



The PROFESSIONAL

A PUBLICATION OF THE HENRY LATIMER CENTER FOR PROFESSIONALISM OF THE FLORIDA BAR

Fall 2005

Volume VII, No. 2

HENRY LATIMER CENTER
FOR PROFESSIONALISM

2005- 2006

COMMISSION ON
PROFESSIONALISM

Chair:
Justice Raoul G. Cantero III

STANDING COMMITTEE
ON PROFESSIONALISM

Chair:
James Floyd
Vice-Chair:
Hon. James McCune
Board Liaison:
Ross Goodman

Upcoming Meetings:

Midyear Meeting

Miami - Hyatt Regency
Standing Committee on
Professionalism
1:30 - 3:30 p.m.
January 19, 2006

Commission of
Professionalism
Subcommittees
8:00 - 10:00 a.m.
January 20, 2006

Message From the Chair

By James Floyd



JAMES FLOYD

At our recent Standing Committee for Professionalism meeting a new project entitled "*Professionalism Works*" was created. The idea for this project first originated after the committee learned of an incident where an attorney, Edward Zebersky, acting as a Guardian Ad Litem had failed to apply for reimbursement or fees in the case despite having worked many hours. When asked why he had not sought the money he had earned Mr. Zebersky replied that by making this choice he was able to sleep better at night, start fresh each morning, and appreciate more fully his own family.

This lawyer's gracious gift to an injured child was recognized when he was presented the Standing Committee Chair's Choice Award on Professionalism.

At the February 11, 2005 investiture of Judge Richard J. Suarez, Robert Fiore,

See "*From the Chair*" page 3

The Ethics Revolution

As companies rush to grasp ethics, they must remember it's about more than rules

By Marjorie Kelly

"RULES ARE FOR MORAL INFANTS, principles are for moral adults," says Mark Goyder, director of the UK think tank, Tomorrow's Company.

I might edit that slightly to say rules are for moral *teenagers* – the kind of companies that push, push, push against the limits of the legal, thinking if they don't step over the line they're fine. These are firms like the ones the *Boston Globe* wrote about in June, who evaded local property taxes by reincorporating in Bermuda, insisting they'd done nothing illegal. Or a company like KPMG, which sold abusive tax shelters for years, earning \$124 million in fees by depriving the federal government of \$1.4 billion in revenue – then told a 2003 Senate hearing the shelters "were consistent with the laws in place at the time." It's enough to make you roll your eyes and send them to their room.

In mid-June, KPMG did admit its tax shelters were "unlawful" and said it took "full responsibility," firing the persons in question and setting up ethics programs. I wish I could say this was the action of a moral adult. But it struck

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ETHICS REVOLUTION

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me as the action of a scared teenager – respecting not the principle of the law, but the threat of prosecution, which could mean death for an auditing firm.

Teenage ethics are what a lot of firms are embracing these days. There's a massive ethics revolution underway, with companies falling all over themselves to hire ethics officers, announce ethics codes, set up whistle-blower hotlines, and launch ethics training. In some cases these changes are part of the deferred prosecution arrangements. In other cases, they stem from the 2002 Sarbanes-Oxley legislation, which on top of its accounting requirements directed public companies to set up ethics policies and hotlines.

Also at work is the ethics framework created by the 2004 revision of the Organizational Sentencing Guidelines. These guidelines say that if firms want leniency during

a prosecution, they must have an effective ethics program in place. Among other things, this means directors and executives must assume responsibility for ethics, designate an individual to oversee ethics, and give that person sufficient authority and resources to do

“...the guidelines say companies must create an organizational culture that encourages ethics.”

the job. More fundamentally, the guidelines say companies must create an *organizational culture that encourages ethics*.

This piece is the hardest for firms to grasp, and the most important. Most are “just going through

the motions,” says David Gebler, founder of Working Values, a 10-year-old ethics consulting firm in Sharon, Mass. “Companies think they can just throw together a program with a code and courses.” But the old computer adage applies, he says, “garbage in, garbage out.”

