them a grand and glorious feeling. You give them a grand – and they feel glorious."

I do think the recent financial crises call upon the profession to engage in continued self-examination. We had no immunity to the speculative fever. We also succumbed at times to the comforting canard that the morals of the marketplace are the principles that not only do, but also should, govern our professional lives. And the bottom line is that, though we live in a society suffused by law and overgrown with lawyers, we don't seem to have been of enough help in preventing an enormous economic catastrophe.

A recent ABA Task Force, in its interim report, noted several of the Model Rules of Professional Responsibility that talk of "personal conscience" and "moral and ethical considerations." The report states that these "aspirational principles, while of profound importance," do not provide adequate guide to the practicing lawyer. I echo the Task Force in pointing out the profound importance of these moral and ethical considerations in the practice of law. I disagree, though, with the notion that these principles are not susceptible of reasoned examination, discussion, and guidance.

Far be it from any lawyer to denigrate the importance of enforceable rules. But I don't think there is much dispute that, even more than rules, beliefs about

right and wrong control how people will act in a particular circumstance. It is not an either/or choice, of course. But hearts and minds dictate actions, and the way to get to people's hearts and minds is not just by twisting their arms.

That's why, it seems to me, that we lawyers need to be reminded, and young lawyers need and want to be taught, about the moral dimension of our professional conduct. We need to think harder and talk more about the usefulness of our professional lives. We will have better lawyers, and less disaffected ones, if we can demonstrate to them that what we do is good for their consciences and not just their pockets. Senior lawyers, by our conduct and by our words, should reinforce cultures of honor, in which lawyers pay conscious attention to their professional, moral obligations.

I suppose I ought to explain what I mean by professional, moral obligations. These are the obligations one understands and embraces as controlling one's conduct even if they do not appear in law or rule of professional responsibility. These occupy the space between the line of the law and one's personal bottom line. These set the limits as to what one will or won't do on behalf of a client. It's less a matter than a legal code than a code of honor. These are the principles whose violation carries with them no sanction other than the personal understanding that one has fallen short. I use the word "moral" principally to distinguish these obligations from "ethical" obligations, only because "ethical" has come to refer to rules of professional responsibility.

Let me tell you some of the principles I have in mind. In no particular order, here is a very partial list:

First, the best lawyers keep their minds open. As we all know, wisdom and certainty are mortal enemies. While clients certainly like authoritative counsel and counselors, we need to understand ourselves that there are almost always different ways to look at an issue. The best lawyers have both intellectual openness and distaste for reaching easy moral judgments as to the conduct of others.

My first year out of law school I had the good fortune to serve as law clerk for Harold Leventhal, United States Circuit Judge serving on the District of Columbia Circuit. Judge Leventhal was widely acknowledged as a brilliant man; some said he was the most brilliant judge on the bench. I was understandably taken aback, then, by the judge's disconcerting habit of asking me what I thought about the issues before him. Initially, I thought this was some sort of Socratic interchange for my benefit. I came to learn, though, that Judge Leventhal truly was interested in my views, not, Lord knows, because he had any higher opinion of my perspicacity than I did, but because intense curiosity about the opinions of others was an indispensable part of his intellectual arsenal. He knew that, no matter his personal brilliance, he could not get to the right answer simply by dialogue with himself.

I worry sometimes that we lawyers travel in intellectual circles that are too constricted. When I was in government, nothing would put my teeth on edge so

much as questions from practicing lawyers about when I was going to return to the "real world." Fool that I was, I was under the illusion that my professional world, even in the government, was real indeed. What the question from my colleagues in practice meant, of course, was when was I returning to their world, and the One True View.

I'm afraid that, intellectually speaking, we need to get out more, to mingle with those who think that their world, not ours, is the real one. As a profession, we should do what we can to combat the deadening of minds that comes from association only with people who think pretty much like we do. We should train young lawyers – best by our own examples – that intellectual curiosity goes hand in hand with intellectual humility. We should make it a point – through professional activities, through continuing legal education, and simply by broadening our circle of professional associates – of discovering people who think differently than we do. I had a former partner, now a federal judge, who used to start every litigation by going to lunch with his adversary. It's a useful thing. We might even learn that lawyers who habitually take the opposite sides of cases from ours have reasons why they see themselves as white knights, and us as scoundrels.

Second, the best lawyers are fully aware of the importance of what we do. As we get older, some of us forget the significance of our professional calling, perhaps because we are so used to it that it blends into the landscape. We do many important things, ranging from helping people and businesses order their affairs so that they comply with the law, to supporting the system of justice by resolving our disputes in civilized ways, to making sure that when the state proposes to do something harmful to someone, it does it in a way consistent with a system of justice. Our attention to fair process promotes fair outcomes; our attention to finding lawful means to do what the client wants promotes socially beneficial economic activity without too many anti-social consequences. It's too bad, but inevitable, that familiarity breeds, if not always contempt, at least a dulling of perception. But without our legal system and our participation in it, we would not enjoy many of the material benefits we take for granted nor the daily security that most of us accept as our birthright. Law doesn't guarantee freedom nor does it guarantee vibrant economic activity, but without it, they are impossible.

I remember some years ago I was representing a truly dreadful person who found himself misunderstood by the Securities and Exchange Commission. Actually, it was worse; he found himself understood completely. At one point during our representation a college student came into my office, closed my door, and asked me, in effect, what was a nice guy like me was doing with a client like that. I mentioned, first, that I got paid, because I saw then and I see now nothing to apologize about in making a living, even a very good one. Still, I struggled for some more grandiose explanation, and I found that over the years I

really had come to believe deeply, while I wasn't noticing it, in the value of being the person interposed between the individual and the state, one whose job was to see to it that the power of the state not be used to crush an individual unless he deserved it and unless it was done in a way that furthered the goal of an ordered and safe society. The point here is that if we want to infuse young lawyers with a sense of idealism and mission, we need to remind ourselves and teach them about the social value of what we do every day.

Third, the best lawyers reserve part of their professional time and talents for good works. We've lost something here, I'm afraid. I recall that when I began to practice in Washington – and I hope this is not just nostalgia – the leaders of the major law firms themselves did significant amounts of pro bono work. That has changed. While law firms still do pro bono work, it seems as if it has become increasingly in effect a contribution by partners of the time of their young lawyers rather than a commitment of their own time. And the contribution has decreased. I confess that, as a general matter, I'm not a big fan of minimum billable hours requirements for law firm associates. I've heard several explanations, and I credit the good faith of those firms that have them, but to me they smack of piecework requirements and sales quotas that I find unattractive for professionals. And, wisely or not, I believe that too many of the quotas are just too high, not because I'm terribly concerned about the economic exploitation of associates, but because they send the wrong messages about what counts in how we do our work and live our lives. But what really concerns me is that too many firms with noble traditions of pro bono support have shrunk the space for pro bono work by making clear that the billables always come first. That's too bad, and I hope that changes.

Fourth, the best lawyers keep in mind that they are not the stars of the show. Our job is to further the interests of our clients. That's what they hire us for. We can enlighten, and we can counsel, but we cannot choose on their behalf. Our clients put their futures in our hands; it is their lives and fortunes, not ours, that are at risk when we represent them. Our calling is to represent their interests – as they see them – zealously within the bounds of the law. Our job is not to indulge our moral fastidiousness at our clients' expense. It is unseemly for us to usurp their responsibility for making the decisions for which they must bear the consequences. We are not their judges, but their lawyers.

Fifth, at the same time, the best lawyers are not indifferent to the consequences of their clients' conduct. Being a lawyer requires one to do two separate things simultaneously – tasks that at times are at war with each other. Our professional calling requires absolutely fidelity to our clients' interest. We are not supposed to be objective; we are partisans on behalf of our clients. At the same time, we want to be instruments of justice, and we want to be responsible members of our society. This means that we cannot remain forever indifferent to the

consequences of our clients' actions. We cannot sustain our sense of professional calling, much less inspire our juniors, if in order to practice law we deaden our better selves.

At any particular time, on any particular matter, a lawyer must lend her efforts to achieving through lawful means what the client identifies as its interest, whether or not the lawyer finds it palatable. But though we may be only counselors and not deciders, sometimes we can be counselors for good, and not always just cheerleaders for our clients' appetites. There may also be questions about whether to take on a matter at all, and there may be questions about just how far a lawyer is willing to go for a client. And, as we look at the totality of our careers, we probably all question from time to time just whom and what we have assisted.

These are compelling questions. We won't all have the same answer, and our answers may well be different at various points in our careers, but I would doubt we can quell the disquiet many of our new lawyers' experience simply by teaching them total agnosticism about who benefits and who gets hurt as a result of our talented assistance to our clients. And the longer a lawyer practices, the more urgent these questions become.

There is no end to the questions. To take a simple example, most of us, I confess, are willing from time to time to be obnoxious to advance a client's interest. Some of us are born jerks, and others of us have learned that sometimes being a jerk helps our clients. A real question – one that has spawned committees of lawyers and codes of civility – is how obnoxious we want to be.

To take another example, several years ago, some of our most prominent law firms represented German and Swiss banks or insurance companies in defending claims that they had employed slave labor on behalf of the Nazis during the Second World War. Many firms, including the one I belonged to at the time, spent a great deal of time and emotion over whether to take on these representations. Some felt a professional imperative to turn them down; others felt an imperative of equal force to take them on. Sadly, there were some who didn't engage at all; of them, some had their minds closed from the beginning, and still others thought the analysis should begin and end with a measurement of the size of the economic opportunity.

To engage on these questions is not necessarily to answer them. Many of the issues involve weighing competing values. One cannot decide these issues in the abstract; we live our lives in the particular. Many answers may be deeply personal. In the discussion about the Holocaust cases, I learned a great deal about the necessity for moral vision and the limits of what it can behold. But regardless of the outcome, I felt enlightened and enriched by the reasoned and passionate exploration of what was required of us as instruments of justice.

These issues can be hard. If they are not at times deeply troubling, it can

only be because we have not engaged them sufficiently. We need to be alive to these issues and to teach our junior lawyers that they should be too. Where we are reflexive, we should become reflective. And we should share our uncertainties with our young lawyers. Let them know the tradition to which they are heirs. Let them know that their professional world is not devoid of moral reflection; and let them know that such reflection can be an uncertain and unsettling business. It probably won't let them sleep better, but it will help them – and their work – take on more meaning. It may seem odd, but I think they'll appreciate us and their work more if we raise the stakes beyond the economic, teach them to grapple with more ambiguity, and show them the uses of creative anxiety. They may sleep less, but they'll be awake to the search for meaning in their professional lives. They'll be the better for it, and their professional lives will take on more immediacy and urgency. Let's teach ourselves and our professional juniors how rich a professional life can be.

Thank you very much for your kind attention.

PANEL I – EDUCATION IN PROFESSIONAL VALUES AND RULES

PAUL C. SAUNDERS, ESQ.
CONVOCATION CHAIR

Welcome back for our afternoon program. Once again, my name is Paul Saunders and I am a member of the Judicial Institute.

Let me say just a word about how these panels are structured and why they are structured the way they are.

The first panel discussion this afternoon is entitled "Education in Professional Values and Rules." We thought we ought to begin approaching the topic of professionalism and what happens in the first seven years of practice from a scholarly or more academic point of view. That is, we wanted to understand what those academics who have studied the general question of professionalism in the law have to say about how those professional ideals are or more properly ought to be included in and adopted by lawyers in the first seven years of their practice.

So, this panel discussion is going to first present that general topic from the point of view of two academics: Professor Russell Pearce from the Fordham Law School and Professor William Sage from Columbia.

A word about each of those.

Professor Pearce has participated in other activities of the Judicial Institute and, as no good deed goes unpunished, he did so well and we were so happy to have him participate in our other activities that we invited him back to speak to this group about this topic, as well.

Professor Sage brings to the discussion a point of view that we wanted to have, and that is a multidisciplinary point of view. He is not only a lawyer, but he is also a medical doctor. And one of the things that we wanted to hear is how other professions deal with the issues of professionalism in training young professionals and how the older members of a profession pass on to young professionals the ideals and practices of professionalism.

So, that's going to be the beginning of Panel I.

We are cognizant that sometimes the academic profession is not always the real-world perspective, so we decided to have a comment on the academic discussion led by Professor Pearce and Professor Sage from two practitioners who have, in their personal and professional experience, had the experience of interacting with and training young lawyers.

We selected Candace Beinecke, who is the chair of the New York law firm Hughes, Hubbard & Reed, and who has had the experience of dealing with and training young lawyers in practice in a large Wall Street law firm.

We also have as a commentator another person who has similar experience of training many young lawyers in the formative years of their practice, Danny Greenberg, who is the attorney-in-chief and president of the Legal Aid Society; a person who is probably known to everybody in the room.

So, without further ado, let me present Professor Pearce.

PROFESSOR RUSSELL G. PEARCE

FORDHAM UNIVERSITY SCHOOL OF LAW

Thank you. It's a pleasure to participate in this program. I have very much enjoyed my previous work with the Institute.

This Friday I am participating in a ten-year retrospective on the MacCrate Report. As you probably know, the MacCrate Report is probably the single most important study of legal education in our generation. As part of my comments I plan to single out the Institute and Lou Craco as beacons of hope as we move forward in the legal profession.

Yesterday I was explaining the purpose of this program to my son, who is in seventh grade. I discovered, really for the first time, that he had developed a lengthy repertoire of lawyer jokes. Let me share one with you.

It's about the school teacher, the rabbi, and the lawyer. They die and go to heaven. The school teacher is shown to his room in heaven. It's a very small studio, very stark with a cot. Not even a pillow. And then the rabbi is shown to her room and it's the same thing. It's very stark and there's a cot, not even a pillow. The lawyer goes to her room, but it's not just a room. It's a castle. There are many rooms, it's beautiful, it's lushly furnished. And the lawyer asks: "Why do the teacher and the rabbi have such stark housing and why do I get such a lavish, beautiful place?" And the answer was: "We have many teachers and many rabbis. You are the first lawyer."

I hope you don't mind my starting with a lawyer joke but it illustrates the widespread perception that lawyers and nonlawyers have of lawyers and their role in society – the belief that we do not help to make the world a better place. And this is, of course, part of what this Convocation is seeking to address.

What makes this belief about lawyers especially disappointing is that dating back to the Federalist Papers, American lawyers, at one point uniquely among lawyers in the world, have claimed the ambitious responsibility of being stewards of the public good.

Earlier, Fritz Schwarz mentioned De Tocqueville's famous quote about lawyers as the aristocracy of America.[1] Well, De Tocqueville didn't make the idea up. He got the idea from interviewing American lawyers and American leaders

1– Alexis De Tocqueville, Democracy in America 264-270 (C.J.P. Mayer ed. & George Lawrence trans. 1969).

of business who believed that you could have a functioning democracy only with a governing class that was disinterested, that would promote the public good, and that would protect the rule of law. That governing class was lawyers.

You see that idea continue through today in a number of ways. The preambles to the Canons in 1908, the ABA Model Code in 1970 and even, though to a slightly lesser extent, the 1983 Model Rules assert that "the future of our republic and the preservation of our society depend on the values and conduct of lawyers."

Now, the subject of this particular Convocation is values and conduct in the first seven years of practice. I have been asked to consider how new lawyers learn values and ethics.

For purposes of this talk, I want to borrow a definition of professional values from the MacCrate Report. The MacCrate Report identifies core professional values as competence, promoting justice, fairness and morality, improving the profession, and self development.

The most challenging of these values for the profession, and the one on which I will primarily focus, is promoting justice, fairness and morality. Indeed, this value is key to the very definition of professionalism. From the inception of the ideology of professionalism in the late 19th century, whether stated in Roscoe Pound's classic words early in the 20th century or in the words of the ABA Commission on Professionalism in the 1980s, what separates a profession from a business is described simply: Business people work primarily to promote their own self-interests, while lawyers and other professionals seek primarily to promote the public good.

Taking Lou Craco's admonition about academics to heart, I am going to conclude by offering some concrete proposals. Nonetheless, I want to start with a cautionary note. My cautionary note is this: During this Convocation, I expect that you will hear about excellent programs for helping lawyers balance work and family, perhaps also managing billable hours and handling debt. But I am not aware of similarly successful programs for advancing the value of promoting justice, fairness and morality.

Indeed, as I think most of us are aware, the legacy of the organized bar's almost 20-year campaign to promote professionalism since Chief Justice Burger's famous attack on the decline of professions is really quite minimal. Despite volumes of exhortations from leaders of the bench, bar and academy, despite numerous conferences and symposia, despite required professionalism courses for young lawyers and senior lawyers, little has changed in the attitudes of lawyers toward their public responsibility or in the public's perception of lawyers. And, indeed, the poll numbers show that the decline in these areas is continuing.

I would suggest that this failure results, in part, from a far too simplistic

understanding of the problem. This afternoon I am going to offer some observations about the complexity of the challenge as well as some concrete proposals for making significant change.

Two weeks ago, I was having lunch with a leading partner at one of New York's top firms – a prime candidate to mentor young lawyers. He is highly successful both in the art of lawyering and in the art of bringing business to his firm. He also believes himself to be a guardian of the law and devotes significant time to community service.

My friend asked for advice on how to discuss questions of values with clients, and he told me about a recent experience. He was counseling a major client of his firm on an issue where the client was pursuing a strategy that was technically within the letter of the law but clearly in violation of the spirit of the law. He found this quite disturbing.

In his discussions with his colleagues in the firm and with the client, he found that no one cared when he spoke about the importance of following the spirit of the law. The only arguments he could persuasively make were ones relating to self-interest, such as the potential for bad publicity.

My friend's experience exemplifies the shift in the perspective of lawyers and of business clients since the 1960s.

Fritz Schwarz earlier quoted from Paul Krugman's wonderful piece in the New York Times Magazine.[2] Krugman observes that in the 1960s, "top executives behaved more like public-spirited bureaucrats than like captains of industry." In 1967 John Kenneth Galbraith noted that "[m]anagement does not go out ruthlessly to reward itself. ... With the power of decision goes the opportunity for making money. ... Were everyone to seek to do so ... the corporation would be a chaos of competitive avarice. But these are not the sort of thing that a good company man does; a remarkably effective code bans such behavior." Krugman is referring not to a literal code but the culture of American corporations. Under this code, "a high standard of personal honesty" developed, as well. By the 1980s and 1990s, this code had been replaced by an anything-goes ethic that "greed is good; greed works," with corporate executives seeking and obtaining astronomical salaries. And most recently we have seen, in the words of a recent Fortune Magazine cover story, "All over corporate America top execs were cashing in stocks even as their companies were tanking."

A parallel change in terms of understanding commitment to the public and the public good has occurred in the legal profession. From its inception in the late 19th century and carrying forward the tradition of the republican conception of the legal profession, professionalism described lawyers as guardians of the public good. As recently as 1963, Erwin Smigel's landmark study,

2– Paul Krugman, For Richer, N.Y. Times, Oct. 20, 2002, § 6, at 62. All quotations in this paragraph come from this article.

The Wall Street Lawyer, found that New York big firm lawyers viewed themselves as an American governing class who "served as the conscience of big business."

The next quote is very interesting to me in light of the comments of the lunch speaker. Smigel finds that Wallach, Street lawyers advise "upon not only what is permissible but also what is desirable as they guide their clients into what they believe to be proper and moral legal positions."

By the 1980s, commentators attempting to recreate Smigel's study found a completely different reality. The leading lawyers had come to view themselves as hired guns. Murray Schwartz and David Luban described the standard conception of the lawyer's role as having two components: extreme partisanship on behalf of the client and moral nonaccountability for all actions within the bounds of the law on behalf of the client. Indeed, accepting moral accountability, to the extent it undermines extreme partisanship would, itself, be considered unethical.

This is the context of the challenges facing this Convocation.

When I was an associate at a large firm in the 1980s, the partners who were the most powerful in the firm were those who brought in the most business. They were the role models that younger lawyers sought to emulate. If you wanted to be a partner, what was important was your skill as a lawyer and as a cultivator of clients. Unless your professional values were so horrible that they got you disbarred and arrested or totally alienated from your colleagues, they were irrelevant. Good or excellent professional values were not visibly rewarded.

I understand that these realities continue to exist in firms today. In such an environment, if you try to teach young lawyers that commitment to justice is part of what it means to be a lawyer, they will know that your teaching is of little relevance to their reality. If you assign a mentor, the mentors will either reflect the existing culture that minimizes the importance of these values or the associates will view the mentors as fools or hypocrites.

The response will be similar to identifying role models or paragons of professional values. The associates will respond to what the firm actually values, not what it tells them to value. And if these role models are chosen because they are exceptional at pro bono work, you face another difficulty, the danger of demonstrating that commitment to justice belongs only in the marginal world of pro bono and not in the firm's regular work.

When someone like the friend I mentioned earlier – a successful and powerful partner – cannot find a common vocabulary to discuss concern for the public good with his colleagues or his clients, what can you honestly tell young associates about the importance of professional values to their work, especially given that they are likely to be the least skilled and least powerful lawyers in the firm?

What this suggests is that the task of educating lawyers in the first seven years of practice in professional values and conduct is a task that cannot be sep-

arated from the reality of how the bar and how firms value professional ideals. The task is one of changing culture, and that is largely in the hands of the senior lawyers in firms and leaders of the bar and judiciary.

Law schools also bear some responsibility. Associates have recently graduated from law schools where they are taught that ethics and values are marginal to being a lawyer. When they learn to think like a lawyer in the first year, they do not take ethics. It's an add-on and it's one of the least respected parts of the upper class curriculum.

I'm sure many of you have heard the story – it's actually commonplace in the literature – of the student who raises his or her hand and says, "But, professor, that answer would just be wrong." And the professor says, "We're not here to discuss ethics or justice. We're here to discuss the law."

If law schools were to teach ethics seriously, here's a concrete proposal: they would make it a first year, first semester course with required advanced classes to integrate the students' practices, experience and course work into their understanding of how to apply their professional values as ethical lawyers.[3] Any lesser commitment sends a message that professional values are just not central to the lawyer's work.

What about the role of the organized bar and the courts? If senior lawyers, if leaders of the bar, if the courts are going to honestly encourage junior lawyers to embrace professional values, they have to embrace those values themselves.

One way to begin to undo the erosion of lawyers' belief in their responsibility for justice is to add an aspirational ethical rule, and here I certainly agree with the luncheon speaker about the importance of setting aspirational standards. The aspirational rule would state, very simply, that lawyers are morally accountable for their actions.[4] It would not dictate any particular morality. It would include such widely diverse views as those of Monroe Freedman and William Simons. What it would do is remove the excuse that lawyering requires lawyers to be amoral. And it would encourage lawyers to debate exactly how to manifest their moral responsibility. We heard one example of that at lunch.

What is the responsibility of law firms?

First, law firms don't have to wait for the organized bar to act. As my colleague Bruce Green has urged, firms could establish their own professionalism codes.[5] But such a code is meaningless without intensive regular follow-up. Evaluation of whether the individual departments of a firm were living up to its professionalism code would have to become a regular part of the firm's work.

Second, a related point. Even without professionalism codes, one could

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3– Russell G. Pearce, Legal Ethics Must Be the Heart of the Professional Responsibility Curriculum, 26 J. Legal Profession 159 (2001-2002).

4– Russell G. Pearce, Model Rule 1.0: Lawyers Are Morally Accountable, 70 Fordham L. Rev. 1805 (2002).

5– Bruce Green, Public Declarations of Professionalism, 52 S.C. L. Rev. 729 (2001).

envision firms making professional values a regular part of their work. Departmental meetings could highlight values issues and could make questions about values a regular and important part of the agenda.

Third, after committing themselves to professional values, law firms can demand the same values of associates in the first seven years. Law firms can create successful programs of mentoring and role models, which will then make sense.

Perhaps evaluations of associates and partners could include evaluation of their professional values. Such an evaluation would make a difference and would become an asset in seeking a partnership. It might even be an asset to those who are already partners.

With all of these changes, who knows? Maybe one day junior high school kids will tell a joke where so many lawyers are getting into heaven that they get the lousy rooms also.

MR. SAUNDERS

Thank you very much, professor.

Professor Pearce's comment illustrates how important it is for us in the Judicial Institute to have this ongoing dialogue with the academy. That dialogue is an important reason for our existence and an important reason for having these Convocations. And that's exactly why we're now going to hear from Professor Sage. I hope he will address the first seven years' experience from his perspective not only as a lawyer, but also as a doctor and also as a professor.

One question that I hope he might answer is why is it that when doctors graduate from medical school, the first thing that they do is to take the Hippocratic oath. Lawyers don't. Lawyers take an oath when they're admitted to the bar, but it's not thought of as an integral part of their training as lawyers, and I wonder why that is.

So without further ado, Professor Sage.

PROFESSOR WILLIAM M. SAGE, J.D. & M.D.

COLUMBIA UNIVERSITY SCHOOL OF LAW

Good afternoon. Thank you for inviting me to speak to you today.

When I was a medical resident, many of my colleagues would tell me that I would make a really good lawyer. After that, when I was an associate in a large law firm, many of my colleagues told me I would make a really good doctor.

I don't think it was my abilities that triggered these reactions. What most of my colleagues in medical residency were saying to me was, "We're all working a hundred-plus hours a week. We're all getting paid $30,000 a year. We're dealing with blood and guts every day. Wouldn't it be nice to push paper around in a carpeted office in a plush office tower, dress well, and go out to lunch?"

By contrast, when I was in the legal practice, I think what most of my colleagues were really saying to me was, "Isn't it terrible that all we get to do is sit in this sterile office tower and push paper around? Wouldn't it be nice to be where you could really help people?"

At least I took their comments that way. I also became a law professor.

What I would like to convey to you today isn't that the grass is greener or less green in medicine than it is in law, but that the grass is different. I think you can learn a lot from those differences, so let me illustrate with an example that I use in teaching.

I teach an interesting seminar at Columbia. I take about 15 second- and third-year Columbia Law students, and about 15 second-year medical students from the College of Physician & Surgeons, which is Columbia's medical school, and we talk about professions and professional ethics.

We start the seminar by looking at some rather mundane examples. I prefer teaching professional responsibility from the mundane rather than the spectacular. You won't hear me talking about medical ethics and anencephalic children, or about the obligations of defense counsel in a race against the clock to find a kidnaping victim. I tend to teach from things that happened to me in practice or happened to friends of mine. I think that these examples end up being more useful to the students.

One of the discussion problems that I use goes as follows:

I did most of my clinical training during medical school at the Palo Alto Veterans Administration Hospital. On one of the medical wards there, I observed a curious phenomenon that had become standard practice among the interns and residents caring for patients with severe, chronic lung disease. When these patients were ready to go home, the question became whether they would go home with or without an oxygen tank – the oxygen in question to be provided and paid for by the federal government.

Now, there was a rule in this VA Hospital. This rule said that if you want to qualify your patients for home oxygen therapy, they had to have a documented arterial blood gas showing a partial pressure of oxygen below 60. Don't worry about the clinical aspects of this.

What was interesting was the pre-discharge routine on the ward where I worked. The patient to be discharged would be sitting in bed, receiving oxygen. The interns and residents would take the oxygen off the patient and make him walk around the hospital ward – "run laps," if you will. The patient would get out of breath. The doctors would return the patient to bed, quickly draw his blood, and send it off to the lab for analysis. The doctors believed – and it was probably true – that by doing this they lowered the patient's PO2 by a few percentage points and made it more likely that he would qualify for home oxygen treatment than if the blood sample had been drawn with him resting comfortably in bed.

That's the example. The discussion we have in my seminar is about its ethics. Many aspects of the situation potentially shed light on the way the first few years of practice differ in medicine and law. Since this colloquium is about the first seven years of practice, I will make seven comparisons.

First, for doctors, the early years of practice are still in the training setting. The bare minimum is two clinical years of medical school; a year of internship, that's three; and two subsequent years of residency, that's five. Most doctors complete much longer residencies, and many add fellowship training. All in all, seven years of clinical training are about average. So this challenge to medical ethics takes place in a "teaching hospital" that is both a training setting and a practice setting.

A second point is advocacy. The doctors who were running patients around to obtain home oxygen treatment thought of themselves as patient advocates. They thought that they were doing the best for their patients. But ask them what the system was within which they were advocating and the answer would pretty much come back, "The system doesn't matter; the patient does." Ask them whether they consulted the patient as to what he wanted and the answer would pretty much come back, "We know this is good for the patient." So there is advocacy, but not necessarily connected to a structured decision-making process or the expressed desires of the client.

This brings us to a third point: autonomy. Physicians have always valued independence. When they advocate for patients, they define how they fight and what they fight for. They also value action, and don't like other people slowing them down or stopping them. I found this a striking difference between my own early years practicing medicine and my early years practicing law.

