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Panel I: The Role of Law Firms in the Educational Continuum

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MR. SAUNDERS: Thank you very much, Bruce.

I am delighted to be here, and I am privileged to moderate the first panel today. The subject of this discussion is going to be "The Role of Law Firms in the Educational Continuum."

There is an increasing phenomenon that we in the practice are observing, and that is that law firms are more and more, and more often, engaging in in-house educational programs, training programs, of their own. I think this began, somewhat sporadically, with the advent of the requirement for Continuing Legal Education. We have seen, over the years, law firms like my own receiving permission from the various accrediting authorities to conduct Continuing Legal Education programs in-house. That, I think, is one reason – but certainly not the only reason – why we have seen a large number of educational programs being conducted inside law firms.

I think the other reason we see this – and that is the reason that I think we are going to try to explore and understand in this discussion this morning – is that there is some perception – there has been for some time, but

there is an increasing perception – not only that the role of the lawyer in practice is one of continuing education and continuing learning, but there is a perception that the law itself is so complicated and so difficult that law schools simply don't have the time to sufficiently educate students to become practitioners. So the law firms themselves have undertaken programs so that they can continually educate their own young lawyers and train their own young lawyers in the types of practices that they do.

In my firm, for example, of Cravath, Swaine & Moore, we have a very extensive and elaborate in-house training program. We offer something like 125 or 150 classes a year to our young associates – young and not-so-young associates. Almost all of those classes are taught by partners, although on occasion we will ask experts – accountants, professors – to come and conduct classes for us. But we have a very, very extensive in-house training program.

So what we would like to discuss with you today is not only how that works, but why it is that law firms more and more are playing a role in the educational continuum. We don't intend deliberately to revisit the longstanding academy/practice dispute, but there will be some of that, I suspect, in the remarks of some of the panelists.

So without further ado, let me say that we have a very distinguished panel of practitioners and academics, who are going to discuss the questions that I have just outlined and some others, both from the point of view of practitioners and from the point of view of academics, to try to understand what is happening; why it is happening; whether it needs to be modified, corrected, amplified, supervised, controlled in any way – that is, the in-house training of lawyers by law firms; and whether there needs to be more of a dialogue between the practitioners and the academy with respect to the training programs that the practitioners themselves are undertaking to conduct.

What I would like to do is introduce the panel members as they speak. Each one of us is going to speak for approximately ten minutes or so. Then what we really would like to do is to have throw open the discussion for an interactive dialogue, not only among the various panel members but with you. We would like to make you become a part of this panel discussion.

Our first speaker is from the academy. It is Professor Clark Cunningham from the Georgia State University College of Law, where he is the Burge Professor. He is, as many of you know, one of the leading experts in the field of lawyer-client communication. I am sure he listened to Mike Greco's comments with great attention.

He is a widely cited expert in the lawyer-client relationship. He directs the Effective Lawyer-Client Communication Project at the Georgia State University Law School. He is also, as I said before, the Burge Professor of Law and Ethics at Georgia State. The Burge Chair was established by an endowment from the U.S. District Court for the Middle District of Georgia. I won't say where the money came from. But the purpose of that is to promote ethics, professionalism, and access to justice – three very laudable goals.

So without further ado, let me present to you as our first speaker,

Professor Cunningham.

PROF. CUNNINGHAM: There is a fairly short PowerPoint presentation. You will find a single double-sided piece of paper in your materials, "Legal Education After Law School: Lessons from Scotland and England."

This PowerPoint presentation, as well as the documents that are referenced or linked to it, will be posted on the Web site of the Effective Lawyer-Client Communication Project next week. So if you, for some strange reason, actually want to take time to look in more detail, it will be there for you [PPT file available at http://law.gsu.edu/Communication/Fordham/Fordham-Cunningham.ppt].

I couldn't have been happier to have the kind of segue from Mr. Greco in his beginning remarks: Learning doesn't stop in law school; lawyers continue to be law students, but then also must become teachers. That is, obviously, the theme of my comments, "Legal Education After Law School" – fortunately, law professors can't get impeached, so looking overseas is something that doesn't happen enough in law schools, but at least I am permitted to do – "Lessons from Scotland and England."

[Slide] I want to start by suggesting four questions that I think we should probably ask ourselves as we listen to each of the presentations this morning about what is happening in the United States in terms of the legal education needed after law school.

The first question is: Are we talking about basic competence when we are talking about legal education after law school, which I would simply define as "qualified to practice unsupervised?" I think it is fairly clear that many law firms, if not most law firms, would not assume that someone who has a law degree and has graduated from law school and passed the bar is therefore qualified to practice in all ways in an unsupervised way – although, of course, that is what the license allows us to do. So are we talking about education for basic competence? Or are we talking about education for proficiency, which I might define as "qualified to supervise?"

Whether we are talking about basic competence or proficiency, two additional questions:

1) How is the competence acquired in this particular setting?

2) How is the competence assessed?

I come to these four questions, actually, by looking at what is done in England and Scotland, which is quite different in terms of basic competence and proficiency after law school – not necessarily to suggest that we adopt or imitate what is happening over there, but I think it is provocative to look at how differently our colleagues across the Atlantic do it.

[Slide] Basic competence, the Scottish approach: After getting your law degree in Scotland, you are not permitted to then take a bar exam and become a licensed lawyer. Instead, there is a fairly detailed process. First, you have to take a twenty-eight-week Diploma in Legal Practice, which is a course in Scotland offered by one of the different universities. Then you have a one-year traineeship in a law firm. Then you go back to the university for a two-week

professional competence course, which is intended to be focused on your developing specialty, as in your law-firm practice you are supposed to develop in that one-year traineeship. At that point, you get a restricted license to practice. You go back for a second year of traineeship at the law firm.

At the end of this entire process, there is an assessment of professional competence, which is largely based, of course, on passing the Diploma, passing the professional competence course; and then there are detailed requirements for log keeping and portfolio keeping during the two-year apprenticeship. All of that is reviewed by the Law Society, which is roughly the equivalent of a state bar. Then you get an unrestricted license.

[Slide] There is a flow chart which is linked to the PowerPoint presentation that sort of details this.

[Slide] Proficiency: What about after you get basic competence? England has developed an interesting thing called the Specialist Quality Mark. This is what it looks like. There are actually two of them, the Community Legal Service Quality Mark and the Criminal Defense Service Quality Mark. This indicates, by the way, that – for a law firm to display the Criminal Defense Service Mark, they have to have a member of Chambers who regularly advises on aspects of criminal defense and someone who regularly represents defendants.

