CODE OF PROFESSIONAL CONDUCT OF THE MARITIME LAW ASSOCIATION OF THE UNITED STATES REVISITED

By: James F. Moseley

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I. INTRODUCTION

Criticism of our profession abounds. It is within the power of each of us working through law societies, bar associations and individually to play a substantial part in reversing what critics describe as the lack of professionalism. If we do not, the fault lies in ourselves. If on the other hand, each of us does our part to enhance our profession, then, our community and the nation will be served. Such must always be the commitment of The Maritime Law Association of the United States, corporately, and of its members individually. Our tradition deserves no less.

This is the second time that a seminar has been held by The Maritime Law Association of the United States where Dick Corwin and I had discussed the Code of Conduct and the underlying ethical spirit of the Association in day to day professional activities. The first occasion also included Hon. Charles L. Brieant, Jr., former Chief Judge of the Southern District of New York, now Senior District Judge. The seminar was reported in the MLA Report. [1]

Four and a half years have passed since our initial seminar on our Code was discussed in open seminar. Recently, a member of the federal judiciary mentioned to me that our Code was absolutely one of the finest he had ever seen. It was succinct, direct, yet all encompassing. Let us now take this opportunity to briefly revisit our Code in order to make sure that the Code and principles stated therein remain our constant companion. Compliance with its spirit rests solely in ourselves.

Our endeavors, day in day out, must always be mindful of our responsibility as a part of the system of justice. Daniel Webster while extolling the virtues of one who had worked in the justice system, Mr. Justice Story, described it this way:

> Justice, Sir, is the great interest of man on earth. It is the ligament which holds civilized beings and civilized nations together. Wherever her temple stands, and so long as it is duly honored, there is a foundation for social security, general happiness, and the improvement and progress of our race. And whoever labors on this edifice with usefulness and distinction, whoever clears its foundations, strengthens its pillars, adorns its entablatures, or contributes to raise its august dome still higher in the skies, connects himself, in name, and fame, and character, with that which is and must be as durable as the frame of human society. [2]

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[1] Centennial Issue, Volume II, Doc. #744, pp. 11750-11738 (October 15, 1999).

[2] The great American Daniel Webster's eulogy of Mr. Justice Story reminds us of the type of person who should be laboring in the vineyards of justice. It reminds us of the qualities that we should all strive for. *The Speeches and Orations of Daniel Webster*, 532 and 533 (Little, Brown & Co. 1894).

II. THE GENESIS

The Study Group was carefully selected so that it included leaders of the bench and bar, MLA proctor members, our non-lawyer members, all geographic areas, all age levels of practitioners, and also various disciplines within the practice of admiralty law [3]. The Study Group was lead by Ben L. Reynolds, Chairman and John D. Kimball, Vice Chairman. A great debt is owed to the Committee leadership and to each Committee member. All members were MLA members and were composed of the following:

A. MLA Judicial Members

Hon. Susan H. Black, United States Circuit Judge, United States Court of Appeals for the Eleventh Circuit;

Hon. Charles L. Brieant, Jr., United States District Judge, then Chief Judge of the Southern District of New York;

Hon. Edith Brown Clement, then United States District Judge, Eastern District of Louisiana (now United States Circuit Judge, United States Court of Appeals for the Fifth Circuit);

Hon. Alma L. Chasez**,** United States Magistrate Judge, United States District Court, Eastern District of Louisiana;

Hon. Harold R. DeMoss, Jr., United States Circuit Judge, United States Court of Appeals for the Fifth Circuit;

Hon. Alex T. Howard, Jr., United States Senior District Judge, Southern District of Alabama; and

Hon. Thomas C. Platt, United States District Judge, Eastern District of New York.

B. Proctor Members of MLA

Richard C. Binzley of Cleveland;

James K. Carroll of New Orleans;

Tucker H. Couvillon, III of New Orleans;

John J. Devine, Jr. of New Jersey;

[3] At the time the Study Group was appointed and when the Code was adopted, the writer was the Fortieth President of The Maritime Law Association of the United States (1996-1998).

George W. Healy, III, Past President of MLA, of New Orleans;

Bruce A. King of Seattle;

J. Dwight Le Blanc of New Orleans;

Raymond T. Letulle of Philadelphia;

The late Frank J. Marston of Miami;

Michael A. McGlone of New Orleans;

Joseph P. Milton of Jacksonville;

Thomas J. Muyka of Boston;

Michael D. O'Keefe of St. Louis;

W. Boyd Reeves of Mobile;

Kenneth E. Roberts of Portland;

Howard J. Sobczak of Chicago;

Andrew A. Tsukamoto of New Jersey;

Charles F. Tucker of Norfolk.

C. Non-Lawyer Members of MLA

Agnes Martin of New York; and

Howard L. Myerson of New York, Past Chairman of Average Adjusters of the United States

THE CODE

Upon the Report of the Committee this Code was unanimously adopted by the Board and members [4].

The Code provides:

1. I will provide the highest level of competency and efficiency in the performance of all legal services.

[4] MLA document no. 374, pp. 11,100 to11,102 (Fall Meeting October 31, 1997).

2. I will comply with all rules and codes of professional conduct, and respect the law and preserve the decorum and integrity of the judicial process.

