Lawyers, Learning, and Professionalism: Meditations on a Theme

Judith Welch Wegner

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FIFTY-NINTH CLEVELAND-MARSHALL FUND LECTURE\textsuperscript{1}

LAWYERS, LEARNING, AND PROFESSIONALISM:
MEDITATIONS ON A THEME

JUDITH WELCH WEGNER\textsuperscript{2}

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I. INTRODUCTION

These are interesting, indeed troubled times. When asked what gave him hope in times like these, Victor Weisskopf replied, "Mozart and quantum mechanics." "Learning" and "lawyers" might be added to that list.

Lawyers are (or should be) by temperament and training "learners." Unless lawyers embrace that notion more consciously, they run the risk of forfeiting their proud heritage and compromising their capacity to deal with a rapidly changing future. A more self-conscious commitment to learning can provide a needed anchor in times when many fear that lawyers' sense of professionalism has drifted.

This essay will offer three meditations on the theme of "lawyers, learning and professionalism."

- First, it lays a foundation by arguing that a commitment to learning is an appropriate and necessary professional value for lawyers.
- Next, it contends that lawyers need to take this professional value more seriously. It will suggest that lawyers lag behind other professions in learning about learning, and urge more lawyers deliberately do just that.
- Finally, the essay shares some important lessons about professionalism recently learned through learning experiments with practicing lawyers and law students.

II. COMMITMENT TO LEARNING AS A PROFESSIONAL VALUE

Lawyers share many important values. A commitment to truth, competence, fidelity to our clients' interests, and justice are embodied in the canons of ethics and the rules of professional conduct. A commitment to learning should be embraced as one of lawyers' fundamental values, based on history and traditions; an emerging modern consensus; and intellectual, moral, and civic imperatives.

A. The Evidence of History and Tradition

Many people have undoubtedly heard the law described as a "learned profession." Much has been written on the important topic of professionalism and its development over the last two centuries, and the extensive literature on this subject is worth reading.

The term "profession" is today simply defined as "a vocation or occupation requiring advanced education and training, and involving intellectual skills." Why then is the term "learned" used as a modifier? The term "learned" came to be used in England because at one time the term "profession" connoted any

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4 Webster's New World Dictionary, 1074 (3d ed. 1988). Other notable definitions include a professing, or declaring; and the avowal of belief in a religion.
"calling, vocation, [or] known employment," including the "mechanical professions," (that is, the "trades of skilled workmen").

The adjectives "liberal" and "learned" were adopted to signify that members of certain professions possessed (or should possess) a "liberal education"—one fit for a "gentleman" of the times. Education encompassed the classics and mathematics.

Ultimately, the need for professionals such as lawyers to become "learned" through a liberal education was justified in more philosophical terms. As an Englishman of the mid-nineteenth century reasoned: "Technical training might be good enough for the narrow purposes of a craftsman or trader, but for a gentleman who might have to deal with wide issues of government and policy, it was much more important to grasp general principles of intellectual activity: his education should teach him how to learn." Thus, nearly 150 years ago, the English tradition had developed that learning was essential to professionals like lawyers, and that "teaching [a prospective lawyer or other professional] how to learn" was a fundamental part of an individual’s education.

In America, the term "profession" came to have an even more specific meaning, one that focused on a professional’s esoteric knowledge, theoretical training, receipt of a formal degree or licensure, and commitment to service.

It appears, then, that in America by the turn of the century, a professional was not only expected to be generally "learned," but also to have become acquainted with sacrosanct teachings. In his compelling study, The Culture of Professionalism, Burton Bledstein contends that the American conception of the professional reflected a distinctly American "culture of professionalism," one bound closely to the country’s temperament and to its rapidly developing middle class. In Bledstein’s view, the American professional incarnated "the radical idea of the independent democrat, a liberated person seeking to free the

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5 READER, supra note 3, at 9-10.

6 Id. at 10.

7 Id. (quoting William Whewell: Of a Liberal Education in General, London, 1850, esp. Sec. I).

8 "Profession" was defined as: [A] full-time occupation in which a person earned the principal source of an income . . . mastered an esoteric but useful body of systematic knowledge, completed theoretical training before entering a practice or apprenticeship, and received a degree or license from a recognized institution. A professional person in the role of a practitioner insisted upon technical competence, superior skill, and a high quality of performance. Moreover, a professional embraced an ethic of service which taught that dedication to a client’s interest took precedence over personal profit, when the two happened to come into conflict.

BLEDSTEIN, supra note 3, 86-87.

9 Id. at 87.
power of nature within every worldly sphere, a self-governing individual exercising his trained judgment in an open society."

Bledstein further viewed the American professional's learning as the source of his authority. The professional used

his trained capacity...[to interpret] the special lines along which such a complex phenomena as a... point of law... developed in space and time.... Through a special understanding of a segment of the universe, the professional person released nature's potential and rearranged reality on grounds which were neither artificial, arbitrary, faddish, convenient, nor at the mercy of popular whim.

The talismanic role of learning and its importance in justifying the power and authority accorded professionals had further implications. A noted sociologist, Everett Hughes, described the role of learning in stark, "contractual" terms: in return for the professional's claim to extraordinary knowledge, he struck a bargain with society in which he received a high degree of autonomy and a mandate for social control.

In the last hundred years, the linkage between the professions and learning has been reinforced by powerful institutional linkages—linkages that might almost be called the growth of a "professional-educational complex." Robert Stevens characterizes the development of legal education during this period as proceeding through four stages: a stage in which some period of law study was followed by a bar exam; a second stage in which law school served as an alternative to apprenticeship; a third stage in which law school was required without the alternative of office study; and a fourth stage in which attendance at college and completion of study at an ABA-approved law school was mandated. Burton Bledstein's work places these developments in a larger perspective. Bledstein has characterized the modern research university as a vital part of the "culture of professionalism," "a professional service institution," which has nurtured middle class and professional values through its transmittal of theoretical knowledge, and its training of an intellectual class steeped in that knowledge to guide the nation. Learning now takes the form of time spent in powerful educational institutions, which in turn serve as gatekeepers to modern professional life.

This brief history thus demonstrates a longstanding linkage between professionals—including lawyers—and learning. The reasons for that linkage may well have varied from culture to culture and from time to time. An
undercurrent appears clear, however: learning is strongly associated with and valued by the professions and by professionals.

B. An Emerging Modern Consensus

An appeal to history sets the stage, but does not fully address the linkage of learning and professionalism in the current day. It would be possible to cite many sources for the proposition that learning and professionalism are now—more than ever—actively intertwined. For simplicity's sake, reference may be made to a single source well-known to many lawyers, Legal Education and Professional Development—An Educational Continuum, The Report of the Task Force on Law Schools and the Profession: Narrowing the Gap (generally known as the MacCrate Report).  

The Task Force's chairman, Bob MacCrate, spoke recently to the Ohio Conclave on Education for the Legal Profession. He described the Task Force's vision as one in which "legal educators, practicing lawyers and members of the judiciary—all members of one profession—engaged in a common enterprise to build an educational continuum for their own and succeeding generations of lawyers." Part II of the Task Force Report sets forth a vision of the skills and values new lawyers should seek to acquire. Four fundamental values of the profession are listed: "providing competent representation"; "striving to promote justice, fairness and morality"; "striving to improve the profession"; and "professional self-development".  