How do you get a Quality Mark? Where did it come from? It came out of two things: voluntary certification efforts by the organized profession, and quality assurance for government-funded legal services. In England, you cannot receive government money – there, they have very much a Judicare system. That is, both criminal defense and legal aid are primarily provided by private practitioners, like we do more with health care here, and you cannot get reimbursement from the government for providing legal services to indigent people or low-income people unless you have a Specialist Quality Mark.

[Slide] The requirements for the Quality Mark: There are seven standards. In the interest of time, I won't go through them here, but again, they are linked to the PowerPoint presentation.

An interesting thing is that you must have a client-feedback process. They have a proposed questionnaire – you don't have to use it, but you have to have something like it – that is provided to everyone who receives services. All of these have to be kept on file, because there are Quality Mark audits. You can't continue to hold the Quality Mark without passing regular audits, in which your files are reviewed, as are the client-feedback questionnaires. It doesn't really assess the quality of service being provided, but rather assesses the procedures that the firm is using.

[Slide] There are some other methods used in England to actually assess proficiency. The most ambitious is something called Criminal Litigation Accreditation. It is required in order to meet with arrestees at police stations. In England, more even than in the United States, there is an active role for the lawyer the moment someone is arrested. Most police stations have someone called a Duty Solicitor, who is a lawyer who is always there (sort of like Joyce

Davenport back in the days of "Hill Street Blues" – always a public defender there at the police station), to be available to people when they are arrested. You cannot have the privilege of meeting with arrestees unless you have been certified, which requires that you first take a course approved by the Law Society. Then you have to pass an examination based on a taped interrogation, where you watch a taped interrogation and you have to stop and indicate where you would intervene with what is happening, how you would behave.

Then you have to do five actual police station cases and present portfolios and have them reviewed. Then you get an unrestricted license.

I also mentioned case-file audits. Again, linked to the PowerPoint presentation is a very detailed list of what are called transaction criteria. In order to hold the accreditation, they come in and review, with a checklist, your files in your criminal matters to see if you have done all the things that are minimally required for effective representation.

[Slide] I am going to pause for a second to point out a couple of common themes I see. Both in terms of basic competence and proficiency after law school, in the United Kingdom we see an organized profession-university partnership, both in the teaching of this material and in the assessing of it. This degree of collaboration – and I appreciate Paul suggesting that perhaps today will be a step forward – I think is not as well developed in the United States. Once people pass the bar exam, the relationship between law schools and the profession for the continuing learning process is not as close as, I think, we all would like it to be.

This collaboration has to do with developing criteria for minimum competence after licensure and for licensure, and objective assessment, which is of a pass/fail nature – not just sitting in a CLE room and certifying that you were in the room when it happened, but you have to be assessed in a pass/fail way – not just that you have substantive law knowledge, but generally you have to go through a simulation exercise, which is evaluated, and often a review of actual work.

As was mentioned, I am the director of the Lawyer-Client Communication Project that is based at Georgia State University. I just want to conclude very briefly by talking about competence in client communication as an example of where this kind of partnership could take place. I am going to stay in England and quickly refer to a study by Professor Avrom Sherr at the University of London about lawyer-client communication.

He studied 143 actual first interviews between lawyers and clients. Of the 143, 24 percent of them were lawyers-in-training, this traineeship that I just described. Seventy-six percent were experienced lawyers. Seventy percent of those experienced lawyers had been lawyers for at least six years, 23 percent for more than eleven years.

He concluded there was a very high percentage of ineffective interviews. These are actual lawyer-client interviews. The experienced lawyers were generally no better than the lawyers-in-training at conducting these interviews.

[Slide] What were some common problems? Fifty-one percent of all the lawyers failed to get the client's agreement to the advice or plan of action by the conclusion of the first interview. Seventy-six percent failed to confirm with the client the lawyer's understanding of the facts. Eighty-five percent failed to ask before ending whether there was anything else the client wanted to discuss. Those of us that teach lawyer-client communication would think, as perhaps you would, that these are all pretty basic things.

[Slide] There were differences between the new and experienced lawyers. The experienced lawyers used less legalese. That is encouraging. They were better at filling in the gaps in the client's story, looking for things that you needed to know more about. This is the biggest statistical difference: In rating their own interview performance, they gave themselves much higher ratings than did the new lawyers. However, the clients saw no difference in performance between the new and experienced lawyers.

[Slide] Generally, I think part of the problem here – and I am about to wrap it up – is that lawyers are skeptical about getting client feedback, generally, and certainly about lawyer-client communication, for some reasons:

• I think most people that do client surveys find that there are low response rates from clients in terms of client satisfaction, and a concern that it is either very happy or very unhappy clients that are most likely to respond. They are concerned, therefore, that the results are skewed by outcome, that clients who get the outcome they want are going to rate their lawyers highly, and people who don't get the outcome they like generally – at least one out of two sides – are going to give a negative.

• Clients aren't qualified to assess lawyer effectiveness.

• And better client communication is not really a focus of professional development.

[Slide] That takes us to the Effective Lawyer-Client Communication Project. The Web site is there. We focus on the initial meeting. The goal is to have the client, before he or she leaves your office, fill out a one-page questionnaire about how they experienced the interview, so you get a 100 percent response rate. It is not skewed by the outcome, because it is at the first meeting.

The feedback can be used to improve the representation of this client, not when the case is over. It tells the client that the lawyer cares about how the client experiences the first meeting. If there were time, we would take a look at the sample forms. They are linked to the PowerPoint presentation. They are on the Web site.

[Slide] My final point is that the Lawyer-Client Communication Project is beginning a partnership with the Glasgow Graduate Law School, which operates the largest Diploma program in Scotland. They emphasize competence in client interviewing as part of the requirement for achieving the Diploma. The test for the Diploma includes a videotaped interviewing exercise that prospective lawyers have to pass.

[Slide] In the pilot project, Glasgow Graduate School is going to

use our client survey forms in the simulated interviews, and we are going to train what are called "standardized clients" for these interviews. These will be people who are not just other students in the class who are going to play the client role, but trained people who will do this over and over again, to give consistency. The simulated clients will participate in assessment, and were inspired by medical education, which now uses standardized patients for a required thirteen-station examination before you get the medical degree in the United States.

That went into place last year. Now, before you get a medical degree, they go to five assessment centers in the country – one of them is in Atlanta – and the prospective doctor has to go to thirteen different examining rooms, where there is a standardized patient sitting there in a gown. The encounter is videotaped for twenty minutes. It is a pass/fail exercise. They have to do a good job in every one of those things in order to become eligible for the license.

[Slide] We plan to design these interviews based on input from Scottish lawyers studying real client meetings. We see a potential extension to the proficiency stage – right now we are talking about basic competence – because we are thinking about using a potential new specialty certification program in Scotland.