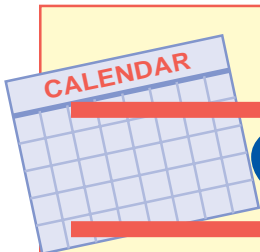
Gebler says companies need a willingness to look at the culture that allows or even encourages unethical behavior. “Most unethical behavior is not done for personal gain, it's done to meet performance goals,” Gebler emphasizes. It's done to benefit the company. And it stems from too aggressive financial goals, aggravated by poor communication and a culture that doesn't tolerate falling short.

If you turn that formula on its head, you have a picture of a morally intelligent company. As Doug Lennick and Fred Kiel write in their new book, *Moral Intelligence*, the first hallmark of the morally intelligent organization is that it embraces responsibility for being of service to others. It doesn't think it's in business just to make money. Second, it allows individuals to acknowledge failures. It's a place where people feel respected and trusted, where they feel free to voice views that are unpopular, and where mistakes are treated as normal.

Such a company will *also* have ethics policies and reward systems. Rules remain necessary. But if we wish to be moral adults, running morally intelligent organizations, we must grasp that ethics is about the spirit of a place, and the spirit of our lives. As Lennick and Kiel say, moral intelligence is what directs our lives and companies to do something worthwhile. Without it, we're like sullen teenagers just going through the motions. Stay tuned.

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On the Calendar:

Practicing with Professionalism

December 1, 2005

Deerfield Beach

Midyear Meeting of The Florida Bar

January 18 - 21, 2006

Hyatt Regency Miami

January 19, 2006

Standing Committee on Professionalism

January 20, 2006

Commission on Professionalism

FROM THE CHAIR...
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the 2004-2005 Standing Committee Chair, coined the term "Professionalism Works" as an expression of success achieved while doing the right thing. "Professionalism Works" was used by Mr. Fiore to describe Judge Suarez's contribution to the profession. Judge Suarez went on to be the inaugural profile for the "Professionalism Works" column in the Spring 2005 issue of the *The Professional*.

While lawyer jokes abound and politicians of every stripe accuse our members of being the cause of society's ills - lawyers in all parts of this state continue to serve their communities with skill and dedication and yes, with a silent professionalism unknown in many walks of life.

However when plaintiffs' lawyers are called "terrorists" as they were by a recent panel of commentators, and named as the sole cause for the increased price of prescription drugs the profession must re-

spond. Not with the tactics of character assassination. But rather with the simple truth of the many good deeds performed each day in the courtrooms and legal offices around the state.

Examples of such acts are the way the Supreme Court, Florida Bar and individual members of the Bar have responded to the hurricanes which have ravaged the Texas/Louisiana gulf coast. By quick action Louisiana lawyers displaced by the hurricane, have been able to come to this state and still help their clients put their lives back together. In the hurricane disasters of 2004, countless lawyers gave of their time freely to answer legal questions from Floridians displaced by hurricanes Charley, Ivan, Frances and Jeanne.

It is important that such stories as Mr. Zebersky's, the Florida Hurricane Relief Hotline, and the relief efforts for today's gulf coast hurricane victims are told. The "Professionalism Works" project aims to recognize and publicize the works of the thousands of attorneys that practice in the "Zebersky way" and

the Standing Committee strongly believes that these stories need to be shared, not only within our profession but with the public.

It has been said that the more we use and magnify our present talents, the more talents we are given and the greater our capacity becomes. I challenge each of you to think of attorneys you know and stories you've heard about those who have done the right thing, and tell us about it. The Center's website has information and a link where you can submit this information: cfp@flabar.org. Let's work together to respond to our critics appropriately and spread the word of all the good that happens in our profession everyday.

Visit our website at www.floridabar.org/professionalism to view the many resources the Center has available. From awards to research materials, the Center is here to assist.



Historical Video Series feature presentation....

