

**Colleagues' Exchange:
A New Mode Of Lawyer-To-Lawyer Communication**

David R. Johnson, Esq.
David G. Post, Esq.
Ron Friedmann, Esq.

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At the time, all of the authors were with
Wilmer, Cutler & Pickering
Washington, DC

While the task of providing sound legal advice has never been more difficult, the criticism of the high cost of legal services grows louder each day. Factors far beyond the scope of this article contribute to these developments, but one fact is clear: the increasing use of technology by the legal profession has not yet generally fulfilled its promise of reducing legal costs. We believe that can soon change, because technology can overcome certain of the imperfections that currently plague the market for legal services.

Every client wants a lawyer who is both an expert on the client's particular problems and business circumstances and who can give sage advice on every legal problem the client may face. The two roles, of course, are often inconsistent: no lawyer can truly be an expert in more than a handful of legal domains, and the very act of investing in a client "handholding" role means that the lawyer has less time to develop wide-ranging subject matter expertise.

The modern multi-service law firm has developed and prospered, at least in part, because it can efficiently respond to these client needs. To the extent that both the handholder (who knows the client) and the expert (who knows the subject matter domain) practice together in a single firm, the client's search costs for the lawyer(s) best able to handle a specific legal problem can be reduced. Moreover, the firm can economically support increasing specialization (both substantive and functional) because each lawyer has access to a far wider client base than he or she could maintain individually -- and thus, by means of this feedback loop, offer clients still greater opportunities to put together the "perfect team" for any given legal problem.

The vital role of modern communication technologies in this development should not be overlooked. Search costs within firms have been lower than between firms because intra-firm communication has been more efficient. It is difficult to imagine a 300- or 400-person law firm -- even at a single location, let alone distributed among numerous remote offices -- functioning efficiently without telephone and facsimile (and, more recently, electronic mail) connections among its personnel. Similarly, firms became able to draw clients from an ever-widening geographic territory (and hence to support larger numbers of lawyers profitably, thereby increasing the range of expertise they can provide) only with the advent of inexpensive long-distance communications (and travel) linking clients with the firm (and attorneys on the road with their home offices).

No law firm, however, can credibly assure its clients that it can always bring the highest level of expertise to bear on whatever legal problems the client may encounter. When expertise is sought beyond the boundaries of individual firms, inter-firm inefficiency replaces intra-firm efficiency and the search may be ineffectual, overly costly, or both.

Outside the confines of a single firm, there is no easy way to identify the lawyers with experience and expertise in complex matters. Consequently, finding the "expert" is largely a hit or miss affair. Furthermore, even though an expert's first reaction may be the most valuable commodity she has to offer, retaining her just to provide that initial response may be quite difficult. Every "engagement" must go through a conflict of interest check that forestalls some retentions and makes all of them more expensive. While these conflict checks are obviously of critical

importance when the attorney-client relationship is going to be a long-standing one in which confidential information is freely transmitted and the client is represented in an advocacy setting, many questions from potential clients do not involve any such relationship. Law firms are not now well positioned to respond quickly and cost effectively to quick questions from not-quite-yet clients; firms tend to look for the "big case" that will occupy teams of lawyers for substantial periods of time.

Enter the Colleagues' Exchange. The Colleagues' Exchange would attempt to expand the reach of electronic mail beyond the confines of individual firms or law offices, creating links among client and law firm e-mail systems and a new electronic marketplace for "buyers" and "sellers" of legal expertise. The Colleagues' Exchange would operate as a private, shared electronic mail address, managed and administered by lawyers. The central transmission facility would be provided by a common carrier. The Colleagues' Exchange address will, at the outset, function as a "mail reflector," allowing each participant to broadcast a message to all other participants. The standard message handling facilities within most commercial e-mail systems should allow participants to forward messages from the Colleagues' Exchange mailbox throughout their own in-house e-mail system, and vice versa.

Participants would be chosen from among the premier U.S. law firms and the offices of the general counsel of major U.S. corporations. Each participating institution would be required to designate one "gatekeeper" who will serve as the point of contact between the Colleagues' Exchange mailbox and the institution's internal electronic mail system. Participants would bear the minimal cost of establishing a gateway to the central service. In order to maximize the informality of the communications, and to minimize the transactions costs associated with widely dispersed communications of this kind, all messages would be treated as non-confidential and outside the framework of attorney-client representation. Because communication over the network would be entirely "lawyer to lawyer," the full panoply of protections regarding these communications are not, we believe, required in order to insure that information is not misused or misunderstood.

The Colleagues' Exchange should allow clients and their outside counsel to find, at relatively low cost, the requisite expertise from among a vastly expanded universe of potential service providers. The Colleagues' Exchange would not replace the traditional attorney-client relationship; but it will allow "buyers" to more easily and inexpensively find information pertaining to their legal problems (as well as information on the availability of specific expertise about which they may now be unaware), and "sellers" to make more widely known the kinds of expertise they are prepared to offer and the services they can perform most effectively.

Certain characteristics of electronic mail are particularly well suited to this information search function. Most obvious is the sender's ability to instantaneously contact large numbers of people at relatively low cost. This feature alone will insure that diverse perspectives are brought to bear on any particular problem cast out into the electronic network. Knowing that a particular query has been broadcast widely, recipients are free to ignore those messages about which they have little or nothing to contribute (in marked contrast to the implied urgency of, say, a telephone call or fax transmission), and the sender, in turn, is not burdened with sifting through large amounts

of unilluminating and unresponsive information. Recipients can devote as much, or as little, time to composing responses as they deem warranted in light of the nature of the incoming message, their own experience with problems of this kind, and their own schedules.

On the basis of our experience with the adoption of electronic mail within law firms, we expect that, at least initially, message traffic through the Colleagues' Exchange would focus on finding particularized, definable expertise for which an attorney is searching in order to solve a particular problem. The ability to identify sources of expertise on specific, narrowly- drawn legal issues -- the lawyer who most recently faced a particular problem, or who has some special competence in that area -- has, at Wilmer, Cutler & Pickering, proven to be one of the most important efficiencies introduced by our firm-wide use of electronic mail.

As experience with the network develops, novel services that can only be offered in an economically sustainable way over a network of this kind -- for example, on-line negotiation or "instant evaluation" of legal positions by a panel of attorneys -- are likely to emerge. Additionally, the network might serve as a means for individual attorneys to offer their (or their firms') work product such as memoranda, outlines, checklists, or more complex electronic practice aids on an "off the electronic shelf" basis. Participants would be free to arrange transaction-specific terms on which they will provide their services, if they choose to do so. As the cost of matching client needs with attorney expertise decreased, opportunities for additional specialization among individual providers would correspondingly increase, as they become increasingly able to find outlets for those services they can perform most effectively.

Only the foolhardy would predict the precise course this new venture might take. We are, however, certain that Colleagues' Exchange and similar services have the potential to transform the legal marketplace for the benefit of consumers and providers alike, and we urge those of you who share this vision to join with us to help transform this vision into reality.