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Task Force Report on Professionalism

New York County Lawyers' Association

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Introduction

NYCLA's Professionalism Task Force was formed in 2005 in the wake of the Enron scandals and against a backdrop of surveys and anecdotal reports of growing dissatisfaction with attorneys both from outside the profession and from within it. Reports of lack of civility, cutting corners and even outright knavery were rampant. Some lawyers were said to be struggling with marginal practices or a desire to do public interest law against a mountain of law school and college debt, and public esteem for lawyers was declining.

The goal of the Task Force was first to take a hard look at the attitudes and practices of lawyers, judges and law schools in New York City. We wished to gauge the extent of the perceived problem and to identify tangible, realizable steps that an organization such as NYCLA might take to reduce its dimensions and ameliorate the professional lives of some lawyers – and by extension, their adversaries, clients and other participants in the legal system. Our goal was always narrow and local in scope, taking into account the work of others and NYCLA's primary role as an organization of attorneys practicing in New York.

The Task Force was established to complement, not duplicate, the ongoing work of major projects, such as Chief Judge Kaye's Committee on Professionalism and the Courts and work done by the ABA, other bar organizations and professionalism commissions around the country.¹ Indeed, we consulted with, received valuable suggestions from, and drew freely on the work and insights of many of those bodies, for which we are extremely grateful. We have focused on

1. *See generally*, Committee on the Profession and the Courts: *Final Report to the Chief Judge* (1995); ABA, Center for Professional Responsibility, *Survey on Lawyer Discipline Systems* (Annual); ABA, Section of Legal Education and Admission to the Bar, *Report of the Professionalism Committee: "Teaching and Learning Professionalism"* (1996); ABA Standing Committee on Professionalism, *Report on a Survey of Law School Professionalism Programs* (2006); ABA Standing Committee on Professionalism, *A Guide to Professionalism Commissions* (2d ed. 2008).

understanding and defining the issue as it may exist in New York City and crafting suggestions that seemed practical, realizable and tailored to the realities of the various types of practices in the City. The work of others enriched and helped refine our study. We felt that we could eschew broader societal and economic themes that NYCLA could only address in a hortatory way in favor of recommendations that we hoped might be concrete and functional.

The members of the Task Force are listed in Appendix A, and NYCLA is grateful to all of them for their thoughtfulness and commitment of time. In keeping with the demographics of NYCLA and the nature of our effort, the Task Force was drawn from all segments of the profession in the City: partners and associates from large firms, members of small firms and solo practitioners, judges and court personnel, in-house counsel, lawyers with long experience at public agencies or with public interest groups, law professors, lawyers with decades of experience and lawyers in the first few years of their practice.

We proceeded in the first instance by engaging in frank and far-ranging discussion, sometimes with academics or others involved in similar studies, to identify what we meant by professionalism and to refine our mission and course of study. The resulting, working definition of professionalism is set forth in Part I of this Report (see also Appendix B), along with some background and commentary.

We created a questionnaire that most of the law schools in or around New York City answered so that we had a clearer picture of what schools felt they could do – and also what they could not do – to instill an appreciation of and commitment to professionalism among future lawyers. We also developed a questionnaire (see Appendix C) that over 150 NYCLA members answered either in hard copy or (in a few cases) electronic form. Never intended as a survey, the questionnaire was designed to obtain comments and insights about whether, and if so why,

lawyers practicing in New York thought professionalism had declined over time. (Most respondents did, but a number did not, and a few noted some improvement through more attention at law schools and ethics CLE programs.) These efforts were supplemented with a questionnaire to New York State Court judges and disciplinary authorities and a roundtable focus group and discussion with a number of judges and magistrates from the United States District Court for the Southern District of New York.

Building on a suggestion from John H. Gross of the Judicial Institute on Professionalism in the Law,² the Task Force then organized a series of focus groups among various segments of the profession. These included one focus group of associates at large firms and others among practitioners at small firms or solo practitioners and at the New York City Corporation Counsel.

From all this work, a few consistent themes emerged, and they are distilled in Part III of this Report. But the one predominant theme was an expressed need and desire for mentoring. This need appeared to exist not only among those in small or individual practices but also among those in larger law firms or institutions, whose formal mentoring programs were sometimes felt to be lacking or potentially compromised by the employer/employee relationship. Other studies have noted the sometimes critical, if elusive, role played by mentoring.³ Many experienced lawyers also expressed a willingness to serve as mentors, particularly in a bar association setting with the added incentive of possible programmatic resources and CLE credit.

In this way, the most tangible outcome of the Task Force's work – NYCLA's pilot mentoring program – was born. It is described in more detail in Part VIII. This program will

2. Also referred to as the "Craco Commission," which was the commission convened by Judge Kaye that has held focus groups and convocations around the State of New York on the topic of professionalism.

3. See, e.g., Ronit Dinovitzer et al., *After the JD: First Results of a National Study of Legal Careers* 80 (2004).

supplement other programs at NYCLA that often beget informal mentoring relationships, such as the Inn of Court that NYCLA founded over 15 years ago, the Minority Judicial Internship Program, and the opportunities afforded by participation in the work of NYCLA's committees and *pro bono* programs. We realize that there are many challenges to such a program, and that it will take persistence and effort on behalf of mentors, mentees and NYCLA's leadership for it to succeed and to grow. At the same time, we believe that such a program will fill a real need among the bar of New York. We hope that, with experience over time, it will not only lead to success for NYCLA and its members but also serve as a model for other organizations.

I. Definition of Professionalism

The first job of the Task Force was to define "professionalism." There was relatively little difficulty in reaching consensus as to whether or not a particular behavior was considered by us to be "professional"; nevertheless, as we were to discover, professionalism is easier to recognize than to define. Lawyers in all states are governed by ethical rules. In New York, the Rules of Professional Conduct ("the Conduct Rules") specify impermissible attorney behavior, but we all believed that the definition of professionalism should extend beyond minimal adherence to those rules. Certain conduct that might be in compliance with the Conduct Rules may still be unprofessional. For example, shameless self-promotion or the failure to return phone calls would seldom constitute disciplinary infractions, yet they epitomize unprofessional behaviors.

To arrive at consensus, the Task Force read writings of numerous scholars, judges and practitioners, from Edmund Burke to Dean Roscoe Pound to Justice Sandra Day O'Connor. We reviewed definitions of professionalism, including the 1986 Report of the American Bar Association Commission on Professionalism (the "Stanley Report"), the 1995 Committee on the

Profession and the Courts' Final Report to the Chief Judge, and the New York State Bar Association's Committee on Attorney Professionalism.⁴ We analyzed the role of law in America, and the role of lawyers in our system of law. We discussed commercialism in law practices, large and small, and we reviewed the staggering amount of time that many lawyers voluntarily devote to service *pro bono publico*. We considered the difference between the practice of law as a profession and the practice of law as a business or trade. We took note of the trends in our society that have resulted in the growth of the number of attorneys, the increasing size of law firms and a possible divide between the large, predominantly corporate practice and other segments of the bar. We examined the historic role of lawyers at the forefront of social movements here in the United States, as well as abroad, such as the thousands of lawyers who protested in the streets of Lahore, Pakistan, and were subsequently jailed, in response to General Pervez Musharref's controversial declaration of emergency rule, which suspended the Constitution, dissolved the Supreme Court and took control of private television news channels.⁵

Our discussions ranged from practical to philosophical. For example, if *pro bono* work and bar association involvement are likely to enhance professionalism traits, should such service be mandatory? We concluded that there are myriad ways for a lawyer to serve and that the decision to do so should be an individual matter.

