THE NORTH CAROLINA STATE BAR

JOURNAL

WINTER
2008

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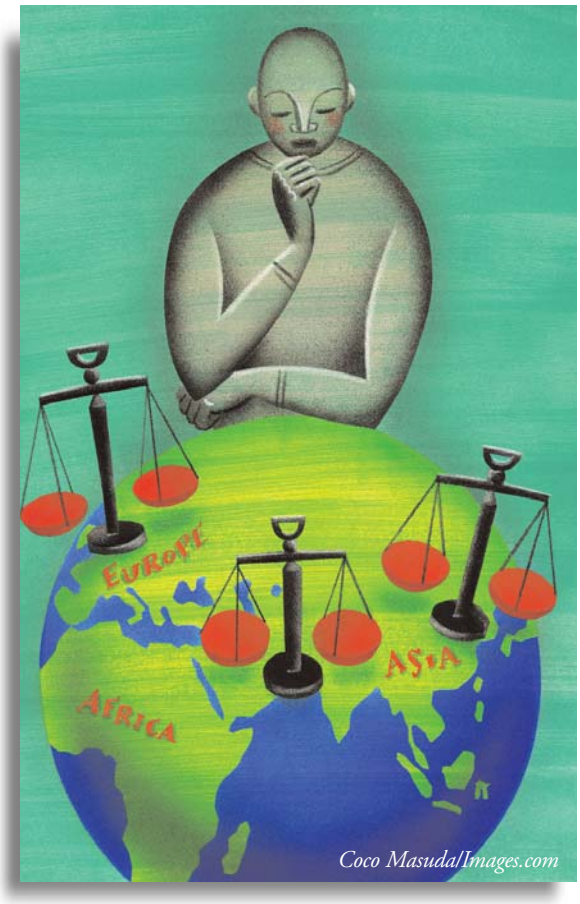
Ethical Implications of Outsourcing

By Mark W. Merritt

On April 25, 2008, the State Bar Council voted to adopt 2007 FEO 12, Outsourcing Legal Support Services. That vote came after the rejection of this opinion at the October 2007 State Bar Council meeting by a single vote. Outsourcing, which is simply the practice of a law firm or in-house legal staff sending legal work to an outside contractor to perform, is not a new phenomenon. What has brought attention to this issue is the movement of outsourcing legal work to providers outside the United States—and particularly India—who perform legal work at a very modest cost.



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The question raised by outsourcing abroad is whether it can be done in a manner consistent with a lawyer's ethical obligations. 2007 FEO 12 holds that outsourcing can be done ethically, but under strict conditions that protect clients. This article will examine the case for and against outsourcing, the ethical issues that outsourcing raises, and how 2007 FEO 12 addresses those issues.

What is Outsourcing?

As stated above, outsourcing occurs when a law firm or in-house legal department sends work to an outside provider to perform. For a number of years, firms have sent certain legal work, such as handling a voluminous document review or conducting legal research, to outside firms who specialize in that work and can conduct it cost-efficiently and quickly. Outsourcing allows firms to avoid hiring lawyers or paralegals for a large but temporary project. Outsourcing has not been particularly controversial when it was done domestically because it was not difficult for an attorney to evaluate the firms doing the work and to supervise the work. In addition, American courts were available to protect client confidences.

With improvements in technology, however, it became easier to outsource work abroad to lower cost locations. Documents and information can be electronically sent around the world quickly and safely, and the cost of telecommunications has dropped dramatically. Indian service providers emerged to provide electronic data management, legal research, due diligence, contract drafting, discovery, and intellectual property research.[1] Indian providers are increasingly doing more sophisticated legal work, including drafting more sophisticated contracts and pleadings.[2] Indian attorneys in established law firms, who speak English and are trained in the common law tradition, are available to perform this work at $50-70 an hour, and Indian contract attorneys who work for outsourcing firms will perform work for $20 an hour.[3]

The Case Against Outsourcing

Opponents of outsourcing raise a host of ethical concerns about legal work being done by foreign attorneys and paralegals ("foreign assistants")[4] who are not licensed here and are outside the powers of our courts. The concerns focus on whether outsourcing is promoting the unauthorized practice of law, and whether attorneys here can meet their ethical obligation to clients when work is being done at distant locations where it is more difficult to evaluate and supervise the provider.

The ethical issues are numerous:

(1) How can an attorney ensure that the foreign assistant in a distant country is competent?

(2) How does an attorney here ensure that client confidences will be respected and protected in foreign countries?[5]

(3) How does the attorney ensure that the foreign assistant has no conflicts of interest?[6]

(4) How can an attorney properly supervise a foreign attorney if there are barriers of time, language, and geography?[7]

(5) What responsibility does an attorney bear if the work done by the foreign provider is negligent but the domestic attorney relies on it in good faith?

Many attorneys who oppose outsourcing simply have a visceral negative reaction to it because it seems inconsistent with law as a profession and consistent with law as pure business driven by consideration of costs. There is concern expressed about loss of jobs and legal work to low cost foreign assistants. These concerns around professionalism and economics reinforce concerns over the ethics of outsourcing.

The Case For Outsourcing

The proponents of outsourcing point to the fact that it has occurred for a long time and that firms have utilized such services to their clients' advantage. They argue that the location of the provider is irrelevant and that the real issue is whether the attorney using the outsourcing services has taken proper steps to ensure compliance with ethical obligations. Proponents of outsourcing note that it reduces legal costs, allows smaller firms the ability to take on larger matters, and allows firms not to hire staff that may only be needed for a discrete project of limited duration. In an increasingly global economy, lawyers point to outsourcing as a strategy that allows American lawyers to be competitive with other foreign providers of legal services. There is also the concern that consumers of legal services will simply bypass domestic lawyers and engage foreign assistants directly and without the supervision and direction of domestic lawyers if outsourcing is prohibited.

How 2007 FEO 12 Addresses the Ethical Implications of Outsourcing

2007 FEO 12 finds that legal outsourcing is ethical provided that the attorney meets strict conditions and requirements in utilizing those services. As an initial matter, the opinion notes that the Ethics Committee has previously determined that a lawyer may use nonlawyer assistants in his or her practice, and that the assistants do not have to be the lawyer's employees or physically present in the lawyer's office. In addition, the opinion agrees with the proposition that the location of the "foreign assistant" is irrelevant "as long as the lawyer's use of the nonlawyer assistant's services is in accordance with the Rules of Professional Conduct."

The opinion then goes on to specify the requirements that a North Carolina lawyer has to meet to be able to outsource legal work ethically. As a threshold matter, the North Carolina lawyer is required to ensure the competency of any outsourcing firm selected. 2007 FEO 12 states that "the lawyer's initial ethical duty is to exercise due diligence in the selection of the foreign assistant." That inquiry includes determining the training and ability of the foreign assistant, the ability of

the foreign assistant to comply with all ethical rules that apply to attorneys, and the willingness of the foreign assistant to act in a manner that is consistent with the lawyer's professional obligations. 2007 FEO 12 sets a high standard for this due diligence. The opinion advises the North Carolina lawyer to obtain the foreign assistant's resume; to conduct reference checks; to interview the foreign assistant to ascertain their suitability for a particular assignment; to obtain work product samples; and to evaluate communication channels.

The opinion then sets forth the supervisory obligations imposed on the North Carolina lawyer who outsources legal work. The opinion recognizes that the lawyer outsourcing the work "must possess sufficient knowledge of the specific area of law" in order to supervise that work properly. In this regard, the opinion simply recognizes that a North Carolina lawyer who lacks knowledge of an area of law is not in a position to supervise or evaluate the work of a foreign assistant in that area. The lawyer must determine that the foreign assistant is competent to do the particular assignment. The opinion imposes an ongoing duty on the lawyer "to maintain the level of supervision necessary to advance and protect the client's interest." That includes ongoing review of the work to ensure quality; ongoing communication to ensure that the assignment is understood and being discharged in accordance with the lawyer's direction; and ongoing evaluation of the work product to ensure that it is accurate, reliable, and in the client's interest.

The opinion also makes clear that there are circumstances in which the required level of supervision cannot be met: "If physical separation, language barriers, differences in time zones, or inadequate communication channels do not allow a reasonable and adequate level of supervision to be maintained over the foreign assistant's work, the lawyer should not retain the foreign assistant to provide services." The Ethics Committee and State Bar Council make clear in this language that a lawyer must honestly evaluate his or her ability to provide the required supervision before outsourcing legal work. If that level of supervision cannot be provided, the legal work should not be outsourced.

The opinion then makes clear the lawyer's ongoing duty to exercise independent judgment and not to abdicate that role to any assistant. The opinion states that the lawyer "will be held responsible" for any work product used from the foreign assistant. The opinion prohibits a lawyer from allowing a foreign assistant to provide legal advice or services directly to the client and states that "foreign assistants may not exercise independent legal judgment in making decisions on behalf of a client."

The portion of the opinion addressing the lawyer's duty to exercise independent judgment is intended to make clear that while work may be outsourced, the lawyer's duty to exercise independent judgment in the client's interest is not. The bottom line is that the North Carolina attorney remains ethically responsible and accountable. If work product from a foreign assistant is to be used, the North Carolina lawyer must exercise his or her independent judgment to ensure that such use is in the client's best interest.

The next ethical issue addressed in the opinion is the protection of client confidences. The opinion notes the lawyer's professional obligation to protect and preserve the confidences of a client from disclosure by those to whom work is outsourced. The opinion notes that the North Carolina lawyer must ensure that procedures are in place to prevent disclosure, including an effective conflict-checking procedure. The lawyer must inform the outsourcing firm of the duty to protect confidentiality and select forms of communication to protect confidentiality during the transmission of information.[8]

Other ethics opinions on outsourcing that have addressed confidentiality have provided more detailed guidance on this topic. For example, the ABA's ethics opinion on outsourcing, adopted in August 2008, advises the lawyer to consider the sensitivity of the information provided and to investigate the security of the foreign assistant's premises, computer network, and its recycling and refuse disposal procedures.[9] The Florida Bar's opinion on outsourcing notes the importance of making sure that the foreign assistant has no access to information about other clients of the firm if the foreign assistant has remote access to the firm's computer files.[10] These opinions emphasize the need to identify points at which confidentiality may be compromised and to address them proactively to ensure compliance with ethical requirements.

The final ethical consideration addressed in 2007 FEO 12 is that of informed consent. The opinion states: "the lawyer has an ethical obligation to disclose the use of foreign, or other assistants, and to obtain the client's written informed consent to the outsourcing." Informed consent is required in recognition of the fact that clients reasonably expect the lawyer they hire to do their legal work unless they are informed to the contrary.