The first fundamental value is described as having three distinct aspects: "attaining a level of competence in one's own field of practice," "maintaining" such a level of competence, and "representing clients in a competent manner." In defining the expected level of "competence," the values statement references "lawyering skills," set forth earlier in the Task Force Report. The first value thus implicitly links learning and professionalism.

The fourth fundamental value, "professional self-development," links professionalism with learning more explicitly. Citing the Model Rules of Professional Conduct, and their reference to lawyers as members of a "learned


16 REPORT AND RECOMMENDATIONS OF THE OHIO CONCLAVE ON EDUCATION FOR THE LEGAL PROFESSION TO THE SUPREME COURT OF OHIO AND OHIO STATE BAR ASSOCIATION, 15 (Feb. 1, 1995).

17 Id. at 12.

18 Id. at 13-14.

19 Id. at 207-10.

20 Skills include problem solving, legal analysis and reasoning, legal research, factual investigation, communication, counseling, negotiation, litigation and alternative dispute resolution procedures, organization and management of legal work, and recognizing and resolving ethical dilemmas. Id. at 138-40.
profession," the MacCrate Report states that a lawyer should be committed to the following values:

(4.1) Seeking out and taking advantage of opportunities to increase one's own knowledge and improve one's own skills, including:

(a) Making use of the process of reflecting upon and learning from experience, which entails:

(I) critically assessing one's own performance to evaluate:
   (A) The quality of the preparation for the performance
   . . . ;
   (B) The quality of the performance itself . . . ; [and]
   (C) The extent to which ethical issues were properly identified and resolved;

(b) Taking advantage of courses of study for increasing one's knowledge of one's own field of practice, other fields of legal practice, and other relevant disciplines;

(c) Employing a consistent practice of reading about new developments in the law and other relevant fields or disciplines;

(d) Periodically meeting with other lawyers in one's own field of practice or other fields for the purpose of discussing substantive law, techniques, or topical issues.

[and]

(4.2) Selecting and maintaining employment that will allow the lawyer to develop as a professional and to pursue his or her professional and personal goals.21

The Task Force's report has had its critics, as well as its proponents.22 The Report has led to considerable discussion about the ways in which lawyering skills and values can and should be incorporated into the law school curriculum, as well as questions about how education in skills and values can be funded. It has triggered controversy on the floor of the American Bar Association House of Delegates, and the adoption of resolutions calling for law schools to incorporate specified skills and values into their curricula. Whatever the disagreements, this much is clear: There is a consensus among both legal educators and lawyers that education is fundamental to lawyers at all points in their lives, and a belief that learning is inextricably linked to professional values.

21 Id. at 218-19.

C. The Case from First Principles: The Intellectual, Moral, and Civic Imperatives

Based on history and the modern consensus evidenced by the MacCrate Report, learning is a professional value for lawyers. This conclusion is also evident from a consideration of first principles.

1. The Response to Change: Learning as an Intellectual Imperative

Most people realize that we live in a time of accelerating change. Lawyers are now called upon to work in increasingly diverse communities, and to operate across international boundaries. Technological changes are driving shifts in the work force, capital structure, and ways of doing business. Families are becoming more fragmented, their roles and membership are being redefined, and new residential patterns are beginning to emerge. Society is in the midst of renegotiating the social contract between rich and poor and between those of different races. Accepted political assumptions are being challenged daily, as citizens reconsider the nation’s constitutional framework. America’s economic future is subject to drastic change as a result of the looming national debt and shifting patterns of trade around the globe. The physical environment is under stress, and both citizens and political leaders are striving to strike a balance between sustainability (or indeed survival) and economic viability.

"Learning" is defined as "a process by which behavior changes as a result of experiences." Learning is needed to face the intellectual and social challenges ahead. Learning is inevitable in the face of these challenges. Lawyers can and must learn to survive in the days to come. Learning is therefore both essential and valuable.

2. Response to Diversity: Learning as a Moral Imperative

Lawyers in America widely espouse their commitment to justice as they understand it. In the last half of the twentieth century, much of the justice debate has turned upon the need to make peace with this nation’s tragic, segregated past. One of the most controversial issues of the current day is whether "affirmative action" in employment, government contracting, and higher education should be continued. People of good will have come to differ concerning the ongoing legitimacy of historical justifications for racially-based preferences as a means of remediating past wrongs.

Justice demands the continued use of well-justified affirmative action programs. It is time to explore an additional moral imperative as a possible justification for such programs—one based on the value of learning.

Affirmative action programs in law school admissions should be sustainable based upon the importance of learning about this country’s tradition of justice and injustice in discussions which involve students of diverse backgrounds.

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who bring significantly different vantages and real-life experiences to such interchange. Such programs support law schools’ traditional mission and function in training law students to "think like lawyers." A diverse population, speaking with authenticity and authority about their ideas and experiences, helps students in law school classrooms learn to articulate and experiment with differing points of view. A diverse classroom population also emulates trends in the nation’s population, and helps law students practice navigating the complex multi-racial society in which they will operate as professionals charged with solving problems for generations yet unborn.

3. Creating Communities: Learning as a Civic Imperative

One last justification for embracing a commitment to learning as a professional value is that learning provides a unifying experience and guiding principle through which we engage in speaking and listening, open-minded discussion, and thoughtful contemplation—the essence of civic dialogue.

The American legal profession, like the larger society, is becoming increasingly fragmented. Americans have long valued candid discourse, in a context of mutual respect. Americans also claim that the free marketplace of ideas is one of the cornerstones of the nation’s system of government, yet members of the profession, and of the society are increasingly atomized, disrespectful of one another, and lacking in common ground. This drift from the nation’s civic moorings has been well-chronicled in Robert Belah’s Habits of the Heart and The Good Society.

More recently, William Sullivan, one of Belah’s co-authors, has argued that professional values can provide a locus for "civic professionalism."24 Sullivan hopes that through a renewed sense of professionalism, American society can develop a model that balances individual autonomy with common standards of performance; and creates a paradigm for mediating institutions that bring together social responsibility, individual integrity, and economic and technical achievement.25 Sullivan also believes that a new vision of professionalism will allow us to reinvigorate our commitment to "the call of service" and to create a renewed ethic of responsibility for the whole of society.26

Sullivan’s argument that the professions are well-suited to undertake the task of reviving the sense of community across this country is a compelling one. Lawyers have long been leaders, and have devoted many hours to the greater good. While there are undoubtedly many ways in which lawyers can accomplish this objective, special emphasis might be placed on just one. Lawyers can work together in the interest of learning, coming together in candid discourse about things that matter, with open minds, and mutual respect for each other. The Inns of Court movement that has recently swept this


25Id.

26Id. at 11.
country provides a ready example of such an effort—one that unites lawyers, judges and law students who seek to learn from and with each other. If the legal profession can continue to model and practice respectful behavior in "learning communities" such as these, we might well develop "habits of the heart" which would spread throughout our larger communities.