[Slide] For more information and further development, there is a three-page handout in your materials, there is the Effective Lawyer-Client Communication Web page, which you have, and the Burge professionalism page. All that is on your PowerPoint.

Thank you very much.

MR. SAUNDERS: Thank you very much, Clark.

I am sure that, as this morning's discussion goes ahead, there will be a lot of questions and comments on Clark's comparison of the English and Scottish model to ours. It strikes me that the English and Scottish model is much more like the medical profession's model in this country than the legal profession's model. In the medical profession, they have continuing examinations, continuing certifications, continuing requirements, long after graduation from medical school. Graduation from medical school doesn't really enable you to do much of anything, unlike law school and passing the bar. If you graduate from law school and pass the bar, under our rules, you are essentially eligible to do almost anything. So that model is one that we might learn from and discuss.

The other comment that I want to make about Clark's presentation with respect to lawyer-client communications is this. As we were working on preparing our remarks for this morning, I sent Clark and the others a list of the in-house classes that we offer at the Cravath firm. He wrote back and said, "That's very impressive list, but there's nothing on the list about lawyer-client communications." And he was right; there isn't.

We in the practice know that lawyer-client communications and lawyer-client relations – not just communications, but lawyer-client relations – are among the most difficult areas of the practice that we encounter. We don't do a

good job in teaching our young lawyers how to interact with clients. It was precisely that insight from the academy that I think, at least in my own firm, will inform our decisions and choices about what skills we want to teach our own young lawyers as we go forward. That, I think, is another example of how what we need to do is to integrate the academy and the law firms as we go forward on this continuing education program.

Our next speaker is actually from the practice. He has an interesting position, one that many of you may not be aware even exists in law firms. It is a growing phenomenon. Don Bradley is the general counsel of the Wilson Sonsini firm in California. You might say to yourself, "Why would a law firm need a general counsel? Aren't they all lawyers? Why do you need a general counsel?"

But it turns out that many firms, including the Wilson Sonsini firm, have general counsel to advise the other members of the firm on matters of ethics, matters of procedure, matters relating to the practice of law – not just doing the substantive practice, but procedurally, ethically, how one goes about doing what one does, and whether one is doing it properly and correctly.

Don, before becoming the general counsel of the Wilson Sonsini firm, was the chair of the firm's tax practice. He is actually a tax lawyer by training. He attended Dartmouth College and UC Hastings Law School, and also has a graduate degree from NYU in tax.

Let me introduce our next speaker, Don Bradley.

MR. BRADLEY: Thank you, Paul.

Paul said, "Ten minutes and answer the questions." I think it needs thirty minutes, and, frankly, I never really got beyond the first sentence. I answered the questions in a roundabout way, but you will have to bear with me. When I read the first sentence, "The idea that large law firms provide superior training has been questioned," I said, "What does that mean; and why?"

Rightly or wrongly, I started to get a little smell of something that we hear about in large law firms from time to time, and that is that, perhaps, mentoring, training, and professional development take a backseat to the demand for the billable hour, to the quest for ever-increasing profits per partner.

I don't agree with that observation. I think large law firms recognize very clearly that the long-term success of their institutions rests on developing great lawyers, generation after generation. If they fail in that task, the firm will fail.

I am not going to sit here and suggest that the way I was trained thirty years ago is the way lawyers are trained today. I think the training is dramatically different. I was a product of on-the-job training and had the pleasure – sometimes pain – of sitting with a senior partner and a mid-level partner for about five years, trying to teach me what it meant to be a lawyer and the values I should possess and the skills I should develop.

But I think the observation that perhaps superior training at large law firms is not as great as it used to be just doesn't appreciate the forces that have changed the practice of law in the last twenty-five years. They are very,

very significant. I don't think they have anything to do about money. Frankly, a lot of those forces have not been for the best. Let me just tick off a few.

● Client expectations: However we have trained our lawyers, we have done a terrible job training our clients. I come from the perspective of a transactional lawyer. I think there are some real differences between transactional practice and litigation practice. But thirty years ago, a client would never have called up on a Friday night and said, "Hey, we're doing a deal this weekend, and we want a signed, definitive document announced before the market on Monday." "Fine, no problem. We'll be there."

● Technology: I think it is one of the biggest culprits affecting the profession. First we had fax machines – when I started, we didn't have those – computers, email, cell phones, and what are now affectionately referred to as "crackberries." They are god-awful instruments, and they radically changed the nature of the delivery of legal services. Lawyers are 24/7, and are expected to give instant responses. It is all about time compression.

● Another factor, cost-effective services: There is tremendous pressure on general counsels with respect to their budgets. That gets translated to tremendous pressure on law firms with respect to their budgets, their discounts, lean staffing, capitalizing on expertise, knowledge management – anything to make the process more efficient and take less time.

● Competition: Perhaps my little city of Palo Alto in California is kind of a microcosm. Twenty years ago, Wilson Sonsini was forty lawyers and was one of a handful of very small firms. Today almost every major New York firm, every major L.A. firm, every major Chicago firm has an office in Palo Alto. Who would have thought it?

Part of that is a reflection of a decline in client loyalty. The client doesn't pick one law firm and one lawyer to serve all his needs. That is probably the rare circumstance today. Now everything is shopped – expertise, ability to deliver high value quickly, and the ever-increasing phenomenon of auditions, beauty contests. All of that, again, compresses time.

Probably another factor is just the consolidation within the legal profession, the creation of mega-firms. There is a firm called Gray Cary that just merged with Piper Rudnick and DLA, and is now like 3,100 lawyers. The notion of mentoring in that environment is probably a fairly challenging task.

The overall result of these factors – and I am sure these are not all the factors that have affected it – is clearly less time and more compression for mentoring, for on-the-job training. I think large law firms have recognized that, and they have said, "We have to compensate for insufficient mentoring by really ramping up our training programs." I think there are varying levels of development in this area, and it is surely evolutionary.

At our firm, it starts at day one. We have a boot camp. New lawyers and new laterals go offsite for a week to try to learn about the firm, its culture, its style of practice, what I might colloquially call "the Wilson Way" – formal training programs that are ongoing, that range anywhere from a year to three years, in litigation, in corporate securities, in technology transactions,

where people are taught – by, basically, partners – various substantive areas of law, various skills.

We have an ongoing professional skills program, which I think is, in part, trying to compensate for insufficient mentoring opportunities due to the time compression. Those are more basic issues, like doing presentations, managing client relationships, having difficult conversations with clients – how do you manage those?

We have a fifth-year academy. If you are a fifth-year associate and you are beginning to look down the path of partnership, how do you develop those additional skills in terms of managing the client relationship, managing younger partners and associates, managing matters? There are a lot of project-management skills. I think lawyers need a lot of help in those areas.