4. The New York State Bar Association (NYSBA) Committee on Attorney Professionalism defines attorney professionalism as "dedication to service to clients and commitment to promoting respect of the legal system in pursuit of justice and the public good, characterized by ethical conduct, competence, good judgment, integrity and civility." NYSBA Journal, "Attorney Professionalism Forum" 48 (Oct. 2009) (definition also available at www.nysba.org).

5. Jane Perlez and David Rohde, *Pakistan Attempts to Crush Protests by Lawyers*, N.Y. Times, Nov. 5, 2007.

Should an attorney's fee be secondary to service? We concurred with Roscoe Pound's definition of professionalism as "the pursuit of a learned art as a common calling in the spirit of public service – no less a public service because it may incidentally be a means of livelihood."⁶

Should civility be the benchmark of professionalism? We felt that civility was a key component but that an approach emphasizing civility to the exclusion of other factors might obscure the important issue of the profession's obligations to client service and society and decided against the proposition.

Should our law schools be required to make professionalism a more pervasive part of the law school curriculum? We agreed that emphasis should be placed upon teaching the profession's role in society, as indeed our work showed it has been in various ways at a number of local schools. At the same time, we came to understand that there are limits to what students may absorb at this stage of their careers and what law schools can effectively teach without slighting substantive content. Thus we believe that, while the law school experience should include a meaningful professionalism component, the manner for doing so is best planned by the individual law schools.

Prior to defining professionalism, it was necessary to consider its characteristics. We have summarized some of the traits that were instrumental in helping us arrive at a definition.

The Law Is a Higher Calling

Law is a learned art involving research, analysis and judgment. We are committed to promoting respect for legal scholarship. We pursue justice and the public good. Louis A. Craco, Chair of the New York State Judicial Institute on Professionalism in the Law, aptly stated that

6. Roscoe Pound, *The Lawyer from Antiquity to Modern Times*, 5 (1953).

“[t]he key notion is that we help clients one by one by putting at their service our special knowledge and craft and judgment.”⁷ We are dedicated to the historic and evolving substantive rules and ethical values that elevate the law to a learned profession as opposed to a trade or business. We acknowledge lawyers’ historic role in society, to their clients and to the profession as a whole. Professionalism involves a commitment to competence and the understanding and development of the law and integrity in our practice. We should exhibit soundness of character, fidelity and honesty, as well as soundness of research and analysis.

Lawyers must serve their clients fairly and skillfully. Our service to clients preempts our desire to accumulate wealth personally. Professionalism involves dedication and service to clients, even at the risk of personal discomfort or inconvenience to the attorney. Public service in the broadest sense is a critical part of professionalism.

Professionalism thus requires a willingness to subordinate narrow self-interest in pursuit of the more fundamental goal of public service. There are numerous occasions in practice, particularly in litigation, where a lawyer’s self-interest may conflict with a client’s interest. One of the key marks of a professional is recognizing the potential for conflict and always trying to resolve it in the client’s favor.

Lawyers must strive to develop the law and improve the legal system. We understand the value of mentoring less experienced attorneys, and giving due respect to courts and more senior practitioners. The essence of professionalism is a commitment to develop one’s skills to the fullest and to apply them responsibly to the problem at hand. We look beyond short-term results and consider the consequences of our actions and advice.

7. Journal of the New York State Judicial Institute on Professionalism in the Law, *Convocation on the Face of the Profession II: The First Seven Years of Practice*, 6 (2003).

Professionalism Implies Maturity and a Reasoned Temperament

Lawyers should use common sense and wisdom in the exercise of judgment. We should infuse our subjective higher, personal values into our daily practice. Attorneys and clients comprise just one aspect of the legal system. Adversary attorneys, fellow practitioners, judges, clerks and assistants, partners and associates, government agencies and legislatures are among the many faces of the legal system. Our commitment to promoting respect not only for each other but for all involved in the legal system should be a hallmark of our behavior.

Professionalism implies an understanding of the importance of collegiality and civility though the concept is broader than a code of good manners. Chief Justice Warren Burger of the United States Supreme Court said that “lawyers who know how to think but have not learned how to behave are a menace and a liability . . . to the administration of justice.”⁸

Perspective is an indispensable attribute of a professional. While the societal role of doctors, teachers and social workers is fairly clear, the role of lawyers is considerably less obvious and is often not well articulated. As lawyers develop understanding of their profession’s societal role, they are likely to develop a better understanding of their own role as professionals and to enhance the public’s understanding.

A lawyer should recognize that there are limits on the ability to help a client and strive to be detached and provide disinterested, considered and sound advice. There is frequently tension between the so-called duty of zealous advocacy⁹ and the professional’s duty to society. Too often conflicts between the two are resolved by reflexively claiming that the adversary system

8. Warren E. Burger, *The Necessity for Civility*, 52 F.R.D. 211, 215 (1971).

9. The words “zealous advocacy” no longer appear in the New York Rules of Professional Conduct.

will somehow take care of them. Lawyers who act professionally understand this tension and strive to resolve it maturely in practice.

Professionalism: The Definition

The definition of professionalism ought to implicate a sense of duty, respect and selflessness that transcends the mandatory character of the ethical rules. This includes both good intent and responsible action. Professionalism addresses both the interests of the clients, and broader concerns. As attorneys, we have a higher calling, not merely a job. We have a duty to behave maturely. With all of the above parameters in minds, the Task Force arrived at the following definition:

By professionalism we mean a group pursuing a learned art as a higher calling in a spirit that it is performing a public service, a service that is indispensable in a democratic nation founded on the rule of law. This calling is no less a public service because it may also be a means of livelihood. Pursuit of a learned art in the spirit of a public service is the essence of being a lawyer. It implies obligations of dignity, integrity, self-respect and respect for others.

The essence of professionalism is a commitment to develop one's skills to the fullest and to apply them responsibly and with the utmost diligence to the problem at hand. Professionalism requires adherence to the highest standards of integrity and a willingness to subordinate narrow self-interest in pursuit of the more fundamental goal of client service. Because of the tremendous power they wield in our system, lawyers must never forget that their duty to serve their clients fairly and skillfully takes priority over the personal accumulation of wealth. Lawyers must be willing and prepared to put their clients' interests before their own while retaining enough perspective to provide those clients with considered, well-informed and objective advice.

Although duties to their clients in particular matters are paramount, throughout their careers lawyers must remain conscious of and committed to the goal of improving the profession and the system of justice. This commitment includes taking personal and professional measures to increase the availability of legal services and abet even-handed and efficient application and administration of the legal system for all segments of society.

II. Summary of Task Force Activities

After surveying existing literature and drafting its working definition of professionalism, the Task Force formulated and circulated questionnaires to NYCLA members, law schools in and around New York City, and New York state judges, seeking their comments on the state of professionalism. The law school questionnaire was drafted with the understanding that even though law schools are not the only agents of influence in the development of lawyers, they have a singular influence on future lawyers as the “influence of first impression” in their careers. The purpose of the law school questionnaire was to understand some of the current practices used by New York law schools for communicating both the ethics rules and broader notions of professionalism to law students. The questionnaire for the judiciary was drafted with the belief that the judiciary plays a prominent role in shaping the ethical and professional values of lawyers and that judges may have unique insights into how well those values are observed in practice and whether the integrity and professionalism of those appearing before them have improved or declined over time.

