MARKETING THE 21ST CENTURY LAW FIRM

DELAWARE LAWYER

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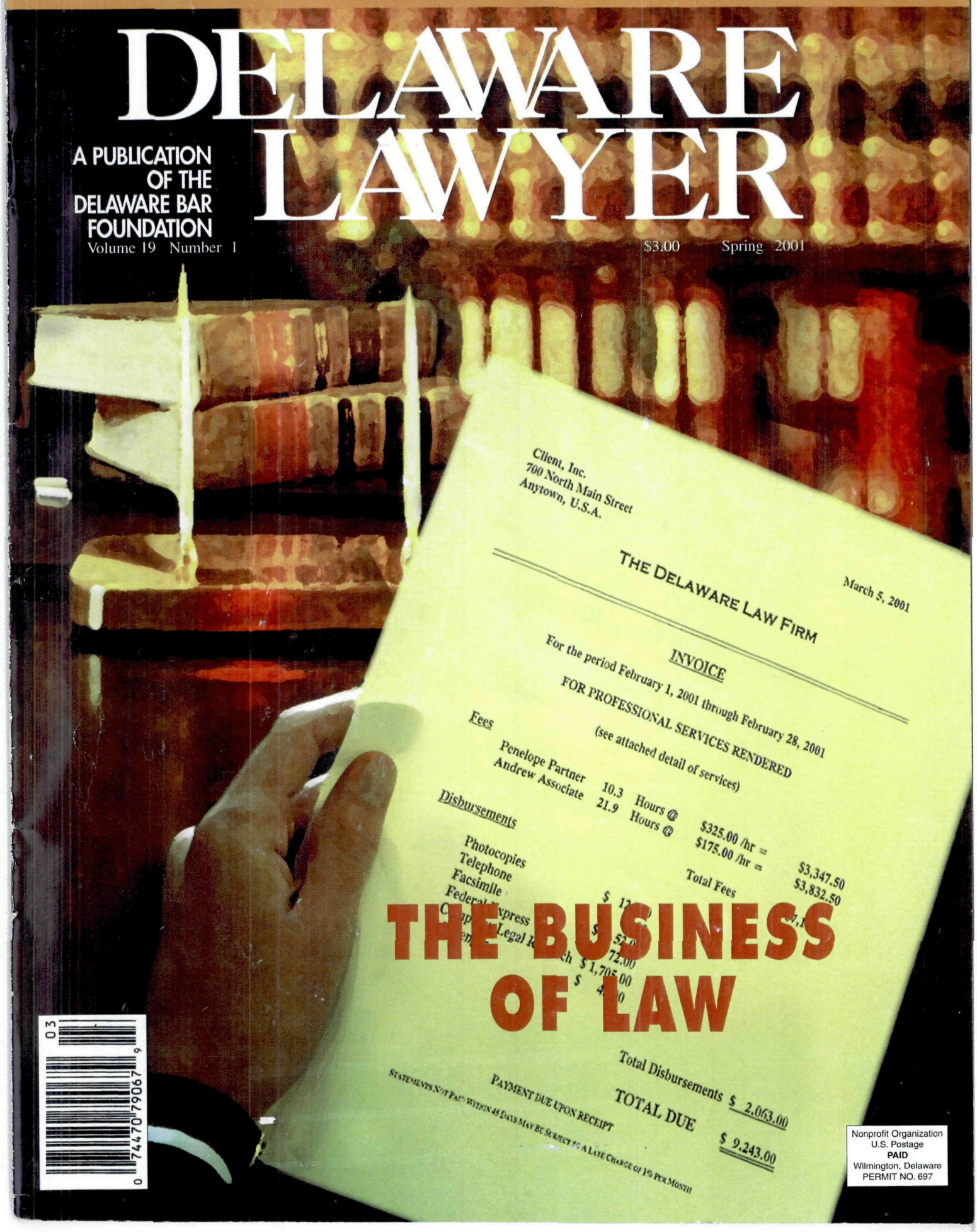