I was not, in the vernacular, a "cowboy" as a medical student or resident. I wanted to observe a procedure first and have someone supervise me as I learned it. When asked, "Have you ever done an appendectomy?" I didn't just reply, "Sure, hand me a scalpel." There were other medical students whose response was, "Absolutely," figuring that if they hesitated they would lose the opportunity. I was very cautious by comparison.

When I got to large law firm practice, however, I may have been the most "cowboy" first-year associate that my firm had seen in a decade. Many of my contemporaries were having one-paragraph cover letters proofread and approved before they went out to clients. To me, compared to the risks involved in medical training, this level of caution seemed absurd.

I should add that the focus on autonomy in medicine may be changing. When I started teaching the professions seminar in 1996, often the knee-jerk reaction of medical students to the oxygen hypothetical was, "We don't want a rule telling us what to do. We know what to do." I haven't heard as much recently about this strong form of professional autonomy, which indicates that even a profession as set in its ways as medicine can change within a relatively

brief period of time as new people enter practice.

Fourth point: roles and rules. Here I will speak to Paul Saunders' question about the Hippocratic oath. Most medical schools, including Stanford where I attended, administer the Hippocratic oath at the graduation ceremony. At Columbia and a growing number of schools, students take the oath early in first year at something called a "white coat ceremony." Each entering medical student trots up, dons a white coat for the first time with the help of a senior physician, recites the Hippocratic Oath, and receives social investiture into the medical profession.

The notion of governance through rules, r-u-l-e-s, is alien to the medical profession. Doctors have a clear sense of the medical role, r-o-l-e. Once they have assumed the role, doctors see themselves that way for their entire careers, even if their actual practice responsibilities diverge markedly from the unitary image of medicine that they are given in medical school. Unlike young lawyers, who receive most of their professional socialization after law school, and therefore relate strongly to only a subset of the legal profession, doctors tend to think of themselves and be thought of by other doctors as cut from a single mold. This perception lets even a strange creature like an M.D.-J.D. law professor gain admittance into medical circles, no matter what message I bring or what professional work I actually do. Practicing physicians often may not agree with me, but they feel duty bound to hear me out.

Returning to my example, medical students are always uncomfortable with the V.A. setting a rule to determine whether a patient will receive oxygen. They come up with a series of questions directed at the rule's legitimacy. Was it decided by doctors? Was it decided by bureaucrats? Was it decided by accountants? Was it based on science? Science and professional self-regulation: good. Business, administrative expertise, or politics: questionable. Even rule-making processes that have social and legal legitimacy are suspect for physicians.

I usually answer the medical students' questions about the origin of the home oxygen rule by planting an uncomfortable seed. "Well, maybe the V.A. didn't think the medically correct level was 60," I say. "Maybe it wanted to set the level at 65 but knew that doctors would attempt to evade it, and so lowered it to 60 in anticipation of 'lying and cheating' so they would end up dispensing roughly the right amount of home oxygen at the end of the day." This is deeply disturbing to the medical students but, in fact, their practice bears it out. Why did the requirement for a documented laboratory value exist in the first place? Presumably because previous approaches allowing doctors merely to certify the appropriateness of home oxygen were being abused, hence the need for some type of objective verification.

Lawyers, of course, do much better with rules and with the idea of evading them "ethically." Law students facing the oxygen example tend to have a different approach. Those who feel that drawing blood after vigorous exercise is

ethically acceptable usually justify it by asserting, "Well, they didn't say to take the blood at rest. If they didn't want us to exercise the patient, they would have said so."

Peer review in the medical and legal professions is a fifth point raised by this example. Even the very junior doctors I was working with at the Palo Alto V.A. looked to their peers rather than their superiors for guidance resolving a potential ethical problem. They decided their course of action as a team, collegially. And, for physicians, using this process is itself a justification for the result reached. This doesn't mean, at the end of the day, that the decision is legal, morally defensible, or even practically effective, but the process of peer consultation satisfies doctors in ways that it might not satisfy lawyers.

The sixth and seventh points I'd like to draw from the home oxygen example contrast the institutional and financial context for early years of practice in medicine with those for law. One of the biggest differences between law and medicine is how much capital their work requires and where it comes from. Occasionally, lawyers draw on outside resources, such as expert witnesses or consultants that are going to be paid for by their clients. And, of course, the court system is a publicly funded resource. But lawyers' work consists mainly of their own human capital – their time and skills – and internally funded resources. In medicine, by contrast, doctors themselves account for much less of what their professional skills enable to happen. Most of what doctors do involves "ordering": ordering a hospital bed, ordering a test, ordering a drug or medical device, etc. The economic implications of this are significant. Physicians' fees account for less than 15 percent of the staggering $1.3 trillion the U.S. spends on health care each year, but physicians control nearly 70 percent.

This situation is demonstrated perfectly by the home oxygen example. The doctor is using professional "ethics" to determine if the government – not the patient or the doctor himself – should pay for a physical resource: home oxygen and the support that it requires to deliver. This sets up very different notions of social stewardship as a constraint on advocacy than those facing lawyers. It also changes the nature of professionals' pro bono obligations because physician charity alone is inadequate. Either the physician must somehow "donate" somebody else's resources, or else the urge to provide charity care is diminished by the realization that other things the patient needs will still be unavailable.

Finally, the home oxygen example shows how the early years of medical practice may dull young physicians to the conflicts of interest that challenge all professionals. In law, conflicts of interest are mainly financial. By contrast, interns and residents are paid salaries, very low ones at that. Whether a patient receives home oxygen did not earn or save the young doctors at the V.A. hospital a penny. Nor did they feel any need to recommend particular care in order to shield themselves from malpractice liability. In the V.A., as in all teaching settings, that's taken care of. The absence of these pressures tends to make young

physicians see themselves as selfless – and indeed they often are. However, they may also blind themselves to the conflicts of interest that they do face. Notably, interns and residents are grossly overburdened and have tremendous incentive to reduce their workloads. In the oxygen example, getting the patient home may be good for the patient, but it would be naive to think that the doctors are not at some level also concerned with themselves.

I intend these observations to demonstrate the value of "comparative analysis." As the example shows, this value is often quite personal, and is gained mainly by committing yourself to looking at your own profession through the lens of another profession.

But I would like to add three larger points as well. One is the question of competition and how it relates to professional self-regulation and government control. Here, a bridging concept is the balance of wages and non-wage compensation for young professionals. Young physicians in internship and residency receive generally excellent training, but accept pitifully low wages and endure terrible personal sacrifices in fatigue and forgone family obligations. Further, they must complete this period of servitude in order to qualify for practice in their chosen specialties. I am convinced that the only way this system of training over cash and comfort persists is because there is little competition among those offering these doctors their positions. And as some of you may know, there is antitrust litigation ongoing to challenge the process by which graduating medical students are "matched" with teaching hospitals for their subsequent training.

By contrast, a big change in large law firm practice over the last 20 years has been a tremendous increase in competition for young associates. Part of this has resulted from increases in information about firms' hiring practices, most recently via the Internet. We tend to love information, but information does sometimes have a price. For young lawyers, the price has been to channel virtually all competition into cash compensation. Promises of deferred compensation – the chance for partnership or even continued employment – have become less credible and less desirable. As a result, firms have been forced to compete mainly on current year salary, which not only increases hours worked but reduces firms' ability and their incentive to provide training. So both cartelization in medicine and competition in law have forced young professionals to work extremely hard, but for very different sorts of rewards.

Another observation about law and medicine – I always find it ironic that we talk about universal access to the courts, because there are few publicly funded legal services in this country. It is equally ironic that we berate ourselves for not having universal health care, but we spend about $600 billion, with a "B," each year of tax revenue to subsidize the provision of medical services. In medicine, this affects the nature of early practice because public money funds internships and residencies. Not only does this funding partly explain the persistent lack of competition among residency programs, but it also affects the overall

structure of medical practice. By "socializing" the entire cost of training and picking up the tab through hospital reimbursement for most of the technology needed to support later practice, public funding allowed solo physicians and small medical groups to survive. The legal profession, by contrast, had to adjust its practice organization to reflect actual client resources. As a result, some young lawyers are "trained" in large firms primarily representing corporate clients, while others are "trained" in smaller firms mainly serving individuals.

I'll conclude by quoting the sociologist Steven Brint, who distinguishes between what he calls "social trustee" professions and what he calls "expert knowledge" professions. The former acts as a stabilizing force for communities and societies; the latter is typically a specialized service provider or "hired gun." Brint points out that social trustee professionals are vulnerable to social change that devalues their services, while expert knowledge professionals are vulnerable to economic change that "commodifies" their services. Both law and medicine have moved from social trusteeship to expert knowledge over the last half century. Although the transition has undoubtedly been beneficial for law and medicine, and for the clients or patients they serve, it is also a major source of angst for each generation of young professionals and for those who will train and inspire them.

Oh, there's one more thing I want to add before I sit down. In case any of you were wondering, let me tell you my personal resolution to the oxygen problem I encountered as a medical student. I was deeply troubled by what the interns and residents were doing to get home oxygen for their patients. But my concerns had nothing whatsoever to do with cheating the government or disobeying the rule. My problem was that one of the patients might have a heart attack while running around the ward, which I thought was bad medicine. Like the other doctors, I wanted to get the patients what I thought they should have. I just didn't want them to be physically harmed in the effort.

So I came up with a clever solution. In the V.A., like any bureaucracy, who you know means everything. I had a friend in each laboratory department, including where they processed blood gases. I simply went to the lab and asked my friend how the oxygen value was calculated. I discovered that the blood gas machine did not spit out a number solely based on physical characteristics of the sample. Instead, the technician adjusted the machine's reading to reflect the temperature of the patient when the sample was taken, which it was the doctor's duty to enter on the requisition slip. For the rest of my time at the VA, every patient I ever drew blood from for home oxygen had a body temperature of 95 degrees.

Thank you.

MR. SAUNDERS

Thank you very much, Bill.

Thank you for answering my question or trying to answer my question

about the Hippocratic oath. It's interesting, not just idle in some schools, that the Hippocratic oath is being administered at the beginning of medical school training with this white coat ceremony signifying entry into the profession of medicine. We don't have anything like that for the practice of law.

Before we hear from the two commentators, I can't resist a comment of my own on something that Bill just said and that's his example of running the patients around the floor to manipulate their blood gases.

Both the practice of medicine and the practice of law have something in common. And that is: we both act for others. We both serve others. That is the essence of what we do. Doctors treat patients. Lawyers advise others, give legal services to other people.

However, the practice of medicine has the easier of that side because it's generally perceived to be a social good to help patients get well. Everybody agrees that's a good thing. Not everybody agrees that defending the indefensible is a social good. And there are many things that lawyers do that are not generally perceived as exactly the same as helping the ill get well.

I wonder what the reaction would be if you took your example and substituted a lawyer for the doctor and a corporation for the ill patient who needed oxygen. Would the response be the same if the lawyer were going to bend the rules to advantage the corporation rather than the doctor bending the rules to advantage the patient?

And more to the point of what we are here about, how is it that doctors learn that one type of practice is acceptable and lawyers learn that a similar but different practice in a similar but different context is unacceptable? Where does that come from?

How do we teach our young professionals that in one sense it's socially desirable to make a patient well using whatever means you possibly can, whereas, on the other hand, it is not necessarily socially desirable to advantage your client by bending the rules?

So we look forward to hearing from the two commentators who will comment on what they have just heard from the perspective of lawyers in practice. First we are going to hear from Candace Beinecke, who is the chair of the New York law firm Hughes, Hubbard & Reed.

CANDACE KRUGMAN BEINECKE, ESQ.
HUGHES HUBBARD & REED LLP

Thanks, Paul.

The hot topic of debate in the profession when I was in law school was whether a law school should be centered on its legal clinic rather than its library. The focus on clinical education was viewed as a means to enhance our training and allow us to do well while we did good.

Today, after a period when our gaze was fixed on the success of business, entrepreneurship and the capital markets, we are hearing from the commentators that law schools should center their curriculum on ethics and professional responsibility and that the profession needs renewed focus on these areas as well.

Who could disagree? Unquestionably, the stature of the profession has suffered. Lawyer jokes proliferate, and I particularly love the idea of being a princess in the castle in heaven, but they do make a point.

Having said that, I am also very concerned about quick-fix rules that threaten the role of lawyers as confidants and advocates. In realigning our focus, we have to be careful not to reverse the positive aspects of the evolution of our roles as lawyers.

We like to think that most professionals do the right thing because it's the right thing to do and that's all it really takes. As a business lawyer, I believe it's helpful if the right thing to do is also the smart thing to do. A renewed focus on ethics and professional responsibility in the law is the professional and business imperative.

The best and the brightest, the people who think highly of themselves, won't be attracted to a profession that is not held in high regard. If we want to preserve the profession as one that attracts great minds, we have to demonstrate and continually elevate its stature.

I came to Hughes Hubbard thinking I would stay just long enough to get a Wall Street firm on my resume. I was amazed to find the head of the firm, Orville Schell, leading a peace march down Wall, Street and heading human rights initiatives. Orv later became the head of the New York City Ballet. This was a man who had a rich professional life, was a major business getter, the head of the firm, but who also found the time to demonstrate his concern for issues beyond himself and his practice. That was the model and there were and are many who shared it. I thought "How lucky I am to be surrounded by such people," and I stayed.

I recently was speaking to a younger partner in a very prominent firm. When asked what he did outside of work, he said, "actually, my firm doesn't value much other than the billable hour, so my theory is I am going to make a lot of money now and give myself the opportunity to do good later." This is such a highly educated, smart, talented lawyer – and an example of what has gone wrong.

Why else must we, as a professional imperative, focus harder on ethics and professionalism? If we are successful in attracting the best people to our profession, we have to ensure their success. That takes teaching.

Some of the materials distributed in preparation for this Convocation suggested that moral fiber must be developed before law school. And so, what's the point of ethical training? You either have an ethical bent or you don't.

The ethical issues that we face every day are complex, as we heard today.

Do we represent Nazis to protect free speech? When is there justification for disclosing client confidences? These need to be taught, kicked around, discussed by good minds. Law firms and other legal employers need to teach professionalism and ethics to make their lawyers successful.

As the profession, particularly in big firms, has focused more on the business imperative, we are facing greater specialization, longer hours, narrower lawyers and burnout. The discussion of ethics and ethical issues is meaty. It's interesting. It's part of our practice every day. If we share it, teach it, discuss it, we expand the vision and judgment of our lawyers and their interest in what we do. For that reason as well, it's essential to what we do.

Most important, we can't be effective as lawyers if people outside the profession don't hold it in high esteem. Let's face it, we're about giving advice to clients, and our clients won't listen to advice if the profession doesn't regard itself well and if the world doesn't regard the profession well.

It's not enough to be a great lawyer. It's not enough to have somebody say, "he is a terrific lawyer and a morally good citizen, but he is an exception." It makes it difficult for us to do our job if our clients don't believe – and particularly if we're supposed to be stewards of the public good, if the world doesn't believe – that we are ethical, principled, professional people.

If we want to attract and keep the best and the brightest, make them successful and enhance our ability to assist and advise our clients, we need to enhance the image of our profession. How can it be done?

I've learned that my kids ignore what I say, but watch what I do. What we need, in my view, is not more talk, not more rules, but more action. The action starts at the top and that's what this group is about. What can we do to help?

We can't dictate law school curriculum. What those of us who are employers can do is to focus on what young law students have done to demonstrate ethics and a commitment to the profession.

I always wanted to be a lawyer, but I had a brief period when I wanted to be a journalist and I applied to journalism school. When I went to interview, the Dean said, "All our applicants have spent years showing why they should be journalists. They have written extensively. They have worked hard on publications and to show a commitment to the profession. What have you done so far?" The answer was, "Very little."

Legal employers can ask for evidence that the students they hire do well on their ethics courses, serve the public good, or do other things to show an understanding of ethics and a commitment to professional responsibility.

When young lawyers start work, we can give them a clear and consistent message from day one as to the importance of ethics and professional responsibility. We try to do this at Hughes Hubbard and I know many other firms do as well. Our first session on our first day of orientation is on ethics. It's about

what we value – doing the best for our clients and for our community, but always in the context of doing the right thing.

Throughout the careers of our young lawyers we give ethics programs to reinforce the message that we give during orientation. We have mentoring programs to help guide lawyers through difficult issues and to share our values as a firm. We encourage public service and pro bono work and publicly praise those who make the commitment.

Also, we need to make sure that we give credibility to the messages we communicate through our own actions and through our system of compensation and rewards. The messages are subtle in many ways and need to be taught by example.

We have always given our lawyers the message that we are a can-do firm. I mentioned this at a memorial service for a partner of mine who had been the President of the Legal Aid Society and who epitomized the "can do" attitude. I noted that early in my career I was given an assignment and, after research, I reported that what the client wanted to do could not be done. The response was that my job was to be innovative and to figure out a way that the client could achieve the goal. As I was reading the material this weekend in preparation for this meeting, I was thinking that I give all our lawyers this message which, if taken out of context, could be viewed as terrible advice – advice to do anything that you have to do to get the job done. Of course, nothing could be farther from the intent.

Danny Greenberg and I had the same thought when we talked about it over the weekend. He said, "You know, I heard you at the memorial service and it was a very nuanced message because, knowing the people who were saying it, knowing you and your partner, there was no chance the message would be misinterpreted or the advice abused. Taken out of context, advice like that could be taken badly."

With the advice to be a can-do lawyer comes the notion that you've got a sense of professionalism. A good lawyer will tell a client not only what he wants to hear, but what he needs to know. That is the underpinning of the ethic and it's the underpinning of our commitment to advocacy on behalf of our clients. While we always do more than is expected of us on behalf of our clients, the achievement of our goals for clients does not justify any means.

So how do we balance these two things – the desire to be great advocates and the desire to be ethical practitioners?

I think of myself as the beneficiary of people who came before me and who did it well. When I came to Hughes Hubbard, there was already a woman partner. She was the only woman partner on Wallach, Street except for one that I knew of and she was certainly the only woman partner of color.

She told me that when she graduated from law school at the top of her

class, no firm of stature other than Hughes Hubbard would give her a job as a litigator. The woman is Amalya Kearse, now a Second Circuit Court of Appeals Judge. When I became a partner, she came to my office and she said, "Candace, how does it feel to be the first white woman partner?"

So there were people at Hughes Hubbard who came way before me and way before Amalya who had a commitment to diversity. What did they do? Their clients surely were not used to seeing black women lawyers. They surely were not used to seeing me.

These partners had the courage of their convictions and they taught us by their example. When clients asked whether they had to have a girl on their most important matters, they would say, "Yes, and believe me, you're going to be happy you did." They stood by us. They took a risk because they believed it was the right thing to do.

That's what we have to do. We have to take risks for what we believe are the right things to do. And we have to train our lawyers to do the same.

There is no question that the legal profession may in some highly visible cases have strayed from the course, that many have been too focused on the billable hour and its impact on the bottom line to the detriment of our lawyers.

Having said that, I continue to fear an overreaction in the diminished role of advocacy in the profession. We have to achieve a balance and that's going to be key. It's not a quick-fix kind of problem. It takes dialogue and buy-in by all concerned. We can't do it alone.

We can tell our young lawyers that the firm will value pro bono work and commitments to the profession outside their work for the firm. We can promise that these efforts will be part of their compensation and evaluation each year.

But if the law firms, as a profession, don't buy-in, it won't be workable. This comes to Prof. Sage's collusion example. We need collusion by everyone. Collusion by the firms, by the profession, by the judiciary, by the government. Everyone has to support a system that values more than money.

The press is key as well. Its focus on profitability has encouraged hype by lawyers – and that is putting it kindly.

So, we need to talk, have the dialogue and then get going. We need to do it together as a unified group in order to be effective.

MR. SAUNDERS

Thank you, Candace.

I was thinking, as I listened to Candace, that it's true that we may not have all of the answers to the questions that were asked, but I wonder how different that talk would have been if it had been given, say, 40 years ago. My sense is that the profession is looking at itself a lot more today than it was when I first started practicing. Most of the topics that Candace talked about and the questions

that she asked were never talked about and never asked when I first started practicing. Even though we don't have the answers, we are probably asking or starting to ask the right questions.

Let's now hear from our last speaker, Daniel Greenberg, from the Legal Aid Society.

DANIEL GREENBERG, ESQ.

President and Attorney-in-Chief, Legal Aid Society

Paul, thank you very much.

And to the previous speakers, and the speakers this morning, thank you, because I want to address some of the things that were said.

I'm struck by the emphasis on complexity as we talk about the profession, and that the giants of the bar have talked about how many different parts of our society bear responsibility both in creating and solving our problems. We look and say the law firms should be doing something. No, the law schools are really the people who have to teach ethics differently. Well, no, it's society at large. Well, no, it's actually the young lawyers themselves. If the students who were coming in demanded more of the law firms, they would change.

In a way, of course, that is accurate because everything is complex. The other part of that accuracy is that it dissipates responsibility.

I'm struck by the fact that the 1994 law that so disproportionately affects my clients, poor people, is called the Welfare Reform and Personal Responsibility Act. Somehow my clients seem to be the only people who have to have personal responsibility for what's going on. Somehow, if only they would pull themselves up by their bootstraps and we stopped giving them all these government benefits, then the world would change and they would be better off.

On the other hand, what I hear from the most powerful profession is that personal responsibility doesn't necessarily extend back into the profession to change our situation.

Things are complex, but some things are relatively simple, and I will say them in the strongest possible terms because I know we are going to discuss them and people can push back.

If a law firm says: "We will give you a lot of money if you bill 2,500 hours" or whatever the number is, that firm has signaled in the most concrete way what's important.

The people who come to law firms for the first several years are good at knowing exactly what they have to do to get to the next step. They knew exactly what they had to do in high school to get to the best college and they did whatever extracurricular activities it required. They took whatever courses they did, they studied for their SATs, they did whatever it was to get into the best col-

lege, followed in the best college by doing whatever they needed to do to get into the best law school, and they proceeded to do that as well. And after that, within the law schools, they did the things they needed to do to get to the best law firms.

And it seems relatively simple to me that if the best law firms said to them, "The way you will succeed here is to be ethical. The way you will succeed here is not by billing a huge number of hours, but by doing several hundred hours of pro bono work," we wouldn't have to have conferences about the need for pro bono work and what we can do about it. If the firms told their associates, "you will get your bonus this year if you spend 300 hours, 200 hours, whatever the hours are, doing pro bono work," that will be the end of the question of how to do pro bono work.

It won't be simple to get the profession to want to do that, but it isn't necessary to throw the question back to the academics or the intellectuals to say what do we need to do in order to become what we say we want to do. Those things are relatively clear. And then the question becomes: Will we have a Personal Responsibility Act for the legal profession? Will there be teeth to what we say we care about and will it be done?

Now, this comes from the head of the Legal Aid Society, which gains enormous benefit from the private firms. We could not exist without them. We are the embodiment of the pro bono that the private firms do. I am not saying that the private firms are not doing the things they need to do for us or others. But I am saying that if the profession wants to talk about valuing what's important, then the visible and sustainable things that need to be done are known to us, and conferences which focus on the first seven years of practice need to have, as their next step, focusing on those partners in the firms who actually have the managing power to make the firm do what we say and what they say the firms want to do. So that's the first point.

Second point: My wife is a physician. We have had many discussions about medicine versus law. One of the things that medicine does better than we do – and it's my chance to throw this back to the academics – is to ask the question: what is it that the great journals of the profession do?

When I ask you to think about the great journals of law, what pops into your mind, I assume, is the Harvard Law Review, the Yale Law Record, and the law reviews of Columbia and other great schools. And the articles in them are often three or four hundred pages long filled with things that nobody understands. Probably the tenure review committee does, but almost nobody else understands.

Now, look at the great journals of medicine – the New England Journal of Medicine, the Journal of the American Medical Association. No article gets published there unless it concretely tells us that if you give half an aspirin a day to a

white male over the age of 50, you will cut down heart attacks by a huge amount.

If you ask litigators what they do when they pick a jury, you will have a hundred war stories, but you will have not the slightest degree of a protocol that actually tells you what you should do because, as a profession, we actually disdain practice in an academic setting. A study of what goes on in the profession will not gain you what you need to get ahead in the academy. The profession is all the poorer for it because people don't study what we do and then bring it back to the academy to be reflected on, and looked at, and thought about, and then pushed back to us out in practice. Articles in law reviews don't say, "you could be doing this better, you could be doing that differently."

Part of the reason for this, and part of the answer to Paul's question about the difference between the professions, and why it's valued that a young professional would bend the rules to get something for a person who is ill but not do that for a corporation, is that people feel the doctor didn't make the patient ill, but people often feel that the lawyers made the problems that they are trying to solve. Doctors value trying to find out the answer about how to make the person better, but lawyers spend very little time being self-conscious in knowing that.

And so another answer to the question of how we can be a more ethical profession and encourage more professionalism, is to actually spend the time studying these issues. Let people in. Let people view the profession and let them do comparative studies. Let them figure out what works best in a way that the legal profession has long resisted. If we continue to resist and continue to use client confidentiality as a shield, we will not know the answer to many of the questions that medicine, at least, has answered.

A public interest lawyer could have given the speech that David Becker gave today. I was struck by the fact that we so often think that public interest law and corporate law are divergent. But there was nothing that David said that I wouldn't say: the role of the lawyer in making sure that government behaves rightly; the role of the lawyer in counseling clients but also telling them when they need help that doesn't necessarily fall strictly within the law. We at the Legal Aid Society try to help our clients who commit crimes. We see it as our role to have less crime in the City. We actually believe that alternatives to incarceration – treatment programs – are so much better than punishment and urge clients into those programs rather than saying we want to just continue to represent them.

We need clients to tell us what they did. And I couldn't agree with Candace more that those rules that undermine a client telling us those things because they fear that we are going to repeat them undermine not just corporate law and not just private law, but also public interest law in ways that I don't want to see happen.

One difference between what affects public interest lawyers and other

lawyers is that there is more of an overlap between the way public interest lawyers spend their waking hours and what they believe to be their values. And you can't put a price on that.

We bemoan the fact that, although 80 or 90 percent of the people who come into law school say that they want to use law as a tool for public and social good, by the time they leave only a handful do it full time. I have a few observations about that.

First, while we blame law schools for that, the truth is that it's easy for students to have the rhetoric of wanting to help when it doesn't cost them anything. It actually costs something to do a life of full-time pro bono law. The starting salary is $40,000 instead of $125,000. And that is a cost that people have to decide whether they want.

The lawyers at the Legal Aid Society and other public interest lawyers are really quite happy with what they do in a profoundly different way than lawyers in private practice. And, again, I say that not with a value judgment of where people should be. People should be where they want to be. But I don't think public interest lawyers have the kinds of problems that private lawyers do. We have problems of burnout, we have problems of people not being able to do enough, we have overarching problems of not enough funds to be able to do the work we are supposed to do. But the great gift for people who choose to do this work is that they spend virtually all of their working hours doing something that reinforces their values as a human being. That, for many, is a value that entails no sacrifice whatsoever. It's something that they cherish and they look for and they wish to do.

I remember a conversation about pro bono with a giant of industry some time ago, talking about how it affects lawyers. Of the group of lawyers to whom he was speaking, a number said, "my firm really does a lot of pro bono work. We take a lot of the money that we get and we give it back to the community." And he said a very interesting thing that is important for this group. He said, "I'm not all that interested in what you do with the money once you get it. I'm really interested in what you do to get your money." That is, the core of what values are, and the core of what ethics are, have to do with what happens in amassing the wealth that firms do.

And one idea that came up then that has died fairly quickly was, what if there were a kind of a Sullivan Principles for law firms? When Fritz Schwarz talked about the early days of apartheid and investment, the Sullivan Principles at the beginning were so aspirational that no one believed you could topple a regime with them, and yet in the end, it worked.

One of the questions is – since, as Candace tells us, it is hard to go out on a limb by yourself – what would happen if the great law firms in this city subscribed to a set of principles? Let's call them the Craco Principles or the Fritz

Schwarz Principles or we will give some other name – a set of negotiated rules about what they would do and not do in order to get wealth.

Soon it would become known that this group of law firms was not going to involve themselves in the kinds of practices that, while maybe technically legal, shouldn't be done. Thereafter, if corporations wanted to go outside those firms, they would be signaling to their shareholders, to the press and to the world that they were not willing to go to the ethical consortium of law firms that had pledged themselves to begin the process of trying to effect what we're here calling morality rather than simply ethics.

Could it be done? Is it something that this great bar, which has been the leader in so many other things, could pioneer in getting together and having people say that this set of firms will behave in a way far better than merely what the canons of ethics require, and that we will do it a way that brings to us all the things that this great bar wants?

My final thought. Candace spoke a little bit about diversity. I will try to be as concrete as I can and do the lobbying as directly as I can.