Interview with

Herman J. Russomano

Earn One Hour of Professionalism CLE

Fill out the form below and attach your \$35 check (plus tax) made payable to The Florida Bar and send to the The Florida Bar, Henry Latimer Center for Professionalism, 651 E. Jefferson Street, Tallahassee, FL 32399-2300.

Please send a copy of the **Herman J. Russomano videotape** to me at the address below.

Enclosed is my payment of \$35 plus sales tax at my local rate.

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Building Trust in the Legal Profession

By Carl J. Zahner

We live in an era of mistrust in social institutions. The trust placed by the public in all manner of positions of leadership has dropped to perhaps historic lows. Read the headlines in the papers, watch the evening news, absorb the latest diatribe about the faults of anyone involved in the Hurricane Katrina rescue and rebuilding and you find mistrust and anger. Indeed the lack of trust in heretofore respected institutions is dramatic. Business was trusted by 70 percent of the population in 1968, by 1980 the percentage was down to 29%. The medical profession in 1966 was considered trustworthy by 71 percent of the population but by 1982 trust was down to 32%. The news media fell from a trust level of 29% to 14% in the same period. These figures come from a recent article from *The Chronicle of Higher Education* written by the social science pollsters Daniel Yankelovich and Isabella Furth. However, conspicuously absent from these references was any comment about the status of trust in the legal profession. From my own research trust in the legal profession by the public at large is below the medical field and the business community. In discussing the reasons why public trust has fallen so low the authors describe three recent periods in the country's history where there were scandals inside institutions which should have been protecting the public interest: the Great Depression, Watergate and the notorious business bankruptcies (a la' Enron, WorldCom et al.) These occurrences have created a sense that such institutions cannot be depended upon to protect the public trust.

At the same time the authors argue our society in general has developed a "serious imbalance" between the *norms* and *laws*. That is to say that the law marks where behavior is either criminal or not.

Professional Directions

by Carl Zahner

Director, The Florida Bar,
Henry Latimer Center for
Professionalism

Norms are that set of social expectations overlaying the laws which define proper behavior for individuals and institutions in the vast majority of situations. A healthy society must have a functioning set of social norms and that has been somewhat lacking in our society over the past few decades. When people justify their behavior by saying, "I haven't done anything wrong because I haven't violated the law" society is in trouble. After all, we as lawyers know the law is a very blunt instrument of social control.

So at the same time that trust in institutions is low, the mechanism for guiding personal and institutional behavior is in tatters. While the authors are writing for the benefit of institutions of higher learning, their conclusions are equally relevant to what ails our own legal community. They warn that colleges could be seen as untrustworthy by their association with,

"... business schools, *law schools and policy making elites* – the watchdogs who should have protected the public interest but did not." (italics added)

Is the legal community a policy making institution? A 'watchdog' who should be better protecting the public interest from the scandals of the past? Whatever the answer to this question, clearly the professionalism movement is a reaction to the atrophy of our own norms of

social behavior. The professionalism movement strives to renew, invigorate and re-establish these norms not just to reduce the tension and strife in the practice of law but also to re-establish some semblance of trust between the citizenry and the legal community.

The legal system, after all, depends upon the trust of the citizens. If they don't see it as a way to justice, as a way to protect their rights, as a place where they are respected as valuable participants in society what would be the point? Citizens must trust the system of justice for it to work.

How is that to be achieved? The *Ideals and Goals of Professionalism*, *The Guidelines for Professional Conduct*, and *The Creed of Professionalism* are good guidelines, the norms of proper lawyer and judicial behavior. But the authors have a few practical suggestions for increasing trust in colleges which might be applied to the legal community. These are:

- **"Recognize that more is expected from privileged institutions."**

Being privileged to practice law brings special responsibilities - practice that way.

- **"Be mindful that anything but plain talk is suspect."**

Express yourself such that the public can understand. 'Legal-ese' is a barrier to the public understanding that the law protects them.