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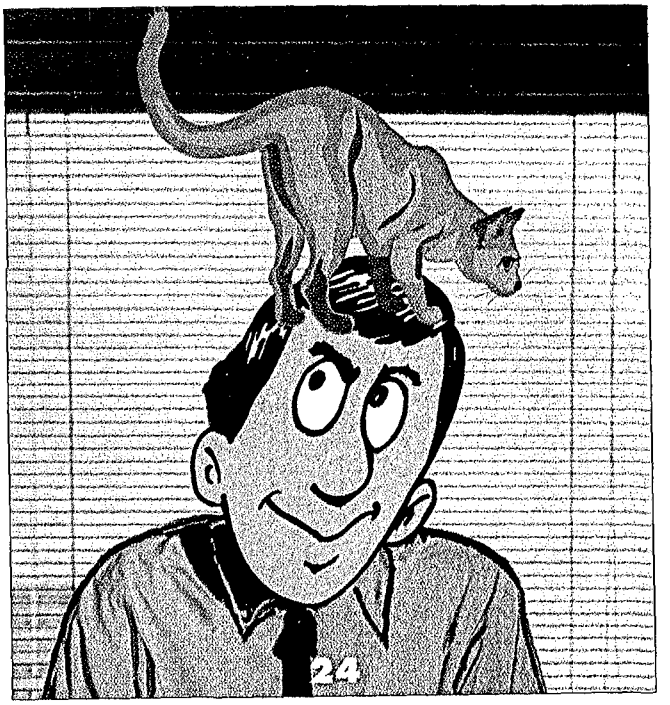

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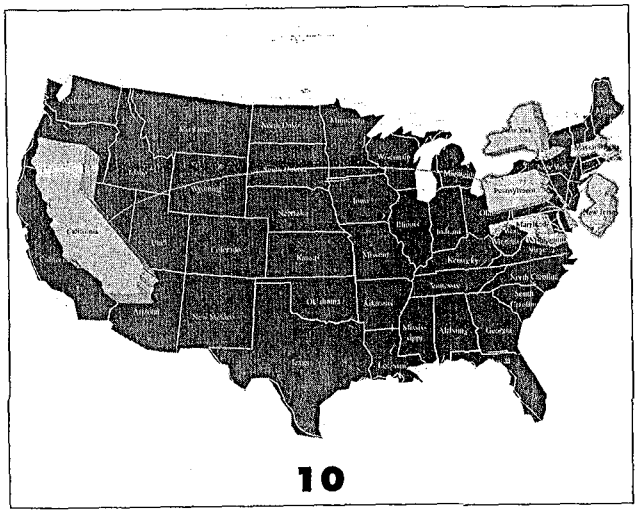

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Many roads to Delaware.

Cover photograph/illustration by Heidi Scheing

NOTE FROM THE CHAIR

There's something a little bit different about this issue. When Dave McBride (my co-issue editor) and I were searching for a theme, it occurred to us that it would be interesting to shift our focus away form the various *practice* areas of the law, and to examine instead the *business* of law in Delaware. Haven't we all known someone we thought of as a marvelous lawyer but whose business skills were less than stellar? In most cases, that type of person has trouble establishing or sustaining a law practice. In the belief that perhaps a bit of "continuing business education" might complement our CLE credits, this issue was born.

By our choice of theme (and cover), we do not mean to imply that Delaware lawyers are preoccupied with revenues and profits at the expense of their clients. To the contrary, we think the "Business of Law" theme is important because it can help negate the putative conflict between being a professional and running a profitable law firm:

> Law is, and always has been, a business as well as a profession.... Once one escapes from the clutches of thinking of "profession" and "business" as dichotomies, and comes to term with the fact that, whether we like it or not, they are joined at the hip in private practice, a refreshing set of possibilities reveals itself....
>
> ... [T]hinking creatively about the business of private law practice could strongly—and realistically—support the enhancement of professional values.... Understanding the business better and taking creative action to improve the business may ultimately prove the most fruitful approach to developing happy, healthy and ethical lawyers.