In addition to the responses received from the law schools, the Task Force received responses from some 150 NYCLA members and nearly a score of State Court judges. The Task Force further engaged in roundtable discussions with roughly the same number of judges and magistrate judges in the United States District Court for the Southern District, and met with representatives from the Craco Commission and the New York State Bar’s Professionalism Committee, as well as law school professors and others, to discuss the state of professionalism in New York. Based on the model suggested to the Task Force by the Craco Commission, the Task Force planned a series of focus groups at which a group of six to 12 practitioners could consider the issues identified in the questionnaire responses and other discussions.

The focus group discussions were divided into two rounds. Some informal first-round discussion groups served to develop questions and themes for the final groups. The second-round panels then met for discussion of those themes. The focus groups were divided into three main categories, namely, associates at large law firms (“Large Firm Group”), solo and small firm practitioners (“Small Firm Groups”), and lawyers from institutions such as the New York City Corporation Counsel (“Public Service Groups”). One or two leaders with a prepared outline of three or four topics led the group discussion. Participants in all the groups were promised confidentiality, and notes were taken but no transcript was made.

In addition to providing comments on the working definition of professionalism, other important issues arose in the focus groups. For example, issues that were discussed in the Large Firm Group and Small Firm Groups included particular instances of professional or unprofessional behavior that participants had encountered with other lawyers, the role bar associations, law schools, the courts and CLE play in teaching professionalism to lawyers, and steps that could be taken to improve professionalism among lawyers. In the Public Service Groups, the impact of an increasing workload and limited resources on the ability to advocate effectively on behalf of their clients was an issue that was discussed in depth. A summary of key points of discussion in the focus groups appears in Part III.

Finally, in early 2008, the Task Force realized that through the NYCLA website, it had the capacity to post to and manage a blog as a way to generate and monitor further discussion on the topic of professionalism. The inaugural post was made on March 15, 2008. Task Force member Madeleine Giansanti Cag serves as the chief blogger and manages the blog. Although not yet as widely used as it might be, the blog has been a source of ongoing dialogue regarding topics of interest to the Task Force, and the Task Force hopes that it will attract more visitors and

comments in the future. It can be easily accessed by clicking an icon titled “Task Force on Professionalism Blog” on NYCLA’s home page (www.nycla.org).

III. Lawyers’ Perceptions: The Focus Groups

Small Law Firm Groups

Certain themes emerged from the two Small Firm Groups. The concept of professionalism is understood by many of these lawyers to boil down to the manner in which a lawyer deals with fellow professionals, the courts and other persons involved in legal matters. It cannot be defined solely with regard to “client service” because the concept of client service (from the client’s perspective) may be in tension with economic and other realities, as well as ethical obligations (e.g., a lawyer must consider constraints other than the client’s desire to hire a “shark in a suit”).

In the view of many in these groups, professionalism may be valued more outside New York City than in it, particularly in smaller communities or specialized practices where there are more frequent interactions with the same adversaries and judges. Some participants expressed agreement with press reports asserting that attorney self-interest too often was prejudicial to client interests in New York.

Churning of the client’s file was said by some participants to be a common practice because of economic pressure or the tactics of adversaries such as some larger firms. Bills are not always sent promptly, and phone calls are not always returned promptly. The time required for a matter may depend on the experience of the lawyer on the other side. For example, there is a perception that some adversaries wage wars of attrition, and some government lawyers do not

have the incentive to handle a matter efficiently and may sometimes use their position to satisfy idle curiosity or for other collateral objectives.¹⁰

Defensive lawyering seems more prevalent than ever in the view of several of the small firm attorneys. For example, in the litigation area one now needs letters confirming every adjournment, and practices such as serving subpoenas on the eve of trial or trying to force an adversary to prepare papers at the last minute are commonplace and accepted. Some lawyers seem to be gaming the court system by not following court rules and delaying proceedings by being late or absent or sending papers late. These tactics sometimes work in state courts, but federal courts do not tolerate them, illustrating the unfortunate truth that when attorneys are permitted to get away with unprofessional behavior, the behavior becomes contagious in a race to the bottom.

Though one might assume that transactional work would seem to be more conducive to professionalism – due to the incentive to reach an agreement – participants still saw a need to “read every word” of revised drafts because they could not trust the other side to point out revisions. Participants also felt that some attorneys put “strawmen” into contracts knowing they are not serious points but simply included as a negotiation tactic. The participants expressed concern that an “anything-goes” mentality could prevail during negotiations because there is no judge or other arbiter to whom one is accountable.

Participants in the Small Firm Groups noted that lawyers have historically been trained in law school to be accurate, especially in representations to the court, but not necessarily professional. Some current CLE is ineffective and does not reach those who approach it with a

10. These comments were in stark contrast to that of the government lawyers in the Public Service Groups who felt that their caseload forced them to do too little on the matters rather than too much.

non-professional attitude. (Too many lawyers are listening to recordings that may or may not be relevant to practice simply in order to obtain necessary credits). To encourage professional behavior, CLE credit might be given for attending bar committee meetings, mentoring and *pro bono* service. Participants noted that bar association membership and activity are excellent ways to improve professionalism, in part because they create peer pressure to adhere to professional norms of conduct.

Many participants felt that courts could and should do more to curb incivility: to paraphrase one participant, judges should explain that raising your voice does not mean that you will be heard. The feedback system should be better (perhaps a “rate-your-lawyer” website). And, of course, lawyers have to be responsible for their clients as well as themselves. They need to attend to client expectations by clearly communicating the scope of work, reasonable chance of success and how much the work will cost.

In summary, two ideas emerged:

1. For the long term, the various stakeholders of the legal profession need a more integrated approach to professionalism, which will require a generally agreed-upon definition to implement.
2. For the short term, mentoring should be promoted by bar associations as a way to ensure that positive role models influence less-experienced lawyers.

Public Service Groups

The Task Force conducted two focus groups involving over 20 attorneys at the Office of the Corporation Counsel, the first consisting of the corporation counsel and executive staff, and the second for assistants with three to five years of experience in the office. The executives noted the complexities of having a governmental body, such as a city, as a client. This type of

client is multi-faceted, often identified with the public interest and the public treasury, but with commercial and other interests to protect. Its policies or actions cannot correspond to the perceived interests of all members of the public or the personal preferences of all its lawyers, sometimes placing those who represent it in an awkward or difficult position. Some members of the group felt that government lawyers have a higher ethical standard than private practice lawyers because they serve the public and are ultimately committed to civil justice. The executives felt that the ethics training at the office emphasized obligations to the public and to the courts, and urged attorneys to conduct themselves with the highest integrity in furtherance of the achievement of justice.

In connection with maintaining high professional standards, the executive focus group noted an increased emphasis on maintaining communication and transparency by various means, including formal presentations on topics of general agency interest, monthly reports describing the major cases pending in various divisions, and reports indicating how many hours were spent on particular matters. Executives also noted that, unlike many attorneys in the private sector, government attorneys are not free to turn down a case if a client's budget makes it impossible to provide adequate representation. Even during periods of budget surpluses, the management of voluminous litigation requires a realistic policy through which attorneys weigh the costs of litigation against settlement.

