Bloomberg Law Reports®

Vol. 1, No. 3 **Law Firm Management** December 6, 2010

In This Issue...

Associates

Nutter's High Level of Associate Satisfaction

Contributed by Deborah J. Manus, Nutter McClennen & Fish LLP

This year, Nutter McClennen & Fish LLP was fortunate to find itself on top of the *American Lawyer*'s survey of mid-level associate satisfaction—#1 for the third consecutive year. Nutter, a mid-sized Boston firm of approximately 145 lawyers, has also been at the top of the *American Lawyer*'s ranking of summer associate programs in Boston for four out of the last five years. The fifth year, we were number two. As one reporter who recently covered the story put it, "You win the first year, congratulations; the second year, that's interesting; a third year, and we want to know what's in the water over there."

So what is the secret to Nutter's success? What are we doing differently? I'd have to say that the answer lies first and foremost in our culture and, more particularly, in how that culture influences our approach to associate development.

Nutter's Democratic Culture

"Culture" can be an overused word as applied to professional service organizations, but it is indisputable that Nutter's culture of mutual respect is an essential factor in our success in these surveys. The people who work at Nutter are genuinely committed to making the firm a collegial place, and the level of collegiality among our associates is second to none. "Sharp elbows" do not play well at Nutter McClennen & Fish. Our associates are focused on providing excellent legal services and not on competing with one another. In a world in which career dissatisfaction among lawyers at big firms is widespread, my sense is that, on most days at least, my partners at Nutter truly like coming to work. This kind of enthusiasm is contagious.

Nutter is fundamentally a democratic, non-hierarchical place, which very much contributes to our sense of community. Reflecting this, all of our attorney offices are exactly the same size. The firm made this decision eight years ago when we moved into our current space in Boston's Seaport District. Initially, we weren't sure how it would work out. In our prior space the partner offices were large, consistent with what we were all used to thinking of as "partner offices." But we found appealing the idea that people should not be judged—by others or themselves—based on the size of their office or the view from its windows but instead on their conduct and contributions. The experiment has been a success. The firm is in the process of redesigning its space—and we are maintaining the one-size-fits-all approach. So, our newest first year associate will still be in an office that is sized the same that of our managing partner, Michael Mooney—who insists that everyone, from the newest lawyers to all members of the staff, call him Mike.

The democratic culture manifests itself in many other ways, too. Our office doors are for the most part kept open. Attorneys at all levels are encouraged to share their opinions on everything from the matters they are working on to issues relating to firm management. Undoubtedly this aspect of our democracy trickles down from the partners: our management committee regularly solicits input from partners on issues relating to firm governance, and partners and associates alike feel generally free to weigh in on issues even when their input is not formally solicited. The upshot of this time-consuming (but worthwhile) democracy is that our associates and partners have a shared sense that their

opinions matter. Our department managers genuinely care about the success of their associates and don't view them as being simply a "cog in the wheel." All of these things affect how we view each other and the organization.

Channels of Communication

Naturally, Nutter's culture impacts the more formal aspects of our approach to associate development. We recognize that frequent and honest communication is always essential, and especially so in challenging economic times like the recent financial crisis. Our managing partner Mike Mooney makes it a point to hold question-and-answer meetings with our associates at least four times a year as a means of sharing information on topics that we know the associates are thinking about. The premise of these meetings—hardly a revolutionary one—is that if we communicate clear, honest, and timely information, people will devote less time to needless worry. (As a junior associate I was convinced that every time two or more partners were behind a closed door they *had* to be talking about "something bad," either about my personal performance or the firm. This memory serves as helpful perspective.) I often attend these meeting in my capacity as chair of the firm's Legal Personnel Committee, which has primary responsibility for associate retention, training, mentoring, evaluations, compensation, and career development. Recent topics covered at associates' meetings have included whether or not the firm would move to new offices at the conclusion of its current lease (we aren't) and whether the firm would abandon its lockstep compensation system in favor of a competency-based model (we are).

Although discussions at the associates' meetings can be lively, we are realistic enough to recognize that most associates are not going to feel entirely comfortable asking the managing partner (even an approachable one) about things they are worried about in an open setting. As such, Nutter has an ombudsman, who is a partner with whom associates can communicate on any issue in complete confidence. This has proved a very efficient tool for dissipating concerns that are groundless and has enabled the firm to take corrective actions about situations where doing so is warranted.

Meaningful Work Assignments

Our model for staffing cases is also a major factor in attorney satisfaction. Unsurprisingly, associates prefer to do work that is meaningful. Nutter is a mid-sized firm, and while we work for many public companies, we also work for many private ones. It has always been the firm's practice to staff matters with efficiency in mind, which, as a practical matter, means that associates have the opportunity to work on rewarding and professionally challenging projects at an earlier point in their careers—although not, of course, before they are ready for the challenge and not without appropriate supervision and coaching.

Nutter actively encourages associates to participate in the firm's pro bono initiatives. This benefits the community and provides junior associates with further opportunity to hone their skill sets on meaningful work. Nutter associates receive full billable hour credit for work on pro bono matters. Matters are supervised by partners who also "coach" associates in the handling of matters. In addition, the firm hosts an annual luncheon celebrating the accomplishments of Nutter associates on matters undertaken for the public good. Over the years, Nutter attorneys in every practice area have taken on pro bono matters ranging from immigration and housing to indigent criminal defense and unemployment benefits. Nutter attorneys have helped charities form legal entities and given advice on tax issues. Our associates provide pro bono legal assistance in the areas of intellectual property and real estate transactional matters, and the list continues to grow. No matter the practice area, all matters provide our associates with a lot of responsibility, direct client contact, and opportunities to develop their skills, and most importantly, they enable associates to make an important difference in the lives of others.

In an effort to monitor the type of matters on which associates work, assignments in all of Nutter's departments flow through the department manager, so that assignments can be made with an associate's career development in mind.

Formal Training and Other Learning Opportunities

In addition to Nutter's culture, emphasis on communication, and commitment to providing associates with meaningful work, the firm also has all of the usual formal associate programs. We have an active mentoring program in which the firm matches first- and second-year attorneys and new lateral hires with senior attorneys. Based on the concept of mutual learning, our mentoring program includes monthly lunches, regular mentoring team lunches, and special events. As part of the program we educate participants as to what to expect from the mentoring process, and we track the amount of time mentors and mentees devote to the relationship. Because of the success of our associate mentoring program, and because being a new partner can be every bit as baffling as being a junior associate, the firm has recently begun assigning mentors for our newly elected partners. We also support a mentoring circle for new parents that meets six times each year.

Nutter also makes a substantial investment in formal associate training. We host an orientation program for new associates to help ensure an effective transition into the firm. We provide firm-wide training for junior associates on "nuts and bolts" aspects of law practice. In addition, we provide ongoing, department-specific training that relies heavily on internal faculty. We also provide experiential and observation-based learning opportunities as well as a training program in practice development. We encourage each associate to develop a personalized and individualized training and development plan.