In this state, there is currently a proposal to raise the passing score on the bar exam. It is something that is being discussed. It is before the Board of Law Examiners. One is not quite sure whether the Court of Appeals has really vetted this in the way that it should have been vetted.

I will take my final moment to say, this is not good. We know from empirical experience from the medical boards as well as the law boards that minorities disproportionately do not do well on these exams. However, at the end of people's careers, their exam scores do not correlate with their ability to practice law.

CUNY Law School is one of the great law schools in this country. Its bar passage rate is not very high. It could raise its bar passage rate by accepting different people. Its mission as a great law school in the service of the public good is a valuable mission, and it does not want to compromise with regard to the people to whom it gives an opportunity to practice law by admitting only those who would easily pass the bar.

I hope that this group will do what it can to resist the Board's proposal to raise the passing score on the bar exam because we know that it will take a profession that already has large problems of diversity and make that even worse. And it is to me a concrete example of what we can do in the public good ethically and morally.

Thank you.

MR. SAUNDERS

Thank you very much, Danny.

To your point about what the law firms might do together, tomorrow we are going to hear from Nancer Ballard, who worked with the Boston Bar

Association for two or three years on a project not unlike what you have in mind. Not exactly the same, but not unlike what you have in mind. They have done really wonderful things in Boston that I hope we can all learn about from listening to Nancer.

Let me speak for all of you in thanking the speakers on Panel One. They did a great job, and let's give them all a round of applause.

PANEL II – OBSTACLES TO PROFESSIONAL FULFILLMENT

PAUL C. SAUNDERS, ESQ.

CONVOCATION CHAIR

Our next panel discussion is one that I have been looking forward to for a very long time and I'm really anxious to hear what they have to say. This is a group that we have carefully selected, composed of young lawyers, most, if not all, of whom are within the first seven or so years of practice.

And the purpose of this discussion is to hear from lawyers who are there, who are experiencing, in fact, the kinds of things that we talk about in theory or from such a long ago vantage point that we older lawyers sometimes tend to forget how it really was in the early days of our practice.

So the purpose of this discussion is to hear from people who are there in the trenches and to find out whether what we think is happening or should be happening is, in fact, really happening in the experience of young lawyers.

This panel is going to be introduced and moderated by Joan Wexler, who is the Dean of the Brooklyn Law School.

DEAN JOAN G. WEXLER, ESQ.

BROOKLYN LAW SCHOOL

Thank you, Paul. And welcome to our panel discussion on obstacles to professional fulfillment.

Before I ask the panel members to introduce themselves to you, I ought to tell you something about our preparation for this afternoon. We had three focus groups across the state with young lawyers. We talked about issues related to the first seven years of practice, and our panel members attended at least one of those sessions. The sessions were held in New York City, in Rochester and in Uniondale.

I want to thank in absentia all of the lawyers who participated in those sessions. There were probably around 50 young people who helped us understand these issues. I also want to thank our hosts in each of those cities: Paul Saunders of Cravath, Swaine & Moore; G. Robert Witmer of Nixon Peabody; and George Farrell at Farrell, Fritz; as well as Catherine Wolfe from the Institute and the Clerk of this wonderful Court, who was the coordinator. It took some effort to get everybody together and make sure we all had the opportunity to learn from one another.

At the focus groups, the participants discussed confidentially their concerns, problems, and dissatisfactions with being a young lawyer. They came from large firms, small firms, corporations, government offices, and public inter-

est organizations, and our panelists listened very carefully to them.

The responses that our panelists are going to give this afternoon to the questions that I'll be posing are not necessarily personal. The panelists are just mouthpieces for the people to whom they listened. They were listening across the state. We have heard that phrase before from a well-known senator who won the New York State election, for she too did listening tours.

So let me just start with Kristin. And if you would, please tell everyone who you are and where you work.

KRISTIN KOEHLER GUILBAULT, ESQ.

WHITEMAN, OSTERMAN & HANNA

My name is Kristin Koehler Guilbault. I'm an associate at Whiteman, Osterman & Hanna in Albany.

KIMBERLEY D. HARRIS, ESQ.

DAVIS POLK & WARDWELL

My name is Kimberley Harris. I'm a litigation associate at Davis Polk & Wardwell here in New York City.

DAVID P. MIRANDA, ESQ.

HESLIN ROTHENBERG FARLEY & MESITI, P.C.

My name is David Miranda. I'm a partner with the law firm of Heslin, Rothenberg, Farley & Mesiti in Albany, New York. I'm also the Chair of the New York State Bar Association's Young Lawyers Section.

MARY T. O'FLYNN, ESQ.

ASSISTANT CORPORATION COUNSEL, CITY OF NEW YORK

Good afternoon. I'm Mary O'Flynn and I'm an Assistant Corporation Counsel here in the city.

MATTHEW J. SAVA, ESQ.

SHAPIRO MITCHELL FORMAN ALLEN & MILLER, LLP

My name is Matthew Sava. I'm a litigation associate here in New York City with the law firm Shapiro, Mitchell, Forman Allen & Miller.

JESSICA F. VASQUEZ, ESQ.

NATIONAL LATINO ALLIANCE FOR THE ELIMINATION OF DOMESTIC VIOLENCE

I'm Jessica Vasquez. I'm the Director of Projects at the National Latino Alliance for the Elimination of Domestic Violence.

DEAN WEXLER

Mary, I'm going to start with you and I'm going to ask you to give us a profile of who the young lawyers were who spoke at our focus groups. Also, give us an idea of what they were thinking about their career goals when they got out of law school. Did they have a plan about their professional goals? What did they expect to be doing during their first seven years of practice, and what was the reality?

MS. O'FLYNN

I attended two of the panel discussions, and consistently the people who were at the panels were, for the most part, all people practicing under seven years. Fairly consistently, people were in their second work experience if not their third. And they had a different focus from the more senior attorneys who were at these panel discussions.

The more senior attorneys went into the work force thinking they would work for one firm for their entire career. In contrast, the people we spoke with and listened to all really were people who had tried one thing and were now doing something else, and that was their goal. They wanted to get as much experience as they could through different opportunities.

In response to your question about what people intended to do when they left law school versus what they were doing now, across the board, people were in very different careers. At one panel discussion, we had one individual who said he wanted to go into a law firm and go straight to partner. When he got there, he realized that was not a reality at all and he said that he and a lot of his other colleagues are just waiting out the current economic downturn to see where they will go next. Somebody else spoke about how she wanted to become an Assistant US Attorney. That was her plan, but now she is not really sure if she wants to stay in law.

It was eye-opening because there's such a difference between the perspective that people have when they're in law school or leaving law school, and where they all end up.

DEAN WEXLER

I find it interesting as an educator that even when people had a plan, it ended up that they moved around quite a lot, and I'm sure these various jobs and opportunities called on different skills than people might have prepared themselves with in law school.

Is there anyone else who wanted to say something about this – goals, plans?

MS. GUILBAULT

People talked a lot about how they didn't really expect what the practice of

law was going to be like. And so there was a discussion about a legal career perhaps not being something that they wanted to pursue any longer, and that after having practiced law for a couple of years, they were considering alternative careers. So that was another aspect. Besides, they didn't really want to be on the partnership track.

DEAN WEXLER

Let me focus next on, instead of the plans you might have had, what actually happened. How did your development as a young lawyer proceed?

At some point during the three or four years that our students are at our law school, in some speech or another I give I talk about the importance of mentoring – my faculty goes, "oh, she is going to give the mentor speech again" – either finding a mentor or being a mentor to people who come after you.

And I am interested, Kimberley, in finding out how this related to the experience of young lawyers. In your answer, I would like you to think about the two different kinds of mentors that one could have. One is the supervisor mentor, the one who helps you, constructively criticizes your work, and gives you feedback about how you are doing professionally. The other mentor might be somebody whom you look up to, someone about whom you say, "gee, 20 years from now I would like to be like that person," either professionally or personally. Someone you think is successful – whatever success means.

So, can you tell us a little bit about your experience or what you heard from other members of our focus groups about this?

MS. HARRIS

Mentoring was one issue where we really saw a distinction in the focus groups between those who were practicing in large law firms and those who were practicing in small firms or government or public interest settings.

On the supervision side, the focus group participants practicing in large firms said that they had plenty of supervision, but not necessarily good supervision. For the most part, a lot of people thought that the supervision seemed to be supervision without purpose; it wasn't supervision intended to help young lawyers grow. Rather, it was supervision, as one person put it, intended "to make me write like a partner wanted me to write," not so that he was writing good, persuasive advocacy pieces.

The focus group participants practicing in large firm settings also felt that the supervision they received resulted in very little responsibility such that it took three levels of review before a letter could be sent out. They didn't feel that they had the opportunity to stretch their wings and take responsibility, because the amount of supervision was, in some ways, a little oppressive.

The third comment that young lawyers in large firm settings made about supervision was that it was often supervision by senior associates and not by

partners. More often than not, it seemed that senior associates were the only ones who had time to be a supervisor; partners either didn't have the time or weren't interested in playing the role of supervisor.

In contrast, focus group participants who worked in small law firm environments or public interest or government settings felt that they had no supervision and a tremendous amount of responsibility; they were thrown into the fire on their first day of work, expected to do a deposition or appear in court and argue a motion when they had absolutely no idea of what they were doing. Some people referred to this experience as walking a tightrope without a net or being on a desert island; they felt they had no support mechanism. Although they had a tremendous amount of responsibility and learned very quickly what their job was supposed to be, they also felt a tremendous amount of pressure and stress from being in a situation with no guidance or supervision from senior lawyers. This may have been a resource issue, namely, that at smaller firms, government agencies, or public interest groups, there was just too much work to do and not enough people to do it, so that more senior lawyers couldn't really spend the time to be supervisors.

At one of the focus groups somebody came up with a constructive middle ground, namely, that young lawyers should have a period of time where they are working under supervision, then gradually gain more and more responsibility so that young lawyers can learn how to take on professional activities independently rather than being left to sink or swim or suffocate under too much supervision.

On the role model side, people almost universally said that they didn't feel there were a lot of role models out there. This lack of role models was due in part, as Mary said, to career paths having changed tremendously between senior and junior members of the bar. Senior members of the bar had one job and spent their entire career at a particular firm or a particular government agency, whereas young lawyers, as Mary said, had two and three jobs even during their first seven years of practice. As a result, young lawyers didn't feel that there was anyone among the senior members of the bar who had the same sort of career path and approach to practicing law as they did.

Instead, many young lawyers created composite role models. They took some parts of some senior lawyers that they worked with and other parts of another senior lawyer that they worked with to create a composite role model of how they wanted to practice law in the future.

In terms of my personal experience, I know many lawyers who are wonderful lawyers, but I would not want to practice law the way they do, because they all work far too many hours. I am a part-time associate and there are few lawyers at the senior levels who have an active professional career and spend a significant amount of time with their family. But things are changing, so we'll see.

DEAN WEXLER

Anybody else on the mentor topic? David?

MR. MIRANDA

We find that many young attorneys are turning to the bar association, whether it be their local bar association, county or state bar association for some mentoring opportunities that might not otherwise be available.

Oftentimes we will see this with attorneys who are in either solo practices or small firms. The Young Lawyers Section of the New York State Bar Association, seeing that this is a major concern for young lawyers, has started a mentor program where we have senior members of the bar association sign up to volunteer to be mentors for young lawyers. By doing that they agree that they will take a call at some point during the year for 15 minutes about a topic in their area of expertise and answer a question or point a young or new attorney in the right direction.

The information pertaining to these senior attorneys is put into a handbook that's distributed to all the attorneys who are in the Young Lawyers Section. They have this handbook and it's a ready guide for them in the event that they need some assistance. It's also, quite honestly, used as a very good referral source.

So, we try to view the bar association as the attorney down the hall for young attorneys who don't have an attorney down the hall on a particular topic.

DEAN WEXLER

Is there another – Mary?

MS. O'FLYNN

In all the focus groups, we really saw how important mentoring was. It just seemed that people who didn't have it had a negative work experience, and they were the people who really were disgruntled and felt lost. In contrast, people who had good mentors, good people to look up to and get advice from, had a good experience. Everybody pretty much voiced that.

DEAN WEXLER

Kimberley mentioned that she might not have been able to find the appropriate mentor because she's more interested in how she is going to balance work and family. So, Matthew, I'm going to ask you to help us look a little more closely at lifestyle choices.

Let me give you some ideas other than just Kimberley's issue of being a mother with kids. Are you pressed to spend more time in the office than you would like to? Are you able to deal with your family obligations? I don't know about your own family, but we all have extended families. Do you feel you have

enough time for recreation, relaxation, exercise? We all read so much about how we are all supposed to be exercising. So why don't you pick it up from there?

MR. SAVA

Work/family balance is often thought of primarily as a woman's issue. While women now comprise at least half of the students at law school and are in positions of leadership throughout the state and throughout the bar, it is true that the need to make a decision on work/life balance often falls to a woman. But many more men are starting to think about these issues.

In my case, I started at a large law firm where I practiced as a commercial litigation associate for four years and decided at a certain point that my life goals and my long-term goals were not necessarily compatible with that environment. I then left and went to a smaller firm, a small commercial litigation practice where most of the lawyers at the firm have children and have committed to striking a more acceptable, at least for them, balance between work and family.

What we found in the focus groups was that, universally, every person we spoke with felt that they had insufficient time for friends, for family and for other pursuits outside of the law.

A major obvious reason is the billable hours system, especially in private law firms. With associate's salaries escalating so dramatically over the last ten years or so, there is an enormous pressure on young associates to bill more hours and to generate more revenues.

Also, as lawyers in the first seven years of practice, everything is overwhelming and it takes time to learn how to prioritize and to develop confidence in what you are doing, to be able to put your foot down and say, "I am leaving the office at nine o'clock because I need to do that."

Young lawyers starting out at the firm typically feel they have little control over their schedules and are subject to the scheduling requirements of the clients, of the partners and of senior attorneys.

Also, firm culture, in general, can exert a great deal of pressure. If all of your colleagues are staying until 9 or 10 p.m., it's very hard to leave at five.

We spoke with other people in government and public-sector work who have similar but different pressures. There are budgetary constraints and huge caseloads. We spoke with a number of attorneys from Corporation Counsel here in Manhattan who said they had a huge number of cases where they were the sole attorney assigned to the cases and it was up to them to do what needed to get done. One of the women we spoke with said she didn't have time in two years for a dentist's appointment.

The nature of legal work and the desire to do well and impress your superiors also increases the pressure that's felt by young lawyers. These pressures, though, pale in comparison to and are compounded by the fact that during the

first seven years of practice many lawyers get married and decide to start families, and that's when a lot of these family life issues come to a head.

Dual career couples face career issues. We spoke with one gentleman, an attorney from upstate, who explained that he and his wife met in law school. They both graduated at the same time and started in a litigation practice. After two years or so, they decided to start a family and so she decided to give up the practice of law.

That sort of situation can be very frustrating for someone who has just spent a lot of time and money in starting a career and then deciding for whatever reason, either to take time off or to actually leave the practice. In that case, because of their huge debt load, this woman was required, after a year or so, to take on extra legal work on a contract basis.

We did find that people are pretty good at striking a balance between work and life. Law firms are now offering part-time and flex-time arrangements to their employees. For example, Family Court has a program where two court attorneys can share a job. They literally will work two or three days a week for the same judge. Out of ten judges now in Family Court in Manhattan, three have these job-sharing court attorneys.

We also talked a lot about advances in technology in the way that computer networking and e-mail and electronic legal research have increased flexibility by allowing people to do more work at home. On the other hand, it also poses a lifestyle issue because with the advances in technology, people are now accessible 24 hours a day, seven days a week, so that poses its own problems.

So, all in all, we found that there is attention out there to striking the proper work-family balance. What we found is that what we call a balance often requires someone to compromise and even sacrifice their own aspirations.

DEAN WEXLER

It was interesting that one of the things that came up at the New York City focus group was the discussion about the difference between choosing a job because you thought that you could have the right work/family balance that you wanted, making that kind of a choice, having that being part of what went into what job you selected, as opposed to accepting the only viable job offer you had and figuring you would deal with those issues later.

I wonder whether anybody else either found this to be so in your experience, or you heard about it at focus groups?

MR. SAVA

The consensus was that most people decided, "I will do whatever I need to do at the time to get the job, and I'll deal with the family/life issues down the road."

DEAN WEXLER

And perhaps you did that and then made a choice later on?

MR. SAVA

Exactly.

DEAN WEXLER

Anybody else?

MS. GUILBAULT

What underlies that is the idea that you're not going to stay at the same job for your whole life, so you've got flexibility. If you decide that the work environment isn't something that's going to mesh with your idea of balancing, you have the flexibility to jump because everyone else seems to have the ability to jump, so you can make those adjustments.

DEAN WEXLER

Kristin, I'm going to ask you to continue and reflect upon debt and career choices and obstacles to professional fulfillment. When you come out of law school and you have a large debt burden, how does that affect your professional choices?

MS. GUILBAULT

This was the topic that created the most lively discussion. Everyone at the focus group I attended had something to say on this topic.

I remember when I was in law school, every semester you would get a form from financial aid. It would list what your law school expenses were. It would tell you how much loan you were taking out for the semester. You would have to sign a piece of paper and you hand it back in.

At the time, I didn't really think much about what I was actually doing, but the day of reckoning came for the young attorneys when they realized exactly how much loan they had taken out.

The people whom we talked to had student loans ranging between $40,000 and $75,000 or $80,000. And that didn't take into account people who had undergraduate loans. So some people, if they had undergraduate loans, could have total loans of a $100,000. A friend of mine who was in this unfortunate predicament used to joke that he was making rental payments on a lovely vacation home that he was never going to be able to go to.

So you sometimes don't realize in law school what you're going to get into at the end and that the amount of loan that the young lawyers are carrying really had a great impact on every aspect of their life, at least for the initial seven years. It affected the type of job they were willing to take.

For example, people who as first-year law students wanted to go into Legal Aid or work for the government or a not-for-profit agency found at the end of the day that their loan payments were going to be in excess of what they were going to be making and they wouldn't be able to make ends meet if they took that type of job.

For others, their debt was a factor in evaluating the job that they took even if it wasn't a choice between public and private practice. For example, someone said they really liked this particular law firm, they liked its characteristics and environment, but that law firm couldn't offer them a salary from which they would be able to actually pay their law school loans and live, so it affected very much the type of job that they chose.

In addition, it had a great impact on personal choices. It had an impact on when people decided to buy a new car, when they could afford a home, when they could get married and have children. And in some cases, people expressed the feeling of being trapped because of their student loans.

If they began their legal career at a particular law firm where perhaps they didn't like the environment that they were in, but they were making a very good living, they felt trapped there. They couldn't jump to something else because they wouldn't be able to make their loan payments.

Lastly, my perception is very much an upstate one. That's where I practice and that is the focus group I attended. I know that in some cases if you work in New York City, you make more money, but your living expenses are more, although law school loans are going to be about the same for everyone across the board. Upstate, there was perhaps a greater reliance on salary increases and bonuses, which in some smaller firms are few and far between depending on how well the firm does.

But for those people who were living hand to mouth in the early years in that they were making all their payments on their house and their student loans, the salary increases and bonuses took on a much greater significance. That was the extra money that they were going to go on vacation with. That was what they were going to use to put a down payment on a new car.

So for me the loans were something that I didn't really think about very much in the beginning, but it really had a great impact on you when you began to practice.

DEAN WEXLER

Anybody else?

MR. MIRANDA

Yes, I'd like to comment on it.

Our Young Lawyers Section oftentimes posts a question for our newsletter.

And earlier this year, we posted a question that we requested responses for.

The question was an innocuous one: "Are you satisfied with your decision to become a lawyer?" That was it. It didn't mention anything about student loans or pro bono work. However, the response was really overwhelming and quite startling, especially for someone like myself who is practicing upstate where the financial issues and the hourly requirements are not quite as severe.

I want to share some of the responses with you. And if you bear with me, you'll see a real disturbing pattern amongst those who are not satisfied. Many are satisfied, but for those who are not satisfied, here's what they said:

"The biggest worry is my $165,000 student loan debt. I work at a great firm, but I still live at home so that I can pay my debt. I'm making $28,000 a year and I have over $100,000 to go to pay the loan to make up for all costs incurred. I work to pay my loans and parking."

"I'm a young attorney saddled with an enormous debt, which literally affects every personal and professional decision I make. Law schools do nothing to address these issues. In fact, there was no counseling or education with regard to the burden of student loan debt. In fact, I was encouraged to borrow money during law school.

"I am precluded from being the attorney that I went to law school to be. Public interest work is out of the question unless I hit the lottery because my debt. I believe that law school was a huge mistake."

"If the government could release my debt, but take my law degree back, I would seriously consider the option."

Actually giving your law degree back to erase the loans is a comment that came up in one of the other focus groups. Attorneys are working, they're productive, but in retrospect, they would be happier to start all over from scratch.

"I find my job as a public interest legal service attorney to be extremely rewarding. The biggest downside to my job as a public interest attorney is the financial aspect. I find it very difficult to make ends meet. Approximately one-third of my take-home pay goes towards servicing my law school loan."

And then, finally, "I'm immensely dissatisfied. My practice largely deals with the indigent. I have watched my loans balloon to $175,000. I have no prayer of ever paying them off. I have no prayer of ever buying a house. I have no prayer of ever having a life."

In fact, this comment was so disturbing to the editor of our publication that he reached out to this person because he thought maybe he was having some other problems that needed intervention.

So the law school loan issue is a terribly important one, one that we as a profession must address and that the law schools must address as well because this issue is all-encompassing. As one individual said, every personal and professional decision they are making is affected by the loan issue.

And when we talk about pro bono and the work that we're doing, it all

goes back to the obligations that we now have from law school. Someone mentioned earlier today, I believe it was Mr. Schwarz, that these issues aren't new. He's correct; it's not a new issue. It's certainly true that young attorneys coming out of law school have always had burdens, but the fact of the matter is, today the issue is much worse than it was before.

Two years ago at this Convocation, Judge Kaye stated that over the past 20 years law school costs have increased 570%, and I say that over the last two years, it certainly has not improved. We as a profession must look for ways to reduce this burden so that when we have young attorneys coming out, they are not overwhelmed with law school debt and they are able to pursue the careers that they went into law school to seek.

DEAN WEXLER

Jessica, we have heard a lot, particularly this afternoon, about the obligation of more senior attorneys and members of firms to promote ethical lawyering and to help younger attorneys. This should be a goal, a mandate, to help younger attorneys understand how to deal with ethical dilemmas.

And I'd like to ask you how in reality it works from your vantage point. How have you learned to resolve ethical challenges and problems? Have you seen colleagues or opposing counsel or judges behave in ways that you found troubling? Do you discuss these issues with other lawyers in your office? Do they give you some guidance? How does it work from the trenches, from the young lawyer's perspective?

MS. VASQUEZ

The work I've been doing is in the area of public interest law, so my answer is geared toward that area.

A lot of the ethical issues that I've seen and heard and that people have spoken to me about have to do with in-the-courtroom type of ethical issues: What do you do when your client is about to say 'X'? Something that's clear, that you know, and that you can remember from your ethics class or professional responsibility class and say very clearly, "You are supposed to do 'X,' 'Y,' or 'Z.'"

But then there are the fuzzier issues that come up when you have things that aren't quite so clear. For instance, if you have a supervisor in whatever type of setting trying to do a certain thing that you believe is unethical – and I personally was in that situation – the dilemma is figuring out how to interact with your supervisor at that moment. That's not something you learn in law school. It's not something that's in the Code. So learning how to actually address ethical issues is something that's very daunting, and it's something that you don't learn in, and it's hard to teach in, law school.

In my situation where my supervisor was trying to do something that I believed was completely, utterly unethical, and that I did not want to be associ-

ated with in any way, I did something that maybe other people would be somewhat afraid to do, which was, I asked for a recess. I requested the case to be recalled and I called the ethics hotline.

The New York State Bar Association has attorneys on call. The New York County Lawyers Association, as well, always posts a monthly attorney on call in its newsletter. And so I reached out to a professional ethicist to answer the dilemma. I also looked up ethical opinions on the Internet, I believe through the New York State Bar Association. That's something that I personally knew about that other people might not have known or might not have felt comfortable reaching out to do.

Other situations that I've seen where I don't believe the attorneys have fully acted in a proper way have to do with things in the courtroom, things that are quick and you can't actually take the time to go back to your office to do the research. And it has to do with things that are mixed with not just ethics, but also professionalism. For instance, how to interact with an opposing counsel, how not to make that your enemy.

In some of the focus groups, there was quite a lively discussion about how to interact professionally with opposing counsel or the opposing side. And some of those discussions dealt with the perception of attorneys. Some people assumed that the other side was going to misrepresent whatever they were saying. Some people said that they automatically have that assumption going into the negotiations. Some people believed that no matter what, they were not going to rely on what opposing counsel said, whether it was a promise or whether they were in negotiations. And they said that everything got documented. And so if somebody actually said that, they write letters saying, "In our conversation, we agreed to 'X,' 'Y' and 'Z.'" They sent a letter to confirm that, so that the other person couldn't back out of whatever promise or agreement.

That's something that we have to figure out how to deal with because it's a perception of the profession and it has to do with professionalism. It's something that we all have internally and we take with us wherever we go, whether it's a law firm, a courtroom setting, the public interest world, or a policy committee. And so to have a perception of lawyers that assumes they're going to misrepresent or they are not going to be quite as forthcoming is something that is very hard to grapple with.

Some of the other things that the focus group came out with and some of my conversations with other attorneys also have to do with the interaction between ethics and professionalism. For instance, there was someone whom I spoke with who said that whenever she went out into the public meetings where there were general lay people, nonlawyer people, she was afraid to identify herself as a lawyer because immediately someone would label her, whether she was misrepresenting or she's defending criminals, but the label of being a lawyer would affect her conversations with lay people. And so she always said, "I'm an

advocate for" this group. When you started asking her more questions, you realized she was an attorney, but she was afraid to actually just come out and say that because of the perception of the profession.

And one of the last things that came out in one of the discussions had to do with something that has already been touched upon and that's the concept of a real lawyer. I've had to deal with that personally on two different fronts.

One has to do with having clients whom I represent who are indigent and their perception of what a real lawyer is. Sometimes they say, "You know, you're not a real lawyer. If I had money, I could get a real lawyer." I try to educate my clients into understanding that a lawyer is a lawyer. It's something that has to do with the media. It has to do with other attorneys and how they view the profession, but also it has to do with the perception of public interest law versus other law, corporate law, and the perception of whether or not public interest lawyers are doing real lawyering. That's something that we all have to try to address as well having some understanding and appreciation of the value of public interest lawyers as real lawyers.

And the flip side of that has to do with how the media portrays the lawyers. For instance, in my family, my father is into true crime. He only reads true crime and biographies. I'm the first lawyer in the family. My father's perception was that I was going to be become a criminal defense lawyer like Perry Mason and that I would get a witness on the stand to break down, to confess to a crime. And he had asked to come and see me in court.

Now, I practice in Family Court, which is the stepchild of all courts, and I was afraid to have him come in and sit in on the court. I was afraid of having his perception of the courtroom and his perception of professional lawyers change because he had this elite vision of people in suits. I was afraid of his seeing judges scream at litigants, seeing the way attorneys interact and the view that lawyers have of our law. And so, to this day, I have avoided allowing my father to come and see me in court, which is quite a shame, but it's something that I thought of quite a lot because it was something that had to do with my view of the profession and I didn't want to skew his view.

DEAN WEXLER

Just two more questions.

One relates to what Jessica was talking about. But I would like to move away from the kind of ethical obligations that we have to behave as appropriate lawyers to issues of office civility or good manners among professionals. And we are talking about those early years of practice. How do you learn that?

I had a call recently from a senior partner at a New York law firm and he said, "I would like you to help me with something," and it's something that we are trying to think about in the law school. "I find that too many of the young associates here are rude to the support staff; they don't seem to know how one

behaves. I don't know what business casual means these days, but they don't dress appropriately. How do you tell someone that? There is an associate who comes into my office and is chewing gum all the time. And particularly if it's a young female associate, I feel that making any comments about appearance or behavior might be taken the wrong way." And I was pretty upset about hearing this, although he wasn't really talking about my graduates, necessarily. He said, "All of these young associates, they don't know how to behave."

How do you learn that? How did you learn it? Do you ever have to deal with those things? Do you watch your peers? Is that helpful? Harmful?

Anybody have a thought on that? Kimberley?

MS. HARRIS

This past Wednesday there was a profile in The New York Times on Henry King, the former managing partner of Davis Polk.[1] Mr. King gave the introductory talk to new associates when I started at the firm. It was from him that I learned to be a civil lawyer.