The topic of informed consent to outsourcing has been addressed in greater detail by other bars. The Florida Bar opinion advises that attorneys may want to disclose to the client risks associated with sharing confidential medical or financial information with a foreign outsourcing firm. The City of New York Bar opinion on outsourcing states that the informed advance consent of a client is needed if the outsourcing service provided is "to be billed to the client on a basis other than cost."[11] These opinions recognize that disclosure to the client of any issues that result from the outsourcing arrangement is necessary to ensure that the client's consent is truly "informed."

How Other Bar Entities Have Addressed Outsourcing

Prior to the release of the opinion, other bar organizations had addressed the ethical implications of outsourcing. The Florida Bar, the City of New York Bar, the Los Angeles County Bar,[12] and the San Diego County Bar[13] have all found that a lawyer may ethically outsource legal support services outside the United States provided the lawyer meets certain conditions and requirements that ensure ethical requirements are met. 2007 FEO 12 is consistent with the views of these earlier opinions, but it places more stringent requirements on a North Carolina lawyer in

the selection of an outsourcing firm.

Subsequent to the State Bar's adoption of 2007 FEO 12, the American Bar Association addressed outsourcing in Ethics Opinion 08-451. Ethics Opinion 08-451 acknowledges the outsourcing trend as "a salutary one for our globalized economy"[14] and notes its ability to reduce legal costs and enhance efficiency. Like 2007 FEO 12, the ABA opinion emphasized the importance of selecting competent outsourcing firms and recommends reference checks, background investigations, and interviews.

The ABA opinion addresses issues not considered in the North Carolina opinion that are worthy of attention. The ABA opinion points out that foreign attorneys are sometimes not trained to the level of our standards in the United States. In the selection of foreign lawyers, it advises that "the outsourcing lawyer should assess whether the system of legal education under which the lawyers were trained is comparable to that in the United States."[15] It also states that the lawyer should evaluate the "professional regulatory system" to determine if the foreign lawyer shares "core ethical principles similar to those in the United States"[16] and whether there is a disciplinary enforcement system in place that is effective in policing those attorneys. Finally, the ABA opinion urges consideration of "the legal landscape of the action to which the services are being outsourced."[17] Such consideration is needed to ensure that claims of client confidentiality will be respected and that disputes over protecting client confidences can be promptly and effectively resolved to prevent prejudice to the client.[18]

These factors identified in the ABA opinion should also be considered by a North Carolina lawyer considering outsourcing legal work to a foreign country. The training and regulation of a foreign attorney and the protection available in a foreign country for client confidences are all factors that may affect whether a client's interest is protected in an outsourcing arrangement. Although not specifically addressed in 2007 FEO 12, they are factors that should be addressed to ensure that outsourcing can be done in a manner consistent with ethical obligations.

Conclusion

2007 FEO 12 recognizes that outsourcing raises a host of important ethical issues. Although it concludes that outsourcing can be done ethically, it imposes significant obligations on lawyers to fulfill their ethical obligations and to protect their clients' interests. The opinion reflects that North Carolina lawyers are part of a global economy in which outsourcing can benefit consumers of legal services, but it recognizes and emphasizes that protecting our clients requires that we outsource thoughtfully, carefully, and ethically. ■

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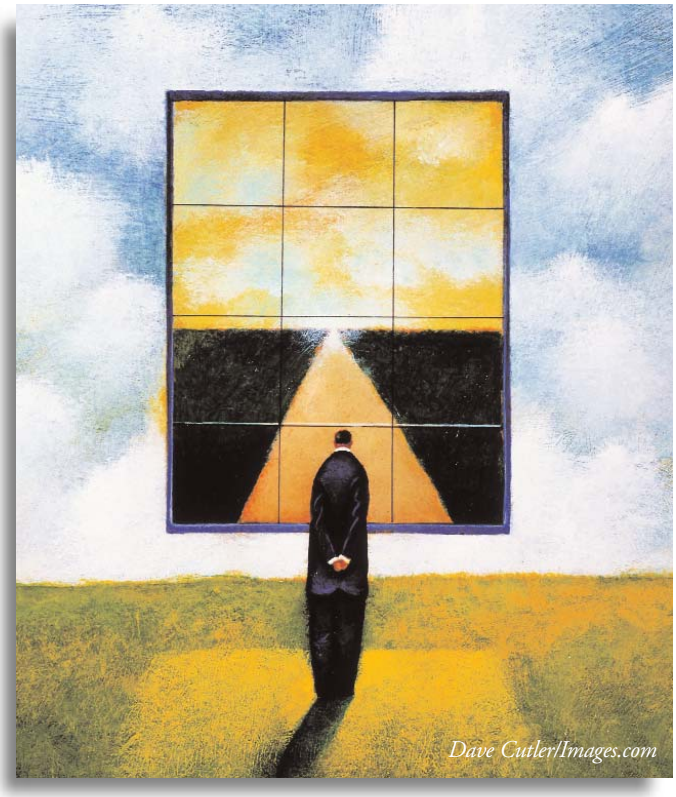
Endnotes

1. *See* Aaron Harmon, "The Ethics of Legal Process Outsourcing - Is the Practice of Law a 'Noble Profession,' or Is It Just Another Business?," 13 *J. Tech. L & Policy* 41, 55 (2008) [hereinafter "Legal Process Outsourcing"]. This article provides an excellent overview of the business of legal outsourcing in India and the ethical issues raised by outsourcing abroad.
2. *See* D. Weiss, "Indian Lawyers Handling Outsourced Work Do More than Document Review," *ABA Journal - Law News Now*, posted May 12, 2008.
3. "Legal Process Outsourcing," at 56.
4. 2007 FEO 12 uses the term "non-lawyer assistant" and "foreign assistant" to describe "a nonlawyer or lawyer not admitted to practice in the United States" who may provide outsourcing services. In this article, the term "foreign assistant" or "foreign assistants" will be used to describe providers of outsourcing services.
5. RPC 1.6, Confidentiality of Information, requires that lawyers not reveal information acquired from a client unless a client gives informed consent or in other limited circumstances set forth in RPC 1.6(b).
6. RPC 1.7-RPC 1.11 set forth the ethical rules that address conflicts of interest. Comment 3 to RPC 1.7 provides a lawyer should adopt "reasonable procedures" to determine whether a conflict of interest exists before taking on a matter.
7. RPC 5.3 sets forth the duties of lawyers who are using non-lawyer assistants. It generally requires reasonable efforts to ensure that the non-lawyer's conduct is compatible with the ethical obligations of the lawyer.
8. A concern over outsourcing is whether disclosure to a foreign assistant would abrogate the attorney-client privilege under a theory of waiver. That topic, which is a matter of evidentiary law, is beyond the scope of this article. If a foreign assistant is working as the lawyer's agent, takes appropriate steps to preserve the privilege, and is working under the direct supervision and control of the attorney, the foreign assistant should remain within the scope of the attorney-client privilege. *See* Edna Selan Epstein, *The Attorney-Client Privilege and Work-Product Doctrine* 147-151 (4th ed. 2001).
9. *See* ABA Formal Opinion 08-451, Lawyer's Obligation When Outsourcing Legal and Nonlegal Support Services (August 5, 2008), at 3 [hereinafter "ABA opinion"].
10. *See* Professional Ethics of the Florida Bar, Opinion 07-2 (January 18, 2008) [hereinafter "Florida Bar opinion"].
11. The Association of the Bar of the City of New York Committee on Professional and Judicial Ethics, Formal Opinion 2006-3, (August 2006).
12. Los Angeles County Bar Association, Opinion No. 518, Ethical Consideration in Outsourcing of Legal Services (June 19, 2006).
13. San Diego Bar Association Ethics Opinion 2007-1.
14. *See* ABA opinion at 2.
15. *Id.* at 3.
16. *Id.* at 3-4.
17. *Id.* at 4.
18. *Id.*

The Future of Your Firm—
Succession Planning, Leader Preparation, and Talent Retention

By C. Michael Thompson

Don't look now, but there are some disturbing demographic trends coalescing around large and medium-sized law firms in North Carolina. The leadership of those firms rests primarily with those born between 1946 and 1964—the Baby Boom generation. That group begins to hit retirement age, in ever increasing numbers, in a mere two years. Many partners in that age range have already moved to take less active roles in their firms or have assumed of counsel status, and many of those firms (more than half nationally) have mandatory retirement policies to which they will soon be subject.


Dave Cutler/Images.com

In spite of that, according to a recent study, well less than half of the firms in the US have succession plans in place to help select and prepare the future leadership of the firms.

From the other direction, an equally discomfiting tsunami is forming. Attrition rates are soaring, with 78% of all new hires in large law firms leaving by their fifth year, according to the National Association for Law Placement. What's more, bar admissions nationally remain flat or are declining. Within several years the large number of retiring lawyers will equal new admittees—and may begin to exceed them.

The Issue

These demographic trends, when taken together, beg a very important question: Who will be running the law firms of the future once the Baby Boomers have stepped down and much of the younger talent has been scattered? And, will they be even remotely ready to do so?

"It's hard to get lawyers to devote serious attention to management and leadership issues," says John Conley, professor of law at

UNC and creator of its course on The Law Firm. "They have retreats, bring in consultants, then go on stumbling from crisis to crisis. Some are so good that they remain constantly busy, but issues of management and succession will become even more critical now that law business—at many firms anyway—is slumping and firms are rescinding offers and/or laying off associates. To date, most firms seem to be managed in spite of themselves."

What's at Stake

First, the firm's *profitability* is affected. A study by Edge International and the University of Michigan identified six characteristics which distinguished highly profitable law firms from those with a less robust bottom line. Primary among those characteristics was a strong firm leadership that was able to convey a vision of the future which its members could accept, and was also able to translate that vision into specific firm direction. The less profitable firms had leaders who were less revered or universally respected and were not expected to exercise as much influence or authority, leaving most firm decision-making to consensus. Moreover, most law firms have learned the hard way that attrition of talent directly affects net firm profits by increasing recruitment costs and decreasing productivity—all the while losing the future leadership base of the firm.

Second, it is a safe bet that the firm's overall *performance* is affected. Decades of research on corporations, nonprofits, and professional service firms tells us that leadership directly molds organizational culture, and culture directly links to the effectiveness (or lack thereof) of organizational performance in practically every way that performance can be measured.

But third, these issues matter because they affect the firm's long-term *viability*—the ability of the firm to survive and thrive as an independent entity or to enter into mergers or combinations on its own terms. A key factor in long-term viability appears to be the existence of one or more "paragons" within the firm—people who are the cultural standard-bearers who command respect and encourage emulation through the professionalism they embody. As the paragons retire or move to less active status, there must be successors capable of engendering the same degree of respect and loyalty.

