IV. Recommendation.

The Subcommittee, following its study, consultations and deliberations, concludes that the legal profession in New York will benefit substantially from the establishment of a permanent institute for the advancement of professionalism among the members of the bar. It is further our view that such an institute can be formed and operate to enhance and reinforce the existing good work being done by bar associations and law schools and stimulate fresh contributions from those institutions. Conversely, we think the institute can be designed to avoid the problems identified by the groups we consulted.

In 1986 the report of the American Bar Association Committee on Professionalism (the "Stanley Report") observed:

> "As a consequence [of the development of attorney discipline enforcement mechanisms] lawyers have tended to take the rules more seriously . . . . However, lawyers have also tended to look at nothing but the rules; if conduct meets the minimum standard, lawyers tend to ignore exhortations to set their standards at a higher level."

In the lexicon developed by those who debate the state of the legal profession, "professionalism" has become the term of art that connotes those higher standards. It is distinguished from "ethics," which is understood to mean adherence to normative rules and the minimum standard of behavior set forth for example in the New York *Lawyers' Code of Professional Responsibility*.

The Georgia Chief Justice's Commission on Professionalism report, "How Can Professionalism Be Institutionalized? The Georgia Experience," refers to the Stanley Report and

further defines professionalism as "what is more broadly expected of [lawyers] - both by the public and by the best traditions of the legal profession itself."

The Subcommittee recommends that we in New York seize this opportunity to institutionalize, in a formal way, a mechanism for nurturing professionalism among lawyers as expressed in the reports of the American Bar Association and the Georgia Chief Justice.

A state-wide institute would be well-positioned to broker conversations among people who represent disparate views on topics of common interest. For example, an institute might be able to facilitate greater understanding between practitioners and law school academics who each address the same legal principles from radically different perspectives. From that enhanced mutual understanding, practitioners might better evaluate the ethics dilemmas they face and professors might better prepare their students to meet the ethical demands that go hand in hand with a thriving practice.

Conversations among the grievance committees of the four departments might advance the discussion of lawyer discipline procedures and sanction policies with a view toward achieving greater consistency in disciplining lawyers statewide. Dialogue between upstate and downstate practitioners and judges also would foster the development of relationships that emphasize the common ties that exist among the lawyers of New York. Communications among bar associations to coordinate services and co-sponsor programs would conserve resources and also encourage relationships. Currently, the Staten Island, Brooklyn, Queens, Nassau and Suffolk county bar associations periodically engage in this type of cooperative venture.

A permanent entity can give consistent, long term attention to seemingly intractable challenges that face the profession. By virtue of its authority, scholarship and thoughtful consideration of the profession, an institute can make lawyers' discussions of important topics sufficiently intense that they become everyday topics for broad segments of the public, as well as the bar. This type of rigorous process will enable the profession to reach better informed and more meaningful decisions on topics that are important not just to the profession but also to society.

An institute should sponsor state-wide public hearings and convocations that provide the public with an opportunity to be heard regarding their experience with lawyers, judges and in areas of substantive law, such as landlord/tenant law. Providing a forum for the public to address the profession is an important response to the discontent described by the Committee on the Profession and the Courts.

A permanent entity should observe and comment upon the success of programs implemented by others, including initiatives undertaken by the Administrative Board of the Courts. Such programs would include the mandatory continuing legal education program, civility projects and efforts to improve client satisfaction. The entity should also maintain communication with other states that are grappling with the same concerns as New York.

Given the concerns expressed by the organized bar, it is useful to define the institute in terms of the functions it should *not* perform because others are already ably providing that service. Bar associations around the State presently offer quality continuing legal education

courses, including remedial programs, operate ethics hotlines, issue advisory ethics opinions and market educational products for profit. It would not be a desirable use of scarce resources to duplicate those services.

Taking the same reasoning one step further, the institute should not undertake to provide a service that others are better suited to offer. It would be more appropriate in that situation for the institute to suggest to a particular entity that it appears well equipped to address a recently identified need. By adopting this approach, the institute will become a partner with other organizations dedicated to the legal profession in New York.