3. I will be civil and courteous to all colleagues, parties, witnesses and the courts, recognizing that effective representation is undermined by antagonistic behavior.

4. I will keep my word in the conduct of my legal practice and treat my colleagues, parties, witnesses and the courts with respect and dignity.

5. I will maintain the trust of my clients by keeping them well-informed and actively involved in making decisions affecting them.

6. I will resolve all disputes expeditiously and not engage in any course of conduct which unnecessarily increases cost or delays litigation.

7. I will engage in the discovery process, seeking an expeditious result for my client's legitimate interest, while avoiding abuse and harassment of witnesses and parties.

8. I will contribute time and resources to *pro bono* activities.

9. I will not mislead or make any misrepresentation to the court.

10. I will exemplify and instill in others the tenets of this Code of Professional Conduct.[5]

III. BACKGROUND OF PROFESSIONALISM

The earliest regulatory guidelines for lawyers arose in medieval times. Most of these commitments took the form of an oath. For example, in the year 1231, the Bishops of the Province of Tours adopted the "Oath of the Advocates". This oath covered among other things that the case should stand for the truth, not produce false witnesses, should be expedited, judges should not be burdened with objections, and at all times the honor of the Court should be sustained [6]. It states:

> The advocates who in accordance with usage receive pay, shall by no manner of means be admitted, unless they have been sworn in. The formula for such an oath is thus: That they shall not favor (take) knowingly cases that are not just; nor shall they bring about, with malice aforethought, undue delay or haste in the conduct of cases by means of false oath, rather than stand by the truth. Nor shall they instruct their client toward malitious

[5] Also printed in Section III, p. 15, Directory and Bylaws of the U. S. M.L.A. (2002-2003), document no. 266.
[6] This example comes from the research of Josiah Henry Benton who published *The Lawyers Official Oath and Office* (1909). Likewise these historical oaths are cited in the *Gilded Age of Legal Ethics: Essays on Thomas Good Jones' 1887 Code*, University of Alabama School of Law (2003). This writer would encourage you to read this interesting and warmly written book of essays that has been written by Carol Rice Andrews, Paul M. Pruitt, Jr. and David I. Durham. Professor Andrews along with her colleagues, with great insight and scholarship, write of an exemplary person. The text does not dwell on "the way it was" but graphically illustrates "the way it must always be", p. 9.

> answer or statement; nor shall they after the published attestations, or any at stage of the trial, nor even before the oath suborn witnesses, or cause them to be suborned. Nor shall they permit their client to produce false witnesses; and if they should gain knowledge thereof, they shall reveal such to the court. If memorials (briefs) are to be made they shall do so in good faith, and not withdraw from court malitiously, until the memorial be completed and admitted in court. Clients they shall expedite to the best of their ability, and in good faith. Nor shall they bother (literally burden) the Judge with objections, believing that they will give in to them. They shall sustain the honor of the court, nor perpetrate in court a falsehood.

Moreover, an oath was in use in England as early as the year 1246. This oath stresses the fact that you should deal with the truth, and that you must conduct yourself according to your best learning and discretion [7]. It states:

> You shall doe noe Falshood nor consent to anie to be done in the Office of Pleas of this courte wherein you are admitted an Attorney. And if you shall knowe of anie to be done you shall give Knowledge thereof to the Lord Chief Baron or other his Brethren that it may be reformed you shall Delay noe Man for lucre Gaine or Malice you shall increase noe fee but you shall be contented with the old Fee Accustomed. And further you shall use your selfe in the Office of Attorney in the said office of Pleas in this Courte according to your best learning and discrecion. So help you God.

In 1430 the Guildhall in London created four symbols of civic virtue. These symbols first constructed seven hundred years ago are still on view today. They are: discipline, temperance, fortitude and justice. These symbols, taken with several others, symbolize law and learning. Perhaps these symbols served as an early "code."

In the formative years of Colonial America legal officials were constantly crossing over the boundaries between their many offices by going back and forth between their private law practices and government. For example, the Chief Judge of South Carolina, Nicholas Trott, was a Chief Judge of the Court of Common Pleas, Chief Judge of the Court of Admiralty and a member of the Governor's Council. Nevertheless, he would represent himself, speak on behalf of private clients, politick for his friends and write the first compilation of that colony's laws. No colony was immune. King's attorneys and judges had active private practices in other colonies, such as in Massachusetts. To say the very least, the modern concept of conflicts of interest and other ethical aspects were not well developed.

However, by the mid 18th Century there was improvement. Apprentice lawyers were being trained by "reading" law as clerks and juniors to established lawyers. While this type of education may be a matter to relegate to the ancient past, the young lawyers who were produced from this method appeared to be very professional and had no use for unprofessional conduct or inferior abilities. [8]

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[7] Id. p.10.
[8] Hoffer, *Law and People in Colonial America*, pp. 56 to 66 (Hopkins University Press) 1992.