Mr. King told us from the very beginning to always be polite. No matter what position people hold in the firm, he told us to always return their phone calls within 24 hours, even if you don't want to talk to the person on the other end of the line. You should always be polite even if an adversary has just done the most horrible thing to you. And that's something that many people at Davis Polk have carried with them always and that has been a real mark of pride in terms of how we conduct ourselves with our adversaries in court and with our clients. As a result, it's Davis Polk's reputation that we are a very civil place. That reputation for integrity and civility is one of the most valuable assets we have at Davis Polk.

Candace Beinecke said you have to start from the very beginning, and I think that's how you learn civility. It's the values that the firm teaches from day one and the values that they seem to reward that are the most important.

MS. O'FLYNN

It ties into something we talked about already: you learn by example. You find those people in your work environment whom you value for how they deal with themselves on a daily basis, and you deal with opposing counsel who do such horrendous things that you never want to do things like that. That came up in a lot of focus groups.

DEAN WEXLER

David, you gave us a perspective about what you think the Young Lawyers group of the State Bar is doing to be helpful. What role did pro bono projects or community work or bar association work play in your development as a

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1– Robin Finn, For Help, Cathedral Turns to a Legal Authority, N.Y. Times, Nov. 6, 2002, at A22.

young lawyer? Did you receive support for that kind of activity in whatever your work environment was? Do you want to start us off on that?

MR. MIRANDA

Certainly.

Young lawyers, like all lawyers, have demands upon their time, but their demands are particularly unique. Generally, they are starting out and putting in longer hours. In addition to starting their careers, oftentimes they are starting new families, and they have these stresses and demands that come with starting and continuing young families. Those who are fortunate enough to obtain jobs that provide them with salaries that are able to have them pay their loans and support their families are oftentimes faced with tremendous demands upon their time at work. And it's the balancing of that work environment and those work demands with their civic responsibilities that provides much of the stress.

Steven Krane, the past president of the New York State Bar Association, spoke two years ago here about what young attorneys are faced with respect to going out and practicing pro bono activities or civic opportunities. And he said, generally, young attorneys are faced with the attitude of: "Do it on your own time. Meet your quota. Meet your 2,300 or 2,500 hours and God bless you. Go serve on a committee. Handle a pro bono matter. But try to get on the committee that meets between two a.m. and five a.m. in the morning because otherwise you are working for us."[2]

Despite these demands and constraints, there's a good number of attorneys who are committed to their civic and pro bono responsibilities, and I am often surprised at the level of commitment that we can see in the bar association from young lawyers.

The attorneys whom I am dealing with certainly find, like myself, that their bar association or civic associations and volunteer work is amongst the most professionally rewarding work of their careers. Especially for young attorneys who are putting in tremendously long hours, it's those activities that remind them and remind us of why we became attorneys.

And it's that type of activity, whether it takes a day or whether a young attorney has to use one of his/her precious vacation days to perform a pro bono activity or go to a bar association meeting or pay money out of pocket to go to an event, it is that time that is terribly well spent because it reminds us why we are attorneys and it rejuvenates us so that when we go back to the office we are able to continue with the understanding that we are, in fact, doing some good.

So, it is terribly important. I see young attorneys trying to do what they can with respect to their responsibilities. They would like to do more, and we would all like to see that.

2– See 1 J.N.Y.S. Jud. Inst. Prof. Law 113 (2001).

DEAN WEXLER

Anybody else?

MS. HARRIS

Trying to balance work and a family life squeezes out the opportunity to do any other professional activities. Although I would love to be involved with bar activities, I regret that I just can't possibly fit it in. And I don't know what the solution to that is; perhaps more activities could take place during the day. I'm sure the firm would be supportive if I wanted to participate in bar activities. There just isn't time.

DEAN WEXLER

Okay, you [the audience] have been doing a lot of listening this afternoon and I wonder if anybody has a question for any of our panelists or a comment.

JENNIE R. O'HARA, ESQ.

CHAIR, YOUNG LAWYERS COMMITTEE OF THE
ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK

I was able to participate in one of the focus groups. I was struck by something that Mr. Schwarz said this morning, and I wonder if any of the panelists have any observations on this: Is there anything we can do to help ourselves as young lawyers? We are getting a lot of attention about what the firms and organizations and government agencies are doing wrong, but did you notice anything or make any observations about approaches young lawyers are taking that could be improved or ways that we could go about things to make things better in the future?

MS. HARRIS

One thing I should have mentioned in talking about mentoring is that a lot of people commented that finding a mentor was self-initiated. Although a lot of firms and organizations had a formalized mentoring program, it appeared to work best when young lawyers found someone and developed that relationship on their own.

And many people talked about doing that; going out and looking for the people who they thought could provide them with the guidance and the role model that they needed or wanted in the course of their career. So one thing that young lawyers can do is to be active in looking for a mentor.

MS. O'FLYNN

Along the same lines, just listening to all these different focus groups, mentoring specifically came up as one thing that we – people in the first seven years

– can do. We can reach out to young people coming in because it seemed as if that was something people were really hungry for, some sort of support. So maybe that's something we can all try to do.

DEAN WEXLER

The gentleman in the back?

DERRYL ZIMMERMAN, ESQ.

MEMBER, COMMITTEE ON LAW STUDENT PERSPECTIVES
ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK

My name is Derryl Zimmerman. I am on the Committee for Law Students' Perspectives at the City Bar; we put together programs for students to acclimate them to the transition from students to lawyers. My question to you is: Of the focus groups, what percentage of the students or young lawyers had no idea what they were getting themselves into? And I would suggest that the bar needs to spend more time with young people who are interested in becoming lawyers, really introducing them to what the lifestyle is like and what the work requirements are like and what preparation is necessary to go after this type of career.

MR. SAVA

Around 50 percent of the people we spoke with just fell into law school. A lot of people mentioned they had a liberal arts degree and didn't know what else to do with that but go to law school. A number of people we spoke with were in careers and made a decision to go to law school because they thought that would advance their career goals.

We didn't do a statistical review of this, but it seems to me that the people who had gone back to law school with a specific mission were, for the most part, satisfied with their career and a lot of people who sort of fell into law school and fell into a job were the ones who, after a few years, would be more likely unsatisfied. You made a very good point: people need to think about what they are getting into and the financial burden they are undertaking.

DEAN WEXLER

The woman right here?

COLETTE FOSTER-FRANCK, ESQ.

NEW YORK LAW SCHOOL

To further that point, if one talks to students or young lawyers who are involved in transactional work, one finds that law school prepares one more for

litigation. A lot of my colleagues who are in transactional work are blown away by what they are expected to do, which is a lot of proofreading, a lot of very basic marking up of documents. They are, like, "is that what I went to law school for?," and that's the beginning of the end for many people because I don't think they understood what they were getting into and I don't know how well law school is preparing those students who want to go into transactional work for what the realities are going to be, at least in the first few years.

DEAN WEXLER

The woman in the front row?

SUSAN R. BERNIS, ESQ.

ROYAL & SUNALLIANCE

I am curious. I recall that in some of my earlier days of practice there was a real pressure on young lawyers to bring in business and, of course, it was a circular problem because you didn't necessarily have the skills or the knowledge to go out and bring in business. Did you hear that in your focus groups; the concern of the pressure to actually bring in business?

MS. GUILBAULT

I'll address that because, at least at the law firm that I am in now, there has been such a focus in the last five to seven years to have attorneys bill, bill, bill, bill. But then they had their 25th anniversary and they started to look back and say, "we would like to be around for another 25 years. What can we do to ensure that?"

One of the things that they saw was that they were creating people who were very good at billing but not very good at bringing in business. So, while billable hours are very important, they started to stress the idea of getting involved in bar associations, getting involved in civic opportunities, joining a not-for-profit board, getting active in the community. The idea was that if they instill this in associates who are two, three, four years out, over the years that will develop into contacts and by the time they get into their seventh, eighth, ninth years and into partnership, they will have those contacts that will bring in business.

And so at least where I am, they are saying, "We don't want you to bring in business now. That's not that important because we want you to start out making those contacts so you will have a framework to have business later on."

MS. BERNIS

You didn't hear that cited as one of the problems?

MS. GUILBAULT

I did not.

MS. BERNIS

Very interesting.

DEAN WEXLER

The gentleman here, second row?

MICHAEL MARKS COHEN, ESQ.

NICOLETTI HORNIG CAMPISE & SWEENEY

One of the ways to deal with the problem of those who fell into law school is when you finish, to try to match up your interest in the field with your legal skills. My question is: To what extent did you feel that career services in the school that you attended assisted you in finding a field of practice that you might enjoy working in?

MR. SAVA

I graduated in 1994. It was not a great market for graduating attorneys, so at that point there wasn't a lot of emphasis on where you would like to work. It was more of a question of where are you going to get an offer from.

So, you can strive to find the perfect job, but because of economic considerations it's often a question of just finding any job.

MR. MIRANDA

To specifically address your question about the effectiveness of career services, the common understanding is that many career services in law schools are concerned with making sure that the top five or ten percent are focused on and promoted because that's what they need to do to try to develop their national reputation. The rest are left to their own devices to find a job somewhere.

So the career services activities of law schools are not really addressing the concern that you raised about trying to place an attorney in a spot where they are going to have productive and successful careers. Oftentimes it's up to just the attorney to find their own way.

MS. VASQUEZ

The only thing that is a little different is with the public interest work. I have personally spoken at almost every law school in New York City about doing public interest work, and I know that they have many panels on different types of public interest work, whether it's government or working at a legal services agency. So most of the law schools are doing a good job in promoting different

types of public interest work.

There are some incentives for postgraduate public interest work that benefit the law schools as well. For instance, I was a Soros postgraduate. I got a fellowship and it reflected well on my law school, but it also was something to promote a different type of career path for a law graduate.

So I know that the law schools are all doing good work in the area of public interest, which is probably a little bit different from being able to describe and have different programs for other types of law.

CHARLES CRAMTON, ESQ.

CORNELL LAW SCHOOL

Just to comment from the law school's side I'm one of the deans at Cornell, it depends on when you graduated from law school. The range of services provided by the career offices today is significantly different than it was even five years ago, ten years ago, fifteen years ago.

Obviously the public interest area is one whole area, and so is clerkship counseling, but you can be sure that at a lot of law schools, the career offices are putting a lot of effort into finding those jobs for the kids in the bottom half of the class. They don't have to worry about the kids at the top end of the class because they are going to get positions anyway.

MR. COHEN

I disagree with the dean, although I'm not as familiar with the services that are being provided by the career services units in the schools. It seems to me that the career services units in the schools aren't reaching out to the bar. Those who are successful or regard themselves as successful in the bar see what it was that led them into those fields that they feel so comfortable in. Law schools could extrapolate from that by questioning the students after their first year to see whether there might be a confluence of interest, so that they could guide the students into taking courses in their second and third year, which might assist them when they graduate in deciding which field they go into.

Let me give you this as an example. I know it's a humorous one, but it is true. I discovered quite by accident that 75 percent of the male lawyers practicing maritime or international law collected stamps before the age of ten. Now, in the general population, only about 5 percent of males collect stamps. I always ask this question when I interview, but I have to explain why.

But the point is that assuming that was valid – and I didn't do scientific research on it, but I did take a survey on it at the International Law Section of the Bar Association – assuming that's valid and there are other connections that those who like ballet would do well in entertainment law or something like that, these are the sort of things the law schools ought to know about and ought to

be counseling students about, particularly that group of students who fall into law school not knowing what they want to do.

The ones who come out of a field and want to promote themselves in that field already know that and that's why they are more successful – because they know that they are comfortable in the field. They simply want to advance further. So I don't really agree with you that the law schools are doing a good a job as you might think.

MR. CRAMTON

They can always do more, but when you get down to the level of whether they collect stamps or not, that's a bit much. Our career services obviously spend a lot of time one-on-one talking about what the students want to do, what types of jobs, what type of firm would be a good match for them.

When I went through it, it was a minimum perspective. "Here are all the firms that come to campus to interview; come interview with them if you want. If you don't want to, if you have one that doesn't come to our school, here's the director and start sending letters." Things have progressed a long way from that.

DEBORAH EPSTEIN HENRY, ESQ.

FLEXTIME LAWYERS

I find what Kim said about there not being role models for young lawyers to be incredibly troubling because it relates to the fact that there are people who are already in their second jobs at that early stage of their career.

And I'm wondering what, if anything, your employers are doing to address that issue of work/life balance and role models, so that there are people whom you can look to who are senior and about whom you can say, "I want to be that person." Not a composite of various people because that's not a reality. Just seeing people who are senior, who are in positions of power, who are successful, both professionally and personally. Are you doing anything in that area?

MS. HARRIS

We have a part-time program at Davis Polk to address the issue of work/life balance. More and more people are deciding to go part-time when they have children. So it will be interesting to see what will happen as the firms have more young women who are working part time.

In addition, over time, there are more and more women partners in firms. That is a wonderful development because there are now women partners having children who are dealing with the same issue (work/life balance) that associates are dealing with.

So I'm encouraged that as things progress and we have more women partners and more women using the part-time option, there will be more role models

for young lawyers like me trying to balance being a young mother and a practicing lawyer at the same time. With all due respect, a 50-year-old man might not necessarily have the same issues or face the same challenges in trying to be a lawyer.

DEAN WEXLER

This woman has her hand up and then we will have one more, so let's –

ROSENBERGER AUSLANDER, ESQ.

CARTER, LEDYARD & MILBURN

Yes, I'm Rosenberger Auslander and I'm with Carter, Ledyard & Milburn on Wallach, Street.

I'd like to follow up on what Jessica mentioned a couple of times about the later end of this one- to seven-year term, which is when, if you're an attorney and you like it, you are going to be looking at long-term career satisfaction. At this point, there are not very many cuts where women are 50/50 of the lawyers. Women are 50/50 of the classes coming into the law firms, but they are struggling to get that equity in the partnership. There has been change and there has been development, but in my experience (I'm attempting to be made partner this year), it's still harder for women than it is for men.

The question is, what kind of mentoring or support or consideration or discussion has there been to continue the push on this issue? The issue, specifically, of advancement to partnership of minorities and women.

MS. VASQUEZ

I know that some bar associations have taken it on. For instance, the City Bar has a workshop on how to make partner. And some of the other bar associations are doing similar programs for women in the profession, but other than the bar associations, I don't know who else is doing that.

MS. O'FLYNN

Coming from a part-time associate, that is a challenge, but –

MS. GUILBAULT

My firm has women who are part-time partners and then come back. The firm has realized that it's important to invest in a woman who goes part-time, because at some point the children will grow up and she will come back and she will be able to contribute on a more regular basis than perhaps she did for a number of years before.

The firm is starting to realize that investment will come back to them threefold over because it will reduce associate turnover. If you're investing in associates and you train them, you're providing them with flexibility. If you offer

part-time, that's going to perhaps have them stay and be a greater asset for you and they will be available for partnership.

DEAN WEXLER

Last question.

G. ROBERT WITMER, JR., ESQ.

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

The diversity question is one we need to look at. Firms will do it not just because it's the right thing to do, but because it's in their self-interest. Due to the outside activities of its members, a diverse firm will have contacts that an all-male firm will not have.

DEAN WEXLER

I hope that you will continue your conversations with each other and with the panelists at the reception, but I think Paul wants to say a few words.

MR. SAUNDERS

I do.

My words are words of thanks to Dean Wexler and to all of the members of the panel for an extremely stimulating and thought-provoking and very well-prepared presentation.

I had the opportunity this morning, as we were having a little breakfast reception outside, to witness a conversation between Mary O'Flynn and Jessica Vasquez and Chief Judge Kaye and Judge Ciparick of the Court of Appeals. And I thought to myself, how much times have changed. However many problems we think we have in the profession, a conversation like that, that's able to take place in a building like this, tells me that our future is secure.

I was very moved by that conversation, as I hope all of you were moved by the very excellent presentation and conversation that we had today, so let's give all of our panelists a round of applause.

OPENING SESSION – DAY 2

PAUL C. SAUNDERS, ESQ.
CONVOCATION CHAIR

Good morning. My name is Paul Saunders. I'm a member of the Judicial Institute on Professionalism. On behalf of the Institute, I would like to welcome you all to the second day of our second biennial Convocation on the Face of the Profession.

As you heard yesterday, the Judicial Institute was created by an administrative order of Chief Judge Kaye several years ago to be a permanent institute in the State of New York to address issues of professionalism in the law and, in part, to create a dialogue between the academy and the bar on issues of professionalism. Among many other things that the Institute does, we held our first convocation two years ago on the face of the profession. We decided then to examine issues relating to why college graduates went to law school in the first place, what they expected to find in law school, whether they in fact found what they expected to find, and what their ambitions were when they graduated from law school. And that convocation, the proceedings of which are printed in our first journal, resulted in a number of practical initiatives that the Institute is now in the process of trying to implement.

This time we are moving one step further in time, and we are examining issues of professionalism that young lawyers face in the first seven years of their practice. Our thinking is that it's probably in that period of time that issues of professionalism are first formed. Those are clearly among the most difficult years that young lawyers face, because young lawyers have to deal not only with issues of career and success in their career (e.g., getting a job and building skills), but also with issues such as debt, family building, and trying to balance a professional life with a life of community service and a life of family. A lot has been written about that period of time, but more from the perspective of dissatisfaction than what we wanted to address, which was not so much why young lawyers are dissatisfied with what they're doing, but how they form the idea of professionalism and what can be done concretely during that period to foster the formation of professionalism among young lawyers. So that's what this convocation is about.

Yesterday we had an extremely professional, thought-provoking series of presentations not only by academics and practitioners, but also by young lawyers who shared with us some of the practical and concrete obstacles that they faced, or that other young lawyers with whom they interacted face, in the early years of their practice.

And in today's discussion, we're going to bring that discussion full circle. We're going to hear from two presenters, whom I will introduce further in a

moment, who have actually dealt in a concrete way with trying to make changes in the way in which notions of professionalism are formed and the way in which lawyers learn to balance their work life with their community life and their family life.

We heard a lot yesterday about the subject of mentoring. We're going to hear more about that subject today. It's an important subject. In order to know how to deal with the subject of mentoring, it's important to understand from which perspective one is looking when one talks about it. From the perspective of practicing lawyers who are somewhat long in the tooth, mentoring takes on an entirely different notion than it does from the point of view of the mentee.

For more senior lawyers, mentoring is a way of, selfishly perhaps, creating young lawyers who will follow in their footsteps, who will be able to carry on the traditions of the profession. It's a way of passing the torch to younger lawyers, and teaching them what it means to be a lawyer, so that the profession will be able to regenerate itself.

From the point of view of the younger lawyer, however, mentoring takes on an entirely different perspective. From the point of view of the younger lawyer, mentoring addresses the questions: "How do I learn to do what I'm doing? How do I learn the skills that I need to be an effective lawyer? How do I learn what it means to be a lawyer? And who are the role models to whom I ought to look as I learn how to practice law?" So, when we talk about mentoring, it's important to understand the perspective from which we are looking.

Both of my sons were classics majors in college, and I took the opportunity last night to look through some of their old texts. I ran across the Odyssey. It turns out that Mentor was a character in the Odyssey. I didn't know that until last night. Mentor was the old friend of Odysseus to whom Odysseus entrusted the care and education of his son Telemachus as Odysseus went on his travels around the world. Although Odysseus wanted his son to have a mentor, my suspicion from the little that I was able to read last night, and not in Greek, is that Telemachus didn't want much of a mentoring relationship at all. He didn't want to have this old man telling him what to do. But that's who Mentor was. And that's where the notion of mentoring comes from.

In my own case, I practiced law both with and without mentors. When I graduated from law school, I was drafted, and I went into the Army JAG. When I practiced law in JAG, I didn't have a mentor. There were no mentors. The more senior officers could not care less. They had no idea what the younger lawyers were doing. They never interacted with the younger lawyers.

And I still remember the very first time, just out of law school, when I had to advise one of my clients – and that was a new notion to me, too, having a client – to plead guilty. It was a very frightening experience for me. I was running through my mind all the things I had learned in law school about criminal law and criminal procedure. "Do I have a defense?" It was very hard for me, a

brand new lawyer, to advise my client to plead guilty and spend ten years in Leavenworth. And there was no one I could go to for guidance. There were colleagues, but they didn't know any more than I did. So practicing law without a mentor is very hard.

And then when I came to my current firm out of the Army, I entered a structure that was entirely different. Mentoring was all over the place. There were people to whom one could go to learn how to do everything that we did. The latter, believe me, is much more satisfying and to be desired than the former.

I mention that because when we talk about mentoring, we sometimes think of it only from the perspective of the large law firm. How do senior lawyers mentor junior lawyers in their law firm? How do they pass on to the junior lawyers not only the skills that they need to learn how to practice, but how do they learn what it means to be a professional? How do they learn what it means to deal with ethical problems and clients and the practice of law generally?

So, in the large firm model, the mentoring structure already exists. And what we need to do is simply to encourage that structure to work the way it was designed to work.

The same is not true with respect to the smaller firm model or the solo-practitioner model. The solo practitioner is very much like I was when I was in the Army, with no one to go to ask, "How do I do this? What should I do when I run into this problem? Whom do I call?"

One of our panelists yesterday, Jessica Vasquez, told us about a situation in which she ran into an ethical issue raised by the conduct of one of her superiors. And what's interesting to me is that she called not somebody in the organization, but the ethics hotline of one of the bar associations. So she had to go outside of her organization to try actively to find somebody who would advise her on how to deal with the ethical issue that she faced.

So when we talk about mentoring, it's important to ask ourselves how the notion of mentoring ought to apply to lawyers who are in very different practice settings. It's different in the government. It's different in large public service agencies like the Legal Aid Society. It's different yet again in much smaller public interest organizations like the one where Jessica Vasquez was working. And it's also different for solo practitioners and lawyers in very small law firms. It's a very important topic.

We're going to hear a lot more about the subject of mentoring today. And I hope that before the day is over, you will help us come up with some concrete ways of improving the notion of mentoring for younger lawyers. That's one of the things that we'll talk about today.

I would now like to introduce the current president of the Association of the Bar of the City of New York, a person who I'm sure is well-known to all of

you. The Association of the Bar of the City of New York is a co-sponsor of this convocation. And I'm delighted to introduce to you Leo Milonas, the former Chief Administrative Judge of the State of New York, former Justice of the Appellate Division, First Department, and currently, in addition to being President of the Association of the Bar of the City of New York, a partner at the law firm of Pillsbury Winthrop in New York City.

E. LEO MILONAS, ESQ.

PRESIDENT

ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK

I guess mentoring didn't work because we Greeks were concerned about others bearing gifts.

Lou and I were chatting earlier when we got in here. He has called me a lot of things, but today he called me a landlord. I'm your landlord as the President of the City Bar. I reminded him that, unfortunately, I'm here only on a very short-term lease.

So, welcome to all of you on this second day of this very important Convocation. This is one of the most significant things that we could address. Chief Judge Judith Kaye identified many of the problems that face our profession today. I don't have to. We know what they are: the billable hours, the law school, etc.

But some sixteen years ago Chief Justice Rehnquist spoke about the problems in our profession. It's remarkable, if you read just part of his comments, what he said. Not much has changed, or let me put it another way, I'm not sure what we've done in the last sixteen years. But I will just read part of it to you:

> My particular interest today is in suggesting a few questions – questions worth answering, I think – that I see raised by the changes in modern practice alluded to earlier.
>
> First, there are several questions that spring from what, to the outside observer at least, look to be fairly substantial changes in the life of an associate in a relatively large firm. What are the consequences to the associate, to the profession, and to the public at large if the associate is expected to bill two thousand or twenty-one hundred hours per year? Does such an associate have time to be anything but an associate lawyer in that large firm? At the time I practiced law, there was always a public aspect to the profession, and most lawyers did not regard themselves as totally discharging their obligation by simply putting in a given number of hours that could be billed to clients. Whether it was "pro bono" work of some sort, or a more generalized discharge of community obligations by serving on zoning boards, charity boards, and the like, lawyers felt they could contribute something to the community in which they lived, and that they as well as the community would benefit from that contribution.

> It seems to me that a law firm that requires an associate to bill in excess of two thousand hours per year, thereby sharply curtailing the productive expenditure of energy outside of work, is substantially more concerned with profit- maximization than were firms when I practiced. Indeed, one might argue that such a firm is treating the associate very much as a manufacturer would treat a purchaser of one hundred tons of scrap metal: if you use anything less than the one hundred tons that you paid for, you simply are not running an efficient business.
>
> How do associates react to this treatment? Is the instinct of the young lawyer faced with staggering hours to favor exhaustive and exhausting research over exercising the judgment necessary to decide whether ten more hours of research will really benefit a client?[1]

Obviously, our profession faces formidable challenges. But let me tell you what I consider to be terrific about our profession. Let me give you the good news. And that is that our young lawyers are wonderful. They are the product of what we want them to be and what we hope for as parents.

In addition, our profession is much richer than ever. By allowing women to enter our profession, we have doubled its talent base and we've added depth and dimension to it.

Our young lawyers are concerned individuals, concerned about public welfare, the environment, about civil liberties and human rights. They're balanced and they want balanced lives. They want to be connected and they want to be empowered. They are productive, hard working, inventive and honorable. They fulfill the mission which Fritz quoted yesterday – I believe he was quoting Holmes – "to share in the passion and the action of the time."

We shouldn't let them down. We owe them a profession which reflects their character and fitness. And, as Fritz said yesterday, we should appreciate who they are, and the profession should accommodate itself to the complex and admirable needs of our young, rather than the other way around.

Let me share with you an experience that I had not too far back. I was at a meeting with some 25 managing partners of our largest law firms. They were talking about various problems confronting them. One of the major problems was the drain of associates. One firm indicated that in the last year they lost 50 percent of their first-year associates. And they were struggling with what to do about this problem. And finally they decided, maybe we should talk to them. Isn't that an incredible and intuitive idea?

Our youth really represent the vital ingredient for a meaningful and honorable future for our profession. And they deserve a place at this table. Maybe we should talk to them and have them share in this problem and get their ideas. Believe me, as I said before, they're wonderful.

1– Chief Justice William H. Rehnquist, The Legal Profession Today, 62 Ind. L.J. 151, 153 (1987).

I hope that this convocation will shed some light on the path our profession should follow to nurture and grow this wonderful resource. Again, welcome. And I'll be here to help you.

MR. SAUNDERS

Thank you very much, Leo. I also want to thank Leo for making this facility available to us for this convocation. Thank you very much to you and to the other members of the City Bar.

I also want to just say a word about those people who were responsible for putting this convocation together before we get on with our program. These convocations don't just happen. They take a lot of work. And our mentor, the person primarily responsible for the inspiration behind the work that we do, is Lou Craco. So I want to thank Lou Craco, the Chair of the Judicial Institute, for his inspiration and guidance.

I also want to thank the other members of the Institute who were particularly important in putting this convocation together: Judge Ciparick, a member of the Institute and of the Committee, George Farrell, Seth Rosner, Dean Leebron, and Bob Witmer. Thanks to all of you. And most important, thanks to Catherine O'Hagan Wolfe, without whose work none of us would be able to do the work that we do. She has been absolutely instrumental in the work, not only of the Institute, but also in the preparation of the convocation. Thank you very much to Catherine and to her colleague Takemi Ueno for the work they did in helping us put this together.

PANEL III – PRACTICES THAT ADVANCE EDUCATION AND ADDRESS OBSTACLES

PAUL C. SAUNDERS, ESQ.
CONVOCATION CHAIR

Let me introduce the members of the third panel discussion. As I alluded to earlier, we have looked at the issues from the point of view of the academics and some practitioners. We have looked at the issues from the point of view of the young lawyers. Now we're going to look at the issues from the point of view of some people who have actually struggled with trying to create concrete initiatives to address issues of professionalism in the practice of law.

Let me first introduce Nancer Ballard, who is a practicing lawyer from Boston. She's at the Goodwin Procter firm. But more important, for at least two years she was in charge of an initiative sponsored by the Boston Bar Association to address issues of professionalism in the practice, including but not limited to lifestyle and work-style issues. And most important and most interesting to us was that the work of the Boston Bar Association not only examined the issues of professionalism, but came up with very concrete initiatives that they asked law firms in Boston to buy into. And Nancer is going to tell us how that was conceived and what the results have been.

The second member of our panel this morning, again a person who needs no introduction in this room, is the former president of the Association of the Bar of the City of New York, a former counsel to the Governor, a former almost everything else, and a partner at the firm of Cleary Gottlieb. And that member of our panel discussion is Evan Davis. Evan is here not only because of who he is and the perspective that he brings to the issues that we are discussing, but also because the City Bar Association has, like the Boston Bar Association, tried to address issues of professionalism in the practice, in part from the perspective of work-style and family-life management, but also in part from the broader issues of the indoctrination of professionalism ideals in young lawyers.