The assistants' group expressed similar concern regarding pressure to settle cases due to financial constraints, and at times, felt settlements were negotiated that might not have been in the City's best interest. However, assistants generally rated professionalism in the office as high due to a strong general commitment to working to improve service to the public. Most of the assistant attorneys reported having left law school with a basic concept of professionalism, but

with little understanding as to how it would arise in government practice, in particular the low level of professionalism exhibited in certain instances by some adversaries. Several assistant attorneys felt that their efforts to be as professional as they would like were hindered at times by slowness of agency clients in providing necessary information and materials, as well as heavy caseloads. Neither group felt there was a strong need for more job training on professionalism because of the considerable efforts already in place.

Large Law Firm Group

The Task Force also conducted a focus group for associates at over a dozen large law firms in New York City. Large law firms have grown in number, size and influence, particularly in urban centers where lawyers at such firms work predominantly for business clients.¹¹

The focus group participants differentiated between professional conduct and professional purpose. Participants reviewed the working definition of professionalism and responded to a series of questions regarding their work experiences and personal views. Several themes emerged from this session as well, with some similarities and some differences from the other groups.

Large-firm associates tended to differentiate between professional conduct and professional purpose. Professional conduct encompasses day-to-day behavior and interactions with others, while professional purpose relates to the ultimate aim or outcome of the work being performed. For example, several associates noted that a lawyer could act in a professional manner yet without regard for the outcome or ethical implications of the work being performed. The frequency of this response suggests that associates at large firms at times – at least privately

11. See John P. Heinz et al., *Urban Lawyers: The New Social Structure of the Bar*, 98-139 (2005); see also Robert Maccrate, “*The Lost Lawyer*” Regained: *The Abiding Values of the Legal Profession*, 100 Dick. L. Rev. 587, 602-03 (1996).

– struggle to balance their ethical duties to serve their clients with other moral or personal considerations. This dilemma mirrors a tension that lawyers in governmental service also expressed.

Associates who focused on professional purpose felt that *pro bono* work is central to maintaining a sense of professionalism at a law firm. Associates who focused on conduct, on the other hand, saw little connection between *pro bono* work and professionalism. While *pro bono* work offers an opportunity to embrace “the higher calling in a spirit that is performing a public service,” one associate noted, it does not mitigate a lawyer’s duty to adhere to the highest standards of professional conduct in all matters.

Perhaps as expected, large law firm associates were nearly unanimous in noting that the biggest motivator for unprofessional behavior was connected to profit motives and billable hour requirements. Some associates reported being given work that they felt was not necessary in order to increase their billable hours, while others suggested that the billable requirement was generally susceptible to manipulation and unprofessional activity.¹² One lawyer noted that associate bonus structures, commonly tied to hours billed in a year, further contributed to unprofessional behavior. One associate felt that firms sought to maintain a level of ethics and professionalism to the extent that it does not interfere with maximizing profit. Another associate thought high attrition rates at large firms lead to apathy towards professionalism. A third complained that there was little chance to display professionalism when performing years of

12. Harvard Law Professor David B. Wilkins referred to the business model of the large law firm as employing “sweatshop capitalism,” noting the tendency for many firms to “take people in, grind the excess value out of them by working them as hard as humanly possible, and then after eight-to-ten years throw ninety percent of them away.” *NYS Judicial Institute on Professionalism in the Law*, Vol. I, 10 (2001). This theme was also observed in an ABA study of Chicago lawyers. That study, however, also noted that the toll taken by billable hours, while real, tended to be somewhat exaggerated and was not necessarily greater than that in other demanding or engaging jobs and profession. Heinz at 130-131.

document review without any contact with clients or other counsel. Collectively, these responses suggest that large-firm associates see professionalism more as a response to workplace demands than as interactions with clients, opposing counsel and the courts.

Views on the efficacy of mentoring as a means of developing professionalism varied. Some felt that in-house mentoring programs amount to “speeches from partners to associates” and that informal mentoring worked fine. However, most responders indicated that mentoring, both formal and informal, could influence an associate for the better by identifying “qualities of professionalism you wish to emulate, as well as those qualities of unprofessionalism you hope to avoid.” Some expressed possible reservations about discussing some issues with an intramural mentor appointed by the employer for fear of adverse career consequences or futility if the underlying grievance reflects the culture of the firm itself.

IV. Public Perceptions of Lawyers

Whether the medium is television, movies or one of the many lawyer jokes told among friends, expressed dissatisfaction with lawyers seems to be pervasive in discourse and our public consciousness.¹³ Well over 1,000,000 lawyers are now practicing in the United States and stereotypes often substitute for the varied traits and characteristics of such a large sample size. The growth in the number of lawyers coupled with recognition of First Amendment rights to advertise has led to increased and often highly visible competition. Many of these million-plus lawyers are perceived as hungry for clients.

Likewise, it is difficult neatly to summarize the perceptions of lawyers by the American public though there are some general identifiable trends. One is a nostalgia for lawyers of our

13. There is extensive literature concerning public dissatisfaction with lawyers. *See e.g.*, Edward D. Re, *The Causes of Popular Dissatisfaction with the Legal Profession*, 68 St. John’s L. Rev. 85 (1994).

real and fabled past. Whether it be the brilliance of Clarence Darrow in his defense of Leopold and Loeb or Atticus Finch offering lessons in morality and virtue before a jury of his peers in *To Kill a Mockingbird*, we like to remember lawyers as learned and unwavering pillars of their communities, and courtrooms as hallowed grounds from which truth and justice emerge.

A second trend is the growing sense that the modern lawyer does not share the same qualities as these iconic lawyers of the past, that the profession has spiraled downward to a much crasser, “bottom-line” approach, with each lawyer looking out for his or her own monetary well-being at the expense of clients, colleagues and the public at large.¹⁴ This is a common observation with other professions, such as medicine and banking, and may be a reflection of our ambivalence toward living in an increasingly capitalistic society and our sense that what was a “profession” has been replaced by a business model. It has also been noted that some concerns over declining standards and increasing commercialism have been voiced driving the supposed golden ages themselves. Over 100 years ago, John Dos Passos of this Association wrote that “[t]he lawyer stands before the community shorn of his prestige, clothed in the unattractive garb of a mere commercial agent – a flexible and convenient go-between, often cultivating every kind of equivocal quality as the means of success.”¹⁵

14. This view has been reinforced by anecdotal observations and reminiscences of those within the legal community as much, if not more, than the public at large. For example, then Chief Justice William H. Rehnquist, in a speech before the North Carolina Bar Association in 1994, lamented an earlier time in his life when “there was 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 obligation by serving on zoning boards, charity boards, and the like, lawyers felt that they could contribute something to the community in which they lived . . . As law firms focus on the proverbial bottom line, with predictable pressure on associates to increase billable hours, little time remains for public service.” Heinz at 203.