A commitment to learning should be embraced as a professional value by lawyers and law students everywhere. It remains for each individual to consider how he or she might manifest a commitment to that value in his or her own life. If legal educators took this notion seriously, law professors would consider the ethical imperative of reexamining how and what they teach. Law students would come to grips with their personal responsibility to learn while in law school, and find common ground with their professors in more active learning partnerships. Members of the bar would rekindle their commitment to devote time to training beginning lawyers and fit time for such training into law firms' billable hour expectations. Perhaps it is appropriate to end this first meditation by urging each member of the legal profession to accept, for a moment, this essay's fundamental premise, and consider what it can and should mean to them.

Having laid this cornerstone, it is time to turn to a second meditation on a related theme—how lawyers need to open their hearts and minds and endeavor to learn more actively about learning, as is becoming true in other professions.

III. TAKING LEARNING SERIOUSLY: LEARNING HOW TO LEARN

If lawyers indeed value learning as a tenet of professionalism, it would seem that they should take learning seriously. Legal educators have, historically, taken at least one form of teaching seriously—"Socratic" inquiry, applied to appellate cases, as espoused by Christopher Columbus Langdell. In the last two decades, law professors have made room for clinical education, although in at least some law schools, skills education continues to be marginalized. Legal educators continue to claim that they need to teach students to "think like lawyers," and to expose them to a growing number of areas of law practice, perhaps with interdisciplinary perspectives thrown in. Law professors have begun to notice a possible distinction between "teaching" and "learning," but have not yet taken the plunge to do very much about it.

Lawyers—or at least law professors—are generally quite gifted in analytical thinking, and tend to value that talent above all else. Some have argued that this emphasis on analytical thinking reflects the positivist orientation of the modern research university. Whatever the reason—core talents or natural proclivities—law professors have assumed all too often that this way of thinking, above all others, can and should be taught. Law professors have also assumed that insight into diverse subject matter can best be gained through this particular lens.

Advocates for skills training, such as the authors of the MacCrate Report and many clinical teachers, have contended that there is more to life—and learning—than this. A range of other practice-oriented skills (including problem solving, negotiation, and the like) has therefore been proposed and increasingly integrated into American legal education. A growing number of American law schools have also developed more sophisticated research and
writing programs, as well as academic support programs—programs whose missions more straightforwardly embrace helping students "learn to learn" by aiding them in the development of study and thinking skills. Happily, an emerging body of scholarship is documenting the lessons about learning discovered in this new venue, and mining the rich body of learning theory developed by psychologists and professional educators.27

Much as these developments seem to be healthy ones, it appears that something is missing at the core. Why do legal educators not set goals of teaching sound "judgment," and of striving for "artful" or "wise" exercise of such judgment? Perhaps law professors believe that judgment, artistry, and wisdom cannot be taught, or that we have no time for the endeavor, striving as we do to emphasize the rigors of analytical thought. Other disciplines have been more bold. Perhaps it is possible to learn from them. Two quite different examples—business schools and schools of architecture—provide helpful insight.

A. Business Schools and the Teaching of Judgment

Business schools, like law schools, often rely upon the case method. Many have made strong commitments to excellent teaching. A recent compilation by Harvard Business School faculty, Education for Judgment, chronicles that faculty's odyssey in charting a broader course.28

In two introductory essays, David Garvin and Ronald Christensen discuss the premises from which they and their colleagues proceed. Garvin observes that the traditional model of "teacher-centered" learning is "based on the idea of teaching as telling," with its primary goal the "transfer of information from the expert (the teacher) to novices (the students)."29 Garvin offers cognitive, philosophic and pragmatic critiques of the "teacher-centered" method. He notes that the teacher-centered method assumes that students can take in, assimilate, and retain information better than they actually do through this method. He argues that the goals of learning can and should extend beyond the transfer of information to "development of clinical judgment, the formation of critical skills, [and] the shaping of artistic sensibility."30 He stresses that "many students don't like the teacher-centered method."31 He contrasts "teacher-centered" learning with "active learning" which emphasizes the shared nature of the undertaking, and makes teachers and students work as partners to achieve "the true ends of education—the ability to use knowledge,


29 Garvin, supra note 28, at 3.

30 Id. at 4.

31 Id.
to think creatively, and to continue learning on one's own. Under the "active learning" model, teachers must attend not only to intellectual content, but also to "classroom climate, group process, and the needs, interests, and backgrounds of students." In Garvin's view, three major shifts must be accomplished to bring about change to what he describes as "discussion teaching": a "shift in the balance of power" so that teachers and students share decision-making; a "shift in the locus of attention" to focus not only on subject matter but also on learning climate; and a "shift in instructional skills" to emphasize interpersonal skills and sensitivity to group dynamics, as well as declarative and analytical abilities.

His colleague, Roland Christensen, in a companion essay, discusses the "premises and practices of discussion teaching." He stresses four major points:

1. A discussion class is a partnership in which students and the instructor share the responsibilities and power of teaching, and the privilege of learning together.
2. A discussion group must evolve from a collection of individuals into a learning community with shared values and common goals.
3. By forging a primary (although not exclusive) alliance with students, the discussion leader can help them gain command of the material.
4. Discussion teaching requires dual competency: the ability to manage content and process.

Christensen states that by relying on these four fundamental premises, he has been able to use "discussion teaching" techniques to work effectively with groups of from 20 to 100 students.

Skeptics might question whether the strategy described by these Harvard Business School faculty is really very different from that employed by skilled practitioners of the Socratic method in law school classrooms across the land. Without observing specific classrooms and measuring student learning, it is difficult to debate that empirical point. For present purposes, however, it is enough to conclude that distinguished educators in other professions have deliberately set out to teach judgment and artistry, not simply to convey...
information; and that they are willing to experiment in an effort to learn about learning. Lawyers and law professors should be so bold.

B. "Educating the Reflective Practitioner": An Example from Architecture

A second example of learning about learning is provided by the ground-breaking work of Donald Schöhn, a distinguished professor of urban studies and education at the Massachusetts Institute of Technology. Schöhn brought a critical eye to the "technical rationality" that he believed characterized education in professional schools linked to modern research universities.\(^\text{38}\) He condemned the artificial division and hierarchy of knowledge that placed basic science above applied science, and applied science above technical skills associated with day-to-day practice.\(^\text{39}\) Rejecting the traditional paradigm calling for the internalization and application of rules, Schöhn chafed at the idea that "practical competence becomes professional when its instrumental problem solving is grounded in systematic, preferably scientific knowledge."\(^\text{40}\) He instead focused on the "wisdom," "talent," "intuition," and "artistry" of skilled practitioners, particularly when they encountered "indeterminate zones of practice—uncertainty, uniqueness, and value conflict."\(^\text{41}\)

As part of a study of architectural education, Schöhn developed what he described as a "new epistemology of practice" which focused upon the "reflection-in-action" (the "thinking what they are doing while they are doing it") of skilled practitioners.\(^\text{42}\) Schöhn sought to understand how such practitioners developed competency and artistry, and endeavored to refine teaching and learning strategies that would foster such skills. He called his resulting educational design a "reflective practicum," in which students were taught to "reflect-in-action" as they worked, and in which the teacher served as "coach" in reflecting back and forth with the student.\(^\text{43}\) Schöhn subsequently perfected his methodology and documented its application in a variety of professional school settings, including architectural studios, master classes in musical performance, instruction in counseling and psychoanalysis, and training in urban planning.\(^\text{44}\)

Again, it may be tempting to reject Schöhn's epistemology as heretical, and his strategy as impracticable given the staffing ratios applicable in legal education. Yet this conclusion is by no means so certain. Schöhn's challenge to

\(^{38}\) Id. at 9.