The paragons create—but the successors must sustain and consistently communicate—both a compelling vision of what the firm can be in the future and the current expectations necessary to get there. Viability can become threatened whenever short-term motivations begin to eclipse the vision of a shared enterprise with larger goals. In the words of one managing partner, are the firm's members out to "strip mine the firm every year, or do they wish to invest in the future?" When the firm lacks effective and forward-thinking leadership, it can easily fall prey to short-term "eat what you kill" compensation systems, the demand for which has led to many mass lateral defections. In a study of 80 firms that dissolved between 1998 and 2004, such lateral departures played a key role in the demise of almost all of them.

What's To Be Done?

Most of us went to law school because we valued independent work and initiative. The thought of being part of a corporate hierarchy was an anathema to many of us. That attitude continues with a certain disdain for management trends and "leadership development" (and the widely-heard joke that "BS" stands for Business School). However, if we choose completely to ignore what our corporate clients have learned over the last 40 years about how to run a business, we do so at our own peril.

Fads and trends aside (and I'm as unimpressed with them as anyone), there are some fundamental approaches to succession planning, leader preparation, and talent retention for the future that have proven their mettle in the worlds of business, nonprofits, the military, and our brethren in the accounting profession. There is nothing about lawyers—save perhaps our own mindset—that would make these tenets any less valuable for your firm's profitability, productivity, and future viability.

1. Assessing your firm's culture. Since you are swimming in that water yourself, you are unlikely to see it objectively. But understanding it and how it differentiates you is a critical first step to determining everything from your most desirable governance structure to your most effective retention strategies—and there are tools of impressive sophistication and validity which can help you to accomplish that understanding.

2. Planning for inevitable changes. You would not think of trusting your financial future to the whim of random events; you do what you can to plan, often with specialized help. Why, then, do so many lawyers worry about their firm's future financial health and viability but take no steps to plan for it? Succession planning has been done successfully for several decades now by almost all of your larger corporate clients. They wouldn't think of not having one, if for no other reason than the realization that human beings do not live, or work, forever. The tools that consultants can employ in the succession planning process have become increasingly sophisticated in recent years, yet highly adaptable to an organization's own situation and desires. They have proven their worth by providing organizations with smooth and consensual leadership transitions to qualified, prepared, and highly respected successors.

3. Preparing your best people. All leadership is contextual, and the style and skills most suitable for one firm will not be suitable for all (another argument for understanding the firm's individual culture). But 40 years of study at Greensboro's world-renowned Center for Creative Leadership has shown that, for any context, development of leadership ability begins with a) a thorough understanding of one's own self, tendencies, traits, and "wiring," b) a clear understanding of how one is perceived by others, and c) a self-chosen plan to do something about all of that. By identifying and encouraging the "emerging paragons" and others chosen in the succession planning process to undertake such self-development, the firm can take an enormous step in preparing them for future firm leadership roles.

4. Making changes. If making changes in the firm's culture is deemed desirable, it is eminently possible. Law firms are no different from any other human association in that relatively small, targeted changes can have major effects on culture over time. For example, in one survey of "Generation X" associates (born between 1965 and 1979), compensation ranked 10th on a list of 17 factors of job satisfaction. What are the top nine, and how could your firm's policies and practices be tweaked in order to be more responsive to them? If they were, might your firm have less of an issue with associate retention?

5. Improving retention. There is no magic formula for this, and a certain amount of attrition is both necessary and healthy for all concerned. But when I think back about the small firm I joined right out of law school, I am struck by two facts: none of the associates with whom I practiced ultimately stayed with the firm, and *all* of them now occupy significant leadership positions in other North Carolina law firms. In accord with the old Joni Mitchell song, "you don't know what you've got 'til it's gone," our firms often lose their best talent to their competitors because they don't know how—apart from money—to keep them there. It is only by understanding your firm's culture and demographics, investing in development, and making desirable changes to the firm's culture and practices that you give yourself the best chance of keeping those people who will positively shape the future.

Objection!

"There's not enough time in the day; or more aptly, in the year. How do I tell a 38-year-old partner with a 2400 hour billing expectation for the year that I want him to spend time on something else?"

Objection noted. But I'd argue that in framing the issue in that way, you are ignoring a very important perspective. That "something else" is at least as important as business development; for while hitting your billable hour targets and bringing in new clients are certainly important for the firm in the current year, and hopefully the next, the issues here discussed are critical to the firm's success in the years and decades to come. Given the demographic trends, how can the firm afford *not* to address the issues of profitability, productivity, and viability which the trends imply? The adage "failing to plan is planning to fail" couldn't be more appropriate.

Organizations should reward what they value. That begins by rewarding partners for mentoring, developing, motivating, and retaining your best associates. But in addition, firms can and should encourage high-performing associates and emerging paragons to participate in firm leadership activities or in personal leadership preparation by making commensurate adjustments in billable hour expectations. "It's understandable," says Charles Volkert of Robert Half Legal, "that succession planning may sometimes take a back seat to billable work or urgent legal matters. But law offices should not wait until a leader departs to begin the process."

Identify those who might be running the firm of the future, give them time and permission to engage in self-development, and include them in the kind of firm discussions that will allow these succession candidates to build their knowledge and skills in areas from practice management to firm strategy to marketing to client service.

Change Happens

The business model for successful professional service firms is changing. To put it in its simplest terms, it is moving from waiting behind your desk for the client to appear in your office with his or her problem, to anticipating the client's future needs, strategically thinking about how the firm will meet those needs, and planning accordingly. That is the essence of forward-thinking leadership these days. And it is an important reason why carefully choosing and preparing those leaders is so important. Waiting, as so many firms do, to "just see who rises to the top" or "who's willing to put in the time" is a poor substitute for advance thinking and planning—and no guarantee that your firm will possess the forward-thinking leadership the future will demand. Says Bill Morley of ExCL Group, a firm specializing in the development of leadership talent, "a thoughtful succession planning process by the managing partners is probably the only reliable way to link a law firm's long term strategic direction to the retention and development of key talent."

Ultimately, the firm will need to determine what it means by the use of that word. If it is merely a collection of individual practices held together by a name and some common office space, then there is little need for the ideas and solutions proposed here. But if it is truly a common enterprise with some basis of shared goals and norms, then there is much that can be done to enhance its profitability and performance—and its chance of still being here in ten years. ■

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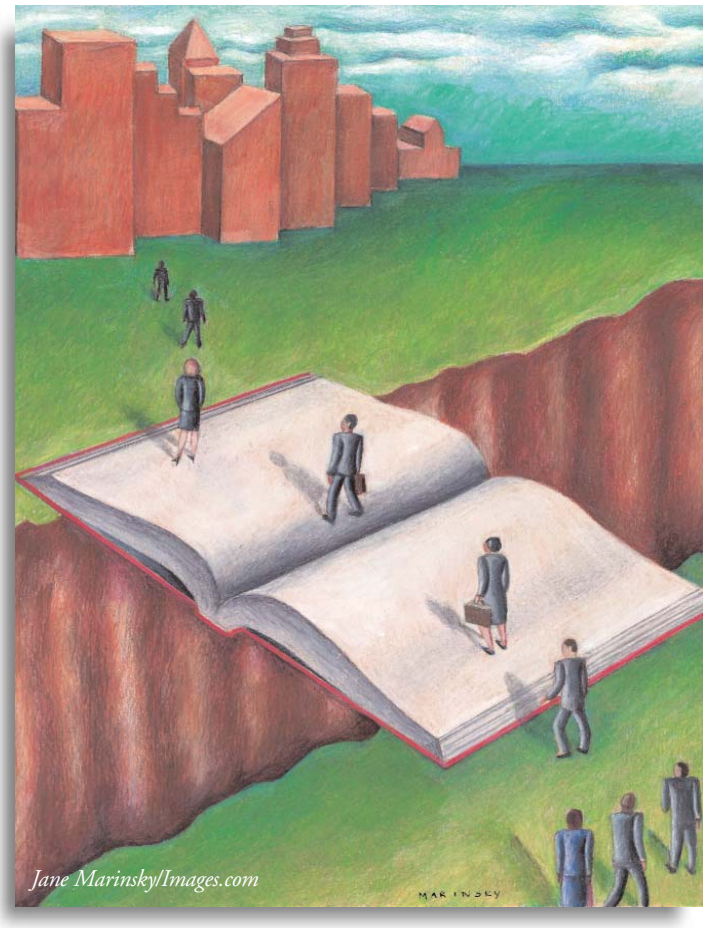
Crossing the Bridge Between Academy and Practice

By Michael E. Tigar

An editor has asked me to share some thoughts about the connection between law teaching and law practice, based on more than 40 years of doing both.



When professors and practitioners are in the same room, they sometimes refer to each other in ways that suggest there is a gap between these parts of the profession. When I hear that sort of thing, I think about being on my sailboat, which is parked down in Oriental. If you sail around the North Carolina waters and listen to the VHF radio, you hear dockmasters talking to boaters. The dockmaster always calls the boater, "captain," as in "Slow it down, Captain, when you make that turn towards the gas dock." The word is "captain," but the tone of voice says "idiot"—or something else that we can't print in this magazine. So it is at these lawyer meetings, when people call each other "professor," which translates into "irrelevant ponderous bloviator," and "counselor," which means "intellect-challenged pettifogger."

Then there is the story that goes around the law schools when recruiting season is upon us: A young fellow was at a bar and struck up conversation with a bearded elderly gent. The young man was bemoaning that his life choices were limited.

"Well," said the gent, "you could have anything you want if you would sell your soul to the devil."

"I don't think so," said the young man. "When I died, I would go to hell and that is not a nice prospect."

"Oh," replied the other, "hell is not so bad. I'll let you in on a secret. I am the devil and I can show you what hell is like. You will be back here without a second having gone by on the earth's clock."

"Well, in that case," said the young man, "I'll give it a try."

So the devil snapped his fingers and the young man found himself transported. The setting was exotic. There were cool breezes, plenty of refreshment, people were nice. The young man took it all in and signed up with the devil. He worked out the remainder of his natural life, had great success as promised, and when he died, he sure enough went to hell. Except this hell was terrible—fires burned and made things unbearably hot, labor was arduous. After a time, the sinner went in search of the devil.

He burst into the main office and there was the man he had met at the bar. The sinner began his litany of complaints.

"Wait a minute," said the devil. "This is hell. What did you expect?"

The sinner recounted their initial meeting and his introduction to the place. Awareness gleamed in the devil's eyes.

"Oh," he said, "you were in our summer associate program."

Most of this sardonic naming and storytelling is well-intentioned. I believe, however, that if you, as you read these words, think there is a gap between law teaching and law practice, you are either not seeing things correctly or you have walled yourself off from some rewarding professional experience.

First, let me adjust your vision. Think about it: In every one of America's 195 law schools (at last count), judges and practicing lawyers serve as adjunct professors. Every good law school has a clinical program, where law teachers with practice experience help students learn how to represent a client ethically, zealously, and capably. Every good law school offers trial practice, moot court, and other simulation-type learning experiences; lawyers and judges give their time to these efforts. Inns of Court bring lawyers, teachers and students together—or should start doing it if they are not already. Law professors are on CLE programs.

