

III. Findings.

Throughout the United States, the study of ethics has emerged as a growth industry in virtually every segment of society. Thousands of organizations scrutinize our social fabric to discern the ethical dimensions of our world. Some societies for the study of ethics have long and distinguished histories; others are of more recent lineage. Some are multi-disciplinary in that their mission draws upon several fields of expertise; others focus on one narrowly defined aspect of an area.

Ethics centers range from grass roots groups established to meet local needs to multi-million dollar entities created by the industries they serve. Education, lobbying, advocacy and policy development are their missions. For the most part, they are funded by membership dues or the products they market. Many universities have at least one ethics center affiliated with their graduate schools. With the introduction of cyberspace even the smallest grass roots entity can expand exponentially its audience.

A. The Formation of Centers for the Study of Legal Ethics

Lawyers individually, and the legal profession as a whole, have participated in the explosive growth in ethics awareness. The bar has taken up the cause of fostering ethics and professional ideals among its members in a variety of ways.

Many law schools throughout the country have established centers for the study of legal ethics. In recent years law schools across the country such as , Duke University School of Law, Case Western Reserve Law School, Emory University Law School, Stanford University Law School and Washington University School of Law, have hosted symposia on important themes that link ethics and professionalism to both general and specific areas of legal scholarship.

Numerous bar associations, through ethics committees or attorney grievance committees, have undertaken initiatives to raise lawyers' awareness of professionalism topics. Arizona, South Carolina, Utah and West Virginia are among those states that most actively have implemented peer review programs, substance abuse treatment and monitoring, and the operation of ethics hotlines.

Florida, Georgia, New Jersey, Oregon and Texas are notable jurisdictions that have established entities to focus attention on ethics issues under the joint auspices of their state bar associations and state supreme courts. Florida's Center for Ethics and Professionalism, the Georgia Chief Justice's Commission on Professionalism, New Jersey's Commission on Professionalism, the Oregon Joint Bench/Bar Commission on Professionalism and the Texas Center for Legal Ethics and Professionalism were each established for the purpose of raising lawyers' awareness of professionalism issues through education programs, interactive seminars, the promulgation of conduct codes, the issuance of advisory ethics opinions and individual counseling.

These centers have been established by order of the supreme court or the chief judge of the state and each resides under the umbrella of the state bar association. The bench and bar both participate in the governance of the entities. Funding is usually generated by a nominal surcharge on bar association dues. The sale of education products, such as seminars, manuals and videotapes, also provides some revenue.

The focus taken by each institute and center established for the advancement of professionalism reflects the structure of the bar in that state and its professional needs as perceived by the bar leaders. All but one of the states that have embarked upon such a formal program to promote the principles of ethics and professionalism have "integrated" bars - *i.e.*, it is a condition of membership in the bar that a lawyer also be a member of the state bar association and participate in its activities. A professionalism initiative undertaken by such an integrated bar thus automatically reaches all lawyers admitted in the state. Moreover, the close relationship between the judiciary and the bar association in "integrated bar" states imparts authority to the state bar association that associations in "non-integrated bar" states do not enjoy. Both the universality and authority of such programs greatly facilitate the formation, governance and financing of these comprehensive efforts.

The New Jersey Commission on Professionalism in the Law, established in the one "non-integrated bar" state that has a state-wide institute, was formed in 1995 as a cooperative venture of the judiciary, the State Bar Association and New Jersey's three law schools: Seton Hall University, Rutgers University - Camden and Rutgers University - Newark. The Commission has promulgated guidelines of professional responsibility for lawyers and judges entitled "Principles of Professionalism" and a "Lawyer's Pledge" to be included at swearing-in ceremonies for new lawyers. It sponsors educational programs, revises the curriculum for substantive continuing legal education courses, and develops models for counseling and mentoring programs that other bar associations can adopt.

B. The New York Bar's Efforts to Integrate Ethics in the Practice of Law

New York is one of the 16 "non-integrated bar" states where ethics training, hot lines and other programs that integrate ethics into legal practice are designed and delivered locally, rather than as part of a cohesive, state-wide program. In these states, numerous local, regional and state-wide bar associations each undertake, individually and occasionally in cooperation with other associations, initiatives to assist lawyers in discerning the ethical requirements of their practice.

In New York, bar associations such as the Suffolk County Bar Association and the Erie County Bar Association conduct law office management and basic skills courses for new lawyers that include ethics components. Other substantive continuing legal education courses are offered throughout the State by bar associations, law schools and the Appellate Division. Both the State Bar Association and the Association of the Bar of the City of New York provide ethics hotlines for practitioners. Advisory ethics opinions are issued by, among others, the Nassau County Bar Association, the New York County Lawyers' Association and the State Bar Association. A lawyer assistance program is operated by the State Bar Association in conjunction with local bar associations.