\(^{39}\) Id. at 8.

\(^{40}\) Id. at 13.

\(^{41}\) Id. at 22-40; see also DONALD SCHÖHN, THE REFLECTIVE PRACTITIONER (1983).

\(^{42}\) SCHÖHN, supra note 36, at xii.

\(^{43}\) Id. at 41, 175, 217, 255 passim.

\(^{44}\) Id. at 110-18.
the intellectual division of theory and application rings true to life. His
discussion of the "dialogue between coach and student" is compelling
reading for any teacher who has attempted simultaneously to further
substantive understanding and aid a student's development of critical thinking
skills. Do legal academics help students learn to think like lawyers as well as
learn to learn to think like lawyers (as Schönb helped students to "learn to
design" and "learn to learn to design")? Schönh's dissection of the process of
"coaching" into "telling and listening," and "demonstrating and imitating," and
combining these two modes, is also helpful. He offers salient observations on
the "ladder of reflection" in which coach and student dance between modes of
questioning, answering, advising, listening, demonstrating, observing,
imitating, and criticizing; between acting and reflecting; and between reflecting
and description, reflection, and reflection on reflection. In short, Schönh
contributes insights that allow legal educators to learn more about learning by
giving words to its subtle artistry, and by illuminating the goals and methods
of professional education.

What might legal educators learn by learning more about learning, as is
occurring in other forms of professional education? It is possible that they
discover that they are doing many things right, and thus develop
confidence to do things even better. For example, law professors might learn
that the Socratic method, well handled, fits closely with some learning theories
that suggest that learning takes place along two axes—the intake of information
and ideas, and the processing of such information and ideas to make them one's
own. Legal educators might also discover ways lawyers can be taught to serve
their clients more effectively and humanely. A medical school colleague
recently reported that efforts are underway to help surgical residents learn to
serve as effective teachers who help their patients learn about medical
conditions and options. This strategy seems similar to the approach to "learning
how to teach" that is incorporated into "street law clinics" and other programs
of that sort. The possibilities may be limitless.

If legal educators treat commitment to learning as an important professional
value, they would learn more about learning. Law professors can do so by
talking with colleagues about what does or does not work in the classroom.
They can also engage their students in such conversations, and commit
themselves to listening and learning from dialogue of this sort. Legal educators
can think actively about how learning takes place in other cultures. They can
find much hope in troubled times through such creative efforts to stretch their
own and their students' minds.

45 Id. at 102-13.
46 Id. at 114-15.
47 SCHÖNH, supra note 37, at 114-15.
IV. EXPERIMENTS IN LEARNING: LAWYERS, PROFESSIONAL VALUES, AND PROFESSIONALISM

It seems appropriate to turn, at this juncture, to some concrete examples drawn from my own efforts to "learn about learning," and insights gleaned from "learning experiments" involving lawyers and law students in North Carolina. In certain ways, these examples illustrate the learning strategies being developed in business schools and architecture schools that were summarized earlier. Perhaps more significantly, however, they illustrate the story of one legal educator's quest to learn about professionalism, lawyers' values, and the means by which personal and professional values can be brought to bear to sustain one's capacity to perform socially important work.

A. North Carolina Professionalism Survey: A Learning Dialogue Between Legal Educators and Members of the Bar

Over the past five years, lawyers and legal educators in North Carolina have convened on many occasions to discuss the problem of "professionalism." In 1992, members of a subcommittee of the North Carolina Bar Association's "Bench-Bar-Law School" Committee concluded that they had talked enough. The subcommittee decided to use survey research techniques to determine whether there was a "professionalism problem" in the state. The subcommittee also sought to explore its precise dimensions, its causes, and possible solutions. The subcommittee concluded that a survey instrument could be useful in providing lawyers and judges with an opportunity to voice their considered views on the topic of professionalism. The subcommittee made no attempt to use a statistical sample or otherwise undertake to prove that such views were in fact representative or in fact borne out by observable events in lawyers' diverse worlds. The subcommittee further believed that the survey could be used to create a dialogue on the topic of professionalism (which would itself provide a vehicle for enhancing professionalism), and to develop educational tools that lawyers could use with other lawyers to find solutions to perceived problems.

The survey yielded some important findings.

1. Of those responding, 65.8% concluded that unprofessional conduct and incivility among lawyers are problems for lawyers in North Carolina. In addition, 24.8% said that these problems were much more prevalent than when they began.

48 The lawyers' survey was developed based on an initial survey of judges and a survey of members of the Fourth Circuit Judicial Conference. It was pre-tested and reviewed with the help of the University of North Carolina Institute for Research in Social Sciences. Copies were distributed informally through the North Carolina Bar Association and through publication in the State Bar Quarterly in 1993. A total of 644 responses were received. The demographic and practice profile of respondents was relatively balanced in comparison to state-wide demographic data. Copies of the survey form and a summary of responses are available from the author. [A summary of the questionnaire and responses is included as an appendix to this article.]
practicing, while 45.9% said that they were somewhat more prevalent. These responses were fairly constant for those with differing years in practice, although those with the most experience said that the problem was definitely getting worse.

2. Respondents were asked to rate various forms of unprofessional or uncivil conduct and, based on their perceptions, rate whether the forms of conduct were not a problem, or were a slight, moderate, serious, or very serious problem. Problems cited as "moderate" or "slight" were as follows (in rank order from most to least important): attorneys failing to return phone calls; service of overly burdensome or intentionally harassing discovery; failure to deliver documents at the time promised; obstruction or delay in negotiations without a reasonable basis; misrepresentation of law/facts of cases during judicial proceedings; improper ex parte contacts with the court; interposition of artificial or frivolous legal obstacles in an effort to increase billings; material misrepresentation of facts or law during negotiations or discussion; and failure to comply with agreements between counsel. Many of the most commonly cited forms of misconduct seem to be related to time (using time burdens as a weapon, where time is now tied to economic survival and stress). Other commonly cited misconduct involves use of excessively adversarial tactics and perceived unfair competition or failure to play by the rules. Other problems relate to communications between lawyers.

3. Judges routinely rated problems as more serious or more prevalent than lawyers. Judges saw significantly greater problems than lawyers in certain areas such as presentation of frivolous arguments to increase billings and failure to comply with agreements among counsel.

4. Specific problems were associated with certain types of practice. For example, lawyers in domestic practice cited higher levels of unreturned telephone calls and more derogatory comments. Those in criminal practice noted more ex parte contacts and more obstruction of negotiations.

5. Those with more years in practice cited more problems with misrepresentation and discovery. Newer lawyers reported more problems with having phone calls returned and fewer problems with frivolous billings.

6. Respondents indicated that unprofessional conduct was moderately likely to arise when attorneys were under stress and when the stakes of a dispute were high.

7. Respondents also indicated that somewhat to moderately important causes of uncivil conduct included the following (beginning with the most frequently cited): a growing
perception that incivility is the sign of a good, tough advocate ("the L.A. Law syndrome"); lack of effective intervention by the court; lack of adequate training and supervision by law firms; general changes in society as the world becomes more competitive; increasing competition due to the number of lawyers; pressures within individual law firms; lack of adequate training in law schools; inexperience; and failure by the Bar to police its own members.