Look around you at the leading law schools in North Carolina. UNC dean Jack Boger practiced with Paul Weiss in New York and then was a star litigator at the NAACP Legal Defense & Education Fund for many years before joining the UNC faculty. Ken Broun, a UNC former dean (and my friend for more than 30 years), has been a real trial lawyer for all of his career as well as a brilliant teacher and writer.

At Duke, where I have just been appointed professor of the practice of law, Dean David Levi has taken the reins. He was a line prosecutor in California, United States attorney and then a federal trial judge. On the roster of Duke faculty you will find many others with substantial practice credentials. Already, Dean Levi has reached out to all parts of the legal profession and his leadership promises to enhance those relationships to the benefit of the community, the profession, and Duke itself.

In short, the parts of the profession are joined together in many different settings. Every law teacher has the opportunity to learn about what is happening in the world of law that his or her students will soon join. Every practicing lawyer can gain and regain insight into the kinds of issues that professors address as teachers and writers. When lawyers and teachers seize those opportunities, they and the profession gain.

My second point—that some people in our profession are depriving themselves from rewarding experiences—speaks more critically to all of you: practitioners, policy-makers, professors, and students. I am worried about this profession of ours. I think that we have a great deal to learn from one another.

One way to address these issues is to see the relationship between law schools and the practicing profession as a bridge and not a gap. I like the image. A bridge does not, itself, take you anywhere. It is simply there, and if you want to benefit from it you have to take the risk of crossing it to see what is on the other side. And when you get there, you should treat the people and ideas you find with respect, as you would when traveling to a foreign country where language and customs are different.

I fear that many in the profession and in law schools do not have a clear picture of what the "other side" is doing. Most law teachers spent some time in practice, but that experience may not serve them well. I know from having kept up a trial practice that the profession has changed in the past 40 years and is changing even more rapidly now. During that time, law schools have changed dramatically, as well. So our first task is to discard any assumptions we have, based on incomplete data, about what lies on the other side of the bridge.

Let me summarize some of the concerns that beset the younger generation of lawyers. Young people graduating from law school carry debt obligations that were unthinkable to those of us who entered the profession four decades ago. I read of young lawyer dissatisfaction with the profession, of poor people not having access to justice, of partner salaries heading towards the stratosphere while their firms ignore the obligation to do community service. I read of young lawyer disenchantment and older lawyer burnout.

To give substance to these thoughts, I quote at length from an essay I contributed to the recent ABA book, *Raise the Bar: Real World Solutions for a Troubled Profession*:

> Median law student educational debt increased by 59% between 1997 and 2000. In 2000, median law school debt was $84,400. In a survey of over 1,000 law school graduates, 50% reported graduating from law school with $75,000 of debt while 20% carried debts of over $105,000. More than half of the survey participants had additional debt from their undergraduate education.

Among those respondents entering government work, 58% carried debts between $55,000 and $105,000. Lawyers entering public service positions were even more likely to carry high debt burdens: 64% of entering legal service attorneys; 61% of future public defenders and 67% of future state or district attorneys completed law school with debts between $55,000 and $105,000. With a median debt amount of $84,400 for law school, the typical young attorney will spend approximately $950 per month to repay loans. A lawyer graduating with more than $100,000 in debt will make monthly payments of more than $1,000 per month. High debt loads compared to low salaries prevent many young attorneys from entering public service. Sixty-six percent of survey participants stated that law school debt kept them from considering a job in the public or government sector.

The median salary for first-year associates working in private practice ranged from $67,500 in firms of 2-25 attorneys to $125,000 in firms of more than 500 attorneys. The median first-year salary for survey participants was $100,000. In large urban areas, the median starting salary for first-year associates in large firms (over 251 attorneys) was $125,000.

In sharp contrast, the median starting salary in 2001 for attorneys entering public interest jobs was $35,000. Attorneys entering federal government jobs made a median salary of $45,000 while those working in state or local government earned a median income of $41,000.

* * *

The ABA Litigation Section conducted two informal polls in 2005. In one survey, 48% of lawyers reported that, in their firms, they are encouraged to take on *pro bono* work and are given credit for it. Twelve percent say they are encouraged to do *pro bono* work but are not given credit for it. Forty percent say they are neither encouraged nor given credit. In another survey, 79% said that their current practice did not match the expectations they had in law school, while 21% said that it did. Apparently, most of the 79% felt tyrannized by the billable hour and chagrined that the ideals that led them to

enter the profession had escaped them.

Law students learn from teachers and scholars who devote their careers to study of the most significant issues that confront the legal profession and society as a whole. They can take advantage of clinical programs, internships, externships, and the other links to the profession that law school can provide. Many of them have done significant amounts of *pro bono* work, which both serves the community and sharpens their sense of what it means to seek justice for a client. We who teach have preached the values of ethical behavior, intellectual discipline, imaginative approaches to problems, and social responsibility.

These students are ready to go to work. They know that some of the most important lessons about law practice can only be learned in the world beyond law school. They are the next generation of the profession's leaders. How can we enlist them as allies for progress and change?

Several times in the past few months, in conversations with friends, I have noted that work in law firms is increasingly divided up and done in cubicles. Lawyers e-mail drafts back and forth. This sort of thing is particularly prevalent in multi-city firms. The young lawyers on a matter do not see the case as a whole. They are not personally mentored by senior lawyers. There are fewer meetings of the project team as a whole where everybody can see how their work fits into the pattern.

Just last week, I raised this issue with a lawyer who was visiting Duke. He reminded me that clients often balk at paying for lawyer time spent in meetings to discuss the case. The answer seems clear to me. Either convince the client that those meetings in fact enhance productivity and the quality of work, or accept the fact that good quality professional law practice is not entirely about maximizing profits.

The alienation and burnout that we are seeing, in younger as well as older lawyers, squanders the valuable resource that is coming into the profession from law schools. The law firm that takes in associates, gives them unrealistic billable hour expectations, and isolates them in their work is being wasteful. It is denying itself access to the thoughtful insights and challenging questions that today's graduates bring to the process. On a long-term perspective, the firm that behaves this way is like the farmer who slaughters all the stock and eats all the crops. He or she may have a banner year, but has nothing to plant for next season, and no flock with which to carry on.

A second way in which the profession is failing its new generation is suggested by the salary statistics. The system for providing legal services to poor people is broken. Private lawyer *pro bono* work can take up some of the slack. At Duke, under the leadership of Associate Dean Carol Spruill, students have spent thousands of hours in many settings helping to provide legal services. Clinical programs serve a similar purpose. The students who do this work become better lawyers, able to see the trajectory from learning basic theory, to learning basic skills, to listening to client stories, to seeking justice. They learn lessons that classroom teaching cannot give: they learn to exercise judgment and to see the consequences of decisions. Every law firm should encourage and support *pro bono* work by young lawyers because it makes good business sense.

Of course, we should expect law students entering the profession to bear their fair share of the costs of doing business in an ethical, professional way. From my conversations with students, I think the great majority would willingly do so. How about a law firm recruitment ad that says:

LITIGATION LAW FIRM

- The salaries at our firm are lower than at our competitors, but you will still make enough money to have a good life and pay off your loans;
- Every lawyer at our firm must do 200 hours of *pro bono* work every year;
- We work in teams and as a team member you have responsibility to understand the whole case and to contribute your ideas;
- We do not worship the billable hour;
- We understand that you need time to have meaningful family and other personal relationships.

There are law firms that say these things, though not quite so bluntly. Good law students respond.

Beyond private initiative, the profession must be an articulate and strong voice for better funding of public defender and legal services programs. It should encourage loan forgiveness programs for lawyers who enter public service. Among the reasons for doing so is that our advocacy keeps faith with this new generation.

For those in practice, there are practical insights on the other side of the bridge. Let me tempt you with some examples from Duke. Professor Neil Vidmar is a social psychologist. If you have not read his work on jury behavior, your jury selection approach probably needs attention. Do you have a high-profile case? Professors Tom Metzloff, Kathy Bradley, Chris Schroeder, and others have done work that will interest you. You probably know the work of Bob Mosteller on the law of evidence. In the fields of international law, intellectual property, and many others, Duke's resources are open to the profession.

Why should you take the time to hear from and read the work of law professors when commercial publishers offer pre-packaged versions of "what you need to know?" The reason is simple, but perhaps not obvious: many modern legal research mechanisms give you a narrow and perhaps misleading view of important legal principles. Computer-driven legal research is based on your knowing what questions to ask, and in what databases. Taking time to see changes in the law in broader perspective makes your directed research more productive.

I can think of many instances from my own practice that support what I have just said. I speak from the perspective of someone who commutes across that bridge between teaching and practice. I was appointed counsel in a federal capital case. We wanted a separate trial for our client. The federal severance law is, on the whole, tilted towards joint trials for those jointly indicted. On the other hand, that law was developed almost entirely in non-capital cases. So we set out to consider why and how our capital case was different, requiring a different approach. We found two arguments that ultimately convinced the judge, one rooted in the broad constitutional principles of death penalty law and the other in legal history. The first argument was in a capital case, with jury sentencing. The Supreme Court has mandated a deep inquiry into the defendant's background and character, as well as into the circumstances of the offense. A joint trial makes this process immeasurably more difficult. The second argument was based on my having remembered a phrase from Blackstone's influential 18th century treatise on the laws of England. He had written that principles of law in capital cases were often interpreted *in favorem vitae*—in

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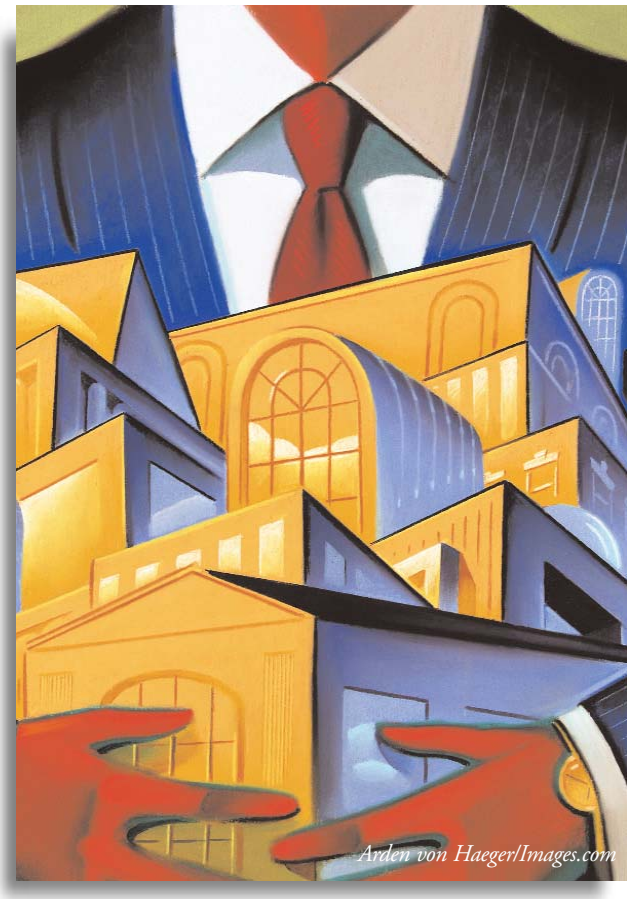
Representing the Corporate Client—Top Ten Tips for a Successful Relationship

By Marvin D. Genzer

Compared to representing an individual client, representing the corporate client presents many differences and challenges to the outside lawyer. For outside lawyers experienced with corporate clients, some of the suggestions in this article may be second nature. But for those lawyers new to corporate practice, understanding the corporate representation may take a little practice, certain skill development, and some change of tactics. This article will suggest my top ten important factors to be considered by outside counsel in the course of representation of the corporate client.