While the firm does not have a program specifically called "Leadership Training," there is general recognition that the associates of today are the firm and community leaders of tomorrow. For that reason, Nutter includes associates on some of its firm committees. For example, at present, we have associates serving on our Diversity and Inclusion Com-

mittee. For the same reason, we encourage associates to become engaged in community and civic activities. We have a Nutter Literacy Team in which Nutter attorneys and staff volunteer their time reading at inner city schools, and we foster involvement in professional associations.

Talent Management

Our hiring is integrally linked to the other aspects of our associate programming. Our hiring team seeks to recruit individuals who are talented, hard-working, and hungry for challenging professional experience—and who attach the same importance to maintaining a collegial work environment and healthy work /life balance that we do.

The firm recently implemented a competency-based approach to associate development. Associate performance is evaluated in relation to the "core competencies" that the firm has identified (professional excellence, client service and commitment) and department-specific benchmarks. In an effort to provide as much formal feedback as we can, we review associates twice each year. Under our new competency-based model, the spring review will not only provide feedback as to past performance but will also look forward, with the focus on prospective career development and discussion of the associate's individual development plan. Associates have the opportunity to meet with our director of professional development to discuss their individual development plans. Our goal is to take an active approach to career development. It is early days yet for this initiative, but we're optimistic that the new competency-based model will be a success.

Finally, we've found that we're better able to leverage all of the many things that we do well with the help of talented professionals who are not practicing law (even though they may be lawyers) and whose sole job is to focus on the strength and development of our associate talent. Experience has shown us that relying on practicing lawyers to perform all of the tasks relating to recruitment, training, evaluating, and mentoring simply isn't realistic. Having a truly outstanding director of professional development and hiring helps ensure that the firm's initiatives stay on track. These professionals can introduce the firm to the most current ideas in talent management.

So that is what we are doing at Nutter. And if it isn't all that different from what people are doing elsewhere, maybe there *is* something in the water…

Deborah J. Manus is a partner and department manager of the Trusts & Estates practice of Nutter McClennen & Fish LLP in Boston and chairs the firm's Legal Personnel Committee. She can be reached at dmanus@nutter.com. For more information about the firm, visit www.nutter.com.

Business Development

Thinking Like a Business Executive: Expand Your Corporate Practice by Researching and Understanding Clients' Businesses

Contributed by Russ Korins, Esq., Russ Korins Consulting LLC

Transactional attorneys advise clients as their businesses evolve. By researching and understanding a client's business, an attorney can anticipate client needs, deliver better service, and ask questions that illuminate unmet concerns. This can open the door to broader engagements and increase client satisfaction. This article will discuss how to put legal issues in a business context, give examples of how informed questions can precipitate broader work, and suggest steps that corporate and transactional attorneys can take to understand their clients' businesses.

Opportunities of Transactional Practice

Corporate lawyers assist businesses with the transactions and initiatives a company deems necessary for moving toward its goals. These may include entity formations, strategic partnerships, joint ventures, contracts with suppliers and vendors, and venture capital or other investor, financing, and funding arrangements. This range of possible work often makes corporate lawyers an advisor of first resort for whatever a company wants to do. Business executives do not always distinguish between legal issues and business advice, and may consult a corporate attorney for input on any company matter.

In addition, business executives are concerned with many matters besides legal issues. They are concerned about revenues, profit, growth, regulation, competition, industry developments, employees, investor and stakeholder expectations, and many other aspects of a business. Legal issues are challenges against the backdrop of business goals. Therefore, learning to seethe world from the perspective of a businessperson and understanding a client's business in context allows an attorney to provide legal service better directed toward those goals. Concerns can then be addressed proactively and comprehensively.

Putting Issues in Context

Every transactional or corporate matter has a context and business motivation behind it. Even a simple act of forming a corporate entity has a reason: a business may be planning activities for which it needs to limit liability, or its growth plans may require the governance of multiple parties or a board of directors. Any corporate lawyer quickly recognizes that choosing the right kind of entity depends on the business priorities of a company, so asking business questions is central to providing sound legal advice.

Thinking like a business executive means using this approach regularly, not just when a business forms or has specific kinds of questions. It means researching a company, its competition and its industry in order to understand the client's perspective on the world and the client's needs.

Specifically, a corporate attorney might keep abreast of developments such as:

- recent announcements by the client
- announcements and initiatives of competition
- developments in a client's industry or sector
- litigation against the client or against similar or strategically related businesses
- factors affecting major expenses, such as commercial real estate, energy, or travel markets
- issues in the client's industry regarding employees, compensation, and performance incentives

These items form the business context in which a client is operating. If an executive or general counsel engages a corporate lawyer to address a legal issue, it is probably because of something related to, or explained by, one of the above items. This presents an opportunity to become more valuable to the client. Knowing which of these items may have triggered a company's legal matter allows an attorney to ask good questions that can help maximize a client's opportunities, minimize a client's risk, and add value to the advisory aspect of corporate practice.

Examples

Two examples will illustrate how understanding the context of legal issues can result in more work and better legal service.

First, consider a business attempting to raise money from investors. An attorney could simply assist with the legal documents required for raising money in the way the client wants to do so, and could do an adequate job. However, an attorney well-versed in other business issues facing the client can ask questions that illuminate other needs: Why is this investment important now? Are there recent developments in the business or in its industry? Will it hire new people or need more space as it grows? How much control does the executive team want to retain? Answers to these questions can reveal opportunities for the corporate attorney to either assist with a wider range of matters himself or to introduce the client to law firm colleagues working in other practice areas.

As a second example, the executive of a business tells her attorney that she wants to purchase another company. Again, the attorney could simply handle this acquisition as presented. However, if the attorney is knowledgeable about the client's business, he might ask: Why does the company want to make this acquisition now? Is it aware that acquisitions by similar companies in the same industry have raised complex integration, tax, and personnel issues? Has it considered a strategic partnership approach, which similarly-sized companies in the same industry have generally found successful? What about the intellectual property issues in an acquisition, and the frequency of related litigation in its industry? By considering these issues, the executive could pursue her business goals while minimizing risk and maximizing opportunity. As in the example above, such a discussion might result in additional legal work for the lawyer and his law firm.

In both of these examples, research, knowledge, and familiarity made the corporate lawyer an even more valuable advisor to a business. The lawyer understood the business issues and important developments driving the motivations of the client.

Improving Business Thinking

Law schools tend not to teach business analysis, and most lawyers start their careers without significant business knowledge. Nobody becomes a business expert overnight. Corporate attorneys looking to develop business knowledge can do so over time by consulting two kinds of sources: people and information.

The client, of course, is one excellent resource. An unbilled lunch, meeting, or phone call to ask questions about the business is an ideal place to start. What are some of the executive's concerns, and what opportunities does she see? What interests her about what she is doing? Answers to these general and open-ended questions can provide guidance about the business issues an attorney should monitor. Over time, and after some research, an attorney might consider occasional "state of the industry" conversations in which he can ask the client about reactions to recent developments. The goal of these conversations is to learn what keeps the client up at night, which will illuminate unmet needs and allow for better client service.

Other attorneys and business contacts can also offer insight into the context of clients' legal issues. For every industry and type of company, there are attorneys, consultants, bankers, financial advisors, investors, and other executives keeping track of issues and developments similar to the ones facing a client. One-on-one conversations can make an attorney better informed, but so can gatherings and events such as legal education classes, conferences, networking groups, seminars, and trade shows. These consultations with knowledgeable people can also be an effective way to meet new clients. No current client confidences need to be revealed: the purpose is to learn about and discuss general industry considerations.