8. Perhaps most notably, respondents generally cited everyone but themselves as causes of the problems of unprofessionalism. Lawyers with little experience thought increasing competition and inexperience were relatively less important causes, while pressures within individual firms were a major source of unprofessional conduct. Lawyers with significant experience cited lack of effective intervention by the court. Those with the most experience cited the failure of the Bar to police its own members and lack of adequate training in law school.

9. Respondents were asked to rate various means of increasing civility and professionalism among attorneys. Somewhat to moderately important factors included the following: the community of lawyers in general; firms in which offending lawyers practice; one's own response to unprofessional or uncivil conduct; the court; law schools; and Bar disciplinary committees.

10. When asked to rate factors that would encourage increased professionalism and civility among lawyers, respondents cited the following as somewhat to moderately important factors: imposition of sanctions; tighter supervision and control of discovery; public censure of attorneys during court proceedings; and adoption of new Rules of Professional Conduct. Judges, more significantly than litigators, tended to believe that the adoption of new Rules of Professional Conduct and the imposition of sanctions are relatively important. Judges had less faith than practicing lawyers in the effectiveness of public censure of attorneys during court proceedings.

The Bar Association subcommittee has put the survey and its findings to good use. Drawing on comments included along with questionnaire responses, the subcommittee developed hypothetical fact patterns which it has used with some success in small group break-out sessions for participants in continuing legal education programs around the state. Creating "learning communities" of lawyers who can brainstorm about possible responses to documented, wide-spread problems is an effective means for confronting the perception that "it's somebody else's problem" or "there's nothing I can do." Colleagues in North Carolina law schools have also administered the survey questionnaire to students who have just completed their first simulated trial in trial advocacy classes. Students are then asked to confront and discuss such problems as
unreturned phone calls or overly adversarial conduct. They learn that practicing lawyers find these problems to be troublesome, and that their future colleagues fear that such problems will escalate if left unchecked. The hypothetical fact patterns developed from survey responses have also been made available to interested law teachers who use them to give students a taste of the ethical problems raised by law practice.

These experiences suggest that it would be beneficial to continue to explore ways in which learning about real-life problems can be used to develop a stronger sense of professionalism among lawyers and law students. For example, it would be possible to work with bar disciplinary authorities to identify common patterns of conduct that lead to disciplinary action, in hopes of developing "real life" hypothetical fact patterns for use in continuing legal education programs and legal ethics classes. It would also be possible for judges to explore solutions to intransigent problems of lawyer misconduct and to develop solutions that can be brought to bear more systematically across the state and the nation.

B. Intergenerational Coaching and the Teaching of Legal Ethics:
The UNC Law School Oral History Project

The UNC Oral History Project\(^{49}\) began with a conversation between a colleague—Professor Walter Bennett—and me.

Professor Bennett had joined the law faculty in 1986, as a clinical supervising attorney, after a number of years as a practicing lawyer and trial court judge. He had incorporated instruction in legal ethics in his clinical teaching and had taught a section of the traditional professional responsibility course in which he used a variety of supplemental readings to increase the level of engagement within the class. While Professor Bennett met with some success, he found that in the traditional classroom setting there remained among students a strong resistance to discussion of moral and ethical problems beyond the narrow context of professional rules. There seemed to be a learned wariness toward value-laden issues and a belief that such issues only confused legal thinking and hindered opportunities for success both in law school and in the profession as a whole. Further, there seemed to be among students a lack of (or lack of ability to express) a moral vision of their own lives and of their futures in the legal profession. There was also significant cynicism about the moral stature of the profession and students’ abilities to change it.

During this same period, I began more intensive efforts to work with practicing lawyers and judges to understand the "professionalism problem" being discussed by both members of the bench and bar and legal educators across the country. I undertook a number of initiatives on this theme, including use of oral history techniques to understand the personal and professional development of a 95-year-old alumna (Kathrine Robinson Everett).

\(^{49}\)For a more extensive discussion of the UNC Law School Project and a summary of selected oral histories, see 73 N.C. L. Rev. (1995).
Following the conversation in which we shared what we had been learning, Professor Bennett decided to try a nontraditional approach to teaching law students about the values of the profession. After consulting with other members of the law faculty and with faculty colleagues in the UNC Department of History, Professor Bennett developed a seminar in the "Oral History of Lawyers and Judges." The seminar has now been offered on five occasions, with quite extraordinary results.

As originally conceived, students enrolled in the seminar undertake field work in gathering oral histories of selected North Carolina lawyers and judges. Students are instructed in the techniques of gathering and maintaining oral histories, drawing on the expertise of UNC history faculty. Each student selects a lawyer or judge of particular interest to him or her, researches and interviews that individual, helps refine tapes and transcripts for deposit in the UNC law library and the UNC Southern Historical Collection, makes an oral presentation to the class, and writes a seminar-quality paper on the life story collected.

The seminar began with three basic goals: to expose students first-hand to the lives and work of lawyers and judges; to engage students in the real-life ethical and moral dilemmas of working lawyers and judges as told by them; and to gather and store professional history and the life stories of members of the profession in North Carolina.

While the seminar achieved these objectives, it was soon obvious that something much more powerful was occurring as well. Student resistance to discussion of values and moral issues, which had been so stultifying in the traditional professional responsibility classroom, dissolved in the intimate setting of the oral history interview. The interviews themselves and the process of synthesis and critique that occurred afterwards forced students to look at their futures in moral terms and engaged them in a deep examination of the nature of the profession, their own reasons for becoming lawyers, and their own moral stance vis-a-vis the person they interviewed. Frequently, but not always, the experience for the student was inspirational and invigorating in terms of career and life purpose. In every case, it was cause for serious reflection.

Professor Bennett and I believe that the key to this success is the intergenerational connection in the oral history interview between the interviewing student and the practicing or retired lawyer or judge. In that setting—where the professional tells his or her life story; discusses parents, ancestors and mentors; and relates hopes, aspirations and failures—issues of personal morality and professional values naturally arise. Interviewees discuss where they learned their values, what moral and ethical qualities lawyers should possess, and the reasons for the decline in ethical standards in the profession. It is almost impossible for a student who takes his or her life and career seriously to see and hear these matters discussed by a member of the profession without engaging those issues personally.

The University of North Carolina has recently received a major grant from the W. M. Keck Foundation to expand upon the learning model we have begun to develop through this experiment. During the past two years, we convened a national advisory committee with colleagues from around the country in diverse disciplines. At the initial committee meeting, law students brought
lawyers' values to light through a "readers theater" production and re-creation of a seminar discussion with the advisory group. Professor Bennett has incorporated elements of the oral history methodology into his legal ethics course, and has begun to integrate within the course a structured mentoring program which pairs students and practicing lawyers in ways that facilitate meaningful exchanges about core values.

This experiment has yielded several important conclusions:

1. The learning dynamic is a remarkable one, which draws the interviewee into discussion and reflection on personal and professional values, and in turn triggers deep reflection by the student-interviewer. When the student presents his or her seminar paper to assembled colleagues, searching conversation inevitably ensues. Here, indeed, is an example of the power of Donald Schön's student-coach dynamic, and the mirroring dynamic described as "reflection in action."