Arden von Haeger/Images.com

Once upon a time, outside law firms representing corporations handled much if not all of the company's legal matters. Often, a lawyer in the outside law firm was considered the company's "general counsel" and was treated as such by the company's executive management. Close, personal relationships with senior management were common and this "general counsel" was considered a member of the corporate "family." In those circumstances where the company had enough legal work to justify having lawyers on its regular payroll, these lawyers were often recruited from associates of the general counsel's firm. And bills for legal services sent to the company included nothing more than "for services rendered" as a description of the work.

Times have surely changed. Corporate executives have become much more savvy consumers of legal services. It has been many

years since the corporate client representative has not been a lawyer. Even smaller companies are more likely to have inside counsel who is responsible for all legal matters for the company. And the days of "for services rendered" bills are long gone.

In this era of a changed paradigm for the corporation/law firm relationship, what are the rules of the road? What does the corporate client expect from outside counsel? How does this relationship affect the law firm's practice of law? How does having a lawyer differ from having a layperson as a corporate client representative?

What follows are my top ten tips for representation of the corporate client. It would not be surprising to find many in-house counsel with other ideas of best practices and this list should be considered neither exclusive nor all inclusive. In the end, nothing can substitute for a good relationship with the client and a candid, up-front discussion of expectations and ground rules at the beginning of any representation.

I have refrained from putting these tips into a typical "top ten" order. The importance of any one tip may vary depending on the individual relationship and the particular views of the lay client or inside lawyer, and outside lawyer.

1 **Know your client's business.** I spent the first half of my adult career as an engineer. For the relatively rare circumstances when we had a legal matter that involved employees other than the executive staff, the number one complaint I always heard from my colleagues was the lack of understanding of our business, products, and operations by the lawyers assigned to the case.

I'm aware that the outside lawyer may be conducting an interview or soliciting information and intentionally appearing to lack basic knowledge of the business for strategic reasons. But there is a clear distinction between inquiring into business matters for purposes of gaining knowledge of how the company operates, and intentionally appearing clueless by asking seemingly basic questions to test the veracity of the witness or how he or she might conduct themselves in court. The latter may be a valuable process in the course of the representation, but the former is inexcusable.

Outside counsel must take the time, and generally at no charge to the client, to gain a reasonably thorough understanding of the client company's business, its products, staff, organization, and structure, and, if possible, its corporate culture. There is no substitute for an appreciation of the day-to-day issues faced by the company. And of course, it may go without saying how much more effective the representation will be with this appreciation. Legal matters often turn on subtleties that may not be obvious from the ordinary discovery of a legal matter, particularly when driven by schedules and pressures of the matter. Outside counsel should learn the client's business. The rewards will be immeasurable.

2 **Never provide a $10 solution for a $5 problem.** Just because the client chose to solicit help with a matter from outside counsel doesn't automatically suggest the matter is a "bet-the-company" issue. There may be significantly varying motivations to pursue a matter legally and it is particularly important to determine what these motivations are.

There may, indeed, be circumstances where the client authorizes outside counsel to spend what seems like an inordinate amount of money on a seemingly insignificant matter. While corporate motivations sometimes defy logic, complex businesses generate complex scenarios and the client is the best judge and final arbiter of this.

But the opposite circumstance is the one that may be the defining moment in the representation, and not in a positive way. When presented with alternate courses of action, in the absence of specific instructions to the contrary, the least expensive option must be chosen. If the cost of that course of action is still more expensive than the cost of the problem, another way must be found. In the likely case where the client representative is an in-house lawyer, this will be a collaborative effort. If the client representative is not a lawyer, it will be outside counsel's responsibility to determine the significance of the matter to the client and, unless there are extraordinary circumstances, to find the $4 solution to the $5 problem.

3 **Avoid surprises.** In the course of a representation for a legal matter, circumstances often change, new facts come to light, laws may change, negotiations take unexpected turns, and if the matter is a litigation, rulings sometimes come fast and often. In the course of representation, outside counsel may change a theory of the matter and counsel's opinion of the likely outcome may also change for many reasons.

In all circumstances, the client must not be the last to find out about these developments. It is important to develop a personal relationship with the client representative and in the course of that relationship ensure the client is kept informed, often and regularly. It is likely the client representative is discussing the matter within the corporation among executives far more often than outside counsel may be aware of and counsel must not allow that contact to be misrepresenting the status of a matter merely because counsel failed to keep him or her apprised of developments. Unless the relationship has progressed to the point where counsel knows the level of change that the client may want to know about, counsel should err on the side of reporting everything. A quick e-mail or phone call is even more effective than a formal letter and generally serves the purpose.

4 **Opine candidly and legally.** Frequently, representation by outside counsel may result from a need for an independent legal view. Even aside from conflicts of interest, the client may need an opinion from a lawyer not connected with the company. In the regular course of a representation, providing opinions in connection with the matter is often a frequent requirement. It is critical that these opinions be candid.

There may be temptations to temper opinions based on various factors. I am not suggesting that the lawyer will be deceptive, or intentionally misleading. But it is often easy to allow views of corporate motives or needs to influence the approach taken to legal matters that are subject to varying interpretations. Outside counsel simply cannot succumb to these temptations. Opinions must be thorough, clear, and independent of non-relevant forces.

In those cases where the client representative is also a lawyer, translating legalese will not be necessary. The conversation in these circumstances may be easier but with no less importance on candidness. This conversation may be more of an exchange of views and comparison of opinions but, in the end, the outside counsel's independent and candid legal views are important to the resolution of any matter.

5 **Make, and regularly update, cost and time forecasts.** Corporations, especially public corporations, operate on forecasts. Some fore-

casts are made public and some are kept private to the company to be used for determining personnel levels, inventories, capital outlays, tax positions, and a multitude of day-to-day company decisions. They are a mainstay of corporate operations.

Lawyers, to risk generalization, are often not proficient at forecasts. It isn't something taught in law school and private law practice doesn't generally emphasize the need for forecasts to the degree needed in corporations. But it is a skill that outside counsel must develop to effectively represent a corporate client.

For any legal matter, the client must estimate, and regularly update, costs of outside legal services. To do that, input from outside counsel is important. Forecasts of total legal costs, and periodic updates of estimates to complete a matter, are a fact of corporate life. Legal costs are, by and large, corporate overhead, and forecasts of overhead costs are critical to fiscal responsibility.

As a corollary to this need for forecasts, they also should not be based on unrealistic assumptions. All bills for legal services should be thoroughly detailed and documented, even without asking. Finally, no discussion of legal forecasts and itemization of costs would be complete without this credo: don't travel first class for an economy class client.

6 Return phone calls and/or e-mails on a timely basis. It is often found that the number one complaint from clients about lawyers is that they do not return phone calls. While it may be an annoyance for private clients not to have calls answered in a timely fashion, and the outside lawyer may indeed be otherwise occupied, not responding to calls or e-mails from corporate clients can doom a relationship.

Corporate developments often come fast and furiously. Auditor demands, executive decision processes, financial reporting, and a multitude of issues arise in the ordinary course of corporate life. When these matters require input from an outside lawyer handling a matter for the company, time constraints may be critical. The outside lawyer can and should expect that his or her corporate client representative will demand quick turnaround for a question only when time is indeed of the essence. This will be part of any good relationship. But when the call is made, a return call or e-mail must be timely and the outside lawyer needs to err on the side of caution if the time constraint isn't obvious from the inquiry. Counsel can never allow the corporate client representative to go into a meeting to discuss the case and be unprepared because outside counsel didn't return a call in a timely manner.

7 Never go over the client representative's head without notice. The old saying that you can always expect at least three different opinions from any two lawyers may hold considerable truth. In the course of representation of the corporate client, there may arise many circumstances where outside counsel and the client representative disagree. Of course, it is usually clear, in the absence of countervailing circumstances, that the client makes the decision. But what about those circumstances where outside counsel firmly believes the client representative is making a grievous error? What recourse does counsel have to alter the client's view?

The first and easy answer is what outside counsel must not do—go over the client representative's head to a higher authority in the company without prior agreement between outside counsel and the representative. The outside lawyer may have had a long, successful, and preexisting relationship with one or more senior executives in the company and be tempted to simply call one of those executives to present the issue. Nothing will sour and probably end a representation quicker than that course of action.

There may well be many occasions where there is honest disagreement about a course of action, but there should be mutual understanding between the outside lawyer and the client representative about deferring to a higher authority. This is particularly true when the representative is also a lawyer. The circumstances may require that both present the matter to the higher executive for a decision. Jointly going to a higher authority in the company is occasionally warranted, but doing it without the client representative's prior knowledge is inexcusable.

8 Don't change staff without notice and discussion. It is a fact of private practice life that there will often be personnel changes

in the course of representation of a matter. It may be more unusual for the partner who may be assigned to the case, but, particularly if the matter is one lasting years, as in litigation, changes in associates, paralegals, and legal assistants are not uncommon. Because they are expected and usual, the client will likely not be surprised when a staff change on a matter is required. The problem arises when the change is made without notice.

Similar to the requirement of tip #3 to avoid surprises, changes in personnel should be discussed before the change is made. Outside counsel needs to be candid about rates, any required retraining and familiarization with the matter, and who will absorb the cost of that familiarization. I am not suggesting that there is only one approach to the resolution of these issues. I am suggesting only that they all need to be resolved in a mutually acceptable manner, in advance. The last thing outside counsel wants is for the client to first learn of a personnel change when the monthly bill arrives.

9 Don't "over lawyer" a matter. We are all taught in law school to zealously represent our client. It is a hallmark of legal training and one of the most practiced tenets of the Rules of Professional Conduct. While it may seem like a contradiction, the problem arises when the lawyer gets too zealous.