The other kind of resource available is information: print and online publications, blogs or columns, and online news and information services. You can identify a company's competition and strategic allies by noting where the company appears in other news or announcements. When using online publications and services, you may be able to set up alerts or saved searches to monitor relevant news and other information. A resource such as Bloomberg Law makes it easy to research any company or industry and seeannouncements, pending litigation, financial information, and regulatory concerns.

Understanding business issues, however, requires more than one visit to a website or one look at the state of a com-

pany. It is a mindset that should govern every reading of a newspaper or magazine, or the consultation of any other information resource. If a client, or a related business, generates significant news, read about it. You can be almost certain that by the time you read about a new development, your client has already thought about it. Finally, learn what the client's executives and other informed people are reading and attending. Doing the same not only increases an attorney's knowledge but also builds a better connection with business clients.

Conclusion

Learning about the business context of corporate legal issues can expand the advisory role of a transactional attorney. The more an attorney can think like an executive, the more he or she can anticipate their needs, ask important questions, and ensure that every business initiative proceeds as soundly as possible. Business executives tend to view legal services as cost centers. Sharing an executive's business mindset makes an attorney a more trusted advisor and a worthy investment in a company's future. Developing business expertise over time can increase opportunities for more legal work with existing clients and also open doors to more clients like them.

Russ Korins, Esq., Russ Korins Consulting LLC, assists attorneys and law firms with practice development. He has previously practiced corporate and technology law, and worked and consulted for technology and Internet businesses. He is based in New York City and can be reached at 646-278-9968 or rkorins@russkorinsconsulting.com.

Fees and Billing

Embracing Alternative Billing

Contributed by David Scherl, Morrison Cohen LLP

Finding a Win-Win Solution

Hearing the words "alternative billing" often creates spine shivers for lawyers, however, law firm clients and prospects are increasingly inquiring about such fee arrangements. Lawyers need to be prepared for such inquiries and to be able to assess whether an alternative fee structure will more likely than not result in a "win-win" outcome for both the lawyer and the client.

Regardless of the negative connotations which many lawyers often attach to such arrangements, alternative or value based billing does not have to mean that a lawyer is being engaged to perform services at a discount to traditional profit margins. Lawyers and their clients should be able to consider any number of billing arrangements and allocate appropriate amounts of risk and reward so that the arrangement makes sense for all involved. If the relative levels of risk and reward are acceptable to both the provider of the services and the end user, then the proposed billing arrangements should be "commercial" by definition and, accordingly, should make sense for both the lawyer and the client.

Alternative Billing is Not Entirely New

Although there may be a growing interest of clients considering value based billing arrangements as alternatives to the traditional hourly billing arrangements, such arrangements are not entirely new. There are numerous services that lawyers provide that are not traditionally based on hourly billing arrangements, including: plaintiff's personal injury, collections and worker's compensation contingency fees arrangements; percentage based fee arrangements in connection with personal services contracts for athletes, entertainers and authors; flat fee arrangements for simple wills and residential real estate closings; and percentage of deal or enterprise value arrangements in connection with certain unique merger and acquisition, and IPO matters.

Traditional hourly billing arrangements are actually a relatively "modern" phenomenon, becoming the more accepted practice over the course of the last five or six decades (prior to that, value based billing was more the norm). For clients, these arrangements allow for easy review of the billing backup, and for law firms, the arrangements are helpful when measuring individual attorney productivity in connection with compensation decisions. For these and other reasons, traditional hourly billing will likely continue to be a factor in fee arrangements for the foreseeable future.

However, as clients become more interested in assessing legal fees and services on a value and return basis, alternative fee arrangements will likely continue to grow in popularity. These arrangements often are attractive to clients because they have a greater likelihood of matching a client's perceived value expectations for the engagement with the fee to be charged. For a given service, the lawyer should be able to assess the cost of a service to be provided and, accordingly, determine whether the proposed alternative billing arrangement would work in that situation.

Forms of Alternative Fee Arrangements

There are many forms of alternative fee arrangements. Some such arrangements are preferred by clients because they shift much of the cost risk to the attorney. Examples of such arrangements are capped fee arrangements and contingent fee arrangements. Both capped fee and contingent fee arrangements provide certainty of cost to the client by shifting overage risk and magnitude of the project risk to the lawyer. Capped fees provide for a maximum fee to be agreed upon in advance of the engagement (if the actual fee exceeds the cap, the amount of the excess is written off; if the actual fee is less than the maximum, the client is only responsible for the lesser fee). In the case of a contingency fee, the attorney will only get paid a fee equal to an agreed upon percentage of a recovery. Accordingly, if there is no recovery, or a recovery upon which the agreed upon percentage results in a lower pay-out than the attorney would have otherwise realized if an hourly fee arrangement were used, then the risk to the attorney is that the contingency arrangement will pay less than an hourly fee arrangement.

Another alternative fee arrangement provides for a courtesy

or preferred client discount on the firm's traditional hourly rate, or alternatively, a blended rate where the client pays a single hourly rate, regardless of whether a senior or junior attorney is providing the service. These arrangements are less risky to the attorney because, although the profit margins may be smaller, he will be compensated for each hour spent on the matter, and does not run the risk, as with capped fees, that the matter will be more involved than initially projected. In effect, risks are shared between the client and the attorney.

Arguably, the most commercial of the alternative fee arrangements are fixed fee and value billing arrangements. A fixed fee arrangement is similar to a prepared budget in that it is based on what similar matters have historically cost. However, it requires the attorney to stand behind the amount estimated based on the assumptions and other variables associated with the matter in question (which both the client and attorney agree are in play in advance of the engagement). Experience is a terrific tool to predict likely fee outcomes on a given matter. Fees charged for similar matters, as well as the variables that historically have caused fees to be greater than the average fee for similar matters, are both key predictors which can and should be relied upon in order to handicap properly what an appropriate fixed fee might be. The principal risk, borne by the law firm, is whether the cost variables have been prudently considered and factored into the fee. Ideally, from the law firm's perspective, the agreed upon fee will include a buffer so that the attorney can "win" even if the actual time involved is on the high end of the assessed range. The upside of a fixed fee to the client, of course, is certainty of cost. The upside to the attorney is that if the matter proves to be either consistent with the cost assumptions or is more efficiently executed, there is the potential for a better profit margin on that matter.

Value billing similarly treats both the client and attorney as two business persons negotiating at arms length to agree upon a fixed fee, but ties the amounts agreed upon to specific outcomes (so there is some variability depending on the outcome achieved). In these arrangements, in addition to the client having certainty of cost, the interests of both parties are ultimately aligned (the better the outcome or result, the more significant the fee for the lawyer).

There are numerous variations on the themes described above. The variations are really limitless. What they all have in common is that they are not tied into traditional hourly billing, and they share or shift risk between the client and the attorney.