2. Lawyers and judges repeatedly reveal that their source of fundamental values lies in their families and their moral codes, rather than in rules of professional conduct. The value placed on education and sacrifice, traditions of service, commitment to religion, early encounters with injustice, and personal models for overcoming such injustice looms large in these accounts. So, too, does the role of learning and the inspiration provided by education.

3. Systematic inquiry into experiences of racial and gender-based discrimination has led to fruitful discussions about the persistence of such patterns of conduct in today's world as well as to an increased capacity on the part of students to engage with these issues in their own lives.

4. Students repeatedly comment on the profound impact that their experience in the seminar has had on their personal lives and their aspirations for the future. Comments such as "I was ready to drop out of law school until I met with X," or "now I know that I can really be a criminal defense lawyer" abound. So do comments such as "My lawyer told me that lawyers are good people—some of the best people he knows!"

5. Simultaneous interviews of lawyers and judges involved in significant cases or historical events from diverse vantages suggest that critical judgment can be brought to bear and historical insights gleaned through use of the oral history methodology.

6. Last, but certainly not least, these experiences may be replicable. During recent experiences in teaching a legal profession workshop at Stanford Law School and a class session in professional responsibility at Cleveland-Marshall College of Law, I have drawn on oral history techniques. When I asked the Cleveland-Marshall students whether, based on in-class exercises, they thought that student interviews of practicing lawyers might help them in
examining their own professional values, nineteen reported that they had gained helpful insights and suggested that all students have an opportunity to undertake such a learning experiment, at least on a voluntary basis. Three disagreed, observing that classroom work such as this was irrelevant, unnecessary or an intrusion on their personal life or views.

My own experience suggests that individual lawyers and legal educators should consider how they might undertake their own learning experiments in their own professional environments. The work is indeed worth the effort, and the rewards are great. Those willing to undertake such experiments will undoubtedly emerge—as I have—more committed than ever to the view that learning is a critically important source of inspiration and insight about our profession.

V. CONCLUSION

This essay has urged lawyers to embrace learning as an important professional value. Learning about learning through the vantage of other professions can contribute to the quality of legal education, and experimentation with new methodologies can foster effective learning about lawyers and their professional values and practices.

In closing, lawyers, legal educators, and law students might consider the eloquent comments offered by Wade Smith, one of North Carolina’s best criminal defense lawyers, during his oral history interview with a University of North Carolina law student. Smith said:

It is a great honor to be a lawyer. The lawyers returned to the small towns in North Carolina. They were president of the PTA; they formed the corporations; they defended people accused of crimes; they headed the United Way campaigns. They really became leaders in their communities. They were very, very much respected in their communities. The lawyers ran for legislature. The lawyers went to the legislature and passed the laws. The lawyers became the judges; the lawyers were the governors. Lawyers were an honorable, honest, distinguished group of people. They wanted to make the world better. They were idealists. They struggled to make the world better. Mostly they were progressive-minded people. They believed in a better world. They went to law school because it was a way to make the world better. They believed that a lawyer had a better chance to make the world better than the ministers did, that they could actually affect the world for good, that they could bring about social change, that they were very well-educated people. They had the power, through learning, to make the world better. . . . And that was part of what brought me to the law.50

50Transcript of oral history interview with Wade Smith, on deposit in the University of North Carolina Law Library.
APPENDIX

I. CIVILITY IN PRACTICE

Please indicate whether you agree or disagree with the following statements by circling the number of the appropriate response:

1. Unprofessional conduct and incivility are a problem within the North Carolina Bar.
   
   1. Agree: 65%
   2. Disagree: 34.2%

2. Unprofessional conduct and incivility within the North Carolina Bar are more prevalent now than when I first began practicing law.
   
   1. Agree, they are much more prevalent: 24.8%
   2. Agree, they are somewhat more prevalent: 45.9%
   3. Disagree: 28.6%

Please rank the following examples of unprofessional or uncivil conduct according to your understanding of how serious a problem they are within the Bar.

<table>
<thead>
<tr>
<th>3. Abusive or derogatory language directed at you by other attorneys</th>
<th>MEAN</th>
<th>NOT A PROBLEM</th>
<th>SLIGHT PROBLEM</th>
<th>MODERATE PROBLEM</th>
<th>SERIOUS PROBLEM</th>
<th>SEVERE PROBLEM</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>4. Opposing counsel obstructing or delaying negotiations without a reasonable basis to do so</td>
<td>2.7</td>
<td>12.9%</td>
<td>28.5%</td>
<td>33.3%</td>
<td>17.9%</td>
<td>5.3%</td>
<td>2.1%</td>
</tr>
<tr>
<td></td>
<td>MEAN</td>
<td>NOT A PROBLEM</td>
<td>SLIGHT PROBLEM</td>
<td>MODERATE PROBLEM</td>
<td>SERIOUS PROBLEM</td>
<td>SEVERE PROBLEM</td>
<td>N/A</td>
</tr>
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</tr>
<tr>
<td>5. Misrepresentation of the law or facts of a case by opposing counsel during judicial proceedings</td>
<td>2.6</td>
<td>15.6%</td>
<td>30.1%</td>
<td>32.6%</td>
<td>13.4%</td>
<td>3.3%</td>
<td>4.8%</td>
</tr>
<tr>
<td>6. Attorneys failing to return phone calls</td>
<td>2.9</td>
<td>11.4%</td>
<td>27.2%</td>
<td>30.6%</td>
<td>20.2%</td>
<td>10.1%</td>
<td>5.5%</td>
</tr>
<tr>
<td>7. Improper interruption of your argument to the jury or the court by opposing counsel</td>
<td>1.8</td>
<td>37.5%</td>
<td>28.2%</td>
<td>16.1%</td>
<td>3.0%</td>
<td>0.5%</td>
<td>14.7%</td>
</tr>
<tr>
<td>8. Use of physical force during interaction with other attorneys</td>
<td>1.0</td>
<td>92.0%</td>
<td>2.4%</td>
<td>0.5%</td>
<td>0.0%</td>
<td>0.2%</td>
<td>5.0%</td>
</tr>
<tr>
<td>9. Material misrepresentation of facts or law during negotiations or discussions with other attorneys</td>
<td>2.2</td>
<td>23.1%</td>
<td>40.3%</td>
<td>23.4%</td>
<td>8.1%</td>
<td>2.7%</td>
<td>2.4%</td>
</tr>
<tr>
<td>10. Service of overly burdensome or intentionally harassing discovery</td>
<td>2.8</td>
<td>14.8%</td>
<td>24.5%</td>
<td>26.6%</td>
<td>18.6%</td>
<td>8.9%</td>
<td>6.6%</td>
</tr>
<tr>
<td>11. Failure to deliver documents at the time promised</td>
<td>2.7</td>
<td>10.7%</td>
<td>32.9%</td>
<td>30.2%</td>
<td>19.9%</td>
<td>3.9%</td>
<td>2.4%</td>
</tr>
<tr>
<td>12. Failure of opposing counsel to serve all parties with pleadings, notices or responses to discovery</td>
<td>2.0</td>
<td>35.9%</td>
<td>30.6%</td>
<td>19.5%</td>
<td>5.5%</td>
<td>1.1%</td>
<td>7.4%</td>
</tr>
<tr>
<td>13. Other attorneys failing to identify all changes made to a document during revision of it</td>
<td>1.9</td>
<td>42.7%</td>
<td>33.9%</td>
<td>12.7%</td>
<td>5.0%</td>
<td>2.2%</td>
<td>3.5%</td>
</tr>
<tr>
<td>14. Opposing counsel making improper ex parte contact with the court</td>
<td>2.5</td>
<td>21.7%</td>
<td>31.7%</td>
<td>20.1%</td>
<td>12.4%</td>
<td>7.7%</td>
<td>6.4%</td>
</tr>
<tr>
<td>15. The use of abusive or derogatory language by opposing counsel toward witnesses during depositions or trial</td>
<td>2.0</td>
<td>35.0%</td>
<td>32.6%</td>
<td>16.3%</td>
<td>6.1%</td>
<td>2.2%</td>
<td>7.8%</td>
</tr>
<tr>
<td>16. Redrafting documents on an attorney's standard form rather than commenting on the initial draft submitted</td>
<td>1.7</td>
<td>48.7%</td>
<td>27.0%</td>
<td>10.2%</td>
<td>2.8%</td>
<td>1.4%</td>
<td>9.9%</td>
</tr>
<tr>
<td>17. Opposing counsel raising artificial or frivolous legal obstacles in an effort to increase his/her billings in the case</td>
<td>2.5</td>
<td>21.1%</td>
<td>28.7%</td>
<td>25.4%</td>
<td>14.8%</td>
<td>6.0%</td>
<td>3.9%</td>
</tr>
<tr>
<td>18. Threats of violence during interaction with other attorneys</td>
<td>1.1</td>
<td>90.9%</td>
<td>3.9%</td>
<td>0.6%</td>
<td>0.3%</td>
<td>0.5%</td>
<td>3.8%</td>
</tr>
<tr>
<td></td>
<td>MEAN</td>
<td>NOT A PROBLEM</td>
<td>SLIGHT PROBLEM</td>
<td>MODERATE PROBLEM</td>
<td>SERIOUS PROBLEM</td>
<td>SEVERE PROBLEM</td>
<td>N/A</td>
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<td>-----------------</td>
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</tr>
<tr>
<td>19. Failure to comply with agreements between counsel</td>
<td>2.1</td>
<td>27.9%</td>
<td>41.1%</td>
<td>20.5%</td>
<td>6.9%</td>
<td>1.6%</td>
<td>1.9%</td>
</tr>
<tr>
<td>20. Counsel making derogatory comments about you to their clients or other attorneys</td>
<td>2.2</td>
<td>36.5%</td>
<td>33.3%</td>
<td>15.7%</td>
<td>6.9%</td>
<td>3.4%</td>
<td>4.2%</td>
</tr>
<tr>
<td>21. Other (please describe):</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