15. Dos Passos, John R. *The American Lawyer: As He Was, As He Is, As He Can Be*. (1907). Another illustrative example, told by American Bar Association President Martha W. Barnett in her keynote address, 52 S.C. L. Rev. 453 (2001), is the commencement address of Timothy Dwight at Yale University on July 25, 1776, in

(Footnote continued on next page)

In 2002, the American Bar Association Section of Litigation released a report titled *Public Perceptions of Lawyers: Consumer Research Findings* (the “ABA Report”), examining the public’s positive and negative perceptions of lawyers and offering suggestions for how lawyers, law firms and bar associations might improve the reputation of the profession.¹⁶ The ABA Report shows that the American public is ambivalent about its lawyers. On one hand, the public perceives lawyers as knowledgeable, hardworking and able to offer expertise that helps clients resolve problems and navigate through difficult situations. On the negative side, many regard lawyers as greedy and corrupt, hired guns who are driven by profits and self-interest rather than client interest or a concern for justice. As noted above, this perception was even voiced by some participants in the Small Firm Groups. The ABA Report also indicated that the public believes lawyers do a poor job of policing themselves, and that bar associations are viewed more often as clubs for lawyers than as protectors of professional values.

The ABA Report offers some useful suggestions for combating these perceptions, including improving client communications, explaining fees up front, alerting clients to unexpected charges, advertising responsibly, providing legal education programs and engaging in *pro bono* work. It also recommends that law firms and bar associations educate lawyers about good attorney-client relationships.

It is useful to note that the public’s primary negative perceptions of lawyers are not that they lack requisite expertise or ability, but rather that they are greedy, corrupt and do a poor job

(Footnote continued from prior page)
which he accused the legal profession of meanness, deception and bill padding and urged graduates to avoid the law like “death or infamy.” Timothy Dwight, *A Valedictory Address to the Young Gentlemen, Who Commenced Bachelors of Arts at Yale College*, July 25, 1776, *Am. Mag.* 101 (Jan. 1788).

16. The ABA Report is available at <http://www.abanet.org/litigation/lawyers/publicperceptions.pdf>.

of policing one another. These are essentially criticisms of character rather than ability. These criticisms are in part due to the public attention given to the small subset of lawyers who make mistakes or act inappropriately. Stories of successful *pro bono* representation or mediating delicate situations are often overshadowed by the occasional malfeasances that garner media attention.

Additionally, the Task Force has noticed increasing public criticism of judges, whose vital independence from other branches of government is frequently misconstrued as out of touch or even undemocratic. Supreme Court decisions relating to substantive and procedural due process rights, including the right to privacy, have become lightning rods for political groups who disagree with the outcomes. Local media often sensationalize decisions without placing them in context, and judges are in no position, and lack the resources, to defend themselves. Contentious judicial confirmation battles have also contributed to public mistrust for the courts. These unfortunate developments are detrimental to our system of justice and lead to the erosion of public trust in our shared institutions and system of governance.

Negative public perceptions are attributable in part to a lack of understanding about what a lawyer does and the nature of his or her ethical obligations and duties. For example, a lawyer's duty to safeguard privileged and confidential communications and information can often frustrate the public's desire for information. A lawyer's willingness to represent an unpopular client or supporter of a particular cause, undoubtedly essential to our legal system's administration of justice and sometimes a means for social change, is often misunderstood as identifying with all the characteristics of that client. A lawyer must consider a variety of contingencies and risks when providing legal advice and often counsel caution and deliberation. This approach may sometimes frustrate a client or appear dilatory or obstructionist to an

adversary. As these examples show, improving the public's understanding of our judicial system and the role that lawyers play could improve public perceptions of lawyers and therefore lawyers' perceptions of themselves. This educational role continues to be an important one for NYCLA and other bar associations to play.

V. Law Schools

Law schools confront the issue of promoting professionalism in two separate but related ways: supporting and encouraging civil and appropriate conduct and integrity among law students, and exploring and teaching the concept of attorney professionalism. The public understandably expects that law schools will not graduate students (and certify them to become members of the bar) if they have shown themselves incapable of honest and appropriate professional behavior. The practicing bar expects that newly admitted attorneys will understand basic ethical standards and will be prepared to practice law ethically and professionally. And because law schools are institutions of higher learning, law schools are best positioned to explore the meaning of professionalism and its implications from a broader perspective.

Law schools begin to tend to these obligations with their earliest interactions with their students. In recent years, a number of law schools have expanded orientation programs for this purpose. Professors may conduct role-playing exercises involving simulated ethical dilemmas and discussions, with related readings. Judges and practicing attorneys (assisted by bar associations such as NYCLA and the New York State Bar Association) may present programs on professionalism. Orientation programs may also include talks by academic and student life administrators about the pressures of law student life, and appropriate and inappropriate ways of coping with those pressures; these programs sometimes include information from Lawyers Assistance Programs and bar admission authorities. Some schools (perhaps fewer in New York

than elsewhere in the country) conduct ceremonies at which students make pledges of their commitment to ethics and professionalism. The message of all of these programs is that students enter the profession of law on the first day of law school, and should conduct themselves accordingly. Of course, all law schools, like post-secondary institutions generally, have codes of conduct or honor codes, violations of which may result in disciplinary sanctions. The law school codes may incorporate broader expectations of professional behavior than other graduate programs or undergraduate institutions.

In fact, chronologically speaking, the first point at which law schools must address these issues is upon a student's application to law school. Application forms routinely ask students to provide information about prior disciplinary sanctions and arrests or criminal sanctions, primarily to inform admission decisions. Bar admissions authorities ask similar questions of applicants to the bar. Bar applicants who have failed to disclose incidents to their law schools that are subsequently reported to bar admission authorities have found their bar admissions delayed or sometimes denied. In response, many law schools have changed their application questions to track the language of bar applications. Even with a tightening of the language, some schools have reported anecdotally an increase in the number of students who omit these incidents (frequently juvenile arrests, dismissals or alcohol-related violations) from their applications, reporting them only after they matriculate and, in some cases, as late as their final year when they are beginning to prepare their bar applications. In some cases, law schools offer limited amnesty periods for reporting incidents that would not have affected the admissions decisions; many times, however, these cases are adjudicated through the school's disciplinary process. This experience highlights the gate-keeping role that law schools play, but also underscores that law schools, like other institutions, are subject to broad shifts in societal mores.

Law school curricula have long incorporated the teaching of ethics and professionalism. Of course, since the Watergate scandal of the 1970s, law schools have required students to complete a course in the rules of ethical conduct, and New York, like most states, requires that students pass the Multistate Professional Responsibility Examination (MPRE) to be admitted to the bar. The required course in most schools is not limited to preparation for the MPRE, however, and explores issues such as what it means to be a fiduciary, the tensions that can arise between an attorney's obligations as an officer of the court and as zealous advocate for a client, and the dictates of civility. The effectiveness of this curriculum can be hindered by the format of the course; students are unlikely to absorb and fully understand the intense stresses facing practicing attorneys if they encounter them only in readings and lecture-hall discussions. Professors whose law practice experience may be limited or remote in time sometimes encounter resistance or skepticism from students who believe that the "real world" produces different resolutions to ethical dilemmas than does the classroom.

Clinical and skills courses offer at least a partial response to the issues described above. Most schools offer simulation courses on skills, such as trial advocacy, pretrial practice, negotiating, counseling and interviewing. Although ethics may not be the substantive focus of these courses, they frequently incorporate ethical issues in the case descriptions and exercises. This exposes the students to the issues "in role" and thus forces them to grapple with them in a more realistic, less academic way. Even more realistically, law school clinics offer students the opportunity to represent actual clients under the supervision of professors. In these courses, students learn the fundamental aspects of law practice management, with their attendant ethical implications, such as the obligations to practice competently and to protect client confidentiality. Real clients in real settings almost inevitably also generate particular ethical dilemmas, and

clinics provide a place for students to consider the issues with the guidance of their professors. Most schools also offer externships, in which students receive academic credit for placement in law offices and judges' chambers. These courses typically require students to reflect on their observations of the attorneys with whom they work and interact, including the effectiveness and professionalism of the practices they see. The guiding principle of all of these courses is to teach students to notice ethical issues in everyday practice, to reflect on their implications, and to have the opportunity to explore them in writing or in the context of discussions with faculty and classmates. Many clinical faculty believe that a key to the effectiveness of these courses is the mentoring that students receive from members of the practicing bar, as well as experienced practitioner-professors.