* * *

Both lawyer and client can win with alternative fee arrangements. Such arrangements provide a terrific opportunity for an iterative dialogue between lawyer and client which can result in shared expectations and a better communication channel between the attorney and the client. At the end of the day, it is all about securing fair value for services rendered, and delivering on the client's value expectations. In a world where clients may value certainty of cost more than they traditionally have, alternative fee arrangements can provide such certainty and nonetheless reward the lawyer at a similar or even better profit margin than those enjoyed with more traditional billing arrangements.

One cautionary note: the focus of this article has been on how alternative billing arrangements can work for clients and lawyers; attorneys within law firms must also ultimately navigate how they assess individual attorney productivity for compensation purposes as they shift away from a pure hourly billing fee dynamic as a key indicator of production.

The bottom line is that there is no need to fear alternative fee arrangements. However, like any business arrangement, careful consideration must be given to the specific dynamics of each proposed arrangement so that it can be successfully navigated.

David A. Scherl is the Chairman of Morrison Cohen LLP, an approximately 100 attorney firm representing financial institutions, private equity sponsors, and companies in a wide variety of industries throughout the middle market.

Global Law Firms

Milbank to Add 10 Lawyers in China as Brazil Acquisitions Boom

By Debra Mao, Bloomberg News

Nov. 23 (Bloomberg) -- Milbank, Tweed, Hadley & McCloy LLP, which advised China's State Grid Corp. on its $1.7 billion acquisition of Brazilian power lines, said it will add 10 lawyers to its 15 in Beijing and Hong Kong in the next year.

The expansion will partly serve Chinese companies such as Cnooc Ltd. and China Petrochemical Corp. that want to invest in Brazil, said Mel Immergut, chairman of the New York-based law firm that announced a new Sao Paulo office in April.

"If you could pick one theme of all the visits that we made to these big state-owned enterprises, it was Brazil, Brazil, Brazil," he said in an interview after a week in China.

China Petrochemical last month agreed to pay $7.1 billion for 40 percent of Repsol YPF SA's Brazil assets. Chinese companies want to participate in the planned $224 billion of investments by Brazil's state-controlled oil producer Petroleo Brasileiro SA to develop new offshore fields, Immergut said.

"Because of the incredible natural resources that there are in Brazil, but also because of the fact that Brazil is going to be a huge economic power," Immergut said, "China wants to be there at the early stages of Brazil's burgeoning growth."

Milbank is also expanding to offer local law advice in Hong Kong as more companies from around the world list there and as China's Hong Kong-listed companies including Cnooc do more deals.

Milbank's investments in China and Brazil are part of the firm's longer-term planning, Immergut said. More than half of its revenue already has a non-U.S. connection he said,

and that should grow with a larger proportion coming from Asia and Latin America, he said.

The firm had revenue of $601.5 million in 2009, according the American Lawyer.

Immergut, who had also spent a week each in India and Brazil before visiting China, said that Milbank plans to expand its India practice group, adding lawyers who would have a 100 percent focus on Indian work.

They would be based in Singapore, London or Hong Kong as foreign law firms are banned from opening offices in India.

--Editors: Douglas Wong, Mike Hytha

To contact the reporter on this story:

Debra Mao in Hong Kong at +852-2977-6425 or dmao5@bloomberg.net

To contact the editor responsible for this story:

Douglas Wong at +852-2977-6451 or dwong19@bloomberg.net

Information Technology

Moving Your Law Practice Into the Cloud

Contributed by Jack Newton and Jay Foonberg

Web-based technologies are part of an exciting new frontier aimed at delivering efficient, accessible, and affordable products and services to their clients. The rapid advance of web- or cloud-based technologies has opened up a wealth of opportunities that weren't available to lawyers just one generation ago; chief among these is the ability to operate–in whole or in part–a completely cloud-based or virtual law office. Bricks-and-mortar law firms may be more hesitant to move everything to "the cloud," but a hybrid approach where cloud-based services complement a more traditional law office is also a viable alternative.

Many lawyers understandably have questions about the cloud's security and appropriateness for their practices. In order to evaluate the cloud's potential and suitability, it is important to understand the basic underpinnings of a cloud-based system, the benefits of virtual legal practice, and the due diligence required before moving a law practice, in whole or in part, into the cloud.

What Is "the Cloud"?

The concept of cloud computing–or "the cloud"–refers to computing that is delivered as a service over the Internet. A partial or total shift to the cloud means that an attorney will need less software on her desktop computer and, increasingly, can access her documents, applications, and other information from any computer. Cloud-based services typically offer increased security and dramatically reduced overhead and IT costs compared to on-premises servers and software.

While cloud computing may seem novel, most computer users have, perhaps unknowingly, been using cloud-based technologies for a number of years via services such as Hotmail, Gmail, or Yahoo Mail. These technologies were among the very first to pioneer the idea of centralized services delivered efficiently over the Web, and they've succeeded in laying the groundwork for a software revolution that's gradually resulting in most applications evolving towards a web-based mode of delivery.

Benefits of a Cloud-based Law Office

Whether a lawyer chooses a fully virtual law practice or a more traditional bricks-and-mortar practice enhanced by cloud technologies, there are numerous benefits to moving a law practice into the cloud.

Competitive Advantage. Consumers are increasingly researching and seeking legal services online. While an increasing number of lawyers have a website, in some cases supplemented with a blog or other social media tools, relatively few lawyers offer a true cloud-based law office. The demand for online legal service delivery may soon outstrip the supply that the relatively few cloud-based law offices can provide. Migrating into the cloud over time offers an opportunity to stand at the forefront of a technology evolution that could serve to set your practice apart from the competition, and establish you as an innovator in your field–something that could provide significant competitive advantage in what is a fast-growing market.

Efficiency. A cloud-based law office delivers many efficiencies. Cost efficiencies are realized in the form of reduced overhead associated with a bricks-and-mortar office, expenses for IT maintenance and upgrades, and commuting. Work product such as letters, bills, and other collateral can be delivered electronically, which reduces material costs and is better for the environment.

Time efficiencies result from online client interactions, which may be appropriate in many situations. For example, client intake forms can be completed and submitted online, and a secure online messaging system might be used by attorney and client to answer simple questions or deliver basic information. Communicating with clients online can often be more focused than in-person meetings. Some in-person meetings with clients will still be desirable, of course, but a lawyer can meet at clients' offices, which can obviate the need for an actual office, if a lawyer so chooses, and otherwise reduce the square footage a firm may need to lease. In addition to the cost savings associated with reduced commuting, home-based work or reduced travel to meetings can free up additional hours for business development, billable work, or other endeavors.

Security. Unlike unencrypted e-mail communications, all communications through a virtual law office are typically secured using 256-bit SSL encryption. This is the same grade of encryption employed by banks and e-commerce sites to ensure secure, confidential transmission of sensitive data. Some jurisdictions, such as Massachusetts, have imple-

mented strict secure communication standards that prohibit insecure communication methods such as e-mail in favor of more secure, web-based communication portals.

Synergy with Other "Virtuals." Increasingly, you may find other aspects of your practice that can be made more efficient via cloud-based service providers. Rather than finding extra office space and hiring an on-premises assistant, you might choose one of the many "virtual assistant" firms to help. Moreover, many leading attorneys in small firms are competing more effectively with their “big firm” counterparts by choosing to collaborate virtually with colleagues online in the form of transient partnerships. A practice that exists in the cloud can be more easily shared and collaborated on, which allows virtual practices to rapidly involve necessary resources on an on-demand basis.