The improvement of the moral view of the responsibility of the bar carried forth into the next century. In Kent's *Commentaries on America Law*, several significant professional observations were made. Not surprising for his time, much of his commentaries is devoted to admiralty and maritime law. In discussing the history of maritime law, he stated that the English maritime law has been advanced because the arguments at the bar, the opinions from the bench, serious reflections, scrupulous morality and a through acquaintance with all the various topics that concern the great social interest of mankind. He further added that the profession has not been wanting in the study and cultivation of maritime law. Decisions in the federal court in commercial cases had done credit to the moral and intellectual character of the nation and the admiralty courts in particular had displayed great research with a familiar knowledge of the principles of maritime law. Further, he was able to extol the fact that maritime law had been an object of professional research. For example, Alexander Hamilton was an accomplished lawyer who by his precepts and practice placed value on decisions of Lord Mansfield and Continental Jurists. Hamilton's professionalism was of the highest quality. [9]

The French lawyer and jurist, Alexis de Tocqueville, traveled throughout the length and breadth of the United States, as it then existed in the mid Nineteenth Century. He made numerous observations about the American character. His observations on all facets of American life and government seemed to provide us with an accurate reflection of life at that time. He stated:

> In America there are no nobles or literary men, and the people are apt to distrust the wealthy; lawyers consequently form the highest political class and the most cultivated portion of society. If I were asked where I place the American aristocracy, I should reply without hesitation that it is not among the rich, who are united by no common tie, but that it occupies the judicial bench and the bar.

Such was the character and reputation of the American lawyer in the Benedict era as reflected in Benedict's Preface to his *First Edition on Admiralty*,. Today it is not enough for us to say that we wish it could be the same way. But, we are not perceived to be the same way. In fact, we are not perceived to be the same way by any measure. Therefore, our MLA Code of Professional Conduct is to serve as a guide to help us remember and return to the standards that have existed for over a hundred and fifty years.

When one encounters the First Edition of *The Law of American Admiralty*, one is struck, not only by the simplicity but the eloquence of Eratus C. Benedict's view of the practice before our Admiralty Courts in the mid 19th Century.

Three characteristics are prevalent in his writing. The first is his great admiration for the "profound sagacity" and the practical wisdom of our forefathers, in providing for an unknown future, and a territory to be extended indefinitely under the forms of our double government. He expressed the judicial and commercial impact of the Constitution: "that wisdom is especially apparent at this time, when the commercial era with its new means and its new discovery is opening before us a most conspicuous and responsible career among nations." The respect that he evinces in the constitutional framework under which we work today comes through with a substantial force upon the reader.

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[9] Kent - *Commentaries on American Law,* Vol. 2*,* pp. 509 to 524, pp. 525, 526, and 528.

His second characteristic is his concern that his writing be directed to those who do not already understand the subject. He felt too many books addressed only experienced admiralty practices. He was addressing not only those with experience but also those who were learners. He was a mentor.

Thirdly, he had a genuine humility in that he felt that his writing may have been an obvious departure from the common standard of excellence established in other books, but he tried and hoped that he had lived up to the standards of other writings. Otherwise, he felt that he would not have accomplished his purpose.

Undoubtedly, Mr. Benedict had very little written code to guide him, but he hardly needed one. His conduct reflected a code, that not only he, but many others throughout the country lived by. Perhaps Mr. Benedict was guided by what he had observed through his years of studies, as well as, his extensive travels.

Personal conduct and personal ideals were equated with the excellence in the law. It is not surprising that the classic author, Robert Louis Stevenson, observed: "personal honor is the distinguishing badge of the legal profession." [10]

On the lighter side, one must always remember that lawyers have always been the subject of jokes and other uncomplimentary comments. However, for the most part these were directed in good-natured comments without rancor.

For example, there is the entry in the public records of Watertown, Massachusetts at the end of the 17th Century that stated the township had three hundred and twenty-five inhabitants; two of who were blacksmiths, three were shopkeepers, and one was a medical doctor. Conspicuously, the clerk added the entry that there were no lawyers, "for which the latter fact we take no credit but give thanks to almighty God". This clever clerk probably sensed that he would be often quoted in the future, but was he vitriolic? I think not.

But the public mood has changed. Comments, commentary and conduct regarding the bar are alarming, but nonetheless are manageable. Clearly, something must be done. The issue at hand appears to be complex and overwhelming.

But, change must begin with you and me. How then should this issue be approached? Perhaps Mark Twain stated it best when he said:

> The secret of getting ahead is getting started. The secret of getting started is breaking your complex overwhelming tasks into small manageable tasks, and then starting on the first one.

The MLA has started. Indeed, the MLA's efforts to right the ship of professionalism or the public's perception of professionalism began with the first step of appointing a Study Group.

[10] 29 American College of Trial Lawyers Bulletin 10 (1998).

IV. THE PROFESSIONAL CODE OF THE MARITIME LAW ASSOCIATION OF THE UNITED STATES

The Maritime Law Association of the United States, of course, was not the first organization that realized that it must continually replenish its considerations of professionalism.

The Maritime Bar has enjoyed an unprecedented standard of excellence as recognized by the federal courts and indeed by most members of the state judiciary. Hardly any maritime practitioner has not heard a comment, formally or informally, by a court that it is a pleasure to have admiralty practitioners participating in a case before that court. However, we are not and never were "grandfathered" into that favored status and, in fact, would not wish to be. It is an ongoing continuum of hard work, effort, civility, professionalism and integrity by each of us that maintains this high standard and reputation.