Kelly, M., Thinking About the Business of Practicing Law, 52 VAND. L. REV. 985 (May 1999).

Here, then, is our contribution toward that lofty goal: In "Marketing the 21st Century Law Firm," Heather Jefferson provides an insider's look at the various ways Delaware firms are adapting to an increasingly competitive market. Next, in "Strangers No More," Dave Swayze and Bill Manning address the business-driven phenomenon that has directly or indirectly affected the practices of most Delaware lawyers—the influx of non-Delaware firms to our fair state. We close the issue with two articles on law firm management. As the immediate past president of Richards, Layton & Finger, Alan Terrell shares his experiences in "Managing the Big Firm." The challenges of running a solo practice or small firm are somewhat different, of course, and I was privileged to speak to several of Delaware's finest such practitioners. They are truly "Small Wonders," and I have attempted to compile their candid insights into a set of valuable lessons that can enhance the practice of any Delaware lawyer.

So, even if your "spring break" is only long enough to enjoy a cup of coffee, I hope you take the opportunity to spend it with these articles.

Karen L. Pascale

Karen L. Pascale

CONTRIBUTORS

Heather D. Jefferson is the Client Services Manager for the Wilmington, Delaware office of Stradley Ronon Stevens & Young, LLP. A 1995 graduate of Widener University School of Law, Ms. Jefferson clerked for the Honorable William T. Quillen of the Delaware Superior Court and practiced corporate law prior to entering the legal marketing field. Ms. Jefferson oversees the client in-take system from the initial engagement through the billing process for Stradley Ronon's Delaware Counsel Group. She is responsible for the strategic planning, development and identification of marketing activities for the office. Ms. Jefferson is the Chair of the American Bar Association Law Practice Management Section's Young Lawyer/Law Student Division and a member of the Section's Council.

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Allen M. Terrell, Jr. graduated from Harvard Law School in 1968 and has been a member of the Delaware Bar since 1970. He joined Richards, Layton & Finger, P.A. in 1970 and for the three years ending June 2000, he served as its President.

DELAWARE LAWYER UPDATES

The Embattled Family, Vol. 17 No. 2 (Summer 1999) featured an article on redrafting the Uniform Parentage Act (UPA) by Professor John J. Sampson and Harry L. Tindall, Esq. The Uniform Parentage Act (2000) was approved by the National Conference of Commissioners on Uniform State Laws (NCCUSL) on August 1, 2000, and is currently pending before state legislatures throughout the country. Copies of the Act may be obtained online at NCCUSL's website: **www.nccusl.org**. An article on the UPA (2000) will appear in the Summer 2001 edition of *Delaware Lawyer*.

Endangered Privacy, Vol. 18, No. 2 (Summer 2000) contained an important "tear out" reference tool advising attorneys what information may be obtained from the Federal Parent Locator Service (FPLS). It details who can request information, for what purpose and how to make it. This reference tool provides the electronic address for FPLS. Since publication, the Federal Office of Child Support Enforcement (OCSE) has changed that address to **fplsaccess@acf.dhhs.gov**. As access by private attorneys to information available to state and federal child support enforcement agencies has been a topic of considerable discussion in the last year, attorneys are encouraged to review "Requests for Information from the Federal Parent Locator Service" to identify existing locate resources.