Finally, I think one thing that has occurred, really since 2000, is much more mandatory training in risk management, in firms' policies and procedures, the impact of Sarbanes-Oxley, required training on Section 307 and the lawyer's responsibilities up the ladder.

Then, I think, there has been a huge investment by firms in knowledge management, to provide frequently asked questions, to provide databases, things that will facilitate training, knowledge, and the delivery of legal services.

So do I think law firms provide superior training? I think they do. Can they improve? No question. This will continue to evolve. Our firm has a professional-development staff that spends time every year managing our training programs, evolving those programs. I think that reflects what I believe to be the very fundamental commitment of large law firms.

Thanks.

MR. SAUNDERS: Thanks very much, Don. I am sure your remarks were very good. I actually missed most of them, because I was secretly trying to answer my emails on my BlackBerry.

I am actually in the middle of a trial right now, and I had to order – if that is the right word – the young lawyers who are in court with me that they could not turn their BlackBerries on during the trial. Watching them sit there was like watching people on caffeine withdrawal.

Don is right. The instant communications that we have in the practice of law, and the technology available to lawyers, in my view have dramatically changed the practice of law in ways that we are just beginning to understand. When I first started practicing, if you were given a legal research project, you would take your yellow pad and go to the library and spend a week in the library. Today you are required to have the answer within about ten minutes, not only from the other lawyers in the firm, but from your clients, who know that you can do it. So the practice of law has become much more intense.

I guess I do agree with Don that the training that lawyers receive in law firms is actually pretty good. The reason for that is exactly the reason that Don gave, and that is that if we didn't train our young lawyers to practice law the right way, eventually the firms would disintegrate. That is, we need to be able to

train lawyers to practice law the right way for our own selfish reasons, if for no other reason. We need to do that in order to survive.

Our next speaker is also from the academy. Professor Margaret Raymond is a Professor of Law at the University of Iowa Law School, where she teaches criminal procedure and ethics. I guess "professional responsibility" is what it is called these days. She was, before becoming a professor, a practitioner. She was a litigator at the Morrison & Foerster firm. She is originally from New York City. She went to Columbia Law School. She clerked for Thurgood Marshall and – I don't remember the other judge that you clerked for – Jim Oakes. Very, very good, almost impeccably good, training.

Without any further ado, let me introduce our next speaker, Professor Margaret Raymond.

PROF. RAYMOND: Thanks, Paul.

The most important training when you step up to the podium is always to adjust the mike, particularly if you are five feet or below.

Good morning. It is really a pleasure to be here today and to have the chance to interact with this great group of colleagues.

Our conversation about training thus far has been fairly general: How do we turn law graduates into experienced, capable, and competent lawyers? I want to speak briefly about the particular importance of teaching law graduates to be ethical lawyers and raise some concerns about that particular area of training.

At the outset, it is worthwhile mentioning some constraints on the lives of these young lawyers.

The first, which Don has already mentioned, is speed. The implications of technology for law practice – what he called the 24/7 world of constant response – create a universe where, as someone has described it, new habits of thought emerge from the compression of time and space, and the expectation that everyone should be available all the time.

I remember having my first Australian clients in 1987 being so impressed that we could effectively work around the clock. I would fax off our draft at the close of our business day, and the next morning when I got to the office it would have been returned, somebody else on the other side of the world having spent a full half-day working on it himself.

That brave new world of twenty-four-hour performance has now become the rule, not the exception. There is no longer anything miraculous about it. So one factor we have to take into account is this expectation that young lawyers will move fast.

As the need to show that you can and will produce an answer on a short timeframe becomes increasingly critical, the time for contemplation of a complex issue is, accordingly, reduced. Responsiveness is assessed on a different timetable, one which might not allow the kind of mature reflection most of us would view as important in the development of an ethical sensibility.

These new lawyers are also being encouraged to become experts in something. It is no longer enough – if it ever was – to work hard at the

assignments you are given and develop the skills of a generalist. Most professional development advice reflects the need to specialize. Choosing an area of specialization makes it possible to develop expertise to stand out from the crowd, to market yourself. It also supports the pressure for cost efficiency that Don mentioned.

The firms, in turn, are developing their own internal cultures of expertise in ethics. There is now an institutional infrastructure of professional responsibility – the risk-management department, the ethics partner, the general counsel, the conflicts committee. These are welcome developments that reflect a number of concerns, from demonstrating to insurers that the firm is paying attention to compliance, to building up trust so that lawyers in the firm will approach the appropriate partner for advice.

But it also suggests that ethics is just another area of specialization, an area in which someone else is developing expertise so you don't have to. Moreover, except in a specialized practice involving ethics work for clients, the development of ethics expertise probably looks to junior lawyers like a specialization best avoided. It is largely of internal service, is unlikely to generate much in the way of a book of business, and may be better deferred to more experienced and more senior colleagues.

So as these junior lawyers are being expected to move faster and respond in real time to the needs of their clients – and their supervisors as well – as they are being urged to specialize early, as they are being encouraged to rely on an infrastructure of ethical consultation and support, what is happening to the materials we are expecting them to absorb to appreciate their ethical obligations? They are getting longer and longer. The ABA's first venture into the articulation of standards for ethics was the 1908 Canons. There were thirty-two of them, and they covered about nine pages of the ABA reports.

Today, the ABA M*odel Rules of Professional Conduct* encompass fifty-seven rules, but that is not a fair count, because every rule includes multiple sub-rules. A better assessment of the density of those rules might be understood by looking at the comments, which are helpful interpretive guidance for the rules. The current version of the *Model Rules* includes 444 comments. Our recent attempt in Iowa to adopt a new version of the *Rules of Professional Responsibility* produced a draft of over 200 single-spaced pages. As you might imagine, few practitioners took the time to review those pages when comments on the rules were solicited by our supreme court.

The density of our current rules means a couple of things. One is an end to the cheerful naïveté of earlier eras that a single, relatively simple code of behavior is enough to advise lawyers of their ethical obligations. With it, though, also goes the more important notion that ethical prescriptions are easily accessible guidance for the average lawyer who should regularly be reminded of them.

What prescription can we take from this for training our young lawyers? I would welcome your thoughts. I have a few.

First, I would suggest that we need to focus on specialty-specific

ethics education. It retains its relevance for lawyers at the beginning of a specialization-driven practice – education about who the client is in an estate-planning practice or, as Paul mentioned this morning, a lengthy conversation about what it is that a litigator does with the inappropriately revealed privileged or confidential document.

Those narrow a bit the breadth of what must be understood. Training that makes professional responsibility concepts relevant to a particular practice gives lawyers more confidence that they reason knowledgeably and appropriately in this area. I should add that the Fordham Law School and my colleague Bruce Green have been real leaders in this area in the legal education environment.