This outstanding Study Group was guided by Ben Reynolds of Houston as Chair and John Kimball as Vice Chair. They used their substantial experience at the admiralty trial bar in drafting our document. The substantial participation by members of the bench added a perspective and an outstanding aspect to the Code. Joining this Study Group were also experienced practitioners from throughout the United States, as well as, non-lawyers who lent a necessary perspective. There were many areas that were discussed at length and finally the spirit and the draftsmanship blended.

There is no more meaningful, yet succinctly written report on professionalism and our Code than that which was orally presented to the MLA Young Lawyers Committee and later published. The author, Hon. Charles L. Brieant, presented an experienced comment on excellent past performance and his view into the future on professionalism and civility [11]. Further, other high praise has come from members of the bench, such as Honorable Alex Howard in his address to the MLA.

In drafting the Code for the MLA, in addition to considering the aforementioned ideals, the Study Group drew upon other professionalism codes from other Associations.

For example, the American College of Trial Lawyers has a rather meticulous Trial Code of Conduct created in 1956. It addresses many issues that are helpful in the conduct of a trial but do not give many general principles. These were closely considered by the Committee in drafting our Code.

Also, the ABA Code was considered. The original ABA Model Canons of Ethics were later modified into the ABA Model Code of Professional Responsibility in 1969. In 1983 aspirational ethics considerations were deleted when the ABA adopted the Model Code of Professional Conduct. The current rules do embody some aspirational sections but many lawyers seem to rely exclusively on disciplinary standards in setting their conduct. [12]

The Code of the MLA is somewhat brief, because the history and traditions of the Admiralty bar have long expedited discovery and encourage mutual efforts to avoid hearings at

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[11] Brieant, J., *Professionalism, Civility and the Maritime Bar: A View from the Bench*, 28 J.Mar.L. & Com., 551 (1997). See also a speech delivered by the Honorable Alex Howard to MLA Fall Meeting, October 31, 1997.
[12] Neuner, *Professionalism*, Tulane Admiralty Law Institute (1999).

ever turn of a case. This spirit had traditionally been evident when it comes to attempts to compromise.

I believe that the hallmark of the Admiralty bar in settlement matters would live up to the advice that was given by former Justice Hardy Gregory, Jr. of the Supreme Court of Georgia when he said "there is a time to take a stand and a time to find a way; good lawyering is knowing the difference". In knowing the difference, matters from personally injury cases to cargo to collision cases have engendered prompt disposition in many, many instances. However in scanning the horizon of the future, it is not always that way with other elements of the bar.

At the August 12 and 13, 2002 meeting of the House of Delegates of the American Bar Association, Resolution No. 105 was submitted for action. Since I am a member of the House of Delegates at the ABA representing the MLA, I customarily review all the documents that will be voted upon by the House. Then I submit my advice to the MLA President and the Board.

Upon reviewing the ethical guidelines for settlement negotiations, I became fully convinced that each and every guideline that was submitted in the proposal had been followed for years in the admiralty practice. Without hesitation I was able to advise the MLA leadership that we should have a positive vote for this proposal. The customs, practices and traditions of MLA long ago established all that the new guidelines suggest. By the way, the guidelines passed in a vote by the House of Delegates. [13]

Further, other Bar Associations have also adopted professionalism or civility codes. In 1998, subsequent to the MLA Code, the Section of Litigation of the ABA adopted guidelines. [14]

The New Orleans Bar Association in the winter of 1990 adopted a Code of Civility. [15] It covers numerous items. In its preamble it states that in striving to fulfill the lawyer's obligation to the client, the lawyer must be ever conscious of the broader duty to the judicial system, which serves both attorney and client. Substantively the Supreme Court of Louisiana on January 10, 1992 adopted a Code of Professionalism.

Shortly thereafter, the American Board of Trial Advocates prepared a Code of Professionalism.

In 1996 The International Association of Defense Counsel adopted its own tenets of Professionalism.

A further example is found when the Bar Association of Baltimore City adopted professional standards. [16] Variations of the Rules and tenets continue to abound. Recently, standards were adopted in Pittsburgh. [17]

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[13] Summary of the action of the House of Delegates, American Bar Association 2002 Annual Meeting, Washington, DC., pp. 43 and 44, and Reports with recommendations to the House of Delegates American Bar Association for the 2002 Annual Meeting. Resolution 105, pp. 1 to 44.
[14] Guidelines for litigation conduct, *Litigation News* (March 1999).
[15] New Orleans Bar, *Briefly Speaking* (Winter 1990). This Code was modeled on one developed by the Dallas Bar.
[16] Bar Association of Baltimore City, *Guidelines on Civility*, pp. 1-7 (1996).
[17] *Guidelines on Professionalism for Allegheny County* (1998).

Further, the organized bar has taken steps in my home state. The Florida Bar has a Center for Professionalism with a director and staff. Additionally, in Florida, the Fourth Judicial Circuit (Jacksonville and its surrounding area) has a Mentoring Committee and Board that attempts to put a mentor and a pupil together when the need arises. This is coordinated through members of the judiciary, State and Federal, who play an active part, both on the Board and the Committee.

The ten rules enumerated in the Code do not enumerate every conceivable circumstance any more than the military in setting forth the General Guard Orders enumerate everyone's duties. However these guidelines lead the way to the correct decision that one will be called upon to make. Moreover, they are reasonably easy to remember.