Unless the client instructs otherwise, outside counsel should not do a lot of posturing or pontificating in the course of the representation. This may occur, for example, during negotiation of a contract with a third party on the client's behalf. While the client expects to have outside counsel's expert legal advice and analysis of the legal risks of the deal, the client also wants to get the deal done and is very attuned to the fact that billing is by the hour. Before pursuing a matter to its logical conclusion, outside counsel should make sure the client is comfortable with the degree of persistence. Counsel does not usually want to be overly aggressive or creative without discussion with the client, especially if he or she is a lawyer.

10 Talk to your inside lawyer/client as you would to a partner. If the client representative is not a lawyer, outside counsel will be particularly careful to avoid legalese and to try to explain legal principles in language that will be easily understood. Counsel should always avoid using latin expressions or quoting cases or statutes, and be particularly attuned to the client's level of understanding of the explanation.

But when discussions involve an inside lawyer, those discussions should be conducted as if he or she is outside counsel's law partner. In fact, the relationship should resemble a partnership. Together, outside and inside counsel will be dealing with a matter involving the mutual client and a joint effort is usually called for. Depending on the matter, and the preferences of the inside lawyer, his or her involvement may vary, but regardless of the level of effort, if the lawyer is always considered like a partner, the conversations will be productive.

There's my top ten suggestions for representing the corporate client. If these tips are practiced, the client will appreciate outside counsel's effort. The relationship will prosper, client retention will be likely, and outside counsel will enjoy the representation. These are the elements that make the practice of law a win/win situation for the outside law firm and the corporate client. ■

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Crossing the Bridge Between Academy and Practice (cont.)

favor of life. And sure enough, we found cases from early in American history in which separate trial was granted *in favorem vitae*. Ordinarily, old trial court cases don't carry much weight, besides not being readily retrievable by ordinary search techniques. But here were cases decided by judges who were alive when the Constitution was adopted, and who could be said to have insight into what it was supposed to mean.

It is true that most law students do not have a good sense of what is truly involved in law practice, including the economic structures of small and large firms, and the way lawyers build a client base. They lack many of the insights and lessons that they can only learn on the other side of the bridge. One way to ease their transition, as I noted above, is by opening up Inns of Court to law student participation, in order to encourage informal discussion among those in different areas of the profession. Another is to make law clerks and summer associates part of work teams in ways that let students see the decision-making process.

I know that the North Carolina bar is aware of these concerns. I have known Charles Becton for more than 30 years. His career shows us how many opportunities there are for lawyers: civil rights lawyer, judge, law teacher, scholar, private practice. Bec has done it all, and led the way in doing it.

I was 20 years in the law before I heard the word "holistic," describing the idea that one cannot understand any system—including the human society at a given moment—by seeing only its parts. Rather, one must see how the system as a whole determines the behavior of its parts. Judge Jerome Frank reminded us that the law is "not what it says but what it does" and that what it does is determined by "the net operation," "the whole official set-up." The rule of decision in your case is what "trickles through," he wrote, quoting Karl Llewellyn. I tread the bridge between the academy and the profession because I cannot see what law "does" without insight from both sides. It is a worthwhile journey, and the folks you meet add value to any team of people engaged in seeking justice for clients. ■

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Back to the Future: Creating a 21st Century Legal Education at Elon Law School

By Catherine Dunham, Steve Friedland, and George Johnson

Viewing the environment of traditional legal education over the past 20 years from a current perch of global transformation, the picture almost seems to belong in an earlier historical era. Traditional legal education was linear, generic and without international or even national context. Law teachers taught primarily through lectures and the Socratic Method. Students were expected to learn by listening to professors teach, taking notes in class and studying in the library. For most of the 20th century, this traditional model of legal education remained dominant and static. Law students relied on casebooks and lecture for course content and, until recent years, were expected to learn, record and analyze legal thought in longhand. Prior to the true advent of the Internet and the portable computer, law student and faculty expectations of learning and process aligned neatly with few gaps or divergences. The law school experience of students mirrored the law school experience of faculty.

The 21st century has brought multiple changes in both the quality and quantity of legal education. The law schools have had to meet changing expectations of law practice in a world transformed by the internet, an economy dominated by oil and emerging powers, and international competition for legal work. Law schools saw they could no longer merely offer a single course in international law, point students toward the bar exam only upon receiving a degree, or turn out students who neither had the skills to practice law nor understood what those skills were.

These outside pressures on schools have been augmented by an inside pressure, namely, a new kind of law student. The 21st century student is proficient at numerous types of technology and is comfortable multi-tasking. This modern student possesses technical expertise that exceeds most law faculty's reach, exclusively uses the computer to record information, and expects to access the internet with ready ease for legal research and all types of communication and information. The 21st century law student evolves from another world of learning, significantly different from the educational world of their faculty.

Some law schools have recognized the need to change their direction given these external and internal pressures, and Elon University School of Law is among them. By adapting Elon University's highly successful undergraduate model of engaged learning to the law school environment, the nascent law school aims to achieve intellectual rigor while developing professional lawyers who will thrive in the 21st Century.

Background

The traditional model for legal learning was formed in the late 19th and early 20th centuries by Christopher Columbus Langdell through his professorship and deanship of the Harvard Law School.[1] Langdell essentially created the academic tradition of law school out of a system that had formerly focused on apprenticeships and practical training at practitioner operated schools.[2] Although many academic law schools were developing during Langdell's time, it was really Harvard where the model of understanding and teaching legal precedent developed. Langdell's model focused on the case method of instruction, which purported to teach the study of law through analysis of prior cases.[3] The idea of taking apart a judicial decision, analyzing the court's reasoning for the purpose of applying that process to another set of facts was, at the time, revolutionary.

In most American law schools little has changed in the teaching of substantive law courses since Langdell's day. Professors still rely on the case method of instruction and many faculty members continue to use a version of the Socratic method of instruction, an integral part of Langdell's teaching model.[4] In a typical substantive law course, such as evidence or torts, the student learns by reading edited cases in a casebook, attending a class taught through some combination of lecture and Socratic dialogue, and taking an end-of-term examination. In most classes, the entire grade for the course rests on that single examination.

Generally, the Socratic and case methods are considered hallmarks of "rigor" in legal learning, in part due to the hazing type culture such methods engender. In addition, the traditional model has spawned a culture of independent study, largely created by the traditionally low number of law faculty per law student. This culture of independent learning evolved in a time when law students themselves were very similarly situated individuals, predominantly male, white, privileged, and with similar educational backgrounds.

Fortunately, law school is no longer full of similarly privileged and similarly educated individuals. At any given law school, the student population has racial diversity, gender diversity, economic diversity, and educational diversity. The academic backgrounds of law students can be and are very different. Also, legal education no longer suffers from a resource crisis, with students paying high tuitions and endowments reaching a record level.[5] So, the question becomes whether legal education should consider revising its traditional practices to meet the needs of a very different time and a very different law student population.

Why Legal Education is Ready for Change

With America staring at continuing foreign wars, global warming, and an economic crisis of historic proportions, it is not "business as usual" for law schools. Instead, major tectonic shifts are being felt inside the walls of even the most traditional schools. These schools are starting to become conscious of the fact that, to maintain competitiveness in the world of law practice and to improve the efficiency of legal education school by school and course by course, law school tradition may need to be modified.

One key contributor to the need for educational change is globalization. The 21st century phenomenon of globalization results from the unprecedented mobility of goods, services, capital, and ideas around the world.[6] The economy is increasingly internationally interconnected,[7] and the modernization of law is inextricably tied to economic globalization.[8] Traditional limitations on the geographic scope of law firms are falling away,[9] and the reality of local practice is diminishing as even the local business clients engage in the global economy. The arena is expanding, and a law student's goal must be to build a skill set optimal to serving as a participant in the global market. It is important for law students to be able to conduct themselves well, to know their strengths and weaknesses, and to be aware of their representation in terms of what they bring to the table. All must be sought with global perspective and awareness, for the exclusion of the global context runs the risk of making the profession of law itself marginal or irrelevant.[10] The legal profession is increasingly challenged to serve as a global force providing structure and process for the complex world of the 21st century.[11] Legal education should evolve to prepare lawyers to advance with the information era's intercontinental movement and operate effectively in the modern arena which spans the globe.

Another key contributor to the need for change in legal education is the fact that students are not who they used to be. If legal education is to be effective, it must reach modern students, not simply students from a prior era. It is difficult to generalize, but the 21st century law student is probably more demographically diverse, yet possesses possibly a more homogeneous set of learning skills. The 21st century student learns in a world of electronic data, accustomed to electronic data collections and constant access to materials via the internet. This student rarely writes in longhand, often reads from the computer screen, and almost never uses textual materials in the course of research. This student creates an individual learning environment in her computer, which is not tied

to a physical study space such as the library carrel, but is portable, moveable, and often remotely accessible. When studying, the modern student segments her computer screen to view several different content items simultaneously. Rather than ponder a question for later study; this student is accustomed to the immediate gratification of Wikipedia, Westlaw, Lexis and other source sites that make information on endless topics available through very simple searches. This student can sit behind his screen and interact with people and materials otherwise not available. Thus, the computer itself creates a new learning environment for the modern student. This new environment is not only an individual environment but extends to the classroom when students bring computers into classrooms, particularly when those classrooms have wireless access to the internet.

The historically implemented mode of legal learning encourages law students to develop tunnel vision. Professionals have been pushed to become experts of their respective trades, and lawyers have been pushed to develop extreme expertise in very specific and discrete subject areas. Visually, this model of education-to-practice resembles an isosceles triangle as the wide foundation of education narrows to a single point. As the individual approaches that tapered area of proficiency, all interaction with and feedback from others becomes noise. As a result of the triangular model, creating a team of experts resembles a pie with many slices that represent the individuals who comprise the team. The team is highly competent and skilled in terms of levels of expertise brought to the table, but there is little interaction between members of the team where different perspectives on an issue would complement each other instead of independently existing side by side.

How Elon is Different

Elon Law School endeavors to be a law school with a difference, a difference that extends from its theoretical underpinnings to its practical import. Perhaps the first modification involves abandonment of the symbolic goal of traditional legal education, which was to teach law students to "think like a lawyer."[12] Not only does this phrase relate to a time when the professional lacked racial, cultural, and economic diversity, it also fails to speak to students, or faculty, about the process of legal learning. The goal in modernizing legal education at Elon, therefore, is to maximize effective learning through an adaptation of traditional methods to the modern realities of students and the profession.

The desired visual model at Elon of how a law school should move students from education-to-practice is not the triangle described above, but rather an hourglass. The broad foundation of knowledge tapers to high competency then gradually reopens such that the individual is receptive to interaction, feedback, and change from application of skills and integration of new approaches. The modern model would respond to the increasing importance and application of networking and interaction with others, and a team can be composed of highly competent people who are open to feedback and new approaches.