We are then going to have comments by two commentators, the first of whom is Hank Greenberg, who is a practicing lawyer in Albany, and who was for a number of years general counsel for the New York State Department of Health. He is going to bring to the discussion the perspective of practicing in a mid-sized firm in upstate New York.

And finally we're going to hear from Anne Weisberg, who is a lawyer, and also a member of the organization known as CATALYST. This organization has spent a fair amount of time studying from a more scientifically-oriented perspective attitudes of lawyers and issues of professionalism of the kind that we are exploring today. So our hope is that this panel discussion will not only bring

some light to bear on the general topic, but also lead us in the direction of some initiatives that one might take as we address the issues that we're faced.

After this panel discussion, we'll break out into breakout sessions. We will ask you to answer a single question. There's no wrong answer, so you can't flunk. There are, I hope, lots of right answers to the question. And I'll tell you what the question is as we get further along in the program.

After you've had a chance to discuss this question and come up with some concrete proposals of your own, we'll get back together again and hear from the breakout session leaders. Our hope is that as we leave this convocation, we will not only have engaged in and fostered a dialogue on the general issue, but we will leave with some concrete proposals for how to address the issues that we face.

So let me ask the members of the next panel to please come up.

NANCER H. BALLARD, ESQ.

CHAIR, BOSTON BAR ASSOCIATION TASK FORCE
ON PROFESSIONAL CHALLENGES AND FAMILY NEEDS;
MANAGING PARTNERS' INITIATIVE

Good morning, it's a pleasure to be here this morning. My name is Nancer Ballard. I was asked to speak to you today because I currently chair the Boston Bar Association Task Force on Professional Challenges and Family Needs, now called the Task Force on Work-Life Balance. I also helped to develop a "Managing Partners" Initiative in which twenty-one of the managing partners at Massachusetts' largest firms participated in a year-long program to address current and future work-life issues in their firms. However, my remarks are really the product of my work on a number of work-life projects. They have also, no doubt, been influenced by having worked in a variety of positions within the private law firm context.

First I'll briefly summarize with my own eclectic background. After clerking for the First Circuit I joined Goodwin Procter, a large law firm in Boston, where I was an associate for six or seven years. I was a junior partner for two years and then an "equity" or senior partner for five years. While a partner, I led a practice group at the firm for six years and served as co-chair of a department for a year. From there, I took a one-year sabbatical to conduct a national research study for the Wellesley Centers for Women on how attorneys define success for themselves personally and how they believe their law firms define success. After returning to my firm, I was asked to chair the Boston Bar Task Force on Professional Challenges and Family Needs, which studied the evolution of work-life issues over the past twenty years. Since 2000, I have been the Chair or Co-Chair of the Bar Association's Task Force on Work-Life Balance, which has recently been "promoted" to a permanent standing committee. One of the Task

Force's major initiatives was the Managing Partners' Initiative, which I'll speak more about in a moment. I also worked on the Women's Bar Association of Massachusetts' study on part-time and flexible schedules that was published in 2001. Currently, I am Of Counsel at my firm and a Resident Scholar at Brandeis University, where I continue to work on work-life related issues of importance to the legal community. Much of what I am going to say today comes from my work or experience in several of these roles.

What new and experienced lawyers want from their careers: intellectual stimulation, independence, to "make a difference," and respect.

In the Boston Bar Association study and in the national study sponsored by the Wellesley Centers, we interviewed lawyers in all walks of legal life and at all stages of legal careers to find out what they had wanted from their legal careers when they decided to become lawyers and what they wanted from their careers now. Interestingly, what people wanted from their careers before they began practicing and what they want throughout their career are thematically quite similar. There is also more commonality than one might think in the responses of lawyers who went to law school in the 1960's and those who attended law school in the late 1990's, in the responses of men and women, and in the responses of young lawyers and very experienced lawyers.

The four major things that interviewees wanted from their careers at the time they decided to go to law school were: intellectual stimulation, independence, impact, and respect.

People who go to law school choose to do so because they want a career that provides ongoing intellectual stimulation. Even if the interviewees didn't know any lawyers before they decided to go to school, they thought law would be interesting and they would get to do and learn a lot of things.

The interviewees also reported that they chose law school because they thought a legal career would provide them with more independence than other options. People defined independence in several different ways. For women, "independence" often meant that they believed a career in law would mean that they would not be financially dependent upon a husband. Both men and women believed that law would offer greater autonomy than other professions or business.

The third major reason men and women in both private practice and in the public sector chose to become lawyers was to "make a difference." This idea was expressed in different ways. Interviewees said they had wanted to "make some larger contribution," "leave the world a better place," "do something for the under-represented," etc. The desire to "make a difference" was expressed in almost every interview and focus group, regardless of geographical region, the age of the interviewees, or the employment context.

The fourth element, which is related to the theme of independence, is "respect." The interviewees didn't want to be taken advantage of and they felt

that, as a lawyer, they would be respected. Even though we often hear about how little lawyers are respected, there is still a strong sense that the thoughts and opinions of individual lawyers are afforded respect.

When we asked practicing lawyers what they currently wanted from their careers, these same themes came through strongly – intellectual stimulation; a feeling of autonomy; the sense that their work makes a difference to others; and the belief that they are respected, particularly by those within their workplace and field. When these features were not there, lawyers experienced career or workplace dissatisfaction.

Concerns identified by lawyers in their earliest years of practice: debt, the need for training, negative competition

In preparing these remarks, I also reviewed the specific concerns identified by lawyers in their first seven years of practice. We heard about many of these challenges yesterday afternoon. Debt was a very big concern; so was training. Although the basic goals of those entering law school in the '50s, '70s, '80s and '90s had not changed much, recent graduates felt the burden of law school debt and the need for specialized training more acutely than older graduates did. Dramatic increases in law school tuition and increased specialization within firms and the marketplace place a lot of stress on many young lawyers and can lead to despair about the possibility of ever feeling independent or respected.

Competition, or an "overly competitive atmosphere," was also frequently cited as an obstacle to workplace or career satisfaction. Young attorneys in small firms experienced less negative competition than those in government and large firms. In large firms, competition was repeatedly cited as a very negative factor, particularly if competition seemed to be highly valued or unnecessarily encouraged at the firm.

Additional challenges identified by those in the third through seventh years of practice: inordinate focus on the bottom line, lack of control over time, law firms' lack of visible commitment to larger social issues, ethical concerns.

The newest lawyers – those in their first or second years of practice – were often so intellectually excited by their cases or work that they didn't mind working long hours and devoting almost all of their time to their work, especially if they were single and their social network consisted largely of other associates at their firms. But, as we heard yesterday, young lawyers' eagerness to spend most of their waking lives at their jobs changes as they become more senior and have non-work relationships and responsibilities such as marriage, parenthood, elder care, and charitable and community connections. Lawyers who felt they had that they had some measure of control over their time were much happier than those that those that felt they did not, even where the lawyers who were given flexibility were working more total hours than those who felt they could not control their schedules.

As lawyers mature, a majority of them became concerned about their abil-

ity to build a life outside the firm. Mid-level and senior associates are sensitive to the messages being given by their firms on the value of pro bono work and non-work commitments and activities. Explicit and implicit messages given by management and partners were especially important to lawyers who believed that they fell outside a very narrow range of traditional stereotypes. Women with children, older women, men who wanted to spend time parenting, racial and ethnic minorities, and men and women who wanted to spend time on community work were all extremely aware of verbal and behavioral norming within their firms. Lawyers who wanted to build a life that extends beyond their workplaces experienced great stress and began to consider career changes around their third year, just as they are becoming profitable and valuable to their firms.

Mid-level lawyers also felt an increasing need for mentoring and role models. By the third year, lawyers who did not feel they had a mentor, really missed it. Those with good mentoring relationships felt more connected to their firms, were more likely to feel that they "belonged," and were better able to negotiate a good "fit" between their personal needs and those of their firm. Other studies have found mentoring to be the most important factor in retention and promotion of women and minorities in law firms and corporate settings.

Attorneys in their first seven years of practice are also very attuned to the ethics of the firm and senior lawyers within the workplace. Being forced to act in a way that a lawyer believes is unethical or immoral will cause an attorney to leave his/her workplace faster than any other factor.

The Managing Partners' Initiative

In its first year, the Boston Bar Association Task Force talked with lawyers in firm management, partners, associates, clients and law students and issued its first report, Facing the Grail: Confronting the Cost of Work-Life Imbalance. In our second year, we presented a number of programs for junior lawyers and law students, and we developed a program for managing partners. We invited the managing partners of the twenty-five largest firms in Massachusetts to participate in an initiative that would examine work-life programs, practices, and challenges; report on the state of firm challenges and successes on an anonymous consolidated basis; and help each of the participating firms to design and implement initiatives to address their specific needs.

Each of the managing partners in the program was interviewed by two non-lawyer organizational consultants. The interviews were based on a questionnaire that the task force and the consultants had developed from our previous work and from feedback from managing partners and others. A data analysis firm compiled the data and removed identifying information. Then a Task Force subcommittee and the consultants analyzed the data and developed a model for organizational change based on the data, organizational change research, and ideas from the consultants. We presented the data, our analysis

and a framework for supporting organizational initiatives to the managing partners in a debriefing meeting and all of the participants designed and implemented at least one intervention.

In order to participate in the program (which we knew would require hundreds of hours of pro bono time by the members of the task force, consultants and the data analysis firm), we required each managing partner to agree up front to implement one change – a change of his/her own choosing – after he/she received the debriefing report. We expected that we would get four or five, maybe six, managing partners to agree to the terms of participation. In fact, 21 out of the 25 firms that were invited to participate chose to do so. We had to recruit additional consultants and expand the commitment of the task force. It was truly an amazing experience sitting in that first meeting with the managing partners of nearly every large firm in the city and have each of them see that all of their colleagues were also committed to grappling with work-life issues.

Concerns Expressed by Managing Partners

In the interviews we asked questions about all kinds of issues. There were questions on business-related issues, questions on work-family programs, and questions about retention and promotion. We even asked the managing partners, "If you had sons or daughters of law school age, would you advise them to go to law school or to come work at your firm?" Most of the managing partners said they would encourage their child to go to law school but said they would not encourage their son or daughter to come to work at their firm. Answering that one question caused several of the participants to think a little deeper about work-life issues.

Four work-life related issues emerged as concerns for many of the firms. The first was unwanted attrition. They all knew attrition is costly. They also talked about the loss of relationships that results from unwanted attrition. They spoke of lost time spent on mentoring associates. They spoke of the loss of morale when partners feel that the associates they mentor will probably leave. They reported that some partners were reluctant to continue mentoring, or they didn't have the same energy for it.

Several of the managing partners also noted that partners are less likely to try to develop client-associate relationships if they think their associate(s) will leave. One noted that his partners felt that if a client identified with him and did not have relationships with associates, it wouldn't be as hard on the clients if good associates left. The client wouldn't see the lack of continuity. The managing partner realized that this was counterproductive but also heard his partners saying, "When I get associates involved with clients and they leave, my clients start grumbling about turnover and believe they're going to be paying more for the new associate to learn their case." Attrition also creates a less tangible negative impact in firms. When partners don't know who is going to stay and how the

firm is going to look in the future, they tend to over-focus on short-term issues.

Managing partners also felt very concerned, and somewhat helpless, about the impact of competition on the profession and on their firms. They expressed concern about inter-firm competition for clients. They felt that, to survive, their firms had to grow larger or consider merging with other firms. As firms grow larger, they need more infrastructure, which increases expenses, and causes firms to need more and more revenue to thrive or survive. Managing partners also felt that as firms grow larger, collegiality becomes more difficult. Partners often didn't know the names of all their partners, let alone the firm's associates.

Prior to being interviewed, the managing partners often professed ignorance about their firm's work-life programs and the people using them. More than a few managing partners told us, "You shouldn't be talking to me. I'm not the person who knows about the part-time program or who knows what people are doing with their schedules. You should talk to [this person or that person]." We responded by saying, "If we came to you and asked if your firm were going to open a new office, you would know about that. If we came and said, 'Are you going to enlarge your intellectual property practice?,' you would probably know about that too. These issues are an integral part of the firm also. It is okay if you don't know very much. This is an educational experience for everyone." Some of them were reluctant. A number of them probably consented to being interviewed because the interviews were not conducted by lawyers and they were promised anonymity. For many, going through the process of facing what they knew and didn't know about their firms' work-life balance efforts was enough to stimulate changes in attitude or attention.

Sometimes managing partners said they had not been more involved because they had not had to struggle with work-life issues in their own lives and they "didn't want to say the wrong thing." They felt that associates wouldn't feel their lives were relevant. Many expressed sadness at not being able to find solutions they believed would satisfy associates but tended to see associates as unlike themselves. In their interviews, few said they felt associates' needs could stretch and strengthen the fabric of their firms.

Finally, the managing partners felt very stressed about what they perceived to be their lack of control. Many, many managing partners talked about the pressures and responsibilities associated with generating enough revenue, having enough work, and distributing work in a way that would keep the firm stable. Although the pressures were different, many of the managing partners didn't feel they had any more control than associates did.

Best Practices: mentoring for mutuality; honesty; training and professional development; receptivity to flexibility; establishing an atmosphere of respect for all; fostering empathy in uncertain times.

We also asked for stories of success. In the compiled data we looked for best practices. The best program/best practices fell into five or six categories that

are consistent with the data that we had previously gathered from associates.

Mentoring is very, very important. Good mentoring correlated very highly with retention and attorney satisfaction. But it had to be a specific type of mentoring, which I shall call "mentoring for mutuality." When mentoring consisted of an experienced lawyer being assigned to a junior lawyer with the instruction to meet a few times, or the more experienced person felt as if he or she was doing the junior attorney a big favor, then the mentoring wasn't very effective. In contrast, when both the junior and the senior person felt they were getting something out of the mentoring relationship, mentoring was very successful. The junior person usually received support, training, and some insight into how the firm worked. The senior person felt more connected to the firm's associates and associate concerns, and felt he or she had a broader perspective on the firm. It didn't matter whether female associates had male or female mentors or whether mentors and mentees were matched for other demographic characteristics. What mattered was whether there was listening and learning on the part of both mentor and mentee and whether both knew it.

A second best practice was honesty. Honest in feedback and reviews and honesty about firm expectations. Honesty makes relationship possible. Prompt feedback, both positive and negative, and honest reviews are very important in building trust and promoting integrity. I've been in partner meetings in which we have debated whether to avoid giving a critical review to someone because he or she is working in a practice area that's short-staffed. Sometimes there's a tension between honesty and the short-term needs of the firm to get work done. It can be very hard to give honest messages and to remember that you're talking about people's lives.

Training and professional development was an important issue for everyone. At smaller firms, training and professional development often takes place outside the firm, among groups of people with similar practices. Small firms rely heavily on bar associations. Training, professional development and mentoring opportunities for lawyers in small firms are an important role that bar associations must continue to play. It is important for large firms to support and promote training and professional development opportunities for all attorneys – from first-year associates to equity partners and management.

Another series of best practices involves what I call "receptivity to flexibility." Many, many things can be done to give people flexibility and personal control in significant places in their work lives on a moment-to-moment basis. Most of these things don't cost any money. They include things like scheduling meetings around the parenting schedules of the participants, rotating meeting times to accommodate different schedules, asking an associate when he or she can complete a project, rather than saying it needs to be done "as soon as possible," and treating other lawyers' parenting and elder care responsibilities with the same respect one gives to an out-of-the office deposition. Although they might

individually seem trivial, together they give attorneys the sense that it is possible to accommodate non-work and professional commitments. A related "best practice" was the recognition of diverse career paths. People live longer and work longer than they did forty years ago, and there are many pulls upon our time. Are diverse career paths available in the firm? Are they talked about in a positive way? Are diverse career choices and the people who have chosen non-traditional roles respected within the firm? Are there opportunities to make different choices as one's family and lifestyle needs change?

Demanding an atmosphere of respect is another best practice. There is a palpable difference between a firm that expects that everyone will be shown respect, and the firm where only the top ten percent of the associate class (and the highest producing partners) are respected. Disrespect undermines bright people. When bright people are made to feel trivial or are disrespected, they leave, or they become abusive to others because they are holding all their anger inside, or they feel crazy because they are trying to respect themselves while voluntarily working in an environment that doesn't respect them. As the speaker from Davis, Polk & Wardwell noted yesterday, it's so easy to raise your level of respect. It doesn't cost anything. It's something that all of us should think about and pay attention to every day.

I spoke about mutuality in the context of mentoring a moment ago. A lot of people, and associates in particular, want promises of security. They will say, "There's so much uncertainty, I have so much debt, how can I become invested in this firm?" Part of the educational process of growing up is realizing how much uncertainty there is in the world, beginning to understand how much uncertainty partners have maintaining thriving practices, how much uncertainty there is in running a law firm, how much uncertainty there is in the economy and other economies. There is tremendous real uncertainty for everybody. And you can't wipe that out. Nobody can save you from uncertainty. Recognizing another's uncertainty is part of being an adult and being mutual. We can't have certainty, but we can have empathy for other peoples' uncertainties and recognize the way in which our lives and choices and uncertainties are interdependent. We can strive for a model of empathy rather than a model based on entitlement for either partners or associates.

Supporting Best Practices, Promoting Organizational Change

Once the Task Force had identified various general and specific best practices, we asked ourselves, "How are these best practices supported within firms?" One of the things that we realized was that no one program or policy or practice will make a firm "family friendly." A firm can say, "I'll set up a mentoring system," or "I'll extend the part-time offering from two to five years," or "The firm will offer part-time partnerships" and not see much of a yield. In many firms, work-life policy decisions had been made but the policies were not being used

successfully. Those who used them were discouraged and management had concluded they didn't work. And yet, somehow, at other firms, similar programs had good track records and were working.

With the help of our organizational consultants we looked at ways in which policies and decision-making are supported or undermined within an organization. In particular, we looked at the role of: communication, reward systems, participation, role modeling, work processes, coercion, and the beliefs and assumptions that underlie the explicit and implicit messages sent by management. When a policy or initiative is not supported by each of these organizational elements or mixed messages are given, the program is usually not very successful.

I will give you an example of inconsistent "Communication." Some of our managing partners would say, "We need people with children in our firm. We're committed to having men and women with parenting commitments at all levels. We don't know why they leave." But they would also admit that at partner meetings or in the lunchroom it was common for lawyers to tell stories glorifying the associate that worked Herculean hours or made phone calls from the dentist's chair.

I remember being in a partner meeting in which we were discussing an associate's candidacy for partnership. The partner presenting the candidate stressed how loyal the associate was to the firm and, as an example, told us that when the associate's brother had died, the associate had chosen not to go his brother's funeral because he was in another city doing a document production. Some of my partners shifted uncomfortably in their seats at such an extreme example, but no one said they thought the choice might indicate lack of perspective rather than firm loyalty. Think about all the times we have heard war stories and glory stories about people going overboard on their work. Now think about how many stories you have heard from senior partners and management marveling about how specific people balance work and family commitments, or work and pro bono commitments. What is really being communicated?

"Participation" is another place that firms can send mixed messages and consciously or unconsciously undermine programs they hope will diversify their firms. Management often says, "We have a part-time policy. We have several women on part-time schedules. We even allow men to go part-time, but no men want to. What else can we do?" Offering a program is only one element of participation. How much is management involved in supporting the program? How often is the program talked about in a positive way outside of recruiting discussions? Are there procedures in place for gathering feedback from participants? Are participants' schedules reviewed periodically to ensure that the firm is respecting the participant's schedule and the schedule is working for the participant? There are a lot of elements to participation.

I'd also like to spend a couple of moments on "Rewards" and "Coercion."

When people hear "rewards," they think that supporting an initiative is going to require a significant investment of money. Money is not the only reward, and sometimes not the most meaningful one. A "reward" can be sending out an e-mail telling people about an important pro bono or community service project that an associate has undertaken. Honoring departments, partners or mentors who show commitment to the firm's work-life goals also lets people know that work-life balance is more than a slogan.

Coercion is also frequently misunderstood. Partners and management frequently say, "Oh, no, we can't coerce anybody to work with part-time associates," or "We can't make somebody prepare a review for a pregnant associate if they don't want to do it." I, too, initially resisted the idea that coercion should be viewed as a tool for positive change. But many firms now take the position that it is not acceptable to be verbally or physically abusive to other lawyers or staff. In my firm it is not acceptable to make racist remarks or be anti-Semitic. Firms already know how to use coercion to foster respect and discourage stereotypical prejudices. These same approaches can be used to promote respect for lawyers with different career paths and life choices.

Sustainable solutions must serve both individual needs and the common good.

Over time, I've come to the conclusion that everybody has individual needs but that we are also genetically "hard-wired" to care about the common good, to care about a future beyond ourselves. I remember the day I realized that Darwin's principle of "survival of the fittest" didn't just mean that the strong would kill the weak and promote survival by passing on their strong genes. An impulse or drive to help the group survive is also critical. Evolution favors both the instinct for individual survival and the instinct for group growth. Both impulses are also needed for organizational survival and growth, and both impulses are almost always simultaneously in play. Both impulses include two aspects: fear, the feeling that tells us to protect our current situation (which is rarely all bad); and a creative impulse, which urges us to engage in new ways and grow.

In every policy or ethical or legal moment of decision-making or response, one can see these four elements at work. How are individuals going to be affected? How am I going to be affected? How is the firm or practice group going to be affected? Where are the fears? Where is the impulse for creativity?

Firms must develop work-life principles and initiatives that meet both individuals' and firm needs. We also need to be able to address people's fears and still move forward with innovative programs. We need to design, implement, and monitor the effectiveness of initiatives that offer our associates intellectual stimulation, flexibility, a sense of impact, and respect. This may sound like a tall order, but there is very little that cannot be mended or fixed with continuing commitment and engagement. No program is all right or all wrong, and even if there were a perfect system or program for today's needs, it would not be per-

fect for tomorrow's needs.

This convocation is an important demonstration of the commitment of the New York State Judicial Institute to grapple with issues that are critical to the futures of associates, law firms, public sector lawyers, and the profession. I appreciate your inviting me to be part of this effort.

MR. SAUNDERS

Thank you, Nancer. I will say just a word about the Boston study, because these kinds of studies, the work that Nancer is describing, don't just happen. It took a tremendous amount of work. It took two years for the Boston Bar Association to decide how to study the questions and then to conduct surveys among the member firms of the Boston Bar Association. And then, as she described, what was especially interesting to us is that the group articulated a series of best practices, a whole list of things that firms ought to do, ought to consider doing.

My recollection is that when the managing partners' initiative came about, which was the third year of the study, this was the implementation phase. Nancer told me that they went to the managing partners of all the large firms in Boston and gave them a list of practices –

MS. BALLARD

Yes, that was after the debriefing meeting.

MR. SAUNDERS

The requirement was that they had to agree to do at least one thing.

MS. BALLARD

Right. They could pick their intervention from a list that we provided, or they could design their own. In order to participate, they had to agree up-front that they had to do at least one thing.

MR. SAUNDERS

So, more than lip service participation was required. It was a way of saying to the participating law firms in Boston that you need to put your money where your mouth is, you have to agree to do at least one thing.

I assume each firm did in fact agree to do at least one group or maybe more.

MS. BALLARD

Right. A lot of them, after going through the program, chose very broad, deep initiatives or did several specific things.

There is a question?

QUESTION FROM THE AUDIENCE

Has there been any follow-up on what was the upshot of their doing the one thing?

MS. BALLARD

When the managing partners sent back the one thing that they were doing, they had to explain how they were going to support it. We compiled all those reports and sent the list to the other firms that had participated so everybody could see what everybody was doing. Not by name. The list was anonymous.

At the end of the program, the managing partners said, "Is this it?" They decided to continue to meet twice a year among themselves. And the people who are implementing the different programs meet quarterly to discuss more "nuts and bolts" work.

MR. SAUNDERS

Thank you again, Nancer. That was very, very interesting and helpful to the work that we are about. Now let's hear from Evan Davis.

EVAN A. DAVIS, ESQ.

Immediate Past President

Association of the Bar of the City of New York

What was really interesting about yesterday was being in that wonderful Appellate Division courtroom, because it took me back to when I was in that courtroom being admitted as a member of the bar. And I thought about how I felt or remember feeling about that room back then versus how I felt about the room yesterday. Back then I remember a much bigger room. I remember a sort of intimidating environment. It was all a little scary. And I didn't know anyone.

Yesterday the room was almost cozy, full of friends and people I've worked with over the years. And that difference is a little bit of a metaphor for the process of inculcating a sense of professionalism and professional values in people. The way you feel when you start out – "clueless" is as good a word as any to describe it. And the way hopefully we want to get everyone to feel – part of the profession committed to the values, committed to the kind of enterprise we're all engaged in here today.

In some ways I'm not the best witness on this subject because my own first seven years out of law school were not exactly typical. The first five were spent in government. The first year out of law school was actually spent with a judge whom David Becker mentioned in his luncheon speech yesterday, Harold Leventhal, a judge on the D.C. Circuit. And Judge Leventhal was the world's

greatest mentor. He viewed the way that a judge and a law clerk should work together as based on his recollection and his attitude about what it was like on law review to be a note or comment editor working with a second-year law student on their note. He saw that as the way that a judge should relate to a law clerk.

So it was almost actually too much mentoring. Judge Leventhal's practice was, you would often prepare a draft of an opinion. And then you would go into his office, and he would sit there and you would sit here. And you would sit with him for the three, four, or five hours that it took to revise your draft. As you would be sitting there, quite often he would pull out a blank piece of paper and do a section starting from scratch. But you sat there and you watched. You talked about it.

Judge Leventhal used to like to go to the National Art Gallery. He always took his law clerks with him. He used to like to go to lectures at the National Press Club. He took his law clerks with him. He liked to have lunch with some of the more prominent lawyers in Washington. And I think he felt it was a very good idea to have law clerks present so that there would not be any inference that improper things had been discussed. So we got to lunch with Judge Leventhal and so on and so forth. That is three-star mentoring clearly. And I was very lucky to have had that.

Then, after clerking with Judge Leventhal, I clerked for Potter Stewart. He was a little more reserved. But still he would sit down with his law clerks once a week and we would have three or four hours' discussion about all the pending cases. You can imagine how interesting and significant those discussions were in my own professional growth.

And then I went on into New York City government. I didn't get a lot of feedback. It was more like the JAG-type thing that Paul described earlier. But you got tremendously interesting good work, lots of responsibility. I was really thrown into challenging assignments. That's another part of growth. I enjoyed it. And I was very, very happy.

I saw a lot of ethical issues because I ended up working on an impeachment, and I saw a lot of government lawyers under pressure, many of whom had done the wrong thing, not the right thing. I felt that in order to be really independent, it would be helpful not to be locked into the public sector versus the private sector, but to be able to live in both of those sectors, move back and forth. That would give you more freedom and independence.

So I went to Cleary Gottlieb. And that has turned out to be a home with a fascinating and interesting work, but also opportunities to work elsewhere. I just wanted to mention that working elsewhere because, as Paul mentioned, I did work for Governor Cuomo. This is the lesson from the point of view of our topic of today of what it's like to work for a person who really likes to work very hard; namely, Governor Cuomo. Unlike the law clerk jobs where you go home

at 6:30, 7 o'clock and maybe take some petitions home to read, which was not very stressful, working for Governor Cuomo, we did work 24/7. We really approached that from early in the morning until late at night. Of course another factor there was that whenever you're in a big bureaucracy, a pressure cooker develops at the top.

So I come away with a fair sense of great gratitude for the wonderful kinds of experiences I've had, both in the five years in government and, just taking the first seven years, the two years after that at Cleary, where I learned a great deal, and with a pretty high standard of what can be done and what the goal is that we should strive for. And the key components of it are all things that people pretty much agree on.

A couple of years ago, the City Bar issued a very detailed report based on focus groups.[1] We called it our lawyers' quality of life study. It was similar and reached very similar conclusions to the Boston Bar study. It recommended best practices, one of the rules being they did not present a best practice if it was not something that people actually already did and found that it worked well. So I'll talk about some of those as we go through this.

I disagree with the speaker yesterday who compared medicine to law and said the interns take no money for the great training, and in law people give up the idea of training and just go for the money. I don't think that's the case at all. As young lawyers think about what they're going to do – whether it's public sector, private sector, big firm, small firm – a big factor for them is professional growth and development. They have their whole life ahead of them, and they want to be the best that they can be. They want to do interesting work, and they want to succeed financially. And they want to be well regarded.

Certainly training is an important factor for young lawyers when they decide which big law firm to go to, because all the law firms pay the same amount. You can't distinguish any on that basis. You have to distinguish them on the basis of how you will develop there and what the work environment will be like. People really want to grow and develop. And people really want a good work environment.