- **"Respond to the public's genuine hunger for honesty and integrity."**

Without honesty and integrity what do we have left?

- **"Build trust."**

Always ensure that your performance exceeds expectations. This means look after your client. This does not mean you have to always

continued...

Professionalism Works!

By Roberta Flowers and Maria Hale

Do you know Edward Zebersky? He isn't famous, on TV, or leader of the Bar. He is just an ordinary lawyer doing extraordinary things. You see in 2001, Ed Zebersky served as the Guardian Ad Litem for a child who suffered permanent brain damage after almost drowning in the family's apartment complex pool. Despite the \$100 million settlement, Ed waived his fee so the proceeds could go to the child and her future needs. Ed Zebersky gave his time without compensation so that justice was properly served. In

recognition of his service, he received the 2004 Standing Committee on Professionalism Chair's Choice Award for his exceptional service and professionalism.

You may not know Ed Zebersky, but chances are you know someone just like him. Every day, ordinary lawyers all over the State of Florida do extraordinary things. In a world where the negative aspects of our legal system are accentuated, the Florida Bar Standing Committee on Professionalism is seeking information about other "Ed Zeberskys."

If you know someone who is worthy of recognition, we want to know his or her story. Send us his or her name, contact information and the act or acts you feel deserve recognition by their colleagues. We want to emphasize the positive that doesn't always become known in the legal community. We want to highlight that Florida attorneys are doing well by doing good. Help us show that professionalism works!

Please send your stories to The Center for Professionalism at: cfp@flabar.org for consideration.

BUILDING TRUST

from preceding page

win to please your clients, but that you show an honest concern for their situation and be a problem-solver for them.

• **"Make a conscious effort to move toward a *stewardship* ethic."**

This involves an honest effort to leave the legal community better off for you having practiced law. That devotion to an ideal will be obvious to the public and they will appreciate its value.

It is difficult to identify which comes first, the lack of trust in the legal profession or the deterioration of the social norms which define a professional lawyer. Most

important, however, is that these two realities corrode the very fabric of our justice system and our way of life. The suggestions by Yankelovitch and Furth are practical ideas that each can be utilized to address both issues at once. Sometimes a complex and difficult conundrum can be solved with simple down-to-earth ideas. These seem like a good place to start.



Read a good book lately?

We would love to have your book review for publication in the newsletter. The review should be a few paragraphs that highlight the storyline of your book. Please submit your reviews to: cfp@flabar.org.

WANTED:

Articles for publication in *The Professional*.

Articles should pertain to issues of professionalism and be inspirational and / or motivational in content. Submissions should be no longer than 800 words (12 point font, double spaced) and in Word format.

Send submissions via email to cfp@flabar.org with "article submission" in the subject line.



THE FLORIDA BAR

HENRY LATIMER CENTER FOR PROFESSIONALISM

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The Parent of All Virtues

by Steven Keeva

If there is a quality or a trait that is common to all happy lawyers, I haven't found it yet. That's probably because, unlike Tolstoy's happy families, lawyers are not all alike, and they find meaning and pleasure in diverse ways that are tailored to their own needs and interests.

But there is one way of relating to the world that, it seems to me, comes closer than any other to characterizing truly satisfied practitioners. It's a sense of gratitude – the virtue Cicero referred to as the parent of all virtues.

I think it makes a lot of sense. A good part of the well documented malaise in the legal profession would probably be alleviated if practitioners felt more connected – to their clients, to a deeper sense of meaning in their work, to each other and to the world around them. Hourly billing and unending demands only make it that much harder to sustain family connections as well.

When we see the world through the lens of gratitude, hassles get easier to bear, and stress recedes. And that's not an idle claim. Research supports it.

In a study by psychologists Robert Emmons of the University of California at Davis and Michael McCullough of the University of Miami, three groups of subjects were asked to keep specific types of journals over time. One group was told simply to record daily events. One recorded only annoyances. And those in the third group made lists of things for which they were grateful.