*Freedom.*The freedom associated with running a cloud-based law office may be something you only truly appreciate once you've taken the plunge. You'll realize you can get your work done anywhere. You'll be able to provide responsive, professional service to your clients on a schedule that works for you, regardless of your location. If an urgent situation with a client comes up while you're on vacation, you're only an Internet cafe away from being able to meet their needs. This not only means that you’re no longer required to support much of the overhead that accompanies a more traditional law practice, it also creates an opportunity to gain more control over your time, and often more freedom to enjoy time away from the job.

Look Before You Leap

Before taking your practice into the cloud, consider the following:

1. Check with your state bar. While some state bars have issued ethics opinions or other guidance on opening a cloud-based or virtual law practice, it is advisable to seek formal approval from your state bar prior to opening a cloud-based law office. Rules regarding information storage, protection and archival are currently receiving a great deal of attention, and the law in this regard is evolving rapidly. Ensure you’re aware of and compliant with your bar rules as they apply to the use of web-based technologies.

*2. Be aware of jurisdictional issues.*A virtual law office blurs the geographic boundaries that a typical bricks-and-mortar law office imposes. While this can be a huge benefit if an attorney is licensed in multiple jurisdictions, it can present a potential problem if a cloud-based law office is seen to be soliciting clients from a jurisdiction in which the attorney is not licensed to practice. Ensure that your virtual law office prominently displays what jurisdictions you're licensed to practice in, and put into place appropriate client screening measures. Moreover, as detailed above, since the bar rules regarding the use of web-based technologies may vary between jurisdictions, we advise that you consult each local and state authority for a formal opinion on approved information management practices prior to accepting clients from any of your licensed jurisdictions.

3. Clearly define the attorney-client relationship. It is at least as important to define the attorney-client relationship with a cloud-based virtual law office as it is with a traditional bricks-and-mortar law office. This can be accomplished via a click-through agreement that defines the scope and nature of the attorney-client relationship. Given that many cloud technologies sit at the leading edge of technology adoption, ensuring that clients are comfortable with the use of these technologies is paramount. In many cases clients should be made aware of the standards of communication, the web-based services being used to host their information, and the security measures in place to ensure that client confidentiality and privacy protection are maintained to the highest standard available.

4. *Thoroughly question and investigate any cloud providers under consideration about security and compliance.* Draft a checklist of questions relating to data security, privacy and confidentiality for each of the providers under consideration. Ensure all data transmissions are encrypted, that data is being stored at a SAS 70 Type II-certified facility, and that backups are performed frequently. Ask how frequently third-party security audits are being performed, and request an uptime report that details all planned and unplanned downtime over the previous six months. Finally, try to ascertain the financial viability of your cloud provider, especially if it is a startup. Ask how many employees and customers the provider has and if it is profitable; if not, what sources of funding does the company have?

* * *

The cloud is certainly not for everyone, but it has established a stronghold among law firms already because of many of the advantages listed above. It can be a compelling option for lawyers who want the flexibility and accessibility a web-based system can provide.

Jack Newton is Co-Founder and President of Clio, a cloud-based practice management solution for solo lawyers and small firms. Jack holds an M.Sc. in Computer Science and holds three software-related patents in the United States and EU. He has also spoken at CLE seminars across the U.S. about how cloud computing can help law practices run more effectively and efficiently.

Attorney Jay Foonberg is a founder of both the American Bar Association’s (ABA’s) and California’s Law Practice Management sections, the ABA’s Solo and Small Firm section, and NALEM (National Academy of Law, Ethics and Management). He is well known for authoring several widely-read practice management books, including "How to Start & Build a Law Practice," which continues to be the #1 bestseller for the ABA.

Law Firm Marketing

Blogging for a City

Contributed by Adrian Lurssen, JD Supra, and John Hellerman, Hellerman Baretz Communications LLC

Important lessons can come from unlikely places: Mars and Venus, a block of cheese, or the end of the sidewalk. For law firms considering whether to start a blog—or wondering how to get an existing blog on the right track—we suggest looking to another improbable source of inspiration: a mountain top in South Africa.

One of us, Adrian, grew up in that country in the last throes of the apartheid era. His father worked as a journalist in Cape Town, tasked with chronicling the country at a fraught time in its history. Twitter did not exist, nor did Facebook, nor did CNN. The daily paper, sold from every street corner, was one of the primary news outlets available to Cape Town's citizens—a fact that increased the responsibility that came with being a reporter.

Adrian's father, a veteran at the paper, underscored the point to each newly hired reporter. He would send them to the top of Table Mountain, a steep-cliffed formation overlooking the city. He would tell the cub reporter to look down on the city below—the lit houses, the trafficked streets, the office towers of the business district. He asked them to keep a message in mind as they stood on the mountain, with all of Cape Town spread out before them: "All of those people are reading your work."

If that exercise did not give the reporter a sense of the importance of the job, nothing would. And while we hardly equate running a legal blog to operating an opposition newspaper during apartheid South Africa, the metaphor is apt in two significant ways. First, blogs are first and foremost publishing endeavors—an obvious point, perhaps, but one too few firms keep in mind when making decision about starting and operating their blogs. Second, your audience is a community of real people, and they should be at the forefront of your thoughts when making editorial decisions.

These two observations will guide us as we detail the considerations that should go into the decision to blog or not—and, once started, how to do so most effectively.

Understanding the Challenge of a Blog

When deciding whether to begin a blog, do not let the trees keep you from seeing the forest. Yes, there are numerous details to consider in establishing a blog. But those details—involving choices over domain name, hosting services, layout, commenting options, and on and on—can quickly obscure the main issue and loom larger in the mind than they should. They do so in the way that an electronics salesman can muddy the issue for a couple looking at televisions. They stop at a window thinking they might want a set for the basement, and after 15 minutes with the clerk, they become wrapped up in thoughts about HDMI connectivity, comb filters, and scaling. They've lost sight of the question: Do we want a TV for the basement?

With a legal blog, the question is this: Do we want to start a publication?

Blogging, after all, is nothing more or less than an easy form of publishing. Yes, there is undoubtedly a social aspect to this form of publishing, but when firms start blogs, they are committing to starting a small publication. The threshold questions firms should ask themselves, then, go to the issue of whether they can realistically, and successfully, make that commitment:

Do we have a viable subject?

Narrow subject areas (e.g., executive compensation policies, climate change regulation, securities enforcement) work very well for legal blogs—but any subject can do, as long as there is an audience interested in it. Though be realistic here, because if you have no Cape Town below you—that is, actual people in the real world interested in your subject matter—your blog will likely be dead on arrival. (Hint: Your law firm is not something people will take time out of their day to read up on. If that is your subject matter, go with an internal newsletter instead.)

Is this subject one that will serve business development goals?

The best blogs become an authoritative source of information for those interested in their subject matter. The business development benefit of a blog stems from that authoritative position; if an HR executive has come to rely on your blog for insights about the law of employee benefits, chances are good the executive will turn to your firm when she needs an attorney. This valuable relationship between the blog and its readers forms over time.