As to Questions 3-21, please provide us with the following additional information:

22. Do you consider any of the preceding examples to be acceptable conduct? Why?

23. Which of the preceding examples do you consider to be the most troublesome in your relationship with other attorneys? Why?
Please respond to the following question by circling the number that reflects your opinion as to each possible answer.

24. When is unprofessional or uncivil conduct likely to occur?

<table>
<thead>
<tr>
<th>At any time</th>
<th>Mean</th>
<th>2.0</th>
<th>Not Likely (1)</th>
<th>29.9%</th>
<th>Somewhat Likely (2)</th>
<th>48.2%</th>
<th>Moderately Likely (3)</th>
<th>12.3%</th>
<th>Very Likely (4)</th>
<th>8.1%</th>
</tr>
</thead>
<tbody>
<tr>
<td>During negotiations</td>
<td>Mean</td>
<td>2.4</td>
<td>11.9%</td>
<td>48.6%</td>
<td></td>
<td>28.7%</td>
<td></td>
<td>10.0%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>During discovery</td>
<td>Mean</td>
<td>2.8</td>
<td>5.9%</td>
<td>30.7%</td>
<td></td>
<td>37.1%</td>
<td></td>
<td>24.8%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>During hearings before the Court</td>
<td>Mean</td>
<td>2.2</td>
<td>25.1%</td>
<td>40.5%</td>
<td></td>
<td>25.6%</td>
<td></td>
<td>7.7%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>When the &quot;stakes&quot; of the dispute are high</td>
<td>Mean</td>
<td>3.0</td>
<td>4.0%</td>
<td>25.5%</td>
<td></td>
<td>38.6%</td>
<td></td>
<td>31.9%</td>
<td></td>
<td></td>
</tr>
<tr>
<td>When the attorneys are under stress</td>
<td>Mean</td>
<td>3.1</td>
<td>2.5%</td>
<td>22.7%</td>
<td></td>
<td>37.4%</td>
<td></td>
<td>36.4%</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Other (please describe): __________

II. SOURCES AND SOLUTIONS (please circle one response):

Please respond to Questions 1-3 by ranking the items stated according to their importance.

1. How important are the following as causes of unprofessional or uncivil conduct?

<table>
<thead>
<tr>
<th>Increasing competition due to the growing number of lawyers in practice</th>
<th>Mean</th>
<th>2.5</th>
<th>Not Important (1)</th>
<th>19.2%</th>
<th>Somewhat Important (2)</th>
<th>32.8%</th>
<th>Moderately Important (3)</th>
<th>24.8%</th>
<th>Very Important (4)</th>
<th>22.9%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inexperience</td>
<td>Mean</td>
<td>2.5</td>
<td>14.3%</td>
<td>40.1%</td>
<td></td>
<td>27.8%</td>
<td></td>
<td>17.6%</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### 1. LAwYERS, LEARNING, AND PROFESSIONALISM

<table>
<thead>
<tr>
<th>Issue</th>
<th>Mean</th>
<th>Not Important (1)</th>
<th>Somewhat Important (2)</th>
<th>Moderately Important (3)</th>
<th>Very Important (4)</th>
</tr>
</thead>
<tbody>
<tr>
<td>The lack of adequate training/supervision by law firms</td>
<td>2.7</td>
<td>10.6%</td>
<td>33.3%</td>
<td>34.0%</td>
<td>21.6%</td>
</tr>
<tr>
<td>The lack of effective intervention by the court</td>
<td>2.7</td>
<td>13.1%</td>
<td>29.8%</td>
<td>29.0%</td>
<td>27.2%</td>
</tr>
<tr>
<td>Pressures within individual firms that reward or encourage unprofes-</td>
<td>2.5</td>
<td>20.7%</td>
<td>27.8%</td>
<td>29.1%</td>
<td>21.4%</td>
</tr>
<tr>
<td>sional conduct</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>General changes in society—the world is becoming more competitive</td>
<td>2.7</td>
<td>9.2%</td>
<td>30.9%</td>
<td>36.8%</td>
<td>22.9%</td>
</tr>
<tr>
<td>and less congenial</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Failure of the bar to police its own members</td>
<td>2.4</td>
<td>21.3%</td>
<td>35.2%</td>
<td>24.3%</td>
<td>18.7%</td>
</tr>
<tr>
<td>The lack of adequate training in law school</td>
<td>2.5</td>
<td>18.3%</td>
<td>32.9%</td>
<td>27.8%</td>
<td>21.0%</td>
</tr>
<tr>
<td>A growing perception that incivility is the sign of a good, tough ad-</td>
<td>3.0</td>
<td>7.5%</td>
<td>20.4%</td>
<td>36.3%</td>
<td>35.5%</td>
</tr>
<tr>
<td>vocate (a/k/a the &quot;L.A. Law Syndrome&quot;)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other (please describe):</td>
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<td></td>
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<td></td>
</tr>
</tbody>
</table>