Some schools also offer upper-level courses in ethics, including such topics as theories of legal ethics, the history and current state of the profession, and attorney rogues and heroes. Although these courses are not typically required, they do allow interested students the opportunity to read, discuss, research and write about the subjects in some depth.

A number of New York-area law schools have academic centers that focus on issues of legal ethics and attorney professionalism. Some of these centers emphasize ethical theory and practice, such as Fordham's Stein Center for Legal Ethics, Hofstra's Institute for the Study of Legal Ethics and Cardozo's Jacob Burns Center for Ethics in the Practice of Law. Others focus on the role of lawyers and law in society, such as NYU's Institute for Law and Society and New York Law School's Center for Professional Values and Practice. Still others highlight the importance of an attorney's obligation to promote justice and serve the public interest, such as New York Law School's Justice Action Center and Columbia's Center for Public Interest Law.

These centers sponsor programs for the public and colloquia for the academic community exploring these topics, and many have specialized publications as well.

Law schools and all of the courses, programs and projects they sponsor operate in the context of the pressures that confront the legal profession generally. Law school tuition and living expenses while in law school are high, and the vast majority of students take on significant debt in order to finance their legal education. Law students, like lawyers, experience higher rates of substance abuse and emotional disorders, such as depression and anxiety, than the general population. Law students face an extremely competitive job market upon graduation, which has only intensified in the recent recession. And the economics of law practice, in most sectors, is less promising than it has been in generations. When they are admitted to the profession and become practicing lawyers, law graduates confront the issues discussed elsewhere in this Report. These conditions make it vital to strengthen and expand partnerships between law schools and the practicing bar.

VI. Courts

Judges expressed concern over the lack of civility, respect for decorum and even truthfulness of some of the lawyers appearing before them. Most felt that these qualities, in general, had declined over time. Some attributed the perceived decline to the growth in the number of lawyers chasing too few clients, often in a small-firm setting without an experienced role model. Others pointed to the limited amount of time in court actually accumulated by most lawyers and to the emphasis on commercialism. Whatever the causes, the most telling comment that the Task Force encountered in its deliberations was the remark of one long-time federal district court judge who said that, whereas he once accepted at face value and relied on

representations of all but a handful of attorneys appearing before him, he now felt there were only a handful of lawyers well known to him whose word he could trust.

One issue of concern to the Task Force, noted in the focus groups as well as among Task Force members, was the failure or inability of courts to become more involved and take action to curb improper behavior. As Chief Justice Warren Burger noted, if “even a few” judges tolerate misconduct, “the administration of justice suffers and it leads to repetition of that conduct by other lawyers.”¹⁷ There are, of course, impediments to doing more. First and foremost are the crowded dockets of the courts themselves, leaving little time to become embroiled in discovery disputes and other pretrial activity. This problem is exacerbated by the complexity and sheer mass of electronic discovery. This background makes it difficult for judges to spend the time to decide fairly who-shot-john satellite disputes often having marginal relevance to the principal issues in a case.

Another factor that may affect some judges is concern for their own reputation with the bar and beyond if they mistakenly reprimand an attorney or discipline a prominent or well-connected attorney or firm. This may be a special concern of New York State judges as they near re-election when any controversy could compromise a re-election campaign. Judges may, however, take some comfort in the virtually unanimous and often earnestly expressed view of survey respondents and focus group participants that strong and more frequent reactions by the judiciary would be welcomed and could stem particularly egregious or unnecessarily obstructive behavior.

17. Warren E. Burger, *The Decline of Professionalism*, 61 *Tenn. L. Rev.* 1 (1993).

VII. Law Firms and Bar Associations

As the focus groups' discussion showed, interaction with role models plays a pivotal role in influencing behavior.¹⁸ This phenomenon of “social learning” is not unique to the legal profession. The armed services are unapologetic and explicit in their emphasis on the exhibition of role models. New recruits, fresh off the bus, are greeted by a drill instructor, with spit-polished shoes, Smokey-the-Bear hat, aviator sunglasses and a uniform in perfect order. Drill sergeants train new recruits to be cognizant of the fact that part of their job is to be a walking, breathing embodiment of military discipline.

Although not always as overtly hierarchical as the military, society is full of spheres in which someone is looking to someone else for cues as to behavior and one generation sets standards for the next. School-age athletes watch the professionals; the professionals watch their all stars, coaches and managers. Small investors watch the experienced big investors, small business owners watch the leaders of the Fortune 500.

So long as lawyers are human beings, modeling will influence our professional behavior for better and for worse. Law firms, bar associations and other institutions therefore inescapably become vehicles for such professional role modeling in the legal profession and need to examine themselves critically in this regard.

Law Firms

Some law students graduate and end up at private law firms. On their first day on the job, and in any initial orientations, those lawyers-in-training are forming first impressions of surface elements, like dress and office organization, as well as watching to see how senior lawyers treat

18. See Leslie C. Levin, *Bad Apples, Bad Lawyers or Bad Decisionmaking: Lessons from Psychology and from Lawyers in the Dock*, 22 Geo. J. Legal Ethics 1549, 1556-57 (2009).

them and interact with clients, judges, opposing counsel or other parties. In every interaction observed, the new lawyer has the opportunity to see how senior lawyers conduct themselves. For example, new lawyers are observing whether honesty and integrity are lauded, expected and assumed, or maligned. They observe whether after a negotiation of an agreement, the senior lawyer decides to leave out a point that was conceded and, if caught red-handed, simply to claim it was a mistake. They observe whether the senior lawyer acts disingenuously in discussing contrary authorities or facts in briefs and oral arguments.

New lawyers also note whether common-sense customer service is eschewed: for example, if the senior lawyer waits a week to reply to the client's phone calls or e-mails; if the senior lawyer uses dated law books to do legal research; or if the senior lawyer has too many clients to serve any of them competently. Such negative examples teach new lawyers to un-learn what might otherwise be assumed as expected of a lawyer.

Over time, firm culture is driven by what types of people succeed at the firm. Junior lawyers watch carefully to see who is made partner, and who is shown the door. They absorb a lesson if unethical or illegal conduct is overlooked when the perpetrator is a rainmaker. If yellers and screamers and corner-cutters make partner, junior lawyers get the message. If courteous, competent and careful lawyers make partner, junior lawyers also get that message.

Many firms have formal mentoring and training courses and firm policies that can reinforce the good lessons learned from behavior and symbolize in a concrete way their importance to the firm. These programs, however, require a commitment from management and senior lawyers who have many other demands on their time and may feel that business and client imperatives take priority. As a result, as the Large Firm Group's discussion showed, their effectiveness is varied. These programs are sometimes regarded as meaningful but can also

appear to be window dressing if not actively supported and if belied by actual behavior.