If the audience for the subject matter of your blog is large but constantly changing—imagine a Cape Town in which the typical resident stays only a week—there may not be time to develop that authoritative position in the mind of the reader. People who have suffered from medical malpractice, for instance, or litigants who have a potential appeal to the Supreme Court, are both large populations that turn over rapidly.

This does not mean that you shouldn't attempt to blog in those areas; it does mean, though, that you should be smart about it. The standard-setting Supreme Court blog, SCOTUSBlog, has become one of the legal blogosphere's most successful. And it has done so in a manner quite shrewd from a business development perspective. By focusing on deep analysis of Supreme Court issues and arcana, the blog attracts a stable population of academics and appellate lawyers that are most likely to be referral sources in the field of Supreme Court litigation.

Can we sustain a publishing schedule?

The best action for firms to take in determining whether they are prepared to blog is to create an editorial calendar cov-

ering at least three months. Laying out a schedule of posts, which should occur at least once a week (though preferably at least twice a week), will immediately give those considering the blog a sense of the work—and commitment—required. If the schedule does not look easily doable at the editorial calendar stage, you know all you need to know.

Do we have invested leaders?

Successful publications have leaders and so must your blog. Firms should consider whether the blogging team—including both marketers and attorneys—has at least one individual personally invested in the blog's success.

Think Like an Editor

If you're still reading, you may be on your way to running a blog. And once you're started, it remains vital to keep in mind that you are running a publication. While writing a valuable legal blog requires interesting legal thinking, being a good lawyer is not enough. The most successful blogs are those run with the sensibilities of a strong editor. Which means, in practice, the following:

Consider Your Audience

Editors think from the perspective of their audience, and then give that audience exactly what it wants. The editors of *CNET* give their tech-thirsty readers incredibly detailed reviews about the latest gadgets. The editors of the *National Enquirer* give their audience salacious, fantastical dramas from the celebrity landscape. The editors of *Good Housekeeping* deliver unfailingly practical advice on making meals, keeping a home, and looking your best.

If you know your subject, and the kind of prospective client you would like to be reading your blog, you should have a fairly good idea of the information that excites and interests them. Deliver it to them, regardless of whether the lawyer in you finds other legal issues more intriguing. Because, as an editor would point out, you are writing the blog for your audience, not yourself.

There may come a point at which your ideas dry up. If that happens—or, if you blog long enough, when that happens—don't despair. There are tools, such as JD Supra's trending topic reports, that can inform you about the most popular articles in a given topic area. Consult them. Or act like an editor would and read your competition (something you should do regularly); think of a fresh angle on their stories. Act like a reporter and solicit story ideas from those you know and respect in the industry you are covering. Better yet, send them five questions and run it as a Q&A.

Keep in mind, this isn't brain surgery—and, in fact, you've likely operated with this editorial mindset already. Law firms have produced client alerts and legal updates for years, certainly predating the online landscape. Those alerts were written to inform clients about issues pertaining to their business, their lives. That same type of substantive information, born of a firm's shared expertise, will get you noticed online because it provides genuine value to its readers. Keep this in mind when wearing your editorial hat as a blogger. Know what is useful to your audience; know what keeps them up at night; bring to bear your expertise and write.

Know What You Are

A good editor has a strong vision of what type of content her publication provides. For some outlets, it is breaking news. During the financial crisis, many law firm blogs covered daily developments in the bank bailouts and passage of the Dodd-Frank financial reform bill. Some offer in-depth analysis of issues, while others curate news stories from around the web relevant to a particular subject matter, as Perkins Coie's Patent Law Insights blog does. Blogs can even be forums for advocacy. It is not important that a blog take any particular path, but it is vital that it takes *a* path and embraces an identity.

Develop a Voice

Law firms share a near-universal instinct to avoid taking public positions on issues or otherwise engendering controversy. While understandable—perhaps even advisable—this instinct should be tempered with the knowledge that developing a distinctive style or "voice" is necessary to attracting a loyal blog readership. Indeed, your blog's voice is the primary reason that readers will seek it out and keep it from being, for instance, just another bland FDA blog cluttering up the Internet. Without one, your blog may not be worth writing.

The good news for would-be bloggers is that while being loud and opinionated is one way to establish a voice (see, e.g., any cable news show), there are plenty of other methods. The best, especially for a blog written by multiple authors, is to create a "hook" or overarching concept that burns a personality into the DNA of the blog from the start. Ford & Harrison's wildly successful employment law blog, called "That's What She Said," is built on a simple formula: each Friday, it analyzes employment law issues raised by the antics of the characters on NBC's The Office. The blog's very framework makes it a fun and engaging read, without requiring Ford & Harrison to get opinionated.

Similarly, readers of the new Basis Points blog know immediately that Bracewell & Giuliani's take on restructuring is going to be fun as well as informative. A central feature of the blog is its weekly haiku from the world of finance (example: My bonus was great / Huh, your bonus was higher? / I am so pissed off), which, paired with the blog's wry headlines and colorful bios, makes you want to stay awhile.

Humor isn't the only avenue to developing a voice. Blogs that allow writers to color outside the lines of strictly confined issue areas give their authors the chance to connect with their audience on a deeper level. A heartfelt post on cyber-bullying on Sheppard Mullin's Social Media Law Update, for instance, spread across the web to a large number of people—some of whom will become regular readers of the firm's blog.

Market Yourself

This final point may require thinking like a marketer rather than an editor, but it's one worth mentioning. The best marketing for a blog lies in delivering valuable information and following the steps above. Delivering unique content on a regular schedule—an industry Q&A every other Monday, a breakdown of industry news every Wednesday, a lighthearted Friday feature—will help to make your blog "appointment reading." Joining the larger conversation can also establish your reputation. Judiciously commenting on top blogs in your issue area or offering to write guest blog entries for others is a great way to pull readers back to your site. Other touches, like creating business cards for your blog, including a link to the blog in email signatures, spreading links to your posts via Twitter and LinkedIn updates, and syndicating your content through JD Supra or Bloomberg Law are all inexpensive steps that will have high impact with your closest contacts.

Those contacts are the people living right on your street in Cape Town. Knock on their doors and let them know what you are up to. Beyond them is a city of people interested in the industry or topic area you are covering. Stand on the mountain and think about what drives them. If you do that well enough, for long enough, in time they'll all be reading your paper.

Adrian Lurssen is the co-founder and VP of Strategic Development for JD Supra, a service that allows attorney users to create online portfolios of articles and other writings and distributes those writings to targeted audiences across numerous channels (415-306-6486; mailto:adrian@jdsupra.com*). John Hellerman is a partner and co-founder of Hellerman Baretz Communications LLC, a PR agency specializing in PR-fueled business development campaigns that help lawyers turn their expertise into new business opportunities (202-274-4762;*mailto:jhellerman@hellermanbaretz.com*).*

Law Firm Operations

Vendors

Five Simple Rules for Strategic Procurement in the Legal Industry

Contributed by Robert C. Mattern, Mattern & Associates, LLC

Having been involved with assisting law firms negotiate support service contracts for the past 20 years, I have learned some excellent techniques and gained invaluable insights from both law firm clients and vendors on how law firms purchase services and products. But I have also seen many law firms make poor vendor choices that have resulted in inflated pricing and noncompetitive terms, substandard service for end users, and vendor/client disputes. From these experiences, I have devised five simple rules to differentiate between *basic purchasing*, which is buying on the basis of price and a few simple terms, and *strategic procurement,* which I define as procuring with a firmwide strategy in mind.