Members of the last group reported more optimism, enthusiasm and alertness as well as less depression and stress. They were also more likely to help others.

A number of lawyers I know are quite clear about the importance of gratitude in their lives. One, a trial

lawyer, tells me he can't imagine a morning without his regular gratitude ritual, which he does in the shower. He brings to mind whatever evokes thankfulness, but always begins with the hot water pouring down on him, something he came to appreciate in a new way on a trip to Africa, where hot water was, in most cases, an unimaginable gift.

Gratitude is an attitude that grows over time and reveals a great deal about who we are as professionals and human beings and what matters most to us. And it's not always what we might expect. Sure, you love your spouse, your kids and your closest friends and so on, but allowing the object of your gratitude to simply come to mind is likely to bring some surprises.

It has for me. I've come to realize, for example, that I'm grateful for the house I live in – but in a deeper way than I had realized before I tried really focusing on the feeling of gratitude. Once I did, I realized that I feel embraced not only by the structure itself, but also by the latticework of feelings and memories it evokes. I've come to see our Chicago-style bungalow as an ideal venue for the comedies and dramas that continue to animate my family's life together.

And not only that. There are the particular textures and aromas; there's the olive-colored overstuffed chair in the living room, where my gratitude for the feeling of such encompassing comfort only gives rise to other pleasant feelings and the opportunity to share them with family and friends.

So here's my suggestion. Let's say you're in the office, feeling harried and anxious. You've got seven calls to return, and the phone is ringing again. What do you do? Count your blessings. You'll feel more present, more balanced, more aware.

Don't go looking. What's important to remember is that it's not about searching for something to be grateful for. It's about finding what you already are grateful for. The distinction is crucial because you can't make yourself feel thankful; you can only shine the light of awareness on what is already there, albeit heretofore neglected. How is that done? By taking a few quiet minutes to ask yourself what makes you feel grateful.

So what are these contented lawyers – the ones I mentioned at the beginning of this article – grateful for? Lots of things: their work, their nimble minds and their clients. The lifestyles their law practices make possible. And, for some, the opportunities work provides for personal growth, even in the face of all that law practice can throw at them.

About a year ago, my friend Arnie Herz and I put on a continuing legal education program in Providence, Rhode Island. It was late in the day, and the general tenor of the gathering was quite negative, even surly. When we sought comment from the audience, all anyone offered were stories about how miserable the practice had become. Things only got worse from there, until Arnie made a request. "I would like you all to think about one thing in the last month for which you feel grateful, one situation where you were happy about what you did."

The room went quiet. Then, after a while, a middle-aged gentleman raised his hand. Arnie called on him, whereupon he described his recent opportunity to help a woman who had been in a bind, and how he did so in such a way as to put her mind at ease.

He beamed as he described the experience. Acknowledging that there wasn't much money in the kind of work he had done, he said

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Call to Action – Renaissance of Idealism in the Legal Profession

by Michael S. Greco, President, American Bar Association

During my year as President-Elect of the ABA, many of you heard me discuss my plans for a “Renaissance of Idealism in the Legal Profession.” Now I invite you, the leaders of our profession, to join me in making the Renaissance a reality.

Over the coming year, with your help, we will ask lawyers to recommit themselves to the noblest principles that define the legal profession: to provide legal services to assist the poor, disadvantaged and underprivileged; and to perform public service that enhances the common good.

In recent weeks, our nation has witnessed natural disasters of unfathomable proportions. During these trying times, I have never been prouder to be a lawyer. The outpouring of support within the legal profession for the people and businesses displaced by Hurricane Katrina offers but the latest example of the generosity of the legal community.

Every day, somewhere in this country, lawyers are providing pro bono representation to criminal defendants, victims of domestic violence, immigrant children, elderly residents in need of affordable housing and medical treatment, and small business owners struggling with legal problems. Lawyers serve on town councils and non-profit boards, run for elective office

and coach youth sports teams. In countless ways, lawyers have risen to the occasion and have made a difference in the lives of those in desperate need.