My second thought: Recognize and acknowledge the importance of the professional responsibility specialization.

Finally, perhaps we need to contemplate whether writing long and complex rules with lengthy and detailed comments is the appropriate vehicle for reminding lawyers of their ethical obligations. Providing an exegesis for every possible development, far from increasing accessibility and knowledge, has made it more and more difficult for practitioners to consult ethics resources themselves. They, too, will come to think of ethics as a specialty area, where they are incompetent to render their own decisions and must consult an expert. We need to contemplate how to reconcile the professionalization of ethics with the possible loss of individual connection to professional responsibility.

Thank you.

MR. SAUNDERS: Thank you very much, Margaret.

Margaret's description of the number of ethical rules that we have now in the practice – far different from what they were when I started – suggests to me that that is yet another reason why we see so much continuing legal education in the law firms and elsewhere after law school. My sense is – and I am probably not old enough to know or to have the right perspective – that the law has become much more complicated than it was when I started practicing, and much more difficult. I think what Margaret said about the rules of ethics, the number of various rules that we have to deal with, illustrates that point. That is probably as important as any reason that I can think of for why continuing legal education in law firms is a phenomenon that we are seeing and a phenomenon that is actually really essential for practicing lawyers as we go forward.

Our next speaker is also from practice, but he is from the public sector. Drake Colley is currently in the Appeals Division of the New York City Law Department. He is a senior counsel in the Appeals Division of the Law Department. He has been in the Law Department for at least ten years. Prior to being in the New York City Law Department, he practiced at the Carter, Ledyard firm here in New York City. He received his J.D. degree from Harvard in 1989.

He will give us a perspective on training programs, not so much from the perspective of the large law firm, but from the perspective of the public sector.

MR. COLLEY: Good morning.

Before I get into what I want to talk about, I am very encouraged by what Mr. Bradley said about firms opening Palo Alto branches. In the unlikely event that the New York City Corporation Counsel opens up an office in Palo Alto, I want to go on record that I am very cheerfully volunteering to do that.

Ordinarily, because I am an appellate practitioner, after I make my appearance in front of the appellate court, I like to tell the court that, "As this matter is very straightforward, I promise to be exceedingly brief." So I am going to tell you that what we are talking about in this panel is pretty straightforward, and I promise that I will be brief – perhaps.

I do believe, though, that any consideration of the role of law firms in the educational continuum can't avoid a consideration of the role of law schools in that process. I read an article by Professor Harry T. Edwards that he called "The Growing Disjunction Between Legal Education and the Legal Profession." In that article, he makes a distinction between what he calls practical scholarship and impractical scholarship. He calls the impractical scholar someone who produces abstract scholarship that has little relevance to concrete issues or addresses concrete issues in a wholly theoretical manner.

He wrote that, among other things, the law professor's role is to produce practical scholarship. He defines that as being scholarship that attends to legal doctrine. He has also elaborated that practical scholarship is not wholly doctrinal, but gives due weight to case precedent, statutes, and other authoritative texts.

One of the things that he said in this article I found intriguing, if not controversial. I would like to read it to you, with your permission. What he says is, "Some law schools grant J.D.'s, but allow professors to ignore or disparage legal doctrine on the assumption that bar review courses will prepare students to pass the bar and that students will then learn whatever they need to know from their employers."

He goes on to say, "Many law firms and other employers of young legal talent accept or even encourage this ruse, because the unformed novices can be shaped to the employer's needs."

I guess we can all decide how we come out on that particular statement. But my observation is that I think you learn how to practice law by practicing law. I think that law schools absolutely serve a vital function. In my view, those functions are to, first of all, provide you with the tools that you need for critical thinking. I think that certainly most of the schools that are considered to be the elite law schools place an emphasis on policy and telling you what the law ought to be, whether or not that is what the case precedent holds. So law schools, at least in my view, can't and should not be expected to provide comprehensive training to law students in all areas of the practice. But I do believe that you do learn through experience.

I am sure that there are many of you here that are brighter than I who can sit in a lecture and have someone give you the theoretical aspects of how you would bake a lemon meringue pie. But I don't think you can do it until you actually get in the kitchen and bake the pie. For myself, I could listen to a

lecture on that for days and still not have the wherewithal to go into the kitchen, if I don't know how to turn on the oven.

So I think the practical application is crucial to professional development. I think that, for many practitioners – certainly for myself – the greatest lessons are learned by being forced to rise to the occasion by an adversary.

I would like to give you, with your permission, a little anecdotal example of that.

I have no doubt that, in law school, when I took civil procedure, at a certain point, someone talked to me about requests for admissions and when you would make a request for admissions and what it is intended to do. I have no doubt that they taught me that. But I didn't learn what it meant until I was engaged in the defense of the City of New York in a lawsuit that was brought by the United States and prosecuted by the Department of Justice. So at a certain juncture in the litigation, I opened up the mail one day and here was this request for admission – "oh, okay, what is this? Let me read the FRCP and let me find out exactly what I have to do and how soon I have to do it." I was shocked and amazed to learn that, gee, I had better respond to this thing in thirty days, and if I don't, then that I don't deny will be deemed admitted.

They served this to me at a time that I was very, very busy. I had to stop what I was doing so I could respond to this. I thought, gee, this is a pretty good thing to know about.

In a later litigation, involving a lawsuit that was brought by twenty-three police officers – this was something that I ended up trying in the Southern District Court – at the end of discovery, I thought, "My adversary seems to be pretty busy. I've noticed that in many cases during depositions she has not met her client until five minutes before the depositions." So that kind of indicated to me that she might have been up against the wall. So I decided, gee, this is a good time for me to pull this weapon out of my arsenal. So I drafted a request for admissions. She had, I think, twenty-three or twenty-four plaintiffs. I sent her a request for admissions that numbered somewhere 600 and 700 requests for admissions.

As you might imagine, she ran screaming to the Southern District. I heard words like "burdensome" and "oppressive," and so on and so forth. I very cheerfully pointed out to the judge that on the surface of things, that is how it may appear. However, it boils down to approximately thirty-something requests for admissions per plaintiff, and it is not my fault that she had twenty-four people sue us. Because the requests for admissions are designed to narrow the scope of trial, which is certainly something that caused the judge's ears to perk up, these should be allowed. In fact, she did allow it.

The point that I am trying to make here is that I was able to time serving her with the request for admissions to coincide with the time that she had to submit her papers in support of a summary judgment motion. I figured she couldn't do both, and it turned out to be the case.

Whether any professor – and I had a very distinguished professor

by the name of Abram Chayes, who taught me civil procedure – whether he mentioned that or not, I didn't understand the importance of it and the way that I could use this as a weapon against my adversary until someone used it as a weapon against me.