Law schools in New York also participate in efforts to develop lawyers' awareness of ethics issues. In particular, the Louis Stein Center for Law and Ethics at Fordham University and the Institute for the Study of Legal Ethics at Hofstra University have sponsored programs to advance the consideration of the ethics dimension of legal practice. Since 1993, the Stein Center has hosted seminars that have addressed, among other topics, the ethics issues that arise in representing tenants, elderly persons and children. Additional programs have pertained to the

use of "junk science" in litigation and the ethics pitfalls that affect small firms and solo practitioners. In 1996, Hofstra's Institute conducted a conference entitled, "Legal Ethics: The Core Issues." Its 1998 program, again bringing together distinguished scholars and practitioners from across the country, concentrated on the professional issues implicated in obtaining "Access to Justice." Among the issues explored were questions as diverse as the function and operation of the adversary process, the culture, operations and openness of corporate law firms and their clients, and the provision of affordable legal services to the middle class and free legal services to the poor. These programs - and others that could be mentioned - illustrate the capacity of individual law schools to organize serious programs addressing large issues of professional standards and behavior at truly strategic levels.

New York's decentralized approach arises naturally from the size and diversity of its bar. While New York is a huge bar in the aggregate, its membership is very unevenly distributed. This creates differences in local philosophy and methods, as well as logistical difficulties that doom to failure any "one-size fits-all" approach to stimulating professionalism.

The statistics indicate why this is so. According to 1996 figures, there are more than 165,000 lawyers admitted to practice in New York State. With the exception of California, this is, by far, the largest bar in the country. Almost 72,000 lawyers work in the five counties in New York City that form the First Judicial Department and part of the Second Judicial Department - itself a bar community exceeded in size only by California. Approximately 23,000 lawyers work in the seven suburban counties outside New York City that form the balance of the Second Judicial Department. The Third Judicial Department has within its jurisdiction some 7,600 lawyers. Seventeen counties in that Department have fewer than 100 lawyers each, while five

other counties have at least 300 lawyers. A similar combination of urban and rural localities exists in the Fourth Judicial Department where nearly 11,000 lawyers work. The 22 counties in that jurisdiction include the cities of Buffalo, Rochester and Syracuse. Approximately 8,600 lawyers work in those areas, while the remaining lawyer population is distributed amongst the other 19 counties. A map reflecting the distribution of lawyers in the state is attached as Appendix C. An effort to compile a profile of the New York bar is further complicated by the fact that almost 16,000 registered lawyers did not indicate the county where they practice and an additional 38,000 indicated that they work outside the state.

The broad range of practice areas among the members of New York's bar matches the geographic diversity described above. The New York State Bar Association's "1997 Desktop Reference on the Economics of Law Practice in New York" indicates that almost 80 percent of all lawyers in private practice work in firms with no more than ten lawyers; 67 percent work in firms with no more than five, or as solo practitioners. In addition, 25 percent of New York's lawyers earned more than \$125,000 a year and an equal percentage earn less than \$45,000. Lawyers across the state engage in international commercial practice and local general practice; some litigate to the exclusion of other types of practice while others never enter a courthouse. Lawyers work at corporations, grass roots legal services organizations, urban defender and prosecutor offices and government agencies.

Presently there is not in New York a single entity focused upon coordinating or cataloguing the myriad programs, needs and interests of the bar. Nor is there currently a way to ascertain how many of New York's lawyers are affiliated with any bar association.

The Subcommittee's survey of 159 bar associations and legal organizations across the State solicited information regarding: the types of ethics or professionalism programs that the association sponsors independently or jointly with other organizations; the degree of concern association members express about issues relating to ethics and the profession; and, whether the association or its members believe that a need exists for the creation of a permanent center to focus on these areas.

The survey revealed that outside the large well-resourced bar associations that dedicate committees to ethics and professional discipline, there are few formal programs that address ethics and professionalism. Moreover, no bar association program was identified that directs ongoing, consistent attention to current or emerging issues that affect the profession at large. In fact, as one Subcommittee member pointed out, the ever-changing leadership at bar associations inhibits this type of long-term consideration of systemic matters pertinent to the profession.

Local and county bar associations occasionally conduct programs on ethics topics that feature a judge or a representative from a grievance committee located in that Judicial Department. More often, and with greater success, continuing legal education programs on substantive law topics include in the curriculum a section on relevant ethics issues. For example, the Monroe County Bar Association has sponsored a series of meetings entitled, "Reaching for Excellence: An Institute on Professionalism, Client Service, and the Practice of Law."

Many of the lawyers who responded to the survey expressed concern about ethics and professionalism issues; they also perceived a need for greater awareness of ethics rules. However, these sentiments were tempered by an at least equal concern that a permanent institute dedicated to professionalism could impose unwanted additional burdens upon the bar and divert

resources from other needy enterprises. Most bar representatives concluded that existing structures, albeit often informally, were addressing adequately ethics issues as they arose, and that a new free-standing statewide institute might interfere with these endeavors.

The organized bar's reluctance to embrace the establishment of a permanent institute to advance professionalism in New York's legal community is understandable since so much about the entity was undefined at the time the survey was conducted. Yet, once that reluctance was voiced, many respondents expounded on their personal views as to how a permanent entity could address the profession's unmet needs, especially those of the small firm and solo practitioners.

Solo practitioners, including those who engage in one-person practices in a larger firm environment, find that their time and financial resources are often strained. They suggested that program sponsors adopt alternatives to the standard live lecture format. Video and audio tapes would enable small groups of lawyers in rural areas and those who cannot drop their practice commitments to partake of a program at less personal cost. Solo practitioners, who do not always have colleagues with whom they can easily consult, spoke of the need for quick advice regarding ethics issues that unexpectedly arise. Many were unaware of the ethics hotlines currently in operation.