A. Offering a Learning-Centered Education

At Elon, the goal is to maximize effective

learning, which is different than maximizing good teaching. Elon recognizes that teaching and learning are not an identity. Just because someone is teaching does not mean someone is likewise learning.

A learning-centered education can have many meanings. It is not student-centered. It is not about giving students what they want (or feel entitled to), but rather about what they need. The goal is not to pander educational goals to modern gadgetry and gimmickry. Rather, updating the portrait of the typical law student allows the institutions and faculty to refine the role of teaching and learning in the modern law school and create learning environments both within and without the actual law school, which better equip law students for continued learning and professional practice in the 21st century.

For example, if we know that the student yields or splits his or her screen to share non-course and course content, we should endeavor to fill all the windows. When teaching the substance of a case, we can engage students in their world by calling on students to access related cases on Westlaw and Lexis, review a history or pop culture reference on Wikipedia, or seek out some detail related to the case or the notes on the internet. Also, with simple projection technology and classroom internet access, faculty can demonstrate the relationship between content by projecting their own working outline on a split screen that also includes the case itself and other content related to the course, such as an analytical map. Learning-centered education is active. It does not just tell students about information, but promotes learning by demonstrating law study and by coaching, rather than mandating, student involvement.

B. Preparing for a Global Practice

Those who engage in legal education should adapt domestic structures to be able to keep pace with the movement of globalization in best serving students,[13] for different skills are now significant in interacting productively and successfully. Born to interact remotely through technology, the average law student is a "digital native," aware from birth of the limitless resource that is the internet and intrinsically attuned to the instantaneous nature of communication that is possible, often via devices that fit in a pant pocket or a child's palm.[14] "Digital native" students are beyond the stage of infatuation with access to sources distributed globally. This broad scope of access is taken for granted, as globalization is not an external concept but what the student lives and breathes. To educate the student as if he or she was a "digital immigrant," adapting to new technology, fails to take advantage of the natural intersection between the student and the environment of the 21st century marketplace. It is hence vital that the study of law is presented in the vernacular and modes of the students.

The 21st century world is characterized by extensive relations, and legal education serves as a catalyst for personal growth and understanding of self in becoming a lawyer. As law firms expand, a lawyer may be in contact with people around the world and travel to offices, conferences, and meetings anywhere from Los Angeles to Geneva to Tokyo. "Corporate homelessness" is coming into play such that large firms are pushing a trend of disassociation from a headquarters city in implementing national and global structures, with which it is possible to be an established institution in each city where business is conducted.[15] Law students must examine and understand their limits to avoid being isolated or overextended in the world of virtual practice. Finding that balance is a personal issue to a degree, but is also important that legal education actively incorporates an understanding of the demands of 21st century global practice into the law school curriculum. Combining substantive education directly with practical education allows students to explore their role in practice from the first day of their professional education.

C. Cultivating a Professional Identity

The recent Carnegie report on legal education, "Educating Lawyers," criticized the traditional model of legal education for its narrow cognitive-based approach to education, where students remained as students (and not lawyers) during most of their law school career.[16] The report urged law schools to integrate the cognitive with the practical; to take law students and make them practice as lawyers earlier in their education and in a broader way than was done before.

At Elon, we have brought lawyers into the school as preceptors, reviving an ancient practice where the preceptors mentor, give feedback to and guide students throughout their first year of law school. In addition, there is a proposal to adopt week-long practicums for first year students in their first and second semesters of law school, which would allow all students to do some work as quasi-lawyers (under the guidance and supervision of experienced, highly capable attorneys) and to then write a significant paper solving a legal problem related to one of their first year courses. This program is an attempt to apply the Carnegie Report's suggestion about integrating legal theory and practice in a committed and substantial fashion.

Also, Elon is developing and implementing a curriculum that interconnects law study with the study of leadership. Students examine leadership in all three years of the curriculum, first focusing on their attributes as a potential leader, second exploring the role of a leader in connecting to others, and finally experiencing leadership itself through a capstone project. The curricular design follows the template developed at the Center for Creative Leadership and is being shepherded at Elon by Dean Emeritus Leary Davis and Professor John Alexander, former Executive Director of the Center for Creative Leadership. In the leadership program, students work on legal problem solving by forming teams to research and advise selected community non-profits on legal

issues facing the organizations. The work is completed under the supervision of licensed attorneys and is presented to the client at the close of the course. The capstone project, the culmination of the leadership course, is an extensive and detailed self-study, similar to a graduate thesis, wherein the student explores a community or legal issue from the vantage point of leadership study. The full leadership course is designed to prepare students for modern practice, preparing students to think of the law in a global and community context, rather than solely in the academic context.

Conclusion

A new educational venture provides opportunities not otherwise available in an established setting. Seizing upon those opportunities, Elon University has designed its law school to be different than the traditional law school. The Elon Law School is endeavoring to meet the challenges of 21st century law practice, incorporating, not deemphasizing, the unique perspective of the 21st century student. The Law School is using an innovative curriculum that explores law and leadership through the successful medium of engaged learning to develop lawyers who possess extraordinary substantive legal knowledge alongside the self-awareness requisite to success in the modern, global practice. ■

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Endnotes

1. Robert Bocking Stevens, *Law School:Legal Education in America from the 1850s to the 1980s* (G. Edward White ed., University of North Carolina Press 2001) (1983).
2. *Id.* at 20-28.
3. *Id.* at 53 ("The Langdell approach not only limited itself strictly to legal rules but also involved the assumption that principles were best discovered in appellate court opinion." This assumption underlay what became known as "the case method.")
4. *Id.* at 53. ("Teaching at Harvard Law School under Langdell's influence consisted of the professor and a large number of students analyzing appellate decisions, primarily in terms of doctrinal logic. This enterprise became entangled with the question-and-answer technique … a merger that rather pretentiously came to be known as the Socratic method.").
5. *See* American Bar Association statistics on public and private law school tuitions; www.abanet.org/legaled/statistics/charts/stats%20-%205.pdf. In 2005, the average tuition for a non-resident student at an ABA approved public law school was $22,507.00 and the average tuition at an ABA approved public law school was $30,250.00. For information on law school endowments, see *Top 20 Law Schools by Size of Endowment,* dated September 20, 2006, "Brian Leiter's Law School Reports," http://leiterlawschool.typepad.com/leiter/2006/09/top_20_law_scho.html.
6. Global Policy Forum, *Defining Globalization* www.globalpolicy.org/globaliz/define/index.htm (last visited Oct. 6, 2008); *see also* Global Policy Forum, *Globalization of the Economy,* www.globalpolicy.org/globaliz/econ/index.htm (last visited Oct. 6, 2008).
7. *See Globalization of the Economy*, Global Policy Forum
8. Terence C. Halliday & Pavel Osinsky, *Globalization of Law*, 32 Ann. Rev. of Soc., 447, (2006).
9. Doron F. Ezickson, *Law Firms, Clients Should Gain from Globalization*, Boston Globe, Nov. 3, 2002 available at www.globalpolicy.org/globaliz/law/intllaw/1103bostonlaw.htm
10. Winston P. Nagan, *The Global Challenge To Legal Education: Training Lawyers For A New Paradigm Of Economic, Political And Legal-Cultural Expectations In The 21st Century* at 11 (July 23-24, 2004) available at www.nsulaw.nova.edu/international/caribbean/documents/caribbean%20speech.doc
11. *Id.*
12. The singular focus of law study on thinking like a lawyer, epitomized in films such as "The Paper Chase" (Thompson Films 1973), implied that the sheer quantity of time required to learn to think like a lawyer related to its quality. In contrast, the popular culture also intimated that each person had a limit and that some or many students were not minimally qualified to become a lawyer no matter how hard they tried.
13. Parikshit Dasgupta, *Globalization of Law and Practices* (Mar. 6, 2003) available at www.legalserviceindia.com/
14. *See* Marc Prensky, *Listen to the Natives*, Educ. Leadership, Vol. 63, No. 4 (Dec. 2005/Jan. 2006) ("I've coined the term digital native to refer to today's students (2001). They are native speakers of technology, fluent in the digital language of computers, video games, and the Internet. I refer to those of us who were not born into the digital world as digital immigrants. We have adopted many aspects of the technology, but just like those who learn another language later in life, we retain an "accent" because we still have one foot in the past. We will read a manual, for example, to understand a program before we think to let the program teach itself. Our accent from the predigital world often makes it difficult for us to effectively communicate with our students.").
15. Kevin Livingston, *For Firms, There's No Place That's Home*, The Recorder/Cal Law, Aug. 2, 1999.
16. *See e.g.*, William M. Sullivan, Anne Colby, Judith Welch Wegner, Lloyd Bond, and Lee S. Schulman, *Carnegie Foundation Report: Educating Lawyers: Preparation for the Profession of Law,* (John Wiley and Sons, 2007). *See also* Roy Stuckey and others, *Best Practices for Legal Education: A Vision and a Road Map,* Clinical Legal Education, 2007.

An Interview with Our New President—John B. McMillan

Q: What can you tell me about your roots?

I am the oldest of four children born to wonderful, loving parents. My dad was a family physician who practiced in Moore County for 40 years. In addition to a full day of seeing patients in the office, he visited patients in two hospitals and made ten or more house calls every day. My mom was a homemaker. Both of them were loved and respected in the community.

Q: When and how did you decide to become a lawyer?

Although there was no pressure to follow my dad and granddad into medicine, I did not rule out doing that until my sophomore year at Chapel Hill. Once that decision was made, my objective became obtaining a law degree. I admired several local attorneys who were community leaders, and I had a growing interest in government. I ran for and was elected to the student legislature, enrolled in extra political science courses, and consulted lawyers about the advantages of various law schools. By my senior year, Angie and I were engaged, and I had been accepted at the UNC Law School.

Q: What is your practice like now and how did it evolve?

Good fortune found me when I received an opportunity to clerk with Manning, Fulton & Skinner the summer after my second year in law school and then received an offer of employment from that firm. My early years were spent doing general practice which included, among other things, searching titles, preparing wills, civil litigation, and criminal defense work. I was on the indigent defense list and was appointed to defend clients in a wide range of cases. When I had been out of law school a little more than a year, I defended a woman against a first degree murder charge and will never forget that experience. Although that trial ended with a very favorable result, I determined then that I was not cut out for criminal defense work and would concentrate on other areas. I began doing more and more civil litigation of all types. Over the past 10-15 years, my litigation practice has been largely in the area of representing property owners in condemnation cases. About 1973, I began representing clients in the General Assembly and my governmental relations practice now includes representing a large number of major corporations and national and state trade organizations.

Q: If you had not chosen to become a lawyer, what do you think you would have done for a living?

Knowing what I know now, I would have tried to find a way to become a safari guide in Kenya. I could also see myself working for an environmental nonprofit like The Nature Conservancy.

Q: How and why did you become involved in State Bar work?