Moreover, not every senior lawyer is by temperament a good mentor or necessarily a good match for the mentee to which he or she may be assigned. Some of these programs might therefore benefit from participation and advice from outside the firm. But they will be successful only if the lessons they teach, reflect and reinforce the realities of the firm's practice.

Bar Associations

While law firms are groups of lawyers associated for the purpose of providing legal services, bar associations are groups of lawyers associated for the purpose of serving the legal profession, as well as improving its interaction with the world. They serve a modeling function as well, but in a collegial rather than hierarchical setting.

Because of their ever-evolving portfolios, bar associations offer new lawyers the unique opportunity to step away from their desks and become more thoughtful lawyers. Members are afforded opportunities to engage in *pro bono* and related public service work, write reports, serve on committees and interact with fellow lawyers. Simply walking through the door of a bar association is a reminder that even when away from his or her firm, a lawyer remains a member of a profession and, indeed, that the profession and its concerns are broader than those of an individual lawyer or firm. Active participation challenges a lawyer to think about what that means. Joining a bar association committee provides the opportunity to step away from the day-to-day practice of law and consider it in a less parochial, more nuanced context.

A securities lawyer has the opportunity to consider the various reasons securities laws exist and in the process become more skilled at interpreting them. Or that same lawyer has the opportunity to consider and shape and improve law in a completely different area – human rights law or international law. A litigator has the opportunity to learn, from a judge's perspective, the

challenges of rendering a decision within the constraints of our system. A trusts and estates lawyer can sit next to a personal injury lawyer, a criminal defense lawyer and an M&A lawyer and debate the merits of a new disciplinary rule. Large-firm lawyers mingle with sole practitioners, government lawyers with private lawyers, rookie lawyers with veteran lawyers.

In the process, new lawyers rub shoulders with experienced lawyers outside the confines of a boss-subordinate relationship. Voluntary associations offer something of a self-selection advantage in that lawyers who think they already know it all are not likely to join. The process of serving on a committee requires patience and the ability to listen to different points of view. It also requires a willingness to do work for no pay, which tends to attract lawyers who have some level of enjoyment in what they do.

The senior lawyers who participate, whether they realize it or not, serve as role models. They can become natural mentors to those junior lawyers smart enough to make themselves useful. A less-experienced lawyer may be asked to draft minutes or help coordinate a meeting, research or draft part of a report, or organize committee programs or activities. These are tasks that can expand a new lawyer's horizon and network of professional colleagues, build professional confidence and also give access to someone else's wisdom and experience. And that exposure can also provide positive modeling of professionalism, when a senior lawyer is cool under fire, firm but polite, informed when necessary, competent and well prepared, and open about limitations on knowledge.

VIII. NYCLA's Pilot Mentoring Program

In addition to informal mentoring relationships that develop through committee work, bar associations can play an active role in formal mentoring partnerships. Seth Rosner, member of the New York State Judicial Institute on Professionalism in the Law, noted that "organized

mentoring programs in county and local bar associations specifically aimed at encouraging participation by young lawyers and by seniors who will come regularly . . . is important.”¹⁹

While the Task Force’s research and analysis show differences of opinion on the extent of the professionalism problem or how to cure it, the one key theme that emerged is the feeling that having a mentoring program in New York would be an excellent way to increase professionalism among lawyers and increase their professional satisfaction.

To that end, a sub-committee of the Task Force and the NYCLA CLE Institute has developed a Pilot Mentoring Program that would pair seasoned attorneys with one or two mentees and involve opportunities for CLE credit.²⁰ The idea is to provide formal training through individual access to mentors for questions, consultations, guidance and the ability to share experiences. The pilot will be a one-year program beginning in early 2010. Mentors will be encouraged to meet with their mentees in person, via phone and by e-mail on an as-needed basis.²¹ In addition, some suggested mentor/mentee activities include: lunch meetings; inviting the mentee to the mentor’s workplace; and inviting the mentee to seminars, conferences, bar association and other networking events. The Program Oversight Board comprises Hon. Laura

19. Journal of the New York State Judicial Institute on Professionalism in the Law: *Convocation on the Face of the Profession II: The First Seven Years of Practice* 124 (2003).

20. The concept of issuing CLE credit to practicing attorneys who are willing to become involved in organized and structured mentoring programs has been raised by others in recent years. *See e.g.*, comments of John R. Dunne, Journal of the New York State Judicial Institute on Professionalism in the Law: *Convocation on the Face of the Profession* 134 (2001).

21. Though not addressed here, on-line and partially on-line mentoring programs have had some success at law schools, as noted by the associate dean of student affairs at Buffalo Law School. Journal of the New York State Judicial Institute on Professionalism in the Law: *Convocation on the Face of the Profession* 150 (2001). For a compilation of suggestions related to lawyer mentoring, see *Id.*, at 173, Appendix A: Compilation of Proposals Made At the Breakout Sessions (2001).

Ward, Lewis Tesser, Nancy Morisseau, Madeleine Giansanti Cag and Bari Chase. Ms. Chase will administer the program from the NYCLA side.

Mentors will receive special training and a Mentor's Notebook designed to facilitate the training. Mentors will receive CLE credit for their roles and for engaging in these sessions. In addition to the informal mentor/mentee sessions, the Program Oversight Board will have 75-minute formal group sessions for all the mentees that will focus on skill building and professionalism. Written source materials will be provided, and CLE credit will be awarded to mentees for attending these sessions. Some of the suggested topics include: Ethics and Professionalism, Management Practices and Practice Development, and at least one open-ended session to be determined by the mentor and mentee. We expect that there will be exercises in team building and working with people with different traits.

The cost for a mentee enrolling in the program will be \$75 for the year, which includes six MCLE transitional and non-transitional credits (including ethics). Tuition assistance will be available so that cost should not stop someone from becoming a mentee.

IX. Steps for the Future

The mentoring program that we have advocated, and which NYCLA will soon initiate, is an important step that the Task Force and NYCLA should nurture and monitor closely. If the program works successfully, NYCLA and the Task Force should judiciously expand and improve upon it. Assuming that NYCLA develops an effective model, we should share it with other bar associations and institutions. With the lessons of experience and a cadre of mentors and mentees, NYCLA may be in a strong position to partner with law schools on programs for their alumni and with law firms or other institutions on programs for their associates or employees.

The mentoring program we advocate is only part of the mentoring opportunities NYCLA has fostered and should continue to foster to increase the understanding and realization of professionalism in the practice of law in New York City. NYCLA already provides a degree of informal mentoring through committee work and forums, as well as its Summer Minority Judicial Internship Program and its Denis McInerney Inn of Court. All these activities should be continued and expanded, with a focus on instilling ethical values and professional norms. The NYCLA Ethics Institute was formed in 2008, in part, to emphasize and coordinate such activities at NYCLA, and we recommend that the Task Force be continued under the auspices of that Institute. To date, the Task Force has been operating as part of the NYCLA Justice Center, but the Ethics Institute (which had not been formed when the Task Force was created) seems a logical permanent home.

The work of the Task Force – and NYCLA – should not stop at mentoring, however. We believe that NYCLA should remain in active dialogue with law schools to encourage them to develop innovative programs for effectively inculcating ethical values in students and playing a role in graduates’ transition to practice. While this is a decision for the law school to make, NYCLA is uniquely situated to provide information on what graduates feel works and what is missing in their law school programs, and it could assist in programs bringing together students and practicing lawyers of varying types and levels of experience.