So I am firmly convinced that that is the way that you learn. I would like to just kind of touch on very briefly the way that lawyers are trained at the New York City Law Department.

As Mr. Saunders pointed out, I did spend about seven years at Carter, Ledyard & Milburn, and so I have a pretty good idea of how they train their lawyers. They do a very good job, I would say. I felt that I learned everything that they had to offer.

The difference, however, between working at a firm in the private sector and working at the Office of the Corporation Counsel, in my view – and I should say that we are one of the largest law organizations in the city. We have just under 700 lawyers. An overwhelming number of them are litigators. But one of the things that happens in the Law Department is that our matters are not heavily staffed. As a matter of fact, in one matter that I worked on I had a partner. There were two of us. That is probably the most that I have ever seen. Many matters are considered to be adequately staffed when you have one attorney working on it.

So I think what happens is that it causes you to have an accelerated learning experience. We don't have the luxury of practicing by consensus. You take a look at the nature of the case, you develop your theory of the case, you then do the things that are required of you in order to move the case forward, and your ultimate success is going to be told to you by the judiciary. They are going to let you know whether or not you did a good job, whether you prevailed or whether you did not.

So the Law Department is very much committed to professional development. That is part of our mission, in fact, along with other concerns, including teamwork, a supportive work environment, and diversity, which they are also very committed to. The provide mentors. I myself have served as a mentor to many young lawyers, and actually even to law students, who have come to our summer honors program. We provide regular evaluations, including annual reviews, in any number of categories, and your supervisor – whoever he or she may be – actually goes and watches you in the field. My supervisor this fall came and watched me make an argument in the Appellate Division, First Department, in a case that was fairly high-profile.

Our professional development program is headed up by an attorney who, until very recently, was a practicing attorney. She gave up the practice to focus primarily on professional development.

The Law Department is an accredited CLE provider. A lot of our training comes from individuals in the practice. I myself have taught CLE courses on practical things such as how to take a deposition, how to make a proper objection, and so on and so forth. We also have a videotape library that is available for our attorneys. We basically videotape any CLE course that is

taught, and you can then view that at any point that you feel is desirable.

In addition to courses that are geared toward the practical aspects of practicing – and those would include things like conducting effective depositions, conducting direct and cross-examination, how to lay a foundation for exhibits or for expert witnesses, basic negotiation skills, developing a theory of the case, use of the Internet in legal practice – we also offer courses that are geared toward our clients. In one of our telephone conferences in preparation for today's panel, someone said, "Oh, you have it easy. You only have one client. It's the city." That is one way of looking at it, but in reality we have a number of – we represent the mayor and the mayoral agencies, and so our clients include entities such as the School Construction Authority, Health and Hospitals Corporation, the Department of Environmental Protection, certainly the Police Department and Fire Department, the Department of Education. The list goes on.

So a lot of our courses address the needs and concerns of our clients. Obviously, since we represent Health and Hospitals, we do a fair number of medical malpractice cases. Some of the cases that I have seen are pulmonary physiology and pathophysiology. Since we represent the School Construction Authority, there have been courses offered for accounting for lawyers and also for construction claims. We also have outside providers coming in and teaching things such as the art of conducting a trial.

I believe that, because our matters are not heavily staffed and because a junior attorney – actually, every attorney in our office is expected to perform to the peak of his abilities, and junior attorneys, especially, will find themselves undertaking as much responsibility as they can manage – I believe that our office provides training that is probably unmatched in any other organization.

Thank you very much.

MR. SAUNDERS: Thank you, Drake.

I absolutely agree with Drake that on-the-job training is really important. Just to pick up on his metaphor, you can't learn how to ride a bicycle by reading a book about it. You have to do it.

But there are risks in that. That is why we are talking about training. In my own practice, the very first cross-examination I ever conducted as an officer in the JAG court during the Vietnam War – the first one I ever did was the first one I had ever seen, except for *Perry Mason* on television. I won't give you all the details, but it wasn't pretty.

So on-the-job training is okay, but you need to have some direction and guidance and mentoring and supervision. That is what we are talking about.

Our final speaker is also from practice. Vilia Hayes is a Litigation Partner at the Hughes Hubbard firm. She is the Chair of the firm's Pro Bono Committee. She and I have been on many pro bono committees over the years together. She is very active in pro bono activities. She is also currently the Chair of the City Bar Committee on Litigation.

She attended Marymount College and Fordham Law School, and

she clerked for Judge Brieant.

Without further ado, our final speaker, Vilia Hayes.

If Professor Green will allow me, I would like to leave a few minutes for some comments and questions from the audience.

MS. HAYES: Having, perhaps, been out of the loop of academic discussions, when I was asked to be on the panel, what was printed – and it is probably in the materials you have today – was, "The idea that large law firms give associates superior training has been questioned in recent years." Well, not by me.

So that really gave me some thought to look around. When I was a student at Fordham, the conventional wisdom was, you may not like a large law firm, it is maybe going to be a sweatshop – we didn't really know what that meant, but we knew enough to be concerned about it – but the idea was that you could always go for three years, and you were going to learn something more.

My personal experience – I worked part-time during my third year here at Fordham at a small firm. I realized, in that one anecdotal experience, that the cases were smaller and there wasn't enough time to get them ready. They had a law student, and I was drafting the papers and those were getting filed. I thought there was an absence of supervision – where were the grown-ups? How were we going to learn how to do this?

So I think that the idea always was that if you went to a law firm and you had cases that were of significance to the clients, there was the time to do the job as carefully as you wanted to do. That afforded a junior person a chance to learn the skill, and there was time to do that.

I stepped back to try to look. I thought I would tell you a little bit about what our training is and, I think, the different issues that we face.

Law firms are very committed to training now, for several reasons. You have heard that it is important to the success of the firm that they have well-trained lawyers. I have a busy practice. I want the associates that work for me to be able to do a good job. Some part of the training is sort of on-the-job. So I am going to give feedback to those people only because I need a better product the next time around.

The other thing is that associates have become a valuable commodity to the law firms. Everybody wants them to be happy and well-rounded. They, I think, are more articulate and outspoken about what they want than when I was a junior associate.

So how do we try to put these different things together? If you are at a big firm, some of our successful work is on big cases. You have somebody who comes in now and is certainly going to have time to develop their skill. But if I have a major litigation in the firm that we have fifty or a hundred lawyers working on, and a hundred paralegals, you are not going to get that depth of practice. So if you get thrown into a government or a DA spot, where you learn just by picking up the case file and going, you are at least seeing the case from beginning to end. If you have another case where you are on the privileged team and you are reviewing privileged documents for a year, the firm has had to come

up with a different way to make sure you are not going to have just that one limited experience, so that at the end of a few years, you are going to have a practice.