2. **How important are the following as means to increase civility and professionalism among attorneys?**

<table>
<thead>
<tr>
<th>Issue</th>
<th>Mean</th>
<th>Not Important (1)</th>
<th>Somewhat Important (2)</th>
<th>Moderately Important (3)</th>
<th>Very Important (4)</th>
</tr>
</thead>
<tbody>
<tr>
<td>The firms in which offending attorneys practice</td>
<td>3.3</td>
<td>1.5%</td>
<td>17.5%</td>
<td>30.4%</td>
<td>50.6%</td>
</tr>
<tr>
<td>The community of lawyers in general</td>
<td>3.3</td>
<td>1.6%</td>
<td>15.0%</td>
<td>32.1%</td>
<td>51.2%</td>
</tr>
<tr>
<td>Bar disciplinary committees</td>
<td>2.6</td>
<td>13.2%</td>
<td>39.2%</td>
<td>24.3%</td>
<td>22.5%</td>
</tr>
<tr>
<td>The court</td>
<td>3.2</td>
<td>4.0%</td>
<td>19.8%</td>
<td>27.1%</td>
<td>48.7%</td>
</tr>
<tr>
<td></td>
<td>MEAN</td>
<td>NOT IMPORTANT (1)</td>
<td>SOMewhat IMPORTANT (2)</td>
<td>MODERATELY IMPORTANT (3)</td>
<td>VERY IMPORTANT (4)</td>
</tr>
<tr>
<td>-----------------------------------------------------------------</td>
<td>------</td>
<td>-------------------</td>
<td>------------------------</td>
<td>--------------------------</td>
<td>--------------------</td>
</tr>
<tr>
<td>Law schools</td>
<td>3.3</td>
<td>10.7%</td>
<td>27.6%</td>
<td>28.0%</td>
<td>33.1%</td>
</tr>
<tr>
<td>Your own response to unprofessional or uncivil conduct</td>
<td>3.3</td>
<td>2.4%</td>
<td>16.3%</td>
<td>29.5%</td>
<td>51.7%</td>
</tr>
<tr>
<td>Other (please describe):</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

3. How important are the following to the court’s efforts to encourage increased professionalism and civility among attorneys?

<table>
<thead>
<tr>
<th></th>
<th>MEAN</th>
<th>NOT IMPORTANT (1)</th>
<th>SOMewhat IMPORTANT (2)</th>
<th>MODERATELY IMPORTANT (3)</th>
<th>VERY IMPORTANT (4)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Adoption of new Rules of Professional Conduct</td>
<td>2.0</td>
<td>33.9%</td>
<td>36.5%</td>
<td>17.9%</td>
<td>10.8%</td>
</tr>
<tr>
<td>Tighter supervision and control of discovery and dealings among attorneys</td>
<td>2.8</td>
<td>9.5%</td>
<td>30.0%</td>
<td>29.5%</td>
<td>30.3%</td>
</tr>
<tr>
<td>The imposition of sanctions</td>
<td>2.9</td>
<td>8.8%</td>
<td>26.9%</td>
<td>34.8%</td>
<td>29.5%</td>
</tr>
<tr>
<td>Public censure of attorneys during Court proceedings</td>
<td>2.6</td>
<td>16.7%</td>
<td>30.7%</td>
<td>30.2%</td>
<td>21.5%</td>
</tr>
<tr>
<td>Other (please describe):</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

4. Are the following appropriate responses to unprofessional or uncivil conduct by another attorney?

<table>
<thead>
<tr>
<th></th>
<th>MEAN</th>
<th>NO (1)</th>
<th>SOMETIMES (2)</th>
<th>ALWAYS (3)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Retaliate with similar conduct</td>
<td>1.1</td>
<td>83.7%</td>
<td>15.5%</td>
<td>0.5%</td>
</tr>
<tr>
<td>Model appropriate conduct in response to offense</td>
<td>2.5</td>
<td>7.6%</td>
<td>40.0%</td>
<td>51.5%</td>
</tr>
</tbody>
</table>
Call the conduct to the offending attorney’s attention  2.4  2.5%  51.1%  46.0%
Write letters memorializing the conduct  2.1  10.5%  65.9%  23.3%
Ignore it  1.6  37.8%  60.6%  1.3%
File a motion for sanctions  1.9  16.7%  80.2%  2.6%
File a bar complaint  1.8  26.4%  72.0%  1.3%
Other (please describe): __________________________

5. Should the State Bar and/or the North Carolina Bar Association be taking a more active role in policing and investigating professionalism within the State Bar?

1  Yes  73.7%
2  No  24.5%

6. How do you believe the problem of unprofessional or uncivil conduct can best be addressed and corrected?

III. PLEASE TELL US ABOUT YOUR PRACTICE (please circle one response):

1. Years in practice:
   1 0 - 5  14.7%
   2 6 - 10  22.5%
   3 11 - 20  38.0%
   4 21 - 35  19.9%
   5 more than 35  4.3%

2. Practice group:
   1 solo practice  15.1%
   2 2 - 6 attorneys  32.6%
   3 7 - 15 attorneys  14.0%
   4 16 - 29 attorneys  7.4%
   5 30+ attorneys  24.0%
   6 other: __________________________
3. Type of Practice
   1 Litigation 65.1%
   2 Domestic/Family Law 5.3%
   3 Commercial Transactions 10.6%
   4 Real Estate Transactions 3.8%
   5 Estate or Tax Planning 3.2%
   6 Administrative Practice 3.0%
   7 Judiciary 4.8%
   8 Teaching 1.0%
   9 Criminal Defense/Prosecution 2.7%

5. NCBA Section(s) of which you are a member (please write out):

   ____________________________________________________________
   ____________________________________________________________

4. County in which you primarily practice (please write out):

   ____________________________________________________________

6. Population of the community in which you practice:

   1 less than 2,500  .5%
   2 2,500 - 4,999  2.0%
   3 5,000 - 9,999  2.0%
   4 10,000 - 24,999 8.0%
   5 25,000 - 49,999 9.2%
   6 50,000 - 99,999 11.3%
   7 100,000 or more 66.2%

7. Part of the State in which you practice

   1 Eastern Federal District 44.9%
   2 Middle Federal District 28.3%
   3 Western Federal District 25.3%
IV. PLEASE TELL US ABOUT YOURSELF (please circle one response):

1. Age
   1 less than 30  5.0%
   2 30-39  34.4%
   3 40-49  37.7%
   4 50-59  14.2%
   5 60 or over 8.0%

2. Gender:
   1 Male  74.7%
   2 Female 24.6%

3. Race
   1 African American 2.5%
   2 Asian  0%
   3 Asian  0.2%
   4 Native American 0.6%
   5 White  95.2%
   6 Other: __________