So I put, and our study put, the work assignment process very high on the list. Having a process that makes sure that people get good challenging work and work that is manageable so that your calendar is not so overloaded that you're going to end up crazy or whatever, as we were talking about before, or that you're going to do nothing well. Calendar management and good challenging work.

Challenging work is work that is going to push you up that learning curve. It's going to help you develop. In today's world, it's more important to have a bit of a speciality than it used to be in the old days. General practice is not

1– Report of the Task Force on Lawyers' Quality of Life, 55 Record 755 (2000).

quite as important as it used to be unless you become a general counsel to a company. In private practice, expertise is more important. So, you have to begin to develop an expertise.

On the other hand, you want to keep a balance. You want to have a certain general outlook, and be able to move around, because the expertise needs of clients in the profession change. So that work assignment is something that requires thought, both by the young lawyer and by the people doing it.

In our quality of life study, we emphasized the use of assignment partners, the use of review of work experience, forward-looking reports on time availability with calendar management, counselling people on calendar management so they can deal with keeping the expectations in line and not having unpleasant surprises that create a bad feeling. And those are things that I've seen at Cleary that work well.

The worst system is the shanghaiing people in the hall system, or two partners, one with the left arm and the other with the right arm, pulling the associate in different directions. That's a failure. And the City Bar report emphasized that to make this system work, to make people really live by a structured assignment system that is attendant to giving challenging work on a fair basis to associates, collegiality is very important, because if the partners don't cooperate with the system, if everyone looks out for themselves, the system is going to fall apart and the associates or the young lawyers are going to pay the price.

In terms of keeping the calendar, I remember that when I was fairly early in the profession, I read that wonderful biography of Justice Brandeis. Justice Brandeis was a corporate attorney before he was a judge. And there is a chapter in the book that says Justice Brandeis once had the experience that overwork led him to make a mistake. He was too busy, and he made a mistake. And he vowed this was never going to happen again. And from that point forward he went home at 4 in the afternoon. Well, I thought that was a great idea. I know that going home at 4 in the afternoon is not going to be a viable best practice. But we have to consider that issue.

We heard about medicine yesterday. There is a big movement afoot to reduce the number of hours that interns work. If they work a hundred hours a week, there's a risk of error. But it's also dehumanizing. And we've had this unfortunate rise over the last twenty years in billable hours. My anecdotal feeling based on talking to people is that the creep has been there for both partners and associates. If anything, the partners have suffered a little more, because with the increase in expertise we talked about and other things, the partners have to be there in ways that maybe were not as critical before. But there's been that creep. And it has frankly gotten to the point in some quarters where it is excessive, where it does not leave enough time to either do the work well, or to have a reasonable opportunity for outside activities, family life, and those kinds of things.

There are two reasons for this upward creep in hours. The first is economic pressure, because the economics of law practice for a big firm are that there is basically almost zero marginal cost to an extra marginal hour of work by a partner or a young lawyer. Therefore, that extra hour of work, working one more hour, goes directly to the bottom line. It's pure profit. And we all know that people are very reluctant to see income drop because they get used to it. So if you're under pressure because the economy is not so good, work is not so prevalent, and you want to keep income up, there is a pressure to push for that extra hour of work, which will go directly to the bottom line. People do fight against that. But it would be naive to ignore that is at least a subconscious factor that presses in the wrong direction.

The other factor that presses in the wrong direction is this competitive environment. We now have lists where firms are ranked on who did the most. And they're very segmented. Who did the most deals involving X, Y, and Z. In order to be on those lists, you have to do a lot of deals. And people feel that the ranking on those lists is important to get interesting, good, challenging work, which is what people want to do. And so that also presses people to be too workaholic.

There's no easy answer to this. However, one thing that is helpful is the competition for young lawyers. Young lawyers are in a sense the saving grace here, because they do have choices. They will respond when the situation gets out of hand by going elsewhere. And we have seen some examples recently of firms that are facing this type of difficulty. We all read about this memo circulated in one big law firm here. That kind of thing reflects an important countervailing pressure. [2]

So work assignments are critical. The best practices are there. They depend on partner collegiality. And they depend on the strength to pull back a little bit from economic incentives.

Feedback is also important. A review has to be detailed and it has to name the names. You can't just say someone said that you were this. At my firm, we name the name of the person who said that, so that the associate can then go and talk to that person. And, as a matter of fact, that conversation should have occurred earlier when people are asked to provide an evaluation. You have to indicate whether you've already shared this information, as you certainly should have, with the young lawyer. And if it wasn't shared then, it will be shared at the review. The name will be there. And you will have a chance to discuss it. And that kind of feedback is absolutely critical.

But the best thing to do is after a project is over, go out to lunch and talk about it, talk about what went well, what didn't go well, talk about the things that you as the supervisor had difficulty with, and have it be a learning experi-

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2– This refers to the October 15, 2002 memo of the associates at Clifford Chance.

ence. That's the ideal. And the trick, of course, is to get busy lawyers to take the time to do that. Which brings you right away to mentoring.

What Paul said about his reading the Odyssey last night was very helpful, because it raises the issue that is the difficulty with mentoring, namely, faced with a choice of being Mentor, the old guy who stays back with the young kids, or being Odysseus, the guy or gal who goes off to fight the war, everyone wants to be Odysseus. No one wants to be Mentor. What we have to do is to read the story more intently to find out that Odysseus himself was also a mentor, and build a model of the mentor and actor that is something that will be more compelling to people than the choice presented as Paul described it.

At my firm, we have had tremendous success with the part of our mentoring program that involves senior associates mentoring the new arrivals. This has worked extremely well: everyone does it, and we've done it for a long time. There is a mentoring committee made up of sixteen senior associates who get great praise and kudos. It's considered a great thing to be on that committee helping the new arrivals.

The harder part of mentoring is to get the partners involved in mentoring the more senior associates. As has been pointed out, mentoring is very important. Harvard did a study of what factor correlated the most with success at college. It turned out to be developing a reasonably close relationship with a member of the faculty. The problem there is always the chicken and egg problem. Did those relationships develop because they were superstar people who were going to be successful in any event? Or did the relationship contribute to the success? Obviously there's an element of both.

The City Bar Association's quality of life study comes out squarely for a formal mentoring program that is across the board, that involves senior associates, that involves partners. And it's something that we, Paul, have to continue to work towards and to make it work, and develop a model that will bring people who are both active lawyers and who got mentoring. We have pictures on the walls here and elsewhere of people who in past generations have done that. And we have to bring that into the present.

Training and supervision are key. That's what Judge Leventhal did so well for me. And what the City Bar has recommended – and, again, this is a practice that people do because we didn't recommend anything that wasn't tried and tested – is upward review, letting young associates evaluate senior associates and partners, and senior associates evaluate partners for their effectiveness in training and evaluation. Feedback in an upward direction is an excellent idea. And it is a way to emphasize the importance of participating in training and participating in evaluation.

I particularly want to talk about pro bono and bar association work, because this is probably the thing that I personally have worked the hardest on during my two years as president of the City Bar, both involving young lawyers

in bar association work, and encouraging young lawyers and others to do pro bono work. There were some successes. The membership of the Association increased. And we took a number of initiatives to encourage pro bono work.

Doing bar association work and doing pro bono work is a very important part of that process of becoming a professional, having ownership in our profession, being a part of it, and contributing to its success and advancement and playing a role. Just to mention the room yesterday at the Appellate Division again, most of the people there whom I knew, I met through either pro bono or bar association activities. Some of them I met in cases where they were on the other side or the same side. But most were through these other activities, and were here on committees.

The City Bar committee structure encourages people from different firms to work together to produce a product, and then to talk about how to get it done, how to get it adopted. That whole process is a great learning opportunity. It can contribute to building leadership skills. I found that first you have to convince the law firms that it's really in their interest to have their associates, their young lawyers, come and be involved in bar work. I spent a lot of time jawboning with firm leadership to convince them of that. And I was not always successful, but successful in a significant number of cases making the kind of arguments that you would think of, namely, that bar work will lead to fulfillment, reward, happier lawyers, skills training, and they'll be contributing to advancing the reputation of the New York bar, in which every firm in New York has a stake in terms of the quality of work we get to do in New York and in terms of our economic success.

Then with pro bono, I always felt we had to push to increase the percentage of lawyers to do pro bono work, and have lawyers do it early so it becomes part of that habit of a lifetime. Somebody mentioned that they were going to work very, very hard, and then at 56 they were going to retire and start to do pro bono. I'm not sure that's a very good strategy, because no one is ever, ever going to think of you for interesting pro bono projects. You're going to be a fish out of water. The strategy I recommend is start early and keep at it and have it be part of your life. And I've also found that emphasizing the ethical point with law firms actually works.

So, those are all things that I put in the category of professional growth that I believe young lawyers do care about, that firms obviously have an interest in seeing their lawyers grow, and things where the City Bar has been pushing for concrete steps that will help that happen.

The other is this important issue of flexibility, balance, work/family. And our report obviously dwells on that at great length, recommends a program that is not limited to care or health issues, but is broad and available to people up to partnership and through partnership and beyond. And we also, of course, emphasize the need to be flexible.

Answering the question that you're not going to let down the client is important, too. And therefore, there's a need for two-way flexibility. It can be done. At my firm, we have a number of people on part time: partners and associates, men and women, for a variety of different reasons. Most do 80%, some 60%, but we will probably get to routine approval for doing 60% before too long. The firm recognizes that in looking at these young lawyers, you're making a bet on them for the long haul. And you have to recognize that for different things there is a season. You can't expect the whole career to run flat out all the time. There have to be periods of intensity and periods where other things get priority. In New York, progress is being made on that front.

So just in closing, this convocation itself plays a very important role in pushing this agenda forward. And I want to thank everybody, Lou and the Chief Judge and, Paul, everybody who worked so hard on this to make it happen, because it's a critical part of the story. And then, of course, you're getting the word out. Making those concrete suggestions is important, too. I'm sure the City Bar and others are all eager to help. Congratulations on our success and the success we're still going to have. Thank you very, very much.

MR. SAUNDERS

Thank you. Before we hear from our commentators, I want to make an observation about something that Evan said. In my short time at the bar, things really have changed. When I first started interviewing applicants, the most important thing they wanted to know was, "How much responsibility am I going to get and how quickly?" We didn't talk about lifestyles in those days, or flex time or community service. Today, applicants ask, "how much training am I going to get? What's the training program? What is the mentoring program? How do I learn to do what you do?" Not so much how quickly can I replace you, which is what they used to ask in the old days. So, there really has been a change.

The other observation that I would have, based on what you said, Evan, is the importance of communication. We sometimes think of mentoring as a top-down process. You know, how do we go about teaching young lawyers? But the communication aspect of that is also important. It's a two-way street. Do we listen? Do we listen enough to what the young lawyers are saying? We can learn as much from them about the future of the practice as they can learn from us, because the young lawyers have a very different perspective in many senses than we had. And it's not correct to think that all we have to do to ensure professionalism among young lawyers is to teach them to do what we did the way we did it. That's not always the case. Indeed, those of us who have sons and daughters know that young lawyers are from a different generation with different perspectives, with different aspirations, with different ideals. Things that were important to us are not necessarily the things that are important to them.

So thank you, Evan. That was a very thought-provoking comment that

you made.

Now let's hear from our first commentator, Hank Greenberg.

HENRY M. GREENBERG, ESQ.

Couch White LLP

Listening to Evan, Nancer and Paul, one cannot help but be optimistic the legal profession will successfully deal with the problems we have gathered to discuss at this Convocation. As you know, our profession tends to move at a glacial pace. We're not terribly good at sharp pivots and quick turns. Nevertheless, while the arc of the profession is long, it always bends in the right direction. So I'm confident we will do what needs to be done.

Of course, the critical element is leadership, which is exactly what the Judicial Institute on Professionalism in the Law is providing. Lou Craco, Paul and all of you are showing the way, teaching by example the importance of addressing the needs of young lawyers. Bob Witmer hit the nail on the head yesterday, too, when he observed that self-interest will drive us to make the necessary changes. More and more, clients are demanding the law firms that represent them mirror their commitment to family, diversity and community. So, even if there are some attorneys who are slow to "get it," like it or not, their clients in time will force them to change.

Now, the perspective I'd like to share with you is that of an attorney in public service. Most of my career I worked for the State and Federal Government. My last government position was as general counsel to a New York State agency.

From my years in government, it became clear that the profession did not fully grasp the unique problems facing the public bar. And, indeed, as compared to their counterparts in the private sector, government lawyers today generally get less job security, less pay and less respect. This was not always the case.

Yesterday, Frederick Schwarz talked about how when he served in John Kennedy's New Frontier the profession better appreciated government attorneys' contributions to society. Public service was widely viewed as the highest and noblest calling. And it still is such a calling. But the environment in which government attorneys now practice has changed. Whereas one could once make a career in public service and earn a decent living, that is today true for fewer and fewer attorneys.

As I said, government attorneys have less job security then they used to have. At one time, many giants of the bar championed the civil service movement. But today, lawyers are rarely hired through the civil service system. As a consequence, government attorneys increasingly find their tenure limited by the whims of elected officals who view their jobs as patronage opportunities.

The lack of job security is compounded by the relatively low entry-level

salaries available for government positions. For example, in 2000, the New York Times reported that lawyers in public service in New York City typically earn a salary ranging from $35,000 to $44,000. By contrast, the basic pay for first-year associates at large New York City law firms is as much as $125,000, with year-end bonuses making possible total pay of up to $160,000.

We have also seen a steady erosion in the public's estimation of public service and public servants. The legal profession has not been immune to this phenomenon. All too often attorneys in the private sector look down their noses at government lawyers and treat them as second-class citizens. Sad but true.

Add to all of this the problem we discussed yesterday, which is law school debt. It is a staggering problem, particularly for those who wish to enter public service. The total educational debt of an average 1998 law school graduate is nearly $80,000, equating to a monthly repayment figure of over $900 with a ten-year repayment schedule. Absent assistance from other sources, many recent graduates simply cannot afford to take lower paying government and public interest law positions.

Today, just like when Frederick Schwarz graduated law school, many young lawyers have a passion to serve and dream of entering public service. But for many this dream is a fantasy. They can, as one commentator put it, "ill afford to fulfill their best intentions when those intentions lie in the field of public service."

But enough of problems. Let's talk solutions. What can we do to make young lawyers' professional lives more satisfying? The answer, in part, is within reach of every older lawyer. All "old" lawyers were once young layers. And we know what it was when we first started out that inspired us and made work more fulfilling.

Again, the solutions to these problems are dependent on leadership. Will our profession take the steps it needs to engage the passion of young lawyers? This Convocation is proof that it will.

With respect to leadership, law firms (both public and private) can learn a thing or two from the techniques and approaches now being taught in business schools. Law school teaches us how to be lawyers, not managers. The Socratic method is fabulous for teaching a student how to think like a lawyer. But it is perhaps not the best pedagogical instrument for teaching someone how to lead an organization that includes Gen Xers.

Leaders in law firms would do well to spend time learning about modern management science. If they did, they would know that a sine qua non of effective leadership is recognizing excellence. This is particularly important in the public sector. A manager of a government law firm does not have the luxury of being able to award cash bonuses to high-performing attorneys. The money just isn't there. Government is broke. Our State government currently has a ten billion dollar deficit. No government attorney in New York State will be receiving

a $20,000 bonus for working over 2200 hours. That being so, the next best thing a manger can do is be generous with praise; recognize excellence at every turn; hold up great work from a young lawyer to the entire organization and brag about it, boast about it, let everyone in the organization know it is conduct that should be emulated.

We need to invest in the lives of new attorneys. There are words and phrases that we hear lawyers use with increasing frequency – words like "job flexibility," "diversity," "communication," and "empowerment." These are fine words, and their addition to the lexicon of law firm leadership is all to the good. The task before us is to move from rhetoric to reality, from words to deeds.

We need to open our minds. We need to do more than talk about telecommuting. We need to institute it. We need to recognize the advantages of technology, and leverage it. We need to understand Gen Xers and, yes, empower them. I know just a moment ago I said all older lawyers were once younger lawyers. But older lawyers were never Gen Xers. Surveys show Gen Xers care more deeply about personal, quality of life issues than baby boomers. Many of us are baby boomers and of course we care deeply about the quality of our lives. But for Gen Xers it is a higher priority. Law firm leaders need to understand this.

Paul spoke well, and I'm glad he did, about communication within law firms, both from the bottom up and the top down. Effective leadership requires more than the capacity to give orders. Decisions need to be well and carefully explained. Even more important than how we talk is how we listen. Law firm managers must be good, empathetic listeners. Richard Feynman once said that "while you're talking you're not learning anything." How true.

Also, we need to help new attorneys cope with escalating educational debt. I had the privilege of serving as Chair of a New York State Bar Association ("NYSBA") Special Committee on Student Loan Assistance for the Public Interest. Our committee recommended the creation of a pilot loan repayment assistance program for New York attorneys working in public service and public interest law, and I'm proud to report that NYSBA is implementing our recommendation. At the end of the day, however, government has an important role to play in solving this problem – a problem, frankly, that needs to be addressed at the state and national level.

Let me share with you one final thought. It may sound trite, perhaps like a cliché, but I believe there is enormous power in caring about new lawyers. When I was the general counsel to a state agency, our leadership team retained a consultant to conduct a survey of the 100 or so attorneys we managed. We asked our "troops" to critique us, to grade us on how good a job we were doing as managers. Additionally, we created a "job satisfaction and communication committee" made up of attorneys not one of whom was a manager. The committee's charge was to develop recommendations that would promote efficiency

and bring unity to our office. In response, the committee produced a magnificent report that contained a set of recommendations, virtually every one of which management adopted.

Our organization benefited greatly from the committee's recommendations. Looking back, though, I think the most important thing that came out of this exercise was that the attorneys in our law firm knew management cared about them. We valued them and their ideas so highly that we invited their criticism. The message we sent was: help us help you. That was a powerful message, and I believe it went a long way towards improving job satisfaction, enhancing comunication and unifying our organization.

So, I find myself closing where I began, with a firm belief that leadership is the key. And with leaders like Lou and Paul, and all of you, there is ample cause to be optimistic about the future. Thank you.

MR. SAUNDERS

I suspect that a lot of things that Hank said are going to show up in the reports from the breakout sessions that we have later this morning because they were really right on the money.

Finally let's hear from Anne Weisberg of Catalyst.

ANNE C. WEISBERG, ESQ.

CATALYST

I'm delighted to be here today. I don't know how many of you know about Catalyst. We are a nonprofit organization whose mission is to advance women in business and the professions. We do that in two ways: through research and advisory services. And last year we released a major report on women in the law. It was funded primarily by Columbia Law School. I know Columbia is represented in the audience today, so I wanted to thank Columbia publicly for its support. The executive summary is available on our web site, which is www.catalystwomen.org, and the full report is available for purchase. If you want a copy, come see me. I'd be happy to give it to you.

But I'm not really here to talk about our findings, because they're basically self-evident. Most people know what the issues are. We heard about it yesterday. What I'm here to talk about is our approach to making change. Fundamentally Catalyst is in the business of making change. We focus on making change around diversity, but in the broader sense it's about making culture change in any private sector organization.

Before I take you through that process, I want to make explicit the link that a lot of people have implied between diversity and the issues of professionalism generally in the profession. That link is best made by looking at employee satisfaction or professional satisfaction.

In all of the assessment work that we do in our advisory service engagements, there is a pattern. The pattern is that white men are the most satisfied group in any private sector organization, followed by white women or men of color, because they are only one degree removed from white men, followed by women of color. And those findings were absolutely consistent in our women in law study. Women of color were the least satisfied on every factor in the legal profession in all sectors of the profession, frankly. So, if you make an organization good for women, you make it good for everybody. And how women, and especially women of color, experience an organization tells you a tremendous amount about the health of that organization. So that's the link between diversity and professionalism generally.

So how do you go about making change? You have to start with the why. Why change? People, organizations don't change without a good reason to do so. And as David Becker said yesterday, it's not just about the right thing to do. For the last twenty years we've been talking about the right thing to do. And it hasn't produced much change, frankly.

The way to make change is to link it to the smart thing to do. So what is it about the kinds of changes that we're talking about that are the smart thing to do? What is the business case for change in law?

There is a very, very powerful business case in the legal profession, and it has three basic components. The first is the demographics of the profession. As you all know, women are fifty percent of law students today. The trend line is up. People of color are roughly 12% of law students. This means that white men will be the minority in the profession. And that's the way it's going to be from here on out. So, the demographics are radically different from twenty years ago.

One thing that most people are not aware of is that while women and people of color are an increasing percentage of law students, the whole pool of people aged 25 to 34 in this country, who are the people that go to law school, is shrinking. That's the reason you've had the talent wars. The pool of people aged 25 to 34 have been shrinking and will continue to do so until 2005, and won't come back up to current levels until 2010. So even though the current downturn has masked the war for talent, it is there. And it will continue to be a reality for legal employers. Business schools, which are facing the same talent shortage, raid law schools for talent. In 2000, McKinsey was the largest employer of law students at Harvard Law School. Ellen Wayne, Dean of Career Services at Columbia Law School is nodding her head that the same trends were true at all of the elite law schools. You're facing increasing competition for a shrinking pool that's increasingly female and of color.

Now, we heard Professor Sage say yesterday that compensation is what wins the battle in the war for talent. I don't think the research supports that. And in fact today we heard about the aspirations and expectations of Gen Xers.

Catalyst did a study of them which was released last year. In that study, 84% of the Gen Xers – both men and women – rated having a loving family as important, as opposed to 21% who rated making a great deal of money as important. So, as we've heard already, the aspirational goals, what people want out of life coming out of law school, is really much different from what motivated us. (I graduated in '85.) According to our women in law study, the number one reason for women to choose their current employer, and the number three reason for men in choosing their current employer, was work-life balance. So there really has been a major change in the expectations and the aspirations of the younger generation.

That leads me to the second prong of the business case, which is the cost of attrition and dissatisfaction. And, Evan Davis, actually I couldn't disagree with Evan Davis more when he said that the business model in law firms means that there's no marginal cost to that extra hour of work, because actually the cost is huge. The problem is that it's not visible. The cost is in the cost of turnover and dissatisfaction.

If you are pushing your people to burn out and they leave, it's costing the firm a tremendous amount of money. The rule of thumb for human resource professionals generally is that turnover costs a 150% of salary. Most law firms, however, because they invest so heavily up-front in training, are probably close to 200% of salary in reflecting the cost of turnover. This means that if you're paying an associate $125,000 a year and you lose four associates, you've lost $1,000,000. I don't think there are enough marginal hours in the day to make up the cost of attrition to most firms. And so, the first thing to do in building the business case for the kind of changes we're talking about is to track turnover and figure out how much it's costing you.

It's true that it's harder to measure the cost in terms of dissatisfaction, loss of productivity, lower morale. But they're not impossible to measure. As Hank was saying, there are well-developed management techniques to measure the costs of dissatisfaction and lower morale.

As a footnote to that, there have been studies comparing the companies that make the Working Mother Best Companies to Work for List against the industry average. Most of those studies show that there is an increase in both customer satisfaction and stock value of companies that make those lists. So those companies that are investing in making their environments a more satisfying, family-friendly environment for all their workers, see a return on that investment.

I don't know if many of you are aware, but Catalyst gives a Catalyst Award every year to companies that have proven initiatives for advancing women and people of color. And there have actually been studies done comparing the Catalyst Award winners to their industry peers. And the same holds true: Catalyst Award winners outperform their peer companies.

So, there's a very strong economic case for addressing these issues. You just have to make those invisible costs visible to senior management.

The last prong of the business case has to do with the changing demands of the client. We see this in our work in a couple of different ways. First of all, just the changing face of the client. The most spectacular success story in the legal profession is the exponential rise in the number of women and people of color in the general counsel position of Fortune 500 companies. In the last two years there has been a 50% increase in the number of women GCs, and an even greater increase in the number of people of color GCs.

The pipeline in-house is full of women and people of color, so that trend line, that kind of exponential growth, is probably going to continue. In fact, I don't know how many of you saw the short list in Corporate Counsel magazine of the ten people most likely to be named general counsel for a Fortune 500 company. Six out of those ten were women and three of them were people of color. So there has just been a huge change in the face of the client.

But beyond that, the clients are making diversity a part of their own business strategy. Why? Well, as Catherine Lamboley, the General Counsel of Shell Oil, explains, minorities are now the majority in every urban area in this country. And it is Shell's goal to make every one of those consumers into a customer. The only way to do that is to understand those consumers. So diversity is becoming a business imperative for multinational companies, there's no question about that. Shell, GE, Dupont, Bell South, major companies are requiring that their law firms break out by race and gender every lawyer assigned to their matters. I don't know how many of you have gotten into these conversations with either your existing clients or potential clients about what your firms are doing around diversity.

Similarly, clients hate turnover. This was mentioned earlier, that clients value stability as much as law firms do, because turnover is very expensive for them. Having to pay for a new lawyer to be acclimated and knowledgeable about their business is very expensive. They don't want to pay for that any more than you do. So the clients really have an interest in seeing that your firm is well run. And I would strongly recommend that you involve the clients in your discussions about what to do.

For example, we are advising a major law firm. They have set up an external advisory board for their initiative and put their major clients on this advisory board. And it has been a fantastic thing for them, because they hear from their clients what's important to them, and have been able to strengthen those relationships, because now the clients are invested in the success of the firm's initiative.

So, basically that's the answer to why make change: the demographics, the costs of attrition and dissatisfaction, and the changing demands of the clients.

So now the question is, how do you make change? There are many action

steps. Catalyst's full report has eleven pages of recommendations which are a blueprint of how you would address a lot of these issues. But more fundamental to what actual steps work and which don't is deciding what it is that you want to change. And really what we at Catalyst do is change normative behavior. As Fritz said yesterday, law schools can teach lawyers how to think like a lawyer, but it's up to law firms and other employers to teach them how to act or behave like a lawyer.

So what does that mean? What is the normative behavior in these law firms? And how do you adjust normative behavior to get the results that you're looking for? Well, you basically heard it in a lot of the remarks that were already made at this Convocation. I just want to pull a few threads together.

Normative behavior in an organization does not change without it coming from the top. Senior leadership commitment and behavior has the single biggest impact in terms of the culture of an organization.

Now, we talk a lot about actions being more important than words, and that is true. However, communication in this area of culture change is very important. Nancer was talking about it earlier. What are the success stories? If you have a part-time policy, but nobody ever talks about the people who are on part-time or what their experience is, or you have a maternity leave policy but nobody ever talks about the men who take paternity leave, at best that's a mixed message. Most people in an organization will read mixed messages as bad. The default is always to assume that it must be bad if it's not discussed or if there is a mixed message.

So, the first thing you have to do is be aware of what you're communicating and what stories you're telling. They're very powerful. As Steve Young, who is the vice president for global diversity at J.P. Morgan Chase, says, "Culture is all about the micromessages," the small, sometimes unspoken, often unconscious messages we constantly send and receive. And that's what I'm talking about. As a senior leader, it's really your responsibility to become aware of the messages that you send. That's step number one.

However, communication and even senior leadership commitment alone is not enough to make change. We find that's true in large companies. It's particularly true in law firms because of the level of autonomy in terms of decision making that partners feel that they have. So top-down commands or commitments don't carry the organization all the way through. What's needed in addition to senior leadership commitment is measurement and accountability systems. And this again has been discussed throughout the last day and a half.

Daniel Greenberg yesterday said law firms need to align their message with what they measure. And what we say at Catalyst is, "What gets measured gets done." So, if you want a good mentoring program, you have to measure how much mentoring is going on. You have to keep track of who's getting mentored. What are people's satisfactions around mentoring? It's not enough just to have

a program. You have to measure and track it. And then you have to hold people accountable to it.

Now, there are several ways to do that. Our approach when we advise clients is to reward good behavior rather than to complain about bad behavior. The best-in-class companies do that through their bonus system. For example, American Express ties 25% of its senior executive bonus to employee satisfaction. And that gets measured on several different factors, including how inclusive an environment that executive has created in his or her business unit or team, how much mentoring that executive has done, to whom. So you have to both keep track and hold people accountable. That's how change gets made.

I won't go into the specific extra steps because they're in the report and because most action steps should be tailored to the environment. I don't want to give you general suggestions about that. But I will say that all of the action steps that we have designed for law firms and for other employers really revolve around good management practices.

Lawyers are notoriously bad managers. And we kind of say that with a smile on our face. We sometimes almost take pride in that. That's nothing to boast about. To learn to act like a lawyer should mean learning to be a good manager, because the skills in good management are just as important as the competencies in good lawyering. If you look at the October issue of the American Lawyer, the article on why Alston & Bird is the number one firm in associate satisfaction in this country describes how the firm put all their partners through management training, and they hold their partners accountable for good management.