So what do we do? We start with our summer associates, and we introduce them to what the work is of all the different departments. At that point, most people don't know what they want to do. We copy the law school model and we run a trial advocacy program with a law professor, for summer associates. We run a negotiation workshop. We take them to everything that is going on that they can see. We have people go with attorneys to watch depositions.

When you get to new associates, we do somewhat of the same thing. Most of our lawyers now come into either the corporate department or the litigation department. This holds true for some of our smaller departments, too. We have in the first year, I would say, twenty-two hour-and-a-half to two-hour programs for the corporate associates and twenty-five for the litigation department. I was happy to see the first one we do for litigators is, what does it mean to practice law, and how do you service your client, and what does practicing law mean from the client perspective?

We do some skills work, too. We do a trial advocacy and, again, a negotiation workshop for our junior lawyers. We teach them how to write. We have a summary judgment motion that everybody works on and exchanges papers and argues before partners at the firm.

By the time you get to second-year, they do a full-day deposition skills workshop, where we bring in court reporters.

The thing that happens when you have a billable-hour requirement and you have more pressure from clients, I guess, not to pay as much – I find that the people that are working on my cases have to have the opportunity to come watch, even if that is not billable. If you are going to work on the case, you will come to the depositions. Years ago, I don't think anybody ever said you can't have three people sitting here, or two people, at any deposition. I went to court when I was the fourth lawyer. But now I think that the law firms have to pick up that responsibility to do that.

The other thing that I do – as Paul mentioned, I run our pro bono program – I make a very heavy pitch to our associates, who I think are among the privileged people living in New York, that they have a moral obligation to do pro bono work. But I also tell them that it helps them be in charge of their own development. By doing pro bono cases, you have the one-on-one client contact; you have the responsibility. But we make sure that nobody does anything unsupervised. Even our pro bono programs are staffed, usually, with a junior person. They will have an associate adviser and a partner responsible for the case. That really teaches you how to do things.

It also helps them learn how to be lawyers and not just big-firm practitioners. That lets you know what a will is and what to do if somebody seeks to evict you or what the rules are – the kinds of things that our families thought they should do. So I think that is an important thing.

I think the best thing that probably can be done is something our corporate department is trying to do, because I think that practice has changed over the years. I recognize that by hearing my colleagues' description about how corporate deals would be done. For years, people learned how to do them by drafting, by having somebody mark it up, by sitting there and talking to you. Some people remember that fondly. I remember that in excruciating detail, when somebody would sit with you for two hours and go over the brief. I don't think you have as much time to do that.

What we have just set up recently is a mentoring program with one of our pro bono projects, one of these new entrepreneur projects that we are doing with VOLS in Brooklyn. So you have a partner and two associates on a team. At least, that way, you have set up in a more formal structure the mentoring that used to just happen periodically.

Do law firms still provide good training for associates? I think that they do. But I think it has become more of a focus – probably because of CLE, too, it has become more formalized, so that you have that. The way to have, probably, the best training is to have the feedback and the one-on-one mentoring. That has become more important as we institutionalize it. It always worked great when it worked great, and when it didn't, you were left out. Having seen that model, going back and examining it, I still think that it has a task. But it is hard for young attorneys to make time and hard for the partners at the firm to make time. So we try to encourage them to do different things, like join bar associations and become involved in that, because all of that expands your ability to practice.

Thank you.

MR. SAUNDERS: Thanks, Vilia.

I want to keep Professor Green's conference on schedule, but I really would like to hear from you, if we have a few more minutes. You have heard us speak. I thought we might just talk to each other for a while, but that is not as useful or as important as hearing from you.

Please, let us have your questions for our distinguished panel members.

QUESTION: Gary Munneke, from Pace Law School.

I was really interested in Professor Cunningham's comments about what is happening in England and Scotland. I just had to sit here and wonder if there was any possibility at all that we could accomplish something like that in the United States. Can you comment on whether you think it is possible or how we might go about it?

PROF. CUNNINGHAM: In terms of basic competence, I do think that there is widespread concern that it is not responsible for us as a profession to give people an unrestricted license to practice, having done nothing but go to three years of law school and pass a paper-and-pencil bar exam. Last year Georgia State hosted a conference on rethinking alternatives to the bar examination. As you may know, there was a proposal under consideration here in New York, and there is something going on in Arizona, something going on in

New Hampshire, about experimenting with alternative tracks to giving people a license. To me, that is probably the best opening wedge for this, to think about alternatives to just passing a paper-and-pencil bar exam that would have more of a hands-on basic competence involved.

Sophie Sparrow, who is sitting right here, in the light green jacket, is from New Hampshire. That state is the farthest along that I know of. It is my understanding that they are fairly close to setting up a setup with one law school in New Hampshire, where students can do a special track in connection with law school, where they develop a portfolio of competence, and they can present that portfolio to a committee appointed by the supreme court, and if it is approved, they are admitted to the bar.

That has a backwards effect, because as soon as something like that becomes available, that puts pressure on law schools to shift somewhat what we make available to students. I think that that would probably be a good thing, too.

I was the keynote speaker last year at the ABA's Roundtable on Specialty Certification. It seems to me that specialty certification in the United States has not realized its potential. One of the things I noticed, as I went and looked at large-firm resumes in states that have specialty certification programs, was that virtually no law firm put on its Web site information about whether anybody in the firm had a specialty certification. It has come in the United States largely out of the regulation-of-advertising movement. People get specialty certification so they can advertise it.

What we are talking about in Scotland would be the idea of having a specialty certification aimed at sort of the fifth-year associate. Instead of having it all be inside the law school, like what you described, it could be a partnership with an outside organization, where you are five years along, you have an idea of where you want to go, and you would go and do a specialty certification. You would come out and actually have a stamp that says you have shown certain competencies. That would be more meaningful than the kind of specialty certification we have in place now.

Those seem to me to be the two – both optional. I think we are a long way from requiring anything like the English or Scottish. But those options strike me as the two points of entry.

PROF. RAYMOND: Clark, in England and Scotland, the basic law degree is an undergraduate degree, isn't it?

PROF. CUNNINGHAM: That is true – in fact, everywhere. I think Canada is one of the few other countries where law is not an undergraduate program. It is the case that in the United States it is not an undergraduate program, but there is more skills education offered in law school. But it is still the case in most places that you can go and get a law degree and have done nothing for three years but sit in a chair like this and listen. That is not much of a way to learn how to make a pie.

QUESTION: I am Norman Fletcher, from Georgia.

You and Don mentioned the problems with instant communication.