The Ethics Institute and NYCLA should explore partnering with law firms and other legal employers as well. Even those at firms with strong cultures and developed mentoring programs report a need for outside perspectives, and not all firms and employers have developed effective programs. In a time of economic stress and potentially broad changes in the structure of the profession, outside perspectives and resources may be especially valued. NYCLA is well

suiting to this role because of the makeup of its Ethics Institute, the diverse nature of its membership, and the concentration of so many large legal employers in New York City. The Ethics Institute may be able to create training programs and lead discussion groups on some topics more effectively and efficiently than many employers could do on their own.

The Ethics Institute should continue to look for opportunities for NYCLA to stress professionalism and ethics in its programming, both through forums and lectures and as a component of CLE programs. Ethics and professionalism columns or articles should appear as regular features in NYCLA's print and electronic communications. The Task Force maintains a professionalism blog that appears under-utilized at present, but dynamic use of new forms of communication should be emphasized. Informal surveys or questions submitted to members through such media could also be useful tools for monitoring changes or reaction to new models of professional organization in the future.

As recounted in *Brethren and Sisters of the Bar: A Centennial History of the New York County Lawyers' Association*, authored by Past President Edwin David Robertson, NYCLA has a long and distinguished history of leadership in ethics and the transmission of professional values. This tradition began at a time when the nature and demographics of the profession were changing. NYCLA should remind its members of that role and its continuing importance during another time of change and uncertainty. And it should use all available means of communication to do so.

NYCLA has taken steps to address these criticisms and to improve relations between legal practitioners and the public. It has often gone to the press to point out distortions and unfairness in *ad hominem* or poorly informed attacks on judicial decisions. NYCLA supports active and successful legal education programs in the New York public schools, including

courses and conferences based on its *NYC Youth Law Manual* and a city-wide high school essay contest. A goal of these programs is to improve public understanding of our judicial system and government and, in some sense, fill the vacuum caused by the shift away from civics courses at the grade school and high school level. NYCLA has also been systematically studying and suggesting ways to improve the local courts in New York City that most often and immediately affect the lives of the public. All these efforts should be continued and strengthened where possible.

Finally, NYCLA has a major role to play in educating the public about the role lawyers and the courts play in our system of government. Misperceptions of what lawyers do and why they do it contribute to lawyers' dissatisfaction with the profession. Representations gone awry or the venal or bombastic lawyer are what make news and attract criticism. But it is only news because it is not in fact the norm. Most lawyers obey the ethics of the profession, respect the law and are dedicated above all to their clients. Many contribute substantial volunteer hours and resources to the public good. Few areas of human endeavor can match this record.

NYCLA should play a major role as a public voice for the profession, as well as a defender of the judiciary when it is unfairly attacked. Independence of lawyers and the judiciary are bulwarks of our freedoms; this principle must be kept continually before the public. NYCLA cannot do all this by itself, but it can certainly contribute.

Long-standing and fundamental aspects of NYCLA's mission include "elevating the standards of integrity, honor and courtesy in the legal profession and fostering the spirit of collegiality among members of the Association and throughout the bar" and "maintaining high ethical standards for the bench and the bar." These abiding aspirations provided much of the impetus for creation of the Ethics Institute. A permanent Professionalism Task Force within the

Institute would further contribute to those goals. This Task Force should continue to study professionalism issues and developments within NYCLA and beyond, monitor perceptions among NYCLA members, and suggest future steps and help NYCLA implement them.

APPENDIX A

List of Task Force Members

| | |
|---------------------------|-----------------------|
| James B. Kobak Jr., Chair | Wallace L. Larson |
| James Altman | George Marlow |
| Stephen J. Blauner | Jason A. Masimore |
| Carol Buckler | Martin Minkowitz |
| Hon. John T. Buckley | Nancy Morisseau |
| Madeleine Giansanti Cag | Mahendra M. Ramgopal |
| Ramsey Chamie | Stacy J. Rappaport |
| Louis Crespo | Norman L. Reimer |
| Paul F. Doyle | Gerard E. Reinhardt |
| John D. Feerick | Edwin David Robertson |
| Bruce A. Green | Barry R. Temkin |
| John Gross | Lewis F. Tesser |
| Unekujo Idachaba | Hon. Laura Ward |
| David Kelly | Kristin B. Whiting |
| Mark Ladov | Linda Willett |

APPENDIX B

NYCLA DEFINITION OF PROFESSIONALISM

By professionalism we mean a group pursuing a learned art as a higher calling in a spirit that it is performing a public service, a service that is indispensable in a democratic nation founded on the rule of law. This calling is no less a public service because it may also be a means of livelihood. Pursuit of a learned art in the spirit of a public service is the essence of being a lawyer. It implies an obligation of dignity, integrity, self-respect and respect for others.

The essence of professionalism is a commitment to develop one's skills to the fullest and to apply them responsibly and with the utmost diligence to the issue at hand. Professionalism requires adherence to the highest standards of integrity and a willingness to subordinate narrow self-interest in pursuit of the fundamental goal of client service. Because of the tremendous power they wield in our system, lawyers must never forget that their duty to serve their clients fairly and skillfully takes priority over the personal accumulation of wealth. Lawyers must be willing and prepared to put their clients' interests before their own while retaining enough perspective to provide those clients with considered, well-informed and objective advice.

Although duties to their clients in particular matters are paramount, throughout their careers lawyers must remain conscious of and committed to the goal of improving the profession and the system of justice. This commitment includes taking personal and professional measures to increase the availability of legal services and abet even-handed and efficient application and administration of the legal system for all segments of society.

APPENDIX C

**NYCLA/JUSTICE CENTER
TASK FORCE TO STUDY THE TEACHING AND TRANSMISSION OF
ETHICAL AND PROFESSIONAL VALUES**

PROFESSIONALISM SURVEY

Year of Admission to Practice _____

Gender _____

Practice Setting

| | | | |
|---------------------|-------|--|-------|
| Solo or Small Firm | _____ | Legal Services or Not-For-Profit Employer | _____ |
| Medium-Size Firm | _____ | Law Professor | _____ |
| Large Firm | _____ | Judiciary | _____ |
| In House | _____ | Legislative | _____ |
| Government Attorney | _____ | Other | _____ |

List the area(s) in which you principally practice: (e.g., general practice, matrimonial, real estate, bankruptcy, civil defense, criminal defense, etc.)

What do you think of the state of professionalism (as defined above) in the profession today? Has it improved or declined over time?

What do you believe the profession is getting right? In other words, are there examples of highly professional conduct and behavior?

What motivates you to act professionally? Conversely, what are the prime motivators of unprofessional conduct?

Do law schools do enough to promote and teach professionalism? If no, what more could they do? What are they doing that you think is helpful?

Do other institutions (NYCLA and other bar associations, the courts, law firms) do enough to promote and teach professionalism? If not, what more could they do? What are they doing that you think is helpful?

CLE ethics credits became mandatory a number of years ago. Has mandatory CLE of ethics improved professionalism? Yes No Why or why not?

What are the most significant issues of professionalism facing you or the profession? How well equipped do you feel you and other lawyers are to deal with those issues? What can you or other lawyers do to maintain professionalism in dealing with other lawyers, including colleagues and subordinates?

How do you think attorneys or the organized bar can combat the negative impression the public is reported to have of attorneys?

APPENDIX D

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