The terms of the Code can roughly be placed in three categories. The three categories are: (1) a relationship in litigation with the court, clients and attorneys (2) professional responsibilities to others throughout your practice, and (3) public service.

Category one involving litigation or handling cases is principally concerned with Code provision 1, 2, 5, 6, 7 and 9. Category two are those that deal with the general conduct are 3, 4 and 10. Finally, category three is covered by provision 8, public service.

I will discuss each of the categories in order.

V. WHAT MUST BE DONE BY THE ASSOCIATION AND ITS MEMBERS

First and foremost, proper conduct must be preached and taught, learned and studied, considered and continually worked upon. It is an ongoing process for all of us.

The professionalism of the individual members of the Association must be borne by those individuals applying the standards enunciated by the Association.

It is with some degree of fear and trepidation that I approach the issue of the honor of the profession. In this regard, I recall another quote of Mark Twain when he said "to be good is noble, but to show others how to be good is nobler and no trouble". [18] Also, one cannot forget the difficulty encountered by a speaker on professionalism and honor of the profession, since Ralph Walter Emerson remarked "the louder he talked of his honor, the faster we counted our spoons".

At the risk of sounding sanctimonious, I would like to share a few observations that seem to be driving forces behind our Code. Moreover, the inferences that come from the Code are of equal importance. First, do not let the Code gather dust in some introductory page of the MLA Directory.

[18] This quote and others are set forth in the article by Judge Todd W. Singer, *My Hero Mark Twain* and *The Integrity of our Justice System,* The Bencher, 11 and 12 (May/June 1999).

Fortunately, for me, the member of the Committee from Jacksonville had a marbleized copy of the Code prepared for me that is now in my office. It serves as a constant reminder of the spirit of the Code and those highly respected individuals who lent their time and talents to making the Code something that should be a part of everyone's practice.

Professionalism is not something that you put on and take off as if it was some jacket. It is something that is as much of an integral part of your practice as your advance sheet of AMC.

The respected practitioner, Gus A. Schill, Jr., has practiced and served as an adjunct professor for many years in Houston. His article *Old Wine Into New Bottles and Old Wine Into New Bottles Revisited* [19] is superb. It deserves reading by every practitioner. There is no principle in his observations from which I differ. He and I have expressed our thoughts to each other in private and in public for many years. His writings on the subject of professionalism and ethics are invaluable and his perspective is of the highest order.

A. Portions Relating to Cases Handling, Courts, Clients, and Other Lawyers

Code provisions 1, 2, 5, 6, 7 and 9 deal with character, integrity and a sense of decency in the way you conduct yourself in litigation or in a non-litigation office practice setting. There are several significant inferences that can be drawn from conduct that is required by the Code.

District Court Judge William Hoeveler sets forth compelling and forceful arguments as to why and how we must get back on track. [20] Honor must not be a casualty of our times.

In an intriguing article on ethics in today's world, one author traces several matters that have been reported in the Delaware Court system. [21] The Delaware Supreme Court defined professionalism as being:

> Professionalism goes beyond the minimum standards required of all lawyers…Professionalism is a higher standard expected of all lawyers…[It] embodies an attitude and dedication to civility, skill, businesslike practice and focus on service rather than making money.

Mr. Pileggi is quick to point out that maybe there is just a general decline in plain old fashion good manners and common courtesies. However, he takes it one step beyond. He states:

> One problem many encounter is the apparent advantage others sometimes gain by using sharp tactics, such as rushing to file a discovery motion. If one does not respond in kind, will it be interpreted as a weakness? If the obnoxious attorney who quickly files a motion with the court instead of trying to resolve pre-trial discovery matters is rewarded by a harried judge who grants the

[19] 18 *Houston Journal of International Law* 817 (1998).
[20] Hon. William Hoveler, *The Lawyer's Honor*, American College of Trial Lawyers Bulletin 4 (Spring1999).
[21] Pileggi, *Ethics: Professionalism in a High-Tech Legal World*, The Bencher AIC January/February 1997.

> motion, perhaps with costs, what message does that send to the other attorney who wanted to chance to resolve it informally?

The responsibility to the profession and the system of justice requires each of us to look beyond ourselves. It requires seeing how one fits within the system. The current slogan of the U.S. Army that one sees on television and in magazines is "an army of one." At first blush this is not a very lucid explanation of a soldier's function. Upon a deep reflection, however, one realizes that it places individual responsibility right upon a soldier's shoulders and also upon his or her heart. We, too, must be a profession of one.

William R. Jones, Jr., who received an award for significant contribution to the litigation process spoke these words:

> When I raised my hand and took the oath to become a lawyer, it had already been instilled in me that with the oath of the profession I was accepting an awesome responsibility. That is the responsibility of a public servant; the responsibility to do my small part to discharge our profession's fiduciary duty to protect, shape and grow our justice system so that all our citizens can prosper together as a free nation…. I fear that some of our profession have forgotten or, sadly, were never instilled with the obligations of their position as public servants and trustees of this great justice system…. When I look in the mirror, I do not see a balance sheet. I see a person who can say he has done his best to fulfill the obligations of the public trust bestowed upon him as a member of this honorable profession. [22]