Rule #1 - Look at the Whole Picture

Procurement decisions should be made holistically in order to ensure that the goal of saving money for the firm will actually be realized. For every procurement decision, law firm personnel should consider not only the cost of the item/service being procured but also the impact on its end users, and whether such costs are to be recovered from clients. For example, a firm may conclude that printing to multifunctional devices is more cost-effective than printing to network or local printers, seeing the savings on the output side (approximately 100%). However, on the cost recovery side, if a firm does not have a plan to capture and recover all print costs from its clients, it will lose approximately 30% of its copy cost-recovery revenue, which in most situations far outweighs the savings realized by the shift of print volume from local and network printers to multifunctional devices.

The decentralization of procurement responsibilities that exists in some firms is another factor that may prevent making the most sound purchasing decisions. A silo approach to responsibilities can prevent decisions from being made in a holistic fashion. Looking at the whole picture may be harder, for example, where multifunctional devices are under the administrative or facilities umbrella and local and network printers are the responsibility of IT. The end result is usually redundancy in equipment, and firms that are vastly over-equipped with a bloated cost per copy due to higher than necessary procurement costs. The solution in situations such as these is a cross-department output team that makes decisions looking at output as a whole, not just one method of output.

Rule #2 - Short-term Cost Savings May Impact Long-term Vision and Success of the Initiative

Each area of your support services should have a long-term plan that dovetails with the firm's overall strategic plan. Take, for example, the procurement of office supplies. Many law firms have contracts that offer quarterly or yearly incentives based on volume, order size, and dollar-spend. But if staff sometimes buys supplies from a different vendor because certain items are less expensive, in the long run it costs the firm money. Dollars spent with a non-contract vendor erode the financial initiatives offered by the contracted vendor.

So make sure that law firm personnel responsible for procurement understand the firm's strategic plan when making buying decisions. During the implementation of a new vendor or contract, hold weekly meetings to communicate both the operational and financial aspects of the new arrangement. At the outset, address the benefits the firm will receive with the consolidation of the firm's spending. Provide copies of the pricing, terms and conditions of the new contract and review them with all the parties involved so everyone understands fully what the firm is trying to achieve. Provide monthly or quarterly updates so all parties involved are aware of the progress toward those goals.

Rule #3 - Competition Is Good, More Competition Is Better

Surprisingly, many law firms renew contracts without examining current market pricing, including what a new vendor may offer. They may think that a contract must be a good deal because the firm's price is less than current costs. But is it? The only way to know for sure is to either get competitive proposals or have an expert benchmark the renewal price. Realistically, in order to get an accurate competitive proposal from another vendor it is necessary to structure a request for proposal (RFP). The key components of the RFP are as follows:

1. Rules for responding to the RFP

2. Contractual terms that you want the agreement to contain

3. A format for pricing that will allow an apples-to-apples comparison

4. Detailed performance standards—in other words, what you expect this vendor to do once they are awarded the contract

5. A section for vendor recommendations

A word of warning: Defining expectations clearly is crucial to the success of any vendor relationship. The basis must be laid in the RFP and solidified in the contract. To do this well requires time and a good understanding of the area under review. If a firm lacks the necessary time and expertise, it might consult with an expert who has the industry benchmarks and can determine whether the renewal offer is competitive and what other vendors would likely propose.

We recently had a client who was ready to re-sign with their current vendor when we were hired to conduct an open RFP for outsourcing services. The client was given a deadline by the vendor to sign the renewal or be removed from consideration. Fortunately the client listened to us and our mantra, "It will only get better." In the end, the firm realized an additional 11% in savings from that same vendor.

Rule #4 - You Don't Know What You Don't Know

Recently, I saw a news story on TV about companies that will buy your old gold jewelry. The reporter sent $400 worth of gold to a variety of companies that advertise on the web and in newspapers, and after a few days he received checks from these companies ranging from $26 to $315. The reporter then visited some local jewelers and received better pricing, but none offered the $400 that the gold was worth. The best offer was still 22% below market value.

The point here is that information on the value of a service or product is essential to negotiating a competitive contract. As Rule #3 suggests, relying solely on your current vendor or contract for the current value of those services is foolhardy at best. In many situations, the contract/price you are using as a basis is three to five years old–ancient in relation to the changes in technology and economic conditions that have occurred since entering into the contract. So unless a firm consults an unbiased source, it is crucial that it learn as much about the marketplace and vendors as possible. Take the time to meet with vendors one-on-one, attend tradeshows, and install technology demos on-site. The goal is to know as much about what is happening in the industry as the vendor sitting across the table from you.

Rule # 5 - Be Careful About Paying Consultants a Percentage of Savings

A rule about consultants from a consultant: Paying consultants a percentage of the savings from a project that is client-reimbursable will increase your costs, not decrease them. For example, some purchasing companies get paid a percentage of the project savings–that is, they do not get paid unless they reduce your costs. While this certainly sounds like an attractive option, in the areas of client-reimbursable charges such as overnight services and legal research, it actually costs your firm money.

As an example:

Firm A ships 10,000 overnight packages per year, at an average cost of $10 per package, totaling $100,000. It bills 80% of the costs to its clients, and the remaining 20% is charged to the firm as overhead. This is a typical situation for most law firms.

Firm A hires Company B to negotiate its overnight services contract and agrees to evenly split the savings with the company–also a common scenario–so that for every $2 saved, Firm A would owe Company B $1. Company B does a great job, lowering Firm A's cost from $10 a package to $8, resulting in a total savings of $20,000.

Initially appears that this contract was a good deal for Firm A. The charges billed to clients under the old contract were $80,000 (8,000 packages @ $10); new charges billed to clients are $64,000 ((8,000 @ $8), a $16,000 savings for clients. Under the old contract, Firm A's overhead overnight shipping charges were $20,000 (2,000 packages @ $10); under the contract with Company B, the charges are $16,000 (2,000 @ $8), a $4,000 savings for the firm. However, Firm A must also pay Company B half of the $20,000 savings, thus adding $10,000 to Firm A's share of the charges. In the end, Firm A's overhead costs have increased from $20,000 to $26,000 under the contract with Company B (although it did reduce its clients' costs).

Some law firms might charge the clients for the savings payments of $1 (charging them $9 instead of their costs of $8). However, this may be a questionable practice, based up the ABA guidelines on the recovery of costs.

The above example focuses on the financial aspect of paying a consulting company a percentage of the savings as their compensation and how it fails to benefit the firm on reimbursable expenses. But what about the decision process–do you really want someone focusing solely on the price in any type of RFP process or contract negotiation? Can you trust their advice and impartiality when you know that their entire compensation is based solely on the lowest cost? What about the cost recovery ramifications or the total

cost of ownership of the contract? While hard-dollar savings might be an appropriate part of a consultant's compensation in some situations, it might not be appropriate for it to be the sole component.