So, I'm just going to leave you with that thought, that once you have built the business case for why change, really the thing you have to focus on is making management a valuable skill, both by modeling it from the senior leadership level down, and by tracking and holding people accountable for it. And that will create a completely different environment in your law firm without really changing all that much. Thank you.

MR. SAUNDERS

Thank you very much. It's obvious that the Generation X lawyers who we are now seeing coming into the profession are clearly different, want different things, have different expectations and needs and desires than we did. It's also obvious the law firm model is changing in an attempt to meet those changing desires and demands. And a third aspect of this that we might consider as we move to the breakout session, is how the nature of the work we do has changed. How is that affected by the change in the desires and needs of young lawyers, and how is that affected by the change in business model of law firms and other institutions that provide legal services?

The practice of law has become much more complicated and much more

demanding now than it was thirty years ago. When Abraham Lincoln started out in practice in Springfield, he had fifteen law books in his office. All he had to do was to learn eleven causes of action. Once he learned the eleven causes of action, that was basically it. He could go and practice law. That isn't the case today. The practice of law is very much more complicated, much more demanding, much more stressful. Clients and the system demand much more of us.

And the issue in my mind is, how is that affected by the Generation X lawyers who are coming into the profession? And how is that affected by the change in the business model of law firms and other institutions? You might think about those issues as well as we move to the breakout sessions.

The first order of business is to thank, on behalf of all of us, the excellent presenters that we had today. So thank you all.

Now, let me just say a word about the breakout sessions that I mentioned a little bit earlier. There is a single question that you're going to be asked to address: "Identify the three most significant obstacles to professional and personal fulfillment in the first seven years of practice. What can be done about those obstacles and by whom? Please focus on solutions for the many varied practice settings across the state."

Before you leave, stay right where you are, and let me ask Lou Craco to give us some additional remarks.

LOUIS A. CRACO, ESQ.

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

One of the problems with a convocation that has enjoyed what I can see is the success that this one has had is that it raises expectations. We've talked about a lot of very good stuff here. And the people who are here will indeed go out and spread the word. But whether the word brings forth results is a crucial thing. And so, as you go off into these breakout sessions, which are very important to the success of the convocation, I want to make two observations of critical importance.

There is no doubt, as you have gathered from the conversation today and much of the conversation yesterday, that the economics, the size, the power, the influence, the style of the big New York City law firms create a dominant culture in the profession. If you doubt that proposition, you can go back to where the billable hours started. You can go back to where the economic model of a business as distinguished from a professional organization started, and you can see that much of the problem that we are talking about has been generated out of expectations in large law firms which, because of their size and influence, have a dominant effect in the way the culture operates.

But as you go into these breakout sessions, I want you very much to keep in mind that 80% of the lawyers of New York State practice in groups of fewer than ten. The overwhelming reality of practice around this state is that we practice in small practice units. And the conversation which we had about leadership influences, on how to effectuate the kinds of changes we're talking about in big firms, may or may not have much to do with what a solo practitioner in Oneonta or a small firm in Huntington will do about the kinds of issues we're talking about. And how do you do the mentoring in Hamilton County, where there are seven lawyers? How do you do these things that we think are valuable about acculturating the profession around the state?

We've deliberately invited people from all over the state to this Convocation so that that question should be addressed. And while I absolutely agree with the focus that has been placed on the dominant culture of the large firms, that is necessary, but it is not sufficient to the work that this Convocation is supposed to do or the Institute will have to undertake. So I want the group leaders as much as they can to keep that focus open, and to invite comment and solutions about that.

The second thing is that I do want very much to see solutions. The expectations we have raised will be disappointed to greater detriment than if we had not had this conference at all, if we don't produce outcomes, practical outcomes, outcomes that have impact over time, outcomes that are rationally based on a business model that makes sense to the people who will have to implement it. It is for this reason that at the outset of my remarks yesterday, I mentioned perhaps in too fleeting a fashion two characteristics of this Institute that are different from prior commissions and different, if I may say so, with all respect, Evan and Nancer, from bar associations. We are permanent. We're here to stay the course. This, as everybody can tell, is not a job for the short-winded. But we have long-winded members, as you can tell.

And we have something else, which is authority. We are an official organization with a power to make recommendations that have a resonance perhaps different from what comes from less permanent, less official organizations. So we want the input, recognizing, please, that what you're providing us should be live ammunition. It should in fact count when we shoot it. And so, please, help us with that, and focus on those two things particularly in your breakout sessions. What do we do about the state as a whole? And what solutions can we really, practically draw from all of this conversation? So thank you very much for your participation. And we hope that the breakout sessions are successful.

CLOSING SESSION

REPORTS FROM BREAKOUT SESSIONS AND CLOSING REMARKS

PAUL C. SAUNDERS, ESQ.
CONVOCATION CHAIR

Let's get started with the reports from the various breakout sessions. I tried to sit in for a few minutes on each one of them. And I can tell you that from that perspective they were very, very interesting and quite different. So I look forward to good reports from each of the breakout session leaders. I know they're going to be good reports because I know what was said in the sessions. And I also look forward to a number of useful, concrete suggestions for solutions, or at least approaches to solutions, to the problems that we've been talking about for the last couple of days.

So the first report will be from breakout session number one.

SUSAN R. BERNIS, ESQ.
ROYAL & SUNALLIANCE

Good afternoon. Group One was a diverse group of people with diverse ideas. This, of course, led to a wonderfully stimulating discussion. Like the other groups, we were asked to list our top three obstacles for lawyers in their first seven years of practice as well as potential solutions. We did this, but did not put them in any rank order. Without further ado – I feel like David Letterman – our top three obstacles, and suggestions to fix the situation, are:

(1) The loans/financial situation that young lawyers face. Over the course of the last two days we have heard the reasons why this is such a problem, so I'm not going to go into that now. However, I will say that this group felt the main concern with high loans was that it prohibited young lawyers from doing the type of work they want to, such as legal aid, solo practice etc.

The suggestions included loan forgiveness programs offered from both law schools and the government. We heard good news when one member of our group, representing a New York law school, explained that it has a loan forgiveness program which is income-based rather than based only on the type of employment being done. Many in the group strongly suggested government-based loan forgiveness programs, particularly for public interest and public service jobs.

Another idea was training students to look for schools that offer forgiveness programs as well as educating them to consider the debt issue from the outset when choosing a school. For example, students may want to consider a state

school where they might not run up as much debt.

Still another suggestions was to lobby for state and federal legislation for tax deductions. This was bantered around with some believing this was a good idea; but perhaps not likely to happen. Others were not in agreement that this is a solution.

(2) Our second concern is the inability of the young lawyer to focus on learning the practice of law. This has to do with the billable hour pressures, technology taking away from human interaction, being "pigeonholed" in one area of practice, and the lack of interesting work assignments. One member of our group told us how a friend of hers wanted to be in court "litigating," but, instead, was "stuck in a New Jersey basement going through documents."

It was discussed that the billable hour pressure is difficult. To get the requisite number of billable hours a lawyer is not encouraged to work efficiently. Further, to meet billable requirements, many lawyers are forced to do tasks they don't enjoy, leaving them no time to do they type of work they enjoy.

Here are some of the suggestions we had: (a) count pro-bono work towards the billable hour quota; (b) lower the number of hours expected for younger attorneys. Have a sliding scale based upon years of experience; (c) here is a novel idea: change the model away from billable hours to project billing; (d) have more clinical programs in law school, which would allow newer lawyers to "hit the ground running" and create more realistic expectations; and (e) have firms institute a "central assignment system" allowing new associates to either choose their work, or be given a variety of work, instead of being assigned to one department or area of practice.

One practical problem we heard about from a member of our group was that if you're in a small practice, young lawyers don't know where to get the forms they need. A suggestion was to have bar associations keep form banks. Another idea is to have the bar associations foster referral services, including referrals to some of the young lawyers who need work and new experiences.

(3) Our third area of concern was the lack of role models, support and mentoring. Again, we heard the stories throughout the convocation, so I won't go into more specifics. Suggestions included: utilizing the New York State Bar Association Young Lawyers Section mentor directory and publishing success stories via press releases and public service announcements etc. When I asked the question, as moderator, "Who is going to do this?," the response was that there had to be a commitment within the entire profession to "get the word out."

Other ideas for improving the lack of support is to have the firms large and small strongly encourage young lawyers to participate in bar association events, even to the extent of awarding credit for involvement in committees and groups.

This would give young lawyers an opportunity to meet others in practice and, possibly, select their own mentor. By building their own professional relationships, they can avoid the usual situation where new lawyers are assigned to somebody in the firm whom they may not be comfortable going to and asking questions. Our group would encourage firms or other employers to pick up the cost for belonging to bar associations whenever possible. This would certainly be helpful for young lawyers.

This group believed that it would be a good idea to have part of the CLE requirements for young lawyers include a mentoring relationship. The young lawyer would actually get CLE credit for participating in a meaningful mentorship.

The discussion turned toward the concern that young lawyers are very isolated; particularly the 80% that are not working in the big firms. One suggestion was to not lose focus on the need for social events. It was recognized that this was taboo for awhile, with people believing that these types of interactions should not be encouraged. However, this group felt it was important to encourage social events, lunches, meetings and other ways to provide interaction. For those in firms, it will allow some of the senior people in the firm find out what the young lawyers in the firm are interested in outside of the office.

We discussed the need to have structured regular evaluations of young lawyers. It would be beneficial for senior lawyers to meet one-on-one with their young lawyers on a regular basis, to give them substantial input on how they are doing, what they can do better and, of course, provide positive reinforcement. In preparation for these meetings, the senior lawyer should get as much input as possible from other people who work with the young lawyer, both in and outside the firm. Further, we talked about employers developing a skills list for young lawyers and having meaningful follow-up to make sure the skills were being taught and there were opportunities to participate in real situations such as motion practice, trials, real estate closings etc.

We loved the idea that had been put forth earlier in one of the presentations of tying a senior partner's compensation to ensuring that mentoring and supervision are accomplished. Also, tying the turnover rate to compensation decisions. We felt this was a very interesting idea.

In closing, we had a very spirited discussion and a wealth of ideas. I only wish we had more time. My thanks to this wonderful group.

HARVEY FISHBEIN, ESQ.

GOULD FISHBEIN REIMER & GOTTFRIED, LLP

In some ways I feel as if I'm doing the second summation because I have to now repeat some of the things that you've heard.

One, it was amazing to us how the random selection ended up getting such

a wonderful cross-section of people at the table, which led to, of course, a very, very fruitful discussion. It was so fruitful that we had a number of difficulties in deciding what the three obstacles really are, because there are so many of them. But we focused a lot on what we heard yesterday from the young lawyers when they were speaking, because we kept hearing a lot of things over the last couple of days. We heard a lot about leadership. And we heard a lot about listening. And we decided that one of the things we should be doing is listening to the young lawyers who spoke yesterday about the problems they see.

The number one problem, is the mentoring. That is a key ingredient across the state for both large and small firms. The large firms need to do it because not only is it the right thing to do, but it's the smart thing to do- another phrase that came out this morning. Mentoring opens up communication between the senior attorneys and the young associates. And that is going to educate everyone. Communication doesn't come from only the top down. It must go from the bottom up also.

When we have communication, we have civility, rules, proper behavior we'll have education similar to law school or CLE programs where all of a sudden we start to question or review why we do things, why we've been doing it for ten, fifteen, twenty years, when we start to teach it to a younger associate, and they start asking questions – and they must feel free to ask questions – we re-evaluate your own procedures. That improves the system for everyone. It improves the system.

For the small firm and the sole practitioner, of course there are colleagues. But many of them are in the same boat. We believe that the bar associations must provide mentoring programs. As a form of inducement, lawyers who volunteer their time to be mentors on an assigned list, and who monitor their time, are entitled to CLE credit. It is teaching. It is serving the profession. It is critical. And as an inducement, we believe it would be very, very helpful in getting people interested in mentoring.

Also, we should be reaching out to the retired attorneys, because the retired attorneys are anxious to give their help.

So the large law firms need these practices in place. And the smaller firms will be able to get the benefit through the bar associations, so we can take care of the seven lawyers in Hamilton County as well as taking care of the lawyers at the large firms here in New York.

The second problem was the debt. It's an enormous problem, because it drives a lot of the decisions as to where to work, and makes people feel like prisoners to whatever lifestyle they're engaged in because of the debt.

One suggestion, which is radical, is that the third year of law school become a third year of clinical programs, but outside of the law school. It can be an internship. This would serve two purposes. You would give people expe-

rience in public service, because they would be working in clinical programs, which would then maybe have them come back as graduates. And two, you would cut the law school debt by a third, because they'd only have to pay for two years. Many law schools have clinical programs under the guidance of professors. We're talking about moving it outside the law school. In that way maybe we can cut down on the debt. The government can't pay for the debt right now. We felt that was not achievable because of the costs that we're running into with our own deficits. But this was a radical idea that is something that perhaps should be discussed.

Connected to public service was the concept that the fourth year be donated to public service. And that requires making it an attractive position that is valued by the larger firms. We heard this morning that you need to value certain things, and then count them. In other words, say "yes, this is something that we would truly hold as valuable," and then actually give credit for it. And the idea is to try to make some public service jobs, whether it's Legal Aid, Corporation Counsel, or the Attorney General's office, as attractive as the judicial clerkships and other internships that many of our top graduates go for now, to make it an attractive alternative to get people involved in public service, so that maybe they'll come back to public service or stay in public service.

The third area is the one that caused us the most difficulty, and that was understanding that 80% of all lawyers seem to be in small firms in New York State, yet the large firm problems drive some of the problems. We were discussing what are the problems at the large firms, and how to change it. Truthfully we couldn't come up with a solution. But we did hear a number of key words. And the words that keep coming back over the last day and a half was the leadership. Again, it has to start with the large firms from above.

It's true that Generation X people have certain desires. We have to listen to them. And we have to conform and maybe change. But the leadership has to hear these things: that the models of 50 years ago don't necessarily apply now, that it's time to change how law firms function and deal with their associates.

One of the suggestions was that there be different pay scales for associates depending upon what roles they want to play in the law firm. To expand the part-time concept, if someone wants to come in limiting their hours for whatever reason, they're at a certain pay scale. Instead of this pigeonholing of people into one direction, there would be flexibility in the grand sense, in a sense much greater than we are experiencing now.

In many ways, though, what we are talking about in the large firms, the mentoring program talks about it also. Because, again, it's this communication. It's for the firms to hear what's going on, to recognize what are the problems. And by listening and observing, they'll learn not only what is the right thing to do, but, again, what the smart thing is to do. Those were our suggestions.

JENNIE R. O'HARA, ESQ.

AMERICAN EXPRESS TRAVEL RELATED SERVICES CO.

Good afternoon. My name is Jennie O'Hara. I had the honor of leading breakout session Three. We, too, had a very representative group, and a very thoughtful and lively discussion. In fact, so much so that my first recommendation would be thinking about making that session a little longer next time. I'm going to do my best to try to sum this up very quickly. Again, I will be repeating a couple of things.

The first obstacle that we identified was the billable hour. We had a very lively discussion about this. The billable hour needs to change. That's the best way I can sum up what we decided.

One idea that was raised was trying to make associates' work judged more on a value basis. But at the same time we discussed the business need and the problems the firms have because that's how their clients want things. We identified that it's a difficult problem, but it's one we should try to address.

One idea was to come up with principles, the Craco Principles perhaps, and get the top twenty law firms in the country to establish some principles whereby they value associates' work. Associates want to feel that their work is valuable and that they're contributing.

The second obstacle that we identified was law school debt. As two people before me stated already, this is a very big issue for young lawyers. And some of the suggestions were that maybe we could provide some tax relief with federal legislation, and perhaps more education for people before they go into law school. This would be done by bar associations, law schools, lobbies.

The third issue that we raised was, for lack of a better word, leadership. This applies across-the-board. Young lawyers are looking for better leadership from the people they work for. That encompasses all of the supervision, the training, the mentoring that we talked about. This might be especially important now in light of the fact there's a different group of people entering the legal profession.

We had some discussions around women in the work force, and minorities. There was a sense that people need to be more empathetic and identify with their employees on a personal level, and try to address some of the more personal issues in a more effective way. And so our suggestion was better leadership. Those are the three that we had.

SETH ROSNER, ESQ.

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

I'm Seth Rosner. Hearing our first three moderators, I was tempted to say "me, too," and sit down. I think the Judicial Institute will be getting a real message from our breakout session returns.

In no particular order, we agreed that the three major obstacles were the pressure of the student loan debt, the billable hour syndrome, and mentoring/communications, or the lack of it.

There was a fourth obstacle that was mentioned. As we discussed it, we came to the conclusion that it really related to at least two of the other two. And that is the unavailability of time for public service, for activities that young lawyers are interested in getting involved in but simply can't do because of the pressures of their practice situations.

There was fairly widespread agreement in our group that the student loan debt syndrome obviously is not limited to young lawyers in large firm practices. Probably the billable hour syndrome was, but certainly the limitations on mentoring opportunities for some of the small firm lawyers is a very significant one, and one that we also addressed.

We came to a fairly widely-held conclusion that most young lawyers went to law school to make a difference. And making a difference certainly included the opportunity to be involved in public service efforts that they felt were denied them by virtue of their student loan obligations and the expectations with respect to billable hours.

Solutions. With respect to the student loan-debt problem, there probably is not a solution. One suggestion that was made was federal or state relief by way of debt forgiveness for young lawyers, similar to physicians, who go into communities that are underserved with lawyers. Except for Hamilton County, I wonder if there are any in New York State. But in the current political environment, there was widespread agreement that that simply is not a realistic expectation.

There was agreement that law firm culture, whether very large firm or smaller firm, makes a difference. And the attitude of firm leadership toward all of these issues impacts very significantly on the young lawyer.

There was agreement in our group that including pro bono activities, public service activities in the calculation of time and effort that a young lawyer in a firm is expected or mandated to perform each year will make a very, very significant difference in that young lawyer's attitude toward his and her practice situation.

Flex time was discussed based on Hank's comments this morning. And he's right, it's clear that there are changes coming, in the face of the profession among younger lawyers, that are going to force changes, whether or not firms large and small want it.

There was actually a reference to a different kind of flex time. One of our younger lawyer members expressed frustration with the fact that, at any given time, he is working very, very hard and long hours, whereas other associates in his class in the firm appeared to be working significantly less. And there was apparently insufficient flexibility so that the young lawyers who were not work-

ing at the same level might be moved over to relieve some of the pressure in his practice area. So his comment was, "I'd be much more interested and less frustrated if I had the opportunity to broaden my practice experience to more than the department in which I'm currently working."

Mentoring. We discussed the opportunity of a model somewhat patterned on the American Inns of Court. It was observed that essentially is for trial lawyers, for litigators. And my beloved mentor, Bob MacCrate, commented, "That's an imposed foreign object. We have our own opportunity to do that kind of providing, and it's in the county and local bar associations." I think he's right. Again, if young lawyers are given encouragement by their firms – not just lip service, but "we want you to become active in bar association committees" – that will provide the first step toward public service. And that's how I got started in this Association as a member of the Young Lawyers Committee almost forty years ago.

The one final comment I'd make on the mentoring issue is that committee work in bar associations probably is not sufficient, because it's limited in number, although this Association has a huge number of committees and encourages the participation of younger lawyers. But organized mentoring programs in county and local bar associations specifically aimed at encouraging participation by young lawyers and by seniors who will come regularly on some model more or less patterned on the American Inns of Court is important.

One final note, and that is diversity. We agreed that diversity is an issue. Hank's comments this morning suggests that in many ways, the pressure both external and internal will be addressing that over the very near term. But at least one member of our group still expressed frustration with the glass ceiling, with the perception among some women in some firms, and some young lawyers of color, that they don't yet have the opportunities that are afforded white males. And that's an important aspect that can and should be addressed here. But it's a broad professional problem. Thank you.

CHARLES M. STRAIN, ESQ.

FARRELL FRITZ, P.C.

I'm Charlie Strain. Group Five was also very lively. We had a diverse group just by the pick of the numbers also.

The obstacles that we identified were very similar: time constraints, debt and work/life balance. There were some interesting comments on time constraints. One came from one of the younger lawyers who said that there is almost a disconnect – we heard this yesterday – with associates at large firms. No intention to stay where they are. Therefore they lose interest in what they're doing. It affects their work ethic. That's a fundamental issue to which some thought has to be given.

Management of time. Lawyers tend to be very inefficient. We had a pretty good discussion about the need on all levels for the implementation of some better management techniques. We need to draw on the business community. That starts obviously at large firms and goes all the way down.

We had a sole practitioner from upstate New York. We talked a little bit about the management of small practices as well. That's something that needs to be taught, and we've got to figure out how to get management type of training to practitioners across the state. It's basic business training. But it's also critical that, at the large- and medium-sized firm level, firms, if you don't adopt good business techniques, ultimately, you're going to have significant problems.

On the debt issue, we had a career counselor who indicated that law schools don't encourage you to work while you're in law school. They seem to encourage you to incur more debt. That seemed odd. There certainly seemed to be a lack of knowledge among new law students about the ultimate cost of attending law school. Some education is needed there.

One suggestion is that the bar perhaps should be talking to law schools about the cost of law school, as it seems to be a profit center at many universities. Should it be so? And does that ultimately have an impact on the practice of the bar?

We talked about work/life balance. We spent a fair amount of time on that. Anne Weisberg had very valuable insights. The average age of women graduating from law school is 28, which means that on the normal partnership track, they're coming up for consideration at 35, which is the peak child-bearing period. That has a fundamental effect on what's going to happen in this profession. More telecommuting has to be encouraged. The large firms don't seem to encourage that.

It is different in a medium-sized firm. As the managing partner of a medium-sized firm, I have a suggestion to large firms who have so much time pressure. You can send business out to medium-sized firms. We'd be happy to help you in that regard. (Laughter.)

On the work/life balance, Shearman & Sterling has an articulated policy that would lengthen the time, but wouldn't take you off the partnership track, if you worked on a part-time basis. That type of thing could be very important.

The themes of leadership and management came through in our group very clearly. Leadership is where I see the biggest dearth in the legal profession. There are a lot of good lawyers out there, and you need a lot of good lawyers out there. But there are very few good leaders. Leaders leave, too.

How do you go from one generation to the next? How do you make sure you have your best people wanting to stay? Inculcate a culture that's positive, and nurture people who are different from you. It's a very, very difficult challenge. It's one that you've got to spend some time on. We've got to think about it.

We can draw on the business community and some of the people that are

out there teaching about leadership and managing change. Change can be very beneficial. That's something that we all should talk about. Thank you.

MR. ROSNER

Lou, could I add one very brief comment?

LOUIS A. CRACO, ESQ.

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

Sure. How can I say no to you?

MR. ROSNER

I neglected to say that one suggestion in our group was that young lawyers ought to have an opportunity to select their mentor. My first reaction to that was, "Yeah, right. That's exactly what the firm is going to permit, because then you'll only have a relatively small number of the senior lawyers who are available."

But her point was that for a young associate of color or a young woman associate, he or she tends to get assigned, at least in her experience, to a senior partner of color or a senior partner who is a woman. And that might be the perception of the firm as to the best mentor for that associate. But it might be antithetical to the desire of the associate to have a different mentor. I thought that was a very useful comment.

MR. CRACO

Thank you. A few closing remarks. First of all, I'm very grateful to the moderators of those panels. That was an extraordinary job of synthesizing what I am sure was an extremely lively and nuanced discussion. And thanks, of course, to the reporters who helped them do it.

You may have noticed that we had a stenographic reporter in each of those groups. The reason we did not give you Miranda warnings before you went in there is that we will keep the stenographic record for our own use and our own work. We will publish the journal of these proceedings with much of what went on in the breakout sessions summarized and presented, but we will not attribute anything that was said there to the people who said it. You can be sure that the nuance that may have been compressed out of the presentations made by the moderators will not be lost on us.

I want to conclude with a couple of observations about the task that you have all set out for us in the Institute. And it's a very imposing task.

We asked for your assistance: to come and help us formulate some thoughts about what can be done to nourish the professional sense and instinct

of our young lawyers. You've answered that question. And, particularly as reflected by the response of the various groups, you've answered on some issues resoundingly. It therefore falls to us to do what we implied we were going to do, which is to try to do something about it.

But those of you who came to help us should know, and those of you who are on the Institute already know, that we approach these kinds of tasks with a rigor that is important to achieving lasting and helpful reform, if that's the right word. And it doesn't help that for us to pretend that the results of this consensus that we've been able to achieve from selected well-meaning people will by some Panglossian magic become the culture of the legal profession. The Bible is not wrong, I think, in suggesting that money or the pursuit of money is the root of all evil.

Let me just give you a couple of notions, not because I want to throw a wet blanket on these proceedings at their tail end, but to indicate that we know that what you've told us involves us in some very difficult and intricate work.

We've been blessed here today and yesterday by the leaders of some law firms who hold to the old traditional notion of what leadership of a law firm is. But the fact of the matter is, as we all know, that the problem of billable hours arises at all because the commoditization of young lawyers' services and selling them by the piece is in the short-term financial interest of many of the bosses to whom we have to appeal for the leadership to change it. The ways to do that are not intuitively obvious, but the task is there.

We talked about retention and the cost of turnover earlier today. That also in some respects is not an intuitive matter. Attrition in the firms is often necessary in order to balance intake on the one hand with size on the other. If you attempt to control size by controlling your intake instead of through attrition, what do you do about the young lawyers who need those jobs to pay their debt? What happens to partnership opportunities if you have an experience like this: When I came to Willkie, Farr, I was one of five associates hired that year. One went off to teach English in Pennsylvania. One went off to become eventually the Chief Justice of Iowa. And the other three of us became partners at the end of the ripening time prescribed by our firm in those years. We now take in 55 or 60 associates per year. Suppose we retained all of them? The issue then changes from one of attrition and retention to the glass ceiling and the selection process for partnership. But suppose all were made partners? At that point the bosses' nets would be divided by a larger fraction, and you're right back to the problem I mentioned first.

When we talk about the need to alleviate debt, we concede that the federal and state governments are unlikely to think of it as a strong case for tax relief, that there should be more trial lawyers in the world. Where do the funds come from? Do they come from bar associations? Do they come from the firms? Why should the firms pay money to alleviate debt so that the best and the

brightest people whom they want to capture in the first place can go do something else? There are all these kinds of questions implicit in it. And it calls for tough work to get at the answers to the questions that you pose and the needs that you've exposed. And, to use the word that has been repeatedly employed over the past two days, it's a job for leadership.

Now, leadership in this context has two components, both of which we've heard articulated in the course of the last two days. And I repeat it only to let you know that we've heard it on the Institute as a commission to us.

The first of the components is that we must be able clearly to articulate a vision, a set of goals attractive enough to attract followers, constituencies in support of these changes. And we will do that. That's necessary, but it's not enough.

The second thing that leadership entails, and it is implied by my remarks about the difficulty and intractability of the problems that I suggested in the first place, is to do what Charlie Strain and others mentioned today, what Candace Beinecke mentioned yesterday. It is the job that we do all the time as lawyers in our counseling room. When is the last time anybody here who is a counselor of a client felt that a sermon to that client about the right thing to do was a welcome aspect of your service? When was pontificating thought to be the right way to get a client to act?

It is our job to find instrumental reasons to do good things. It's our job, as you put it, to find ways to articulate to the leadership of the profession – and I don't mean the well-intentioned bar leader, but I mean people who are running law firms and the people who are out there in small bar associations in the countryside – why doing the right thing is the smart thing to do. And there are all sorts of techniques that we might want to explore beyond the ones we've talked about so far.

There is the talent market. If we want to mobilize market forces to produce market results, we could do worse than identify what the markets we're talking about are. The market for talent from law school. What if we were able to get the law school placement officers to ask the hiring partners of law firms whether they subscribe to a bunch of things or not, and then put it up on the bulletin board? It helped in the years when people in law schools held certain values about the kinds of places where they wanted to work. But controlling the questions that are asked at the intake of talent, the recruiting leverage, is one of the most powerful influences on otherwise money-driven senior partners.

We talked about the billable hour. I blame Bob MacCrate's firm for the billable hour. I blame his firm because Sullivan & Cromwell in the old days used to send out bills that said "For professional services rendered, $2,500,000." And as the bills grew, in-house lawyers who had to account to their boards and their chief executives for their budgets wanted some quantification of what it was that this firm had spent $2,500,000 doing. And the story of the quality of

their services was thought to be insufficient to convey that message to the executives of the client corporation.

Now, Bob insists loudly and long that they never caved in to that. And I congratulate you. But others did. And they did it at the instance of the corporate clients who thought it was a reform. This is a reminder to us that all the reforms that we are able to generate out of this work will be the agenda of reform for the next generation.