Benjamin Sells writings continue to have an influence on the study of our relationships with others. His writings on the history of the secretarial tradition, their responsibilities and other aspects of that arduous task are worthy of every lawyer's reflection and study. Simply stated, he feels that the competent lawyer, the effective leader and successful person must always grant the secretaries the respect that they are due. In a great sense, however, he is merely restating that basic element of respected human nature: that one is respectful to superiors as a duty, but is respectful to others because of one's character. [23]

Judge William E. Spainhour of North Carolina provided ideas from two sides of the bench that are helpful in analyzing inferences that this portion of the Code provides [24]. This insightful article drawing upon his experience as an experienced practitioner and judge provides, among other things, the following rules: (1) remember that in dealing with your fellow attorneys what goes around comes around, (2) never lose your temper in court unless you plan it well in advance, (3) be candid and straight forward with the judge, (4) be considerate of the jury's time, and (5) slow down your delivery and do not talk to fast. While he has other matters that are of interest to the trial practitioner, he centers most of his comments on the basic standards that our Code provides and how to best implement it.

Justice Holmes felt that a lawyer's advice was the giving of "wisdom". It is a challenge of admiralty lawyers in the 21st Century to value the sharing of their wisdom on admiralty

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[22] 44 American College of Trial Lawyers Bulletin 28 (Summer 2003).
[23] Sells, the *Soul of the Law* - reprinted in *The Florida Bar News January 15, 1997, page 19.*
[24] *Ten Practice Tips for the Trial Lawyer*, 2 *Practice Quarterly* 3 (2001).

matters with the client, without arrogance, without smartness and with a down-to-earth directness. It is also of equal importance that admiralty practitioners not only speak with words of wisdom, but that they have the wisdom to listen to their client's needs, expectations and hopes.

As Holmes added the bar has done its full share to exalt one of the hateful American words, "smartness", that learning was out of date and a that a lawyer could not be encumbered with any values other than the latest addition of the digest or the latest revision of statutes or rules. And then he added it was the responsibility of the law school, the bar and the bench to make "lawyers wise in their calling". [25]

The Code and its inferences provide steps in either making or keeping a proctor as a wise advisor.

B. Portions Relating to General Conduct: Professional Responsibilities in Dealing With Others

The second part of the Code of Conduct relating to paragraph 3, 4 and 10 are more personal. These provisions in the optimum situation caused a reader to inwardly exclaim, "why I learned those things at my mother's knee". However, such is not always the case. These Code provisions speak of civility, courteousness, the integrity of your word and treating everyone with respect and dignity. Paragraph number 10 contains a portion which is perhaps most difficult to do. Its states that the MLA member will "exemplify" the tenants of this Code. In order to meet the professionalism on a personal basis we must repeatedly and in our mind's eye ask ourselves are we really the example? None of us could or should answer that in the affirmative; however, all of us should be able to answer with zeal, vim and vigor that we will try.

There is an ancient medieval parable where a Knight-errant comes across a sparrow on the ground. The sparrow is on his back with his feet stretched upwards to the sky. The Knight speaks to the sparrow by saying, "lowly sparrow what are you doing in that position?" The sparrow replies, "the sky is falling and I am holding it up, Sir Knight." The Knight replies, "how foolish you are, don't you know that you are but a lowly sparrow and could not hold up anything, much less the sky." To which the sparrow replied, "but Sir Knight in all matters one does what one can."

Most of our citizens still feel that becoming a lawyer is a worthy goal. We are an integral part in the justice system. We are the only group that has a private interest in the public business and a seat within the orderly activity of society. The impact is great. As Holmes said "the law is made by the bar even more than the bench" [26]. How then may each of us enhance American justice? How can we be the one that "does what he or she can"? By placing a premium on

[25] Oliver Wendell Holmes, Jr. Collected Legal Papers (1920), reprinted in *The Common Law and Other Writings* 25 (Legal Classic Library 1982).
[26] Oliver Wendell Holmes, Jr. Collected Legal Papers (1920), reprinted in *The Common Law and Other Writings* 25 (Legal Classic Library 1982).

candor, truthfulness, honesty, collegiality, mutual respect and, yes, even a civility towards our opposition. [27]

It has been my experience of over 42 years of practice (2 years in the Army and over 40 years at my firm) that the manner in which lawyers deal with staff, associates, clients (all of whom are colleagues) is generally the way they deal with the world in general. The consequences of a changing law firm culture may have forever changed the appeal of our practice to today's young lawyers. Often, there is use of the buzzword "mentoring"; however, this word is fully translated into meaning as treating people that are just starting in their practice correctly by word and deed. [28]

Benjamin Sells (a lawyer) in his book [29] explains the circumstances of a "very important person". He went to visit this lawyer one day. While they were having some coffee in the coffee room the machine ran out of coffee. Mr. Sells said "I'll wait while you change the coffee material, by filter and adding coffee and so forth." The time will take probably thirty seconds or so. The lawyer replied that he was a highly paid by the hour and he had no time to do such tasks. That was for others. Contrast that with two examples, one I was told by the observer and the other I observed myself.