This is what the Renaissance of Idealism is all about.

The nation’s best and brightest college graduates continue to choose law as a career for the opportunity it provides to help solve people’s and society’s problems, to make a difference in the lives of others and in their communities. This idealism is still what inspires most young men and women to become lawyers.

Yet once they enter the profession, many of these young people soon become disappointed and frustrated as the demands of their law practice severely limit the time and opportunities they have to contribute to society. For veteran lawyers as well, the pressures and pace of law practice often make it difficult to participate in the life of their communities.

If we are to change this situation, lawyers must find ways to strike a better balance in their lives and law practices. The key to balance is freeing up time—in law firms, in government offices, in every setting where a lawyer practices law—for lawyers to perform public service, to volunteer their legal training to those in need, to help improve their communities,

and in the process to find greater fulfillment in their legal careers.

To lead this effort, I have appointed a Commission on the Renaissance of Idealism in the Profession. I am delighted that the Honorable Ruth Bader Ginsburg, Associate Justice of the U.S. Supreme Court, and Theodore C. Sorensen, who served as legal adviser to President John F. Kennedy, have agreed to serve as Honorary Co-Chairs of the Commission. I have asked Mark D. Agrast, a Senior Fellow at the Center for American Progress in Washington, D.C., and a member of the ABA Board of Governors, to chair the Commission, and Doreen Dodson, a partner with the Stolar Partnership in St. Louis, Missouri, to serve as Vice-Chair.

The Commission will develop programs, publications and policy recommendations that help make the case for the value of pro bono and public service activities – not only to their beneficiaries but to the lawyers and legal employers who provide them.

But for this initiative to succeed we must have your active support. Many of you have existing projects and programs that advance pro bono and public service and I applaud your wonderful efforts. This year, I hope that you will consider undertaking a special project devoted to the Renaissance of Idealism...

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PARENT OF ALL VIRTUES

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he still would love to do it all the time.

“I felt so grateful to be able to help the way I did,” he said.

I had never seen the mood in a room shift so fast. From crankiness to gratitude in no time flat.

Steven Keeva, an assistant managing editor at the American Bar Association. His e-mail address is skeeva@staff.abanet.org “The Parent of All Virtues” by Steven Keeva,

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RENAISSANCE OF IDEALISM
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ism. You may choose to launch a new program or to expand an existing activity; to focus on pro bono or public service; to partner with other organizations on a specific service project or develop a program to help the lawyers you serve identify opportunities to engage in pro bono and public service work.

To help get you started, the Commission has developed an on-line *Pro Bono and Public Service Best Practices Resources Guide* that highlights model programs and activities geared to lawyers in every practice setting. The guide can be found at www.abanet.org/renaissance. As you develop your own best practices we encourage you to submit them for inclusion in the guide.

The Commission also is developing an on-line toolkit to assist in developing programs to advance

the Renaissance and promote the best practices to your members. At the end of the year we will showcase outstanding projects by participating bar associations that have contributed to this initiative.

I am excited about the potential of this collective effort, and I look forward to working with you over the coming months to bring it to fruition.

“Call to Action – Renaissance of Idealism in the Legal Profession,”

by Michael S. Greco, President of the American Bar, ABA Journal, September 2005. Open letter to state and local bar association presidents and executive directors is reprinted with permission of the American Bar Association. Permission to photocopy or otherwise reproduce this material is not permitted, except for versions made by non-profit organizations for use by blind or physically handicapped persons, provided that no fees are charged.

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Visit the Center’s website at <http://www.floridabar.org/professionalism> and check out the Historical Video Series. There are over 30 tapes of interviews of prominent members of the legal profession in Florida, including Justices of the Supreme Court, that are available for only \$35 each, plus tax. **Each tape is approved for 1 hour of Professionalism CLE credit!** For more information or to order a tape, call the Center at (850) 561-5747 or e-mail them at cfp@flabar.org.

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