My first involvement was being appointed by the State Bar Council to serve on the Disciplinary Hearing Commission. That was in 1981, and I served on the DHC for nine years, the last four as chairman. Although the DHC is an independent commission, as chairman I had a lot of contact with State Bar officials and staff. State Bar attorneys represented the Bar before the hearing panels, and I reported to the council on the activities of the DHC. In 1985, I was president of the 10th Judicial District Bar and the Wake County Bar Association and in those capacities also had contact with State Bar officials. As to why I became involved, it was probably more than anything simply a desire to give something back to the profession that has meant so much to me.

Q: How would you describe your experience on the Disciplinary Hearing Commission?

I learned a great deal from the chairs who

preceded me. Dudley Humphrey was chair when I was appointed to the commission, and Judge Naomi Morris succeeded Dudley. I was Judge Morris's vice-chair and then filled in for her when she became ill. We had extremely conscientious members on the commission; they worked hard to find the truth and dispense appropriate discipline. In some cases the decisions were obvious, but in many cases we struggled to make sure we got it right.

Q: What was your experience on the Bar Council like and how did it differ from what you anticipated?

My senior partner Howard Manning had served on the council for the nine years preceding my election and had given me a pretty good idea of what to expect. Once on the council, I was immediately impressed with the diligence with which all of the members dealt with the responsibilities assigned them. Every councilor read the materials and was prepared for the meetings. Councilors come from all over the state and from all varieties of practices.

They bring different perspectives to the meetings, and everyone contributes.

Q: Can you tell us about the most difficult issue you faced while serving on the council?

During my time as chair of the Grievance Committee, our counsel advised me that a superior court judge had set aside the conviction of a death row inmate because the prosecutors withheld evidence from the defense attorney. We had not received a grievance from anyone, but our counsel and I immediately agreed that a grievance file should be opened and the matter investigated. That was done, and the case was referred to the Grievance Committee which found probable cause and referred the case to the DHC. A complaint was filed in the DHC, discovery was conducted, and the defendants were found by the DHC panel to have violated three of the Rules of Professional Conduct. There was no finding that any evidence was deliberately withheld. In fact, the post-conviction attorney who successfully had the conviction overturned voluntarily wrote in a letter that he did not believe that the conduct of the prosecutors had been intentional. The hearing panel determined that the appropriate discipline was a reprimand. There followed a lot of criticism in the media about the case and the decision reached by the hearing panel. I have publicly defended the process and, because the misconduct was unintentional, do not find fault with the decision.

Q: You've been an officer during the past two years, first as vice-president and then as president-elect. What has that been like?

It has been a great learning experience for me. The officers spend a lot of time together, trying to make sure that the various components of the State Bar work smoothly. North Carolina State Bar presidents have a long gestation period, but that provides the continuity that is needed in an organization like ours. It has been extremely helpful to have had the opportunity to learn from Calvin Murphy, Steve Michael, and Hank Hankins. Not only have we spent a lot of time together in Raleigh, but we have traveled the state from Kitty Hawk to Asheville attending district bar meetings and from Miami to San Francisco to Boston attending ABA meetings.

Q: You live in a large city and practice in a fairly large firm. Do you think you can understand and empathize with those lawyers who live and work in rural areas of the state?

With his wife, Angie, looking on, John B. McMillan is sworn in as president of the North Carolina State Bar by Chief Justice Sarah Parker.

My formative years in the practice were with a firm of five partners and me, not a large firm by today's standards. I grew up in a town of 5,000 people, and I believe the largest law firm in Southern Pines in those days was two lawyers. When I started practicing, I would routinely go to court in Apex, Wendell, and the other small towns in Wake County, and I have had cases with lawyers from all over North Carolina and in courts all over the state. Members of the council from small towns in North Carolina are not bashful and are more than willing to share their perspectives on issues that come before us. My experience is that everyone's viewpoint is heard and respected as it should be. We have had terrific leaders in the State Bar from small towns as well as from Charlotte and the other large cities in the state.

Q: In your opinion, does it make sense for lawyers to be regulating themselves? Is it good public policy? Do we deserve the public trust?

I have no doubt that the citizens of North Carolina are best served by our lawyers being self-regulating. We have been doing that effectively for 75 years. It was good public policy when the General Assembly passed the legislation establishing the State Bar, and it is good public policy now. Starting with the admission process and our Board of Law Examiners through the disciplinary system with the Grievance Committee and the DHC, lawyer volunteers are vigilant to ensure that the public is protected. In between licensing and discipline, the State Bar has in place a wide range of programs designed to assist lawyers in maintaining high standards and to help the public when issues arise with a lawyer's services. We continue to earn the public's trust every day.

Q: You served on the State Bar's Grievance Committee for many years and ultimately were its chairman. What do you think about the disciplinary system? Is it working? Are we doing a good job? Where can we improve?

The objective of any bar disciplinary system should be to provide an avenue for people with complaints about the conduct or services of lawyers to have those complaints investigated and addressed. That process should be deliberate, expeditious, and fair; it should be fair to the complainant and to the lawyer. The system should be transparent, but the individual investigations should be confidential until such time as it is determined that there is probable cause to believe that the lawyer's conduct violated the Rules of Professional Conduct and public discipline is warranted. Trials should be public, and the decision makers should be impartial, knowledgeable about the Rules, and fair. We have just completed a year-long study of our disciplinary system and concluded that it is working. We made some refinements, primarily dealing with tightening the time intervals in various stages of the process and made other minor modifications designed to

achieve more consistency in the discipline imposed for similar misconduct. All in all, I believe our system works well.

Q: Recently the State Bar has sought to increase access to justice by petitioning the Supreme Court for mandatory IOLTA and by seeking legislation to permit "retired" lawyers to provide *pro bono* legal services. Both programs have now been implemented. Do you think these initiatives will improve the situation? Should the profession be doing more to make the legal system more accessible?

Like most things, the cost of legal services continues to rise, and the number of people who cannot afford the services of a private attorney continues to grow. We seek to address the legal needs of poor people in a number of ways. Persons charged with crimes who cannot afford a lawyer are entitled to representation paid for by the state. Others have to depend on too few Legal Aid attorneys or lawyers providing services for free or at a reduced cost. IOLTA is a primary funder of North Carolina's Legal Aid attorneys, and requiring all lawyer trust accounts to be IOLTA accounts will generate additional funds for those programs. Allowing retired lawyers and lawyers living in North Carolina but licensed in other states to work with Legal Aid attorneys to provide *pro bono* services will also help. But there are still a lot of unmet needs, and there are other ways that we can do more. There are now 24 states that require lawyers to maintain their trust accounts with banks that pay interest rates on those accounts that are comparable to those paid to the banks' best customers. This is a relatively new concept, and 16 of those 24 states have adopted "comparability" over the past two years. In most instances the results of comparability have been significant. The IOLTA board is currently studying this concept, and I have asked our Issues Committee to do the same.

Q: Can you tell us where we are in regard to planning for the State Bar's new headquarters? Do we know where it is going to be located? Do we know when it will be built, how much it will cost, and how it will be paid for?

Our survey of the members of the council and staff reflected a clear preference for a downtown location for the State Bar headquarters. Through the work of our Facilities Committee and with the help of a consultant, we identified a location in the State Government Complex at the southwest corner of the block just south of the Governor's Mansion, at the intersection of Blount and Edenton Streets. Governor Easley has agreed to recommend that the Council of State agree to lease this property to the State Bar for a period of 99 years for a nominal sum and by the time you are reading this, I hope that has been approved. Acquiring this property on this basis will likely save the lawyers of North Carolina something approaching a million dollars. We will need to be able to occupy our new building by January 1, 2012. Over the coming year the Facilities Committee will be continuing its work in the areas of cost and financing. We have considerable equity in our current building and we believe that equity will provide a significant down payment for the new facility.

Q: What else would you like to accomplish during your year as president?

The most important thing for the State Bar is to continue to perform our core functions efficiently, expeditiously, and fairly. These core functions include the disciplinary process and the work of the Ethics, Authorized Practice, and Attorney-Client Assistance Committees. As I said previously, we have just completed a comprehensive review of the disciplinary process, and I want us to undertake a similar review of the other programs to make sure they are performing well. I believe they are, but now is a good time for us to take another look. I have already mentioned the study of the issue of comparability in the IOLTA program, but, in a similar vein, I have asked the Issues Committee to consider the implementation of some version of Model Rule 6.1 from the ABA's Model Rules of Professional Conduct dealing with a lawyer's obligation to provide *pro bono* legal services. Over 40 states have adopted variations of this rule, and we should take another look at it. As discussed in the previous question, I am hopeful that by the end of the year we are pretty well along with regard to the plans for the new headquarters. And, finally, I am looking forward to the implementation of the State Bar's new lawyer recognition program to appropriately highlight the contributions of lawyers from all over the state who are rendering extraordinary service to their communities.

Q: Tell us a little bit about your family.

My life-partner Angie and I have been married for 44 years. My father died a few years ago when he was 86 and my mother died three years later, three days before her 90th birthday. They were both incredible individuals and were immensely important in my life. I am the oldest of four children. My sister Julia is a pediatrician, director of the Johns Hopkins University School of Medicine pediatric residency program in Baltimore, vice-chair of the Department of Pediatrics at Hopkins, and is past chair of the American Board of Pediatrics. She is married and has three children. The oldest, Edith, is in her second year of medical school at Johns Hopkins. My father graduated from the Johns Hopkins School of Medicine and was thrilled when Julia ended up there. My sister Mary lives in Toronto and is retired from a career devoted to helping families with autistic children. My brother Robert lives in Raleigh, is a manager at a well-known local watering hole named The Players Retreat, and plays the bass guitar in three bands. Angie has a brother, Broughton Stokes, who lives in Winter Park, Florida. He has three children who live in Portland, Oregon.

Q: What do you enjoy doing when you're not practicing law or working for the State Bar?

I have spent a lot of time working with the North Carolina Museum of Natural Sciences, The Nature Conservancy, and the UNC School of Law. Those organizations are very important to me. I enjoy the outdoors and cutting my own firewood. I am an enthusiastic amateur photographer and would rather be camping in the game parks of Kenya or Tanzania than anywhere else on earth. Fortunately, Angie and I share that love and we have been privileged to do that many times. We have also enjoyed taking many friends with us for those experiences.

Q: How would you like for your administration to be remembered when the history of the State Bar is finally written?

The goal for all of us should be to seek to elevate our profession. It is unlikely to be done in the manner of a rising tide that lifts all boats. It is more like putting a jack under one corner, cranking that corner up, blocking it off so it doesn't fall back, and then moving the jack to another corner. I hope that during the coming year we will be able to ratchet up some aspects of the profession a few notches, making sure that we don't fall back anywhere. To use another analogy, I want to leave the woodpile a little higher. ■