But why not go to the committee in this Bar Association that is composed of corporate legal counsel and say, "You created this monster. Do you really think it still serves your purposes?" Suppose the clients were the ones who started to talk to the law firms about their lack of desire to have their bills controlled by so vulnerable a measure as billable hours. I say this only to illustrate that there are ways of going about this which are not going to be evident to you in a flashy report in six months about all the things that need to be done.

This is inside baseball in some ways. We're going to have to do it slowly, incrementally, and the hard way in order to get it done.

Here's another example of what we might do when we're talking about mentoring. The mentoring business in the large firms has all sorts of ways you can tweak it about who selects it, who doesn't select it, whether likes should attract likes for the mentoring job. That's one set of circumstances. The problem in Hamilton County is another. The problem in Erie County is another.

The bar associations in the outlying parts of the state are probably the place where the mentoring connection can most likely be made. But what's to get them to do it? CLE is a very possible inducement because of the quality of it. How do you keep track of it? Well, that can be worked out.

But mandatory CLE has also created a cash cow for many of these bar associations. They provide huge amounts of CLE that's delivered to the population of the bar as a whole, which has to fulfill their CLE requirements. And they buy it from bar associations.

Is it possible to use some portion of the revenue streams thus created to generate really good combinations of referral and mentoring services in bar associations in rural areas? I think it is. But the work is hard and incremental, and needs to be done, as I said, with rigor.

What I've been talking about at this point has been the efforts that we're going to make to harness the available forces to try to initiate some change along the lines that you have suggested. But the reason to leave this place with real hope is not because the Institute in all its majesty and weakness is going to turn to this job. The real reason to leave it with hope is because everybody has told us that the coming wave of lawyers won't put up with it any more, and that the forces of change will overwhelm the incumbent situation. And we have to manage those forces as acutely as we manage the resources available now.

There is going to be a very new face of America, as Time Magazine illustrated on its cover not too many years ago, and as I see in my family now. But there will be a very new face in the profession as well. And we have to be attuned to that. And it will force itself upon us if we don't.

Last, I want to say some thanks. And there are a number of people. This is not going to turn into an Academy Award speech. I want to thank one person in particular first. He has been mentioned before. But to the extent that I have a mentor in this business, to the extent that I've derived any understanding of what it means to devote yourself as hard as you can to the profession that has given you the opportunity that you have, it is Bob MacCrate. And I want to thank him very much for what he has done for me. And to the extent that I've been able to do anything with the friends I have on the Institute, he is responsible derivatively for that as well. Bob, thank you so much.

Paul Saunders has shown what you can do with a gentle, low-key kind of leadership to produce extraordinary results from busy people scattered around the state, some of them even people with egos and agendas of their own, and to harness them into an effective program. Paul, what you and your committee have put together here is just extraordinary. And I thank you for that. And through you, I thank the members of the Committee who on behalf of the Institute put it all together.

And finally, as Paul has said and others have said, if not for Catherine O'Hagan Wolfe, none of us would have any effect. Bob MacCrate's good intentions would come to me and stop. Catherine is, as most of you know, the Clerk of the Appellate Division, First Department, which most people think is an important and full-time job. Among the people who think that is the Presiding Justice of the Appellate Division, First Department. That we've been able to steal her as fully and thoroughly as we have is a sign both of his acquiescence, but mostly of her generosity. And, Catherine, for your skill and your help, we are forever in your debt.

Finally, to all of you who came, and those who were here yesterday for your contribution to this discussion, the only reward I will promise you is that no good deed goes unpunished. And since you were so smart about telling us about how these problems should be solved, we're going to draw on your skills and your suggestions as we go through the arduous job, as I suggested, of trying to solve it. Don't think that your involvement with this project ends today. But this meeting today now does end. Thank you very much.

SUMMARIES OF BREAKOUT SESSIONS

BREAKOUT SESSION I

MODERATOR: **SUSAN R. BERNIS, ESQ.**
ROYAL & SUN ALLIANCE

REPORTER: **TAKEMI UENO, ESQ.**

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DERRYL ZIMMERMAN, ESQ.
MEMBER, COMMITTEE ON LAW, STUDENT PERSPECTIVES,
ASSOCIATION OF THE BAR OF THE CITY OF NEW YORK

Breakout Session I identified the following obstacles to professional and personal fulfillment that lawyers face during their first seven years of practice:

1. problems of economic insecurity, including both the law school debt problem and the problem of young lawyers who hang out their own shingle but don't know how to run a law office. The need to repay loans prevents many young lawyers from going into public service straight out of law school.

2. not getting the kind of experience that young lawyers want or need. This includes, in no particular order:

a. not enough opportunity to do pro bono work. This problem may be greater for lawyers at small firms.

b. overspecialization at large firms – being pigeonholed into a particular field too early.

c. lack of opportunities for professional growth. For example, to fulfill their quota of billable hours, some young lawyers take on drudgery (e.g., document review) instead of work that would further their career development.

d. work that is not particularly interesting or meaningful

e. unfairness in how work is distributed

f. unpredictable hours – not being able to plan one's life outside the firm because one never knows when one will have to drop everything and work all night, all weekend, or over a holiday.

g. work/life balance – the number of billable hours required

h. technology – the need to be available 24/7 to clients

i. the pressures created by globalization, increased competition, and heightened client expectations

j. solo practitioners and lawyers at small firms don't have access to forms and best practices.

3. lack of role models, support, and mentoring. This is especially severe for young solo practitioners. The problem of lack of support, which overlaps somewhat with problem 2, includes:

a. lack of diversity and lack of support for minority and female attorneys. Again, this problem may be worse at small firms than at large ones.

b. isolation. This is often exacerbated by technology – instead of having face-to-face interaction with colleagues, people send e-mails.

c. if young lawyers don't see happy senior lawyers, they aren't particularly motivated to stay in the profession. In addition, the lack of role models cuts off the pipeline of young lawyers because it discourages students from going to law school.

4. the billable hour system, which cuts against training, mentoring, and pro bono, and which punishes efficiency.

5. ethical dilemmas. This problem may be more severe for young lawyers who hang out their own shingle.

6. the integrity of the profession lawyers should be more concerned with creating a just society instead of concentrating on money and prestige.

7. lawyers who don't know why they entered the legal profession or where they want to go in their careers

The breakout session suggested the following solutions:

1. for the law school debt problem:
   a. loan forgiveness programs, both at the law school level and the federal and state government level. Bar associations might get involved as well.
   b. interest on student loans should be tax-deductible.
   c. the interest rate could be lowered if the loans were financed by the government.
   d. train students to think about how debt will impact their lives. For example, they might choose to go to a state school to lower their debt, or they might look for law schools with loan forgiveness programs.

2. for the problem of not getting the experience that one wants or needs:
   a. law firms should count pro bono toward billable hour requirements.
   b. bar associations should facilitate pro bono for solo practitioners and lawyers at small firms. They should also provide referral services.
   c. employers, both public and private, should encourage young lawyers to get involved with bar associations. Law firms could count bar association activity (if necessary, with a cap) toward the total quota of hours. They could also pay for bar association dues, especially in the early years, when dues are lower.
   d. to combat the problem of overspecialization, law firms could have a central assignment system or a rotation system so that, for the first six months or so, the young lawyer can get assignments from various departments.
   e. one participant suggested that first- and second-year associates have a lower billable requirement because they have no control over the amount of their work; they are completely dependent on assignments from partners and senior associates. However, another participant felt that it is often easier for more junior associates to bill lots of hours – clients don't want to pay high rates for senior associates to do document review or due diligence.
   f. to encourage training, law firms could have a special client/matter number for training, and a certain number of training hours could count toward the overall hours requirement.
   g. employers can create guidelines re: the skills that a lawyer at a partic-

ular level should have. The employers then need to follow up to make sure that the young lawyers are getting the opportunity to develop different skills.

h. employers should give regular (i.e. periodic) evaluations. Bar associations might be able to spread "best practices" for evaluations.

i. to help solo practitioners and lawyers at small firms, bar associations can create and maintain form banks.

3. for the problem of lack of mentoring and support:

a. mentoring could count toward lawyers' CLE requirement.

b. bar associations can create lists of people who are willing to be mentors.

c. to encourage mentoring, tie compensation to mentoring. Compensation could also be reduced if there is undue attrition in a particular department.

d. to combat isolation, have more social events and social interaction. Instead of sending an e-mail, walk down the hall and talk to your colleague. Ask people what they're interested in outside of the law.

e. to combat the problem of lack of role models, everyone needs to try to get the word out about positive stories.

Some other suggestions, which deal more with the issues raised at the first Convocation, were:

1. teach professional responsibility (ethics) in the first year of law school and make it a three-credit course.

2. pro bono should be mandatory at law school.

3. law schools should have more clinical programs and externships/internships.

4. the bar should educate people who are thinking of going to law school – tell them what it's really like to be a lawyer.

BREAKOUT SESSION II

MODERATOR: HARVEY FISHBEIN, ESQ.
GOULD FISHBEIN REIMER & GOTTFRIED, LLP
REPORTER: STEPHANIE UHLMAN

PARTICIPANTS:

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BARBARA SMITH, ESQ.
LAWYERS' ASSISTANCE TRUST

STEPHEN A. WEINER, ESQ.
MEMBER, NEW YORK STATE JUDICIAL INSTITUTE
ON PROFESSIONALISM IN THE LAW

ANTHONY P. ZAPPIA, ESQ.
NIXON PEABODY LLP

Panel II engaged in an intriguing discussion to identify the most significant obstacles to professional and personal fulfillment and to create solutions to address these obstacles. The group focused on finding realistic solutions that could easily be implemented.

The panel raised the issue of debt repeatedly. Law school debt is a huge problem and a guiding force for many young attorneys in their career choices. Recommendations included using the State Bar's foundation and seeking government funding to provide scholarships and/or post-graduate loan repayment

programs. The panel was aware that any solution involving government funding was unlikely for the immediate future given current financial conditions. Charles D. Cramton, Esq., from Cornell Law School, pointed out that law schools are already providing loan forgiveness aid for students entering public service positions and that these programs are very expensive. One possible solution involved seeking law firm support for these programs.

Stemming from this debt conversation was the proposition that an increased desire for money, both within the profession and without, has affected the profession in a negative way. Are people entering the profession simply out of the desire to make money?

While the focus was on realistic suggestions, a proposal to transform the third year of law school into a year of paid public service work was well received. The program would be similar to a medical school residency, where the students would not pay tuition but would be paid by public service organizations. The disadvantages included the affordability of the program, both by the organizations that would pay the students and the law schools that would lose tuition. Law schools might supplement the loss in revenue by raising tuition or admitting more students. A similar solution involved a "clerkship for public interest organizations." The following question was raised in response: Who pays? Additionally, how do we get others to value this experience in the way judicial clerkships are valued?

As the participants focused more on the cause of debt, the discussion turned to the lack of control faced by graduating lawyers who are saddled with high debt. The idea of mentoring or counseling first arose as a way to educate students who are embarking on law school. Mentoring was viewed as an issue that cut across the state, from large firm to small firm, to government and nonprofit attorney. The group focused on mentoring students to help them realize the effect of taking large loans on their choices later in life; that high-paying jobs may not be available to them after graduation; and that many lawyers do not take "the traditional" path of working for a big firm and making a lot of money. At this point the following questions arose: "Are there too many lawyers? Where do all these people find jobs?" The group could not find a satisfactory answer to either question.

Mentoring was discussed as a solution to other problems as well, such as ethical dilemmas. Young lawyers with increased access to senior lawyers could have an avenue to address such issues. Louis Craco, Jr. illustrated the practical and economic aspects of mentoring. By spending time mentoring a young attorney, one can develop a professional able to play a greater role in the work of the organization. For large firms, mentoring could be encouraged by focusing on the practical and economic aspects. For smaller firms, mentoring could be

achieved through bar associations linkages and offering CLE credits.

Lack of leadership was also an issue. Are senior lawyers are providing proper leadership for younger ones? Senior lawyers can increase communication to make young lawyers feel more valuable and less like "fungible billing units." Andrew P. Zappia, from Nixon Peabody, LLP spoke about the pressure to provide high quality legal services. He stressed that increased communication and team work might help reduce this pressure on young lawyers, creating an investment in their institution and leading to greater fulfillment.

Lawyers from the focus groups reported that they did not have a role model. Often people spoke about being mistreated. A potential solution to this problems was a civility code. The group also suggested requiring a "standard of professional conduct" CLE to address the civility issue.

There was a realization that change enacted at the large firm level could create a downward effect to the smaller firms. One suggestion was a two-tier system where new attorneys choose from one of two career tracks, one at a higher salary and more hours, another at a lower salary and smaller hour commitment. Overall, the group recognized that the increase in the billable hours requirement leads to greater pressure and less time to lead a balanced life, thereby aggravating the discontent of young lawyers.

By the end of the session, the participants addressed a range of obstacles and developed many practical solutions. The group agreed that the diversity among them helped foster such a productive conversation.

BREAKOUT SESSION III

MODERATOR: **JENNIE R. O'HARA, ESQ.**
AMERICAN EXPRESS TRAVEL RELATED SERVICES CO.
REPORTER: **SHEILA MURPHY**

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NICOLETTI, HORNIG, CAMPISE & SWEENEY

SUSAN GIBSON, ESQ.
INGERMAN SMITH, L.L.P.

HOWARD GLICKSTEIN, ESQ.
DEAN, TOURO LAW CENTER

KRISTIN KOEHLER GUILBAULT, ESQ.
WHITEMAN, OSTERMAN & HANNA

TRACY RICHELLE HIGH, ESQ.
SULLIVAN & CROMWELL

SCOTT E. KOSSOVE, ESQ.
L'ABBATE, BALKAN, COLAVITA & CONTINI, L.L.P.

DONALD R. L'ABBATE, ESQ.
L'ABBATE, BALKAN, COLAVITA & CONTINI, L.L.P.

G. ROBERT WITMER, JR., ESQ.
MEMBER, NEW YORK STATE JUDICIAL INSTITUTE ON
PROFESSIONALISM IN THE LAW

The session's mission was to identify obstacles that young lawyers face today. Two issues were decided upon as the primary areas for further discussion. One was billable hours, and the second was the need for leadership from senior attorneys.

On the first point, the consensus was that billable hours create pressure and extreme competitiveness. The group cited the requirement of quotas plus the inability to work 2500 hours and still be competent, which left many lawyers unable to give real meaning to their work. The members expressed concern that it becomes difficult to determine who is the better attorney – the one who bills 65 hours or the one who bills 5 hours to perform the same task? Without the requirement of billable hours, important other factors must be determined which include: what is a reasonable pay scale and what are reasonable hours? A further is what is fair compensation when there are two attorneys and one is working harder than the other? One member stated that if the young attorneys hired were professionals, then any of the billing requirements listed above would not be necessary.

One member raised the study of the American Bar Association ("ABA") issued 20 years ago, which recommended 1600 hours a year as the ideal billing requirement. However, the member suggested that 1300 hours would be a better requirement, broken down as 900 hours for work, plus 400 hours billed towards client development, CLE, bar association activities, and professional development. Also, the group discussed "value billing." Other suggestions included adopting the term "attributable hours," which would include pro bono and bar association activities. One member suggested applying the Sullivan principles to 20 of the biggest law firms, wherein there would be no billable hours and associates would be identified by subjective standards, which would include a range of items such as mentoring, evaluating and compensation for lawyers.

All members agreed that to change the billable hour requirement, the managers of the firms, their clients, bar associations, the Institute, and business organizations should all be consulted before any implementation.

The other obstacle identified as impacting young lawyers was the issue of leadership. This issue focuses on the role of senior attorneys and/or the management of firms to mentor and train younger attorneys. It was important to the members that management show its empathy towards young associates, and treat them humanly and as assets to the firm or organization. Attorneys in leadership positions have a duty and responsibility to develop the young attorneys. The associates themselves need to pay more attention to what is required to become better attorneys, including what training should be involved. The group recommends that the responsibility of seeking a mentoring relationship should fall upon the individual, to find the person that best suits him or her. It is not necessary that men seek out men or women seek out women, or minorities seek out other minorities for mentors. Mentoring should create the feeling of belonging to a firm or organization as well as receiving honest feedback regard-

ing the individual's work. Senior associates should explain to a junior associate "this is how I felt in your situation and this is what I did" and partners should ask associates "what do you think"?

A distinction exists between mentoring and supervising. Another distinction is between mentoring and training.

The group briefly discussed debt as a factor facing young lawyers, and they considered a loan forgiveness plan which law schools could fund. They also thought that federally financed tax deductions could be allowed. Also mentioned as an obstacle for young lawyers was not participating in or fulfilling civic activities outside the firm. The group agreed that fulfilling such activities was determined by where the attorney was employed, i.e., a large firm, a small firm, or as solo practitioners. Some firms do not require outside activities, while others support it by contributing money and time to bar associations, CLE activities, and at least one community- sponsored activity a year.

BREAKOUT SESSION IV

MODERATOR: **SETH ROSNER, ESQ.**

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

REPORTER: **JOSEPH M. GITTO, ESQ.**

FARRELL FRITZ, P.C.

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ROBERT MacCRATE, ESQ.
SULLIVAN & CROMWELL

MARC A. McKITHEN, ESQ.
FITZPATRICK, CELLA, HARPER & SCINTO

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DEBEVOISE & PLIMPTON

Breakout Session IV agreed that the three most significant obstacles to professional and personal fulfillment are student loan debt, billable hour pressures and a lack of mentoring and communication between and among partners and associates.

The group agreed that the large amount of debt taken on by law students for their education is a driving force in those students' determinations of where to work post-graduation. Marc McKithen gave the example of law students who choose to go to large, high-paying firms despite their passion for public service. The student will tell herself that the position at the large firm will only be a means of paying off law school debt, and after four or five years, hopefully she will be able to work in an area of the law that invokes a stronger personal response in the young lawyer. The group agreed that this is not only a problem for the law student, but also the large firm investing in her, as well as a loss to that area of the profession in which she may feel more personal satisfaction.

The group discussed various solutions to the problems associated with student loan debt. Ms. Kaufman recommended a "domestic peace corps" similar to the Vista Volunteer of days past. Essentially, the government would establish a program that forgives student debt if a young lawyer does work that addresses the legal needs of the poor or underprivileged. Another suggested solution was reaching parity between the private and public sector. The group discussed this issue but concluded that with the high current salaries being paid to junior associates in most large firms, there would be no way for the government to compete on that level.

The second major obstacle identified by the group was the pressure to maintain and increase already high levels of billable hours. Robert MacCrate explained that the billable hour requirement was a product of the requests of corporate in-house counsel looking to quantify the legal work performed by their outside attorneys. The group agreed that a billable hour requirement provides an incentive to an associate to work for the time it takes to complete a project, rather than the completion of the project itself. Some members of the group noted that the billable hour measurement encourages "busy work" and "over-researching." Ms. Schlissel noted that one of the major problems with a billable hour requirement is that it does not take into account the quality of work, creativity and many other important attributes of a good attorney. Another major problem associated with the pressure to bill a high number of hours is the young lawyer's lack of time to do any work for the community. Unless law firms include pro bono work as part of an associate's "billable hours," there is no incentive for young attorneys to seek out such work, as it will result in under-performance at their present position.

Possible solutions to the issue of billable hours discussed by the group were

minimal because of the economic reliance upon the billable hour as a measurement of performance. David Schraver noted that law firms are basically "backed into" billable hours as a way of dealing with the day-to-day and annual finances of the firm. He further expressed that it would take both the clients and the firms themselves deciding to move away from the billable hour to lessen its importance and the resulting pressure upon associates. One member of the group noted that with the growing number of women entering the profession every year, there will be a forced change in the reliance upon the billable hour, or at least upon a high number of those hours. The member explained that women who wish to both work in a large firm and have a large role in their families will be instrumental in changing the present situation.

The group decided that the third major obstacle to professional and personal fulfillment in the profession is the lack of communication and meaningful mentoring between and among partners and associates. With regard to communication, the group concurred that attorneys are taught to communicate as advocates rather than as managers. While the role of an advocate fits the legal and practical aspects of the profession, it is not as effective in the corporate context. Some of the associates in the group felt uninformed of the expectations of partners they work with and those of the firm as a whole. On the topic of mentoring, many of the younger members of the group explained that while many of their firms provide mentors through a mentoring program, it would be more effective if they could find mentors through alternative programs. The group agreed that the possibility of a young attorney being arbitrarily assigned a mentor that both inspires and challenges the young attorney is limited.

With respect to the communication issue, one suggestion was to start on the law school level. It was suggested that business management be a required course in law school. To that end, law firms should also invest in personnel management seminars for their partners on an annual or semi-annual basis. Many solutions to the mentoring issue were posited by the group. All agreed that bar associations could play a greater role in the development of young associates. Many of the more seasoned practitioners in the group expressed their satisfaction with local bar associations, and believe that young associates would be afforded many fruitful opportunities to find a significant mentor in the bar association environment. With respect to mentors selected within a law firm, some associates noted that it would be helpful if the firm did not try to match up attorneys with similar backgrounds or of the same sex. One of the younger associates in the group explained that she would rather be exposed to a person's outlook on the profession that differs significantly from her own, and therefore would like a mentor who is from a different background and of a different sex and/or ethnicity.

BREAKOUT SESSION V

MODERATOR: **Charles M. Strain, Esq.**
Farrell Fritz, P.C.
REPORTER: **Paul V. Craco, Esq.**
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CLEARY, GOTTLIEB, STEEN & HAMILTON

MARTY GLENNON, ESQ.
MEYER, SUOZZI, ENGLISH & KLEIN

ELLEN LIEBERMAN, ESQ.
DEBEVOISE & PLIMPTON

MATTHEW SAVA, ESQ.
SHAPIRO, MITCHELL, FORMAN, ALLEN & MILLER LLP

MARK WALDAUER, ESQ.
MEMBER, NEW YORK STATE JUDICIAL INSTITUTE ON PROFESSIONALISM IN THE LAW

ANNE WEISBERG, ESQ.
CATALYST

Breakout Session Five began with a general and wide-ranging discussion of associate dissatisfaction. The initial comments addressed the absence of law firm loyalty to associates and the absence of meaningful, interesting assignments. The group addressed the negative impact these conditions have on associate morale and work habits.

Members of the group identified communication and leadership within a law firm as being important in the assimilation of associates into law firm culture. Partners as well as senior associates foster greater satisfaction and loyalty in younger associates by including those associates in aspects of the practice beyond the drudgery of legal research and writing. The group generally agreed that involving associates in client contact improves continuity of services and affords associates the opportunity to engage in "meaningful work."

The group also discussed economic issues facing associates, in particular, debt. The question raised was whether debt requires some young lawyers to place monetary considerations (and particularly debt service) above job satisfaction. The group differed on the extent to which career decisions were made based upon the need to pay debt. George Farrell noted, however, that in focus groups held prior to the convocation, as many as 75% of the associates questioned were carrying debt from law school which they considered to be significant.

The conversation turned to the causes of increased debt. Senior members of the group noted that law school debt was not a pervasive problem when they were young associates. The group collectively wondered what goes through a prospective law student's mind when such debt is incurred. A distinction was drawn between students in the "top-tier" schools and those graduating from schools considered to be less competitive. Those leaving top-tier schools, it was thought, are more likely to command salaries sufficient to service debt, while others may be laboring under the misconception that such salaries are easy to come by. Members of the group disagreed somewhat about law students' expectations as to payment of debt, and how it affects their decisions. The group did not disagree, however, that debt has become a significant variable in where young lawyers work and for how long they remain at a particular firm.

Proposed solutions to the debt problem included: (i) firms agree to pick up debt in lieu of bonuses and raises; (ii) young lawyers receive debt forgiveness in exchange for public service work; (iii) Ms. Lieberman suggested addressing and controlling the skyrocketing cost of legal education; and (iv) before incurring the debt, educate law students about the realities of debt service and the availability of employment sufficient to service such debt.

The discussion then briefly turned to the issue of training young lawyers and mentoring. Again, there was a distinction drawn between large firms, on the one hand, and small firms/solo practitioners on the other. The large firms were seen as having resources available to undertake mentoring programs, either on a formal or informal basis. Small firms, however, and particularly solo practitioners, were seen as presenting a different problem. Specifically, where might a young solo turn for practical advice, not only about substantive legal issues, but in the area of "practice management"?

As to large firms, a lapse in leadership and management was blamed for the lack of formal mentoring. As was the case in many of the issues discussed, the group felt that solutions to the questions raised must come from leadership and/or upper management. As to small firms and solos, the absence of mentors was viewed as a serious problem which bar associations are best able to address.

The group then addressed the emphasis placed on billable hours and its impact on the ability of associates to adequately keep up with other aspects of their lives. The evolution of the billable hour and the emphasis placed on it were also identified as a problem rooted in leadership and/or management of the large firms. Ms. Weisberg identified an American Bar Association task force on billable hours which concluded that it would be difficult to abolish the billable hour completely. However, for most practices, a combination of billable hours and fee for service billing makes the most sense.

The conversation turned to how a young lawyer might be expected to reconcile work and personal time in a culture which measures success based upon the number of billable hours one is able to produce. The discussion arose out of the often repeated complaint during the convocation that young lawyers are "fungible" and have little time to cultivate personal interests or devote time to family. Members of the group pointed out that in a highly competitive, service-oriented profession, clients' needs often require prompt attention, long hours and continuity.

The group essentially concluded that in an environment where at least half of the law students graduating from law school are women, firms must adopt flexible policies. Firms who expect to attract talent will need to "think outside of the box," allowing for part time work, working from home and coming up with new ways to accommodate talented lawyers. Limitations were noted, however, as to the ability of part time attorneys to complete assignments or provide continuity.

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APPENDIX A

COMPILATION OF PROPOSALS MADE AT THE BREAKOUT SESSIONS

QUESTION: Identify the three most significant obstacles to professional and personal fulfillment in the first seven years of practice. What can be done about those obstacles, and by whom? Please focus on solutions for the many varied practice settings across the state.

I. LAW SCHOOL DEBT

A. Loan forgiveness programs for those going into public service
   1. by law schools
   2. by federal and state governments
   3. by bar associations

B. Educate students about the impact that debt will have; as a result, they might choose state schools with lower tuition or private schools with well-funded loan forgiveness programs.

C. Make sure that students do not have unrealistic expectations – for example, if they are in the middle of their class at a lower-ranked school, it is unlikely that they will get a starting salary of $125,000 a year.

D. Federal and state tax deductions for interest on student loans.

E. Eliminate the third year of law school and replace it with a public service internship.

F. The bar could try to persuade law schools to lower their tuition; law schools should not be profit centers for their universities.

II. LACK OF MENTORING/ROLE MODELS, COMMUNICATION, AND SUPPORT

A. Give CLE credit to more senior lawyers who are willing to mentor younger lawyers. Bar associations could set up and monitor such mentoring programs.

B. Encourage young lawyers to get involved in bar associations so that they can find their own mentor. Firms could subsidize young lawyers' bar association dues and/or credit at least part of the time spent on bar association work toward the annual billable hour requirement.

C. Tie partners' compensation to their success in mentoring and supervision.

D. Bar associations should set up mentoring programs for solo practitioners and lawyers in small firms. They should reach out to retired lawyers who

can provide mentoring.

E. Firms should give their associates regular, structured evaluations.

F. To combat isolation, lawyers should talk to their colleagues face-to-face instead of using e-mail.

G. To combat isolation, firms and bar associations can have more social events. Senior lawyers should try to get to know younger lawyers as people (e.g., by asking what they are interested in outside of the law) instead of treating them as fungible billing units.

H. To help solo practitioners and lawyers in small firms get the knowledge they need, bar associations could set up form banks.

I. Don't lose sight of diversity and glass ceiling issues.

J. Permit associates to choose their mentor. Don't assume that female associates want to be mentored by a female partner or that associates of color want to be mentored by partners of color.

III. THE BILLABLE HOUR/TIME CONSTRAINTS / WORK-LIFE BALANCE

A. Outside lawyers could try to persuade in-house counsel that the billable hour no longer serves clients' interests.

B. Law firms could switch from hourly billing to project billing, flat fees, or other alternative billing arrangements.

C. The top 20 law firms could establish criteria other than the number of hours billed for evaluating associates' work.

D. If a firm has a billable hour requirement, it should count pro bono, work for the firm (e.g., helping partners with speeches and articles), and bar association work toward the annual target.

E. Permit associates in slack practice areas to move to busier practice areas. Have a central assignment system to distribute work more evenly.

F. Don't pigeonhole young lawyers too early in a particular specialty.

G. Firms could establish a client/matter number for training, which could be used for taking junior associates to court, depositions, closings, etc.

H. Maybe first- and second-year associates should have lower billable hour targets. Training hours (point G above) could count toward their targets.

I. Implement better time-management techniques.

J. Law firm leaders should be trained in how to be good managers.

K. Encourage telecommuting.

L. Have a part-time partnership track.