In summary, many firms are doing an excellent job of purchasing services and goods for their end users, but most likely they are still leaving money on the table. These strategic procurement tips can help you get more for your money and benefit your firm from both financial and efficiency standpoints. Hopefully the above five rules can assist you if you feel there can be improvements to your internal procurement processes. Remember that vendors may be honest and loyal and you may like them a lot, but they are still in business to make money and are focused on making a profit. No one in today's economy can afford to spend unnecessarily, so make sure your firm gets the best possible deal–every time.

Rob Mattern is the President of Mattern & Associates, LLC, an unbiased support services consulting firm that assists firms in improving their support services and the realization of their billable cost-recovery revenue.

Partner Profile

Why David Boies Left Cravath

As told to Diane Brady, Bloomberg Businessweek

Oct. 21 (Bloomberg Businessweek)–I was representing the New York Yankees against Major League Baseball [in a dispute over sponsorship rights] in May 1997 when Time Warner (TWX)–then the largest client of my law firm, Cravath, Swaine & Moore–acquired Turner Broadcasting. Turner owned the Atlanta Braves, and they didn't want their law firm representing the Yankees.

I had been at Cravath my entire career. At 56 I had a multimillion-dollar-per-year income, total job security, and the best lawyers in the country on my cases. I didn't want the firm to lose its most important client, but I didn't want to abandon Steinbrenner. The issue was raised by Time Warner (TWX) on a Friday. By the following Tuesday, I resigned. It was the only way I could be loyal to my firm and my client.

A few days after I left, there was an article about it in The New York Times. That morning, [real estate executive] Sheldon Solow, who had been a client at Cravath, called me and said, "Now you have two clients." By the end of the day, I had Georgia-Pacific and DuPont, too. The first call I made was to a brilliant lawyer named Bob Silver. Bob brought over an associate. My son Jonathan was graduating from law school, and I convinced him to come, too. By Thanksgiving, we knew this was going to be successful.

One thing that could have screwed it up would have been not spending enough time on client relationships. The hardest decisions are knowing what to take on. Most clients expect some participation from me, and I'm careful in choosing what to do. There are a few factors: my availability, the nature and importance of the case, the significance of the client to the firm, and chemistry. If I'm going to spend a lot of time with them, they have to be people I want to work with.

Law firms either grow or decline. You must recruit the very, very best people. They won't come unless they can see a path to their own professional development. I would have been happy to see us settle at 150 lawyers. We have more than 240 lawyers now, and the firm still has to grow. It's a necessary evil to attract the best people.

Professional Development

Training

Teaching Lawyers How To Fight Foreclosures

By Prashant Gopal, Bloomberg Businessweek

Oct. 28 (Bloomberg Businessweek) -- Lawyers have been traveling to a remote 160-acre farm in the mountains of Western North Carolina since 2006 to drink Scotch, network, and prepare for legal combat in foreclosure and bankruptcy cases. Groups of a dozen or so arrive about nine times a year for the four-day "boot camp" where they learn how to protect their clients' assets by exploiting the mistakes of creditors. Their instructor is O. Max Gardner III, a 65-year-old bankruptcy litigator and grandson of a North Carolina governor, who was using flaws in mortgage servicing to stave off lenders years before cases involving shoddy paperwork spurred an investigation by the attorneys general of all 50 states. Gardner charges $7,775 for the program, which includes 3,000 pages of materials, lodging, food, and unlimited wine, beer, and single-malt Scotch.

"My time with Max changed the trajectory of my legal career," says Nick Wooten, a 40-year-old Alabama attorney who shifted his focus from personal injury to bankruptcy and foreclosure after attending the boot camp in 2007. "Knowledge is power, and one thing he is able to give in his boot camp is a tremendous amount of knowledge about how the other side operates," says Wooten.

Attendees, who are admitted only after a background check confirms they don't work for creditors, travel along a gravel road to reach Gardner's farm in the South Mountains. They sleep in cabins and swap stories over meals prepared by Gardner's wife, Victoria, in the family's three-story log-cabin style house on a hill overlooking a pond. Gardner spends 10 to 12 hours each day on topics such as "Max's Favorite Discovery Devices," "Strategy to Trap Opponents in their Own Mistakes," "Mortgage Servicing Litigation: How the Legal Network for Creditors Is Organized," and "The Alphabet Problem, A to D Unlawful Transfer of Mortgages and Notes." Guest speakers at his October boot camp included a forensic accountant, a North Carolina Superior Court judge, and the former general counsel for Saxon Mortgage, now owned by Morgan Stanley (MS).

The heart of Gardner's strategy is to uncover omissions and errors in mortgage securitizations, the process in which thousands of loans are bundled into bonds and sold to investors. Securitizations are plagued by lost promissory

notes and missing or inconsistent tracking of changes in ownership of loans, Gardner says during a break at the October session. "One of my primary objectives is to give you enough knowledge so that you can understand more about the business structure and organization of the creditors than their own lawyers know," he tells a class.

He started the boot camp after piecing together evidence that lenders and servicers were relying on teams of workers-what defense lawyers now call "robo-signers"-to process thousands of foreclosure documents a day without the time to verify them. While Gardner and some of his 559 graduates have been winning settlements for years, it wasn't until Sept. 20, when Ally Financial (GJM) said it was halting some evictions, that foreclosure documentation became a national issue. "We had a steep hill to climb to convince the judges that the largest financial institutions in America were engaged in this kind of conduct," Gardner says.

Most foreclosures go unchallenged because homeowners rarely hire attorneys. That changed as judges began questioning whether banks were producing sufficient proof that they had standing to foreclose. Private attorneys working on behalf of homeowners are paid in different ways. Some are paid by clients, many of whom have cash even though they aren't making mortgage payments, says Margery Golant, a Boca Raton (Fla.) attorney who graduated from the boot camp in August 2009. If a bankruptcy court judge believes a mortgage company has submitted false evidence, the court can order the creditor to pay legal fees, she says.

Gardner says the graduates of his program act like a large law firm. Linda Tirelli, a consumer bankruptcy attorney in New York and Connecticut who attended the program in October 2008, says she has the confidence to go up against what Gardner calls "tall-building law firms" because the community of graduates located in 47 states functions as a unit, exchanging documents and discovering patterns of misconduct. "It's a fraternity," she says. "We don't see each other as competition. We want more attorneys to join, because the more we have the better."

The bottom line: Gardner is training other lawyers to challenge foreclosure proceedings–and "tall-building law firms"–in court.

Bloomberg Law Reports®

Law Firm Management

Rachael Krueger, Esq. (Editor), Lisa Cohose, Esq., Spencer Mazyck, Esq., Anthony Pacchia, Esq., Frank Quinn, Esq., Lori Wood, Esq.

If you would like to contribute to Bloomberg Law Reports, please contact: Lori Wood - Telephone: (212) 617-3526 or e-mail: lwood13@bloomberg.net

Subscription Price: Free to Bloomberg Professional Service Customers; $2500/year to non-customers.

Discounts available for volume subscriptions