A consultant friend of mine, who at a young age, along with his senior consultant, was a consultant to Rich's Department Store in Atlanta. During the Christmas rush he observed Mr. Rich, the Chairman of the Board, helping a customer take packages that she had just purchased to her car. When Mr. Rich returned the young consultant thinking that this was an ineffective way for the Chairman to conduct himself, approached Mr. Rich and said, "while I am a junior consultant I think your time would be better spent otherwise." The reply came quickly. Mr. Rich replied that all staff were busy, that his principle job was to make sure that all customers were satisfied and well taken care of. Their wellbeing and satisfaction would result in a successful venture for all concerned. He did what needed to be done for his customers and staff.

For the first few years when I began my practice, Mr. Louis Kurz, was senior partner in this firm. He was then in his seventies and had received countless honors and recognitions for having had an exemplary career. His longtime secretary had a disability and while it did not prevent her from walking it made long walks very difficult. In those days, no firm that I was aware of had any messenger service within or outside of the office. Every day that I can remember, when Mr. Kurtz was going to a civic meeting or to lunch, he would go by his secretary/bookkeeper to pick up the bankbooks for deposit. Then en route to those events, he would stop by and deposit the necessary financial matters.

Leadership, by example, deed or word takes a long time to perfect. The same is true to become a proficient lawyer. In order to become a proficient lawyer substantial time has to be spent preparing oneself. Those formative years need not necessarily be on a client's case. Reading the treatises and other documents is equally important and for the most part there is nobody to charge. Even reading some of the old editions of Benedict is important because it tells

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[27] Charles L. Brieant, *Professionalism, Civility and the Maritime Bar: A View from the Bench*, 28 J. Mar. L& Com. pp. 551, 553 (1997).

[28] Cover story, *Law and Practice Cash and Carry Associates,* ABA May 1999 *Law Journal*, p. 41

[29] Benjamin Sells, *The Soul of the Law* (Rockport, MA: Elements Book 1994) extracted in the Florida Bar News (December 1997) and (January 1997) Florida Bar News.

you and guides you with the history and reason for some of the rules that are now somewhat misunderstood by many people. This is a predicate that must be laid in order to meet the competent handling that is stressed as job number one in the Code.

The instilling of concepts and setting an example applies from old to young and then from the young to old. The young should always instill in the older lawyer's mind valued activities, commitment to learning and the further disseminating of their learning to others as a valuable contribution to their law firm.

Often the conduct of the younger lawyer sets an example. One example of many that I have observed during MLA meetings is relatively a young lawyer, Gordon Paulsen, a later President of MLA, escorting his older partner, Wharton Poor, into the meeting when Mr. Poor had great difficulty walking and also seeing. Without fanfare, shepherding an older partner with such obvious respect sets an example for all of us.

The Honorable Elbert P. Tuttle served his country as a General Officer in the Army and also a member of the Court of Appeals. He was able to provide an exceptional definition of a professional person. He stated:

> The professional man is in essence one who provides service. But the service he renders is something more than that of a laborer, even the skilled laborer. It is a service that wells up from the entire complex of his personality. True, some specialized and highly developed techniques may be included, but their mode of expression is given its deepest meaning by the personality of the practitioner. In a very real sense his professional service cannot be separate from his personal being. He has no goods to sell, no land to till. His only asset is himself. It turns out that there is no right price for service, for what is a share of man's worth? If he does not contain the quality of integrity, he is worthless. If he does, he is priceless. The value is either nothing or it is infinite…. Like love, talent is only useful in its expenditure, and is never exhausted. Certain it is that man must eat; so set what price you must on your service. But never confuse the performance, which is great with the compensation, be it money, power, or fame, which is trivial. [30]

C. Portion Relating to Public Service

The need for *pro bono* activity is forever justified [31]. It is covered by Code provision 8. Being a lawyer requires public service in the broadest sense. It is handling and supporting by resources *pro bono* legal activity. However, it is substantially more than that. It covers the entire ambit of being a volunteer in the public activity. In so doing, the lawyer becomes better at lawyering and the public is benefited by the lawyer's knack for leadership.

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[30] Tuttle, *Heroism in War and Peace*, 13 Emory Law Quarterly 138-139 (1957).

[31] Schill, *Old Wine Into New Bottles and Old Wine Into New Bottles Revisited* 18 *Houston Law Review* 817 (1998). This author concurs completely with Mr. Schill's observation that *pro bono* activity is more than handling cases and goes to public responsibilities in the broader community sense.

It is attributed to the Chief Justice of the United States, William H. Rehnquist, that he believes lawyers are now less active in community affairs. As he observed "as law firms focus on the proverbial bottom line, with predictable pressure on associates to increase billable hours, little time remains for public service". [32] If such be the case not only the profession, but also the communities are the losers. However, Professor Hines' limited survey allows him to draw the conclusion that lawyers have not withdrawn from public service but that a substantial number of lawyers participate in some type of voluntary association. [33]

Moreover, *pro bono* exercised by the profession must always be viewed in the larger sense. Such larger sense also includes support by resources and efforts of various significant legal aspects within each community. In so doing, a lawyer is not merely a one-dimensional person but becomes a multi-faceted person interested in the community at large, including the legal system. As such, it expands his or her ability and the benefit to his or her clients. Setting the example, either of a longstanding practitioner or a relatively new practitioner, is everybody's responsibility in *pro bono*.