I have sort of been out of practice for about fifteen years, on the court. That is a concern to me, how it might affect the quality of life for your attorneys in a firm. How is it abused – or is it abused to such an extent that it is an aggravation factor that affects your ability to get your work done?

MR. SAUNDERS: I will answer that briefly for myself, and then Don can answer. I think it does affect quality of life, in my own view, and it can affect the quality of the work. It can be abused. My own perception is that the abuse is not only within the law firm, but in the lawyer-client relationship. The clients now know that they can communicate with your twenty-four hours a day, seven days a week. They can get you anytime.

So the instant communication is not only used within the law firms, but it is used as a way of communicating with clients, in ways in which – years ago, when I started practicing, one would never communicate with a client that way. You would never give an instantaneous response. You would take the client's inquiry. You would think about it. You would turn it around. You would test it. Today it is much more instantaneous.

It really does affect the quality of life. Those little things are not called "crackberries" without a reason.

My response to that is that that is the reality. I don't think we are ever going to turn that clock backwards. It is not going to happen.

MR. BRADLEY: I agree with all that Paul said. Quite frankly, at sixty-one, I didn't expect to be answering a hundred voicemails a day, two hundred emails a day, and on my way home at night, having my partner, who is in Beijing, call me to discuss some issues, and when I got home, having my wife look at me and say, "You had three or four calls from folks. Such-and-such a client wants you to call back tonight."

It is a very significant impact on the quality of life. But the legal profession – it is that slavish mistress. You can either practice a hundred percent or you can stop practicing. It is very hard to practice part-time. The demands are so heavy. They are aggravated by all of this technology. Frankly, a lot of young lawyers don't have time to think, don't have time to process, and are looking for instant answers somewhere, so that they can get their work done within the timeframe that the client expects.

It is very challenging.

QUESTION: Given this incredible pressure on attorneys today, particularly partners, who are really servicing clients from a very high level of client service, how do we motivate partners to focus on the non-billable or to focus on that mentoring piece? Have law firms yet turned to issues of motivation by compensation or de-compensation with respect to partners engaging as mentors, as faculty for in-house, giving value back to the firm?

MS. HAYES: Depending on your perspective within the partnership, I don't know if you can say how well that has been done, but it certainly has become part of our partner compensation process, the things that people are going to be evaluated on. If you are the biggest rainmaker in the firm, I have my doubts as to whether you would really see any detriment. But we have

at least gotten to the point where we say there are things that are important. We want to encourage our associates to stay, we want to encourage their development. We now try to get the partners to help with all the pro bono projects that we think help that development.

So I think it certainly has come to the forefront, at least, I know, in our firm.

MR. SAUNDERS: From my firm's perspective, we look at things a little bit differently. We don't have billable-hour requirements at all. Our partners are all compensated equally. We don't have rainmakers and people who get compensated differently. So we don't have those issues.

But we do spend a lot of time in our firm thinking about, talking about, and working out ways in which we can – to the extent that we can do it, consistent with our obligations – improve the quality of life for our younger lawyers and for our other partners. But it is difficult, I must say. People are not talking about these subjects without good reason. They are serious problems, and they are difficult.

PROF. CUNNINGHAM: I was just going to mention, the second reading in the materials under our tab is about the shadowing program at Proskauer Rose, which is specifically about this issue. I know that Steve Krane is on the next panel from that firm. You might ask him if it is still in place and how it is working. It is a very interesting article.

QUESTION: Could I direct a question to Mike Greco?

MR. SAUNDERS: Certainly.

QUESTIONER: I so applaud the initiative and share the concerns that he mentioned that are driving some of it, especially about the assault on confidentiality and the independence of the bar.

At the same time, as someone who has spent a quarter-century as a critic of the Bar Association, it seems to me that we are where we are, in part, because we brought it on ourselves. The bar's resistance to ways to think about confidentiality in a less absolutist mode got us to a place where you had lawyers massively implicated in the major scandals of the last couple of decades. In the aftermath of the meltdown of the savings and loans, and Enron *et al.*, I think it was inevitable that people were going to call into question some of the perceived truths of the Bar Association. It is precisely because, I think, so many members of the bar have stuck their heads in the sand when it comes to reforming from within that we are now seeing it being imposed from without.

I guess I wonder about your sense of ways of bringing these groups together in a constructive dialogue about where the exceptions really need to be made. Is there an alternative to what is being proposed now that provides greater independence for the profession, but still maintains some kind of accountability for the huge third-party consequences that have emerged as a result of the lawyers' unilateral assertion of privilege above all else?

So trying to use this as an opportunity to recast the balance and get the profession to be a self-reflective critic, as well as an adversary to what is going on, seems to me to be, at least potentially, part of a project to reconnect us

to the ideals of the profession, which are, after all, all about serving the public.

MR. GRECO: Deborah, your question is the subject of an all-day conference.

MR. SAUNDERS: Or a career.

MR. GRECO: Or a career.

It is an excellent question. The brief answer is, first, that the American Bar Association and the organized bars throughout the country are addressing the issues that we are talking about. That is one of the goals. I personally [inaudible] address these issues.

Point number two is that the confluence between the subject of this panel, which is education in law school and continuing legal education, and public service – currently, the greatest harm, I think, to the profession is the harm that we lawyers do to ourselves, by not being well-trained, by not serving our clients to the best of our ability, by being unprofessional, which gives our critics the opportunity to criticize individual lawyers for their excesses, and those criticisms are broad-brushed to the entire profession.

I said this morning that lawyers don't stop being students of the law, and they become simultaneously teachers – every day of our lives, we are teachers. We teach either intentionally by what we say to our clients, members of the public, juries, judges, Kiwanis Clubs – we teach consciously, but we are also teaching by our actions, unconsciously. I ask all lawyers to be aware of that. Everything we do reflects not only on us as individual lawyers, but it reflects on the profession, and what the public [inaudible] and what the regulators [inaudible].

So the attorney-client relationship is informed both by the attorney-client privilege and what I talked about it, but it is also informed by the fact that we have to be sure that all of us, at all times, are delivering the best services to clients. Overarching all of that is the sense that the difference between lawyers and car salesmen, everyone else, is that lawyers are defined by being people who serve the public. That is what we are. We serve the people.

That is why I am so upset that people are trying to diminish our role as lawyers. A diminished profession, a marginalized profession, a wounded profession, a weakened profession, harms every layer in society.

Those are my thoughts. People may disagree with them.

MR. SAUNDERS: Thanks, Mike.

I saw a lot of other hands. I would love to keep this dialogue and discussion going, and I hope you would, too. But I think, in the interest of keeping this conference relatively on schedule, we have to bring this panel discussion to a close.

Please join me in thanking all of our panel members.

Thank you very much.

PROF. GREEN: We will pick up again in ten minutes.