At the Annual Meeting of the American Bar Association in Chicago on August 4, 2001, Associate Justice Stephen Breyer, of the Supreme Court of the United States, enumerated the public service role of a lawyer. He enumerated that *pro bono* work upon cases was important. He then stated that perhaps the most important public service role of a lawyer is that of a teacher. He states that a teacher of our most basic legal and constitutional values is the responsibility of the bar. Each of us must teach and promote our system of justice unequivocally and foremost. [34]

In his book *Leaders' Digest*: A Review of the Best Books on Leadership, the author brilliantly sets forth critical characteristics of an effective leader. He states:

> People of the highest moral commitment are sustained in their work by their real enjoyment of what they do, by their own resourcefulness and ability to forgive, and by their capacity to see things in a positive light and make the best of whatever happens. They always find a way to focus on the good. And they persevere. They keep their sense of humor.

This is a good formula for not only effective leadership, but for sound mental health and wellbeing. [35]

From my readings of authorities in the field (which I am not) and discussing professionalism issues with persons of the highest quality on the goals of professionalism, I reached several thoughts that I would like to share with you. The strongest and greatest resource that the MLA has is its reputation and tradition of quality. I believe that the Code of MLA speaks to that tradition and of that tradition. It can be summarized in four "L's".

First, Lawyering of the most competent and highest quality on a daily basis. It encompasses the Code and beyond.

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[32] Heinz - 11 American *Bar Foundation* 2 (Winter 2000).
[33] Id.
[34] Annual Meeting American Bar Association opening keynote address "Our Civic Commitment".
[35] Dietel, *Leaders' Disgest*: a review of the best books on leadership 2 *Law Practice Quarterly* 8 (*Law Practice Management Section*, June 2001)

Secondly, Leading on a Daily Basis means more than just being a lawyer but continuing to practice and exemplify the highest traditions of the Admiralty Bar by evincing civility and courtesy to all you encounter.

Thirdly, Legacy simply means you should protect the traditions that you have been given, nurture them, foster new ideas and add a new spirit that will one day become a tradition of the MLA.

Fourthly, Lending your Talents at zero interest to your community, state and nation.

In 1951 Justice Robert Jackson, former Attorney General and Solicitor General and fresh back from his tenure as Chief U. S. Prosecutor in the Nuremberg war crimes tribunal, wrote an article about trial advocacy. And Jackson closed with a parable that he said often ran through his mind as he viewed the procession of lawyers who passed before him.

> Once upon a time, …three stonemasons were asked, one after the other, what they were doing. The first, without looking up, answered, "I am earning my living." The second replied, "I am shaping this stone to pattern." The third, lifted his eyes and said, "I am building a cathedral." [36]

The Code is but an outline on which must be engrafted your many experiences in your learning from your state and city bar associations. However, the three major areas that are covered by the Code must be taught, amplified and experienced by our members. We must give it all of our other lawyerlike traditions, our energy and commitment. Our cathedral is an effective justice system.

Learned Hand and his first cousin, Augustus Hand, were more like brothers than cousins. Each served on the United States Court of Appeals and each had a major impact on the laws of the United States and the maritime laws. Augustus Hand served as President of The Maritime Law Association of the United States from 1927 to 1930. Their family philosophies for living and for working in the law were expressed by Learned Hand:

> If at the end some friendly critic shall pass by and say: How good a job do you think you have made of it all?
>
> We can answer: If we have done our best: I know as well as you what I have done is not of high quality but … I put into it whatever I had, and that was the game that I started out to play. [37]

That, too, is our mission as trustees of the professionalism of the maritime bar. We are to build upon the tradition and make every attempt to improve it. That is the game that all of us must play.

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[36] *The Bulletin,* American College of Trial Lawyers, (Number 43, Spring 2003).
[37] Hand, *The Spirit of Liberty* (1959) as reprinted from *This Week Magazine* (August 1959).

CONCLUSION

The Code is but a checklist to all of us concerning the minimum requirements we must meet on the road to becoming a professional. I hope that it will help all of us obtain that goal and we need to spread the word that our efforts are devoted to that end.

I began this paper with a quote from Robert Louis Stevenson and I would wish to end the paper also with his thoughts. Armed with the Code, the traditions, the longstanding history of the maritime bar, and the commitment of each of you, you will have the benefits of continuing to enhance your professionalism and enjoy a successful maritime practice. You will also have the peace of mind that Stevenson expressed in his prayer:

> Give us grace and strength to forbear
> and to preserve.
> Give us courage, gaiety, and the quiet mind.
> Spare to us our friends
> Soften to us our enemies.
> Bless us if it may be in our innocent endeavors
> If it may not, give us the strength to encounter
> that which is to come
> That we may be brave in peril,
> Constant in tribulation,
> Temperate in wrath,
> And in all changes of fortune
> and down to the gates of death,
> Loyal and loving to one another. [38]

I have an appreciation for your reading this paper. I hope that it will stimulate your thoughts concerning our stewardship. I am sure that upon your reflection, your ideas and thoughts will be vastly superior to mine. I hope that this paper will be an encouragement to you to speak or to write on this subject at every opportunity that is presented. Those opportunities exist at bar meetings, law society activities, The Maritime Law Association of the United States, or the public in general. Your zeal for and encouragement of our Code will create an even better bar, facilitate the administration of justice, and enhance our tradition.

[38] Prayer inscribed at St. Giles Church, Edinburgh, Scotland.