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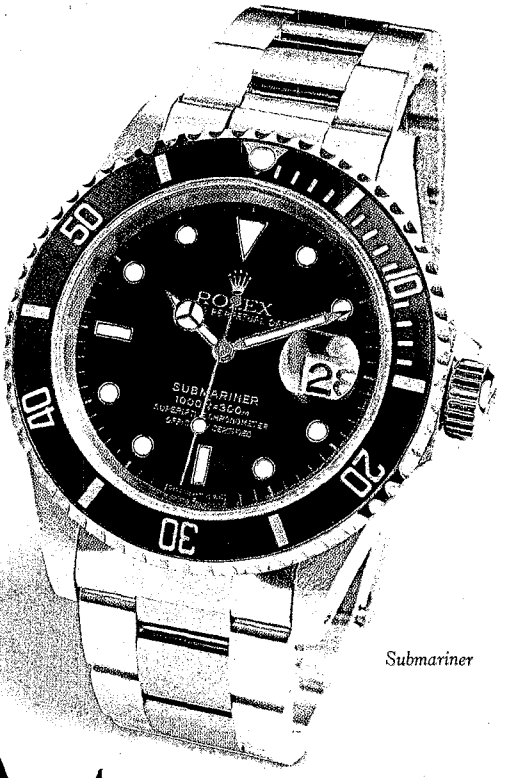

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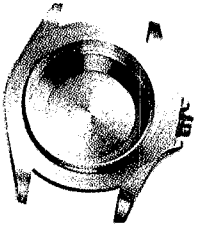

for this Submariner, is pressure-proof to 1,000 feet. Its legendary durability has made it the standard of excellence among divers, and is just one reason why this timepiece grows even more impressive the deeper you delve into it.

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FEATURE

Heather D. Jefferson

MARKETING THE 21ST CENTURY LAW FIRM

The law firm marketing field is exploding. It used to be that only the big firms, the mammoth leaders in the legal industry, called on consultants to help develop marketing strategies. Only these major firms used the Altman Weils and Hildebrandts—well known legal marketing consultants—of the world. Most law firms viewed legal marketing as too expensive, too time consuming or just plain superfluous. But in the last five years that has changed. Competition among law firms is increasing steadily due to many factors, including the globalization of the legal profession, the Internet, and the ever-present client mantra of "faster and cheaper." Merely providing good-quality legal work no longer provides a firm with the competitive edge needed to attract and keep clients. As the legal marketplace continues to evolve, Delaware law firms are asking the question: How are we supposed to generate new business and maintain our current client base? The conclusion is inescapable: Marketing is no longer an exercise for the few and the mighty.

Delaware firms, particularly those with corporate and business law practices, have enjoyed the fruits of a booming legal economy assisted by the national recognition of our corporation laws, the well-deserved reputation of the Court of Chancery and the almost "Oz-like" Division of Corporations of the Delaware Secretary of State. Similarly, the thriving bankruptcy and intellectual property areas of practice have pulled many out-of-state lawyers and firms into our jurisdiction. Even as accounting firms and banks have taken advantage of the many Delaware laws that are favorable to businesses nationally and internationally, Delaware law firms have benefitted. As Brenda Thompson, owner of Management Resources, a Wilmington-based marketing consultant to law firms, was told by at least one local lawyer, "We don't need to market, this is Delaware."

And so, year after year, more out-of-state firms have quietly entered the Delaware legal marketplace. Lawyers from old, established Delaware firms have left to open the Wilmington office of "Philadelphia, Pittsburgh and New York, LLP." As a result, quality legal work is available on any street and in any corner office in town. Marketing, and the idea of strategic planning for future business, has consequently burst onto the Delaware scene.

Marketing—It's More than Just Advertising

"Marketing," "business development" or "client development"—whatever euphemism one uses—encompasses more than just advertising. Even the term "marketing" itself is defined more broadly than ever. A firm-wide strategic plan that incorporates various marketing activities used to achieve well-articulated goals will define a firm in the public eye, conveying its character, image and philosophy. In other words, the concept of marketing is greater than publishing a firm brochure. It is greater than setting up a website or presenting seminars. It is greater than throwing a holiday party for clients or drafting practice group descriptions. Yes, all of the above are marketing activities. However, if those activities are not formulated and executed within the framework of an overall strategic plan, then they are a waste of firm resources.

What About Delaware?

So, what are Delaware firms doing in terms of marketing? Many firms continue to attract business because of the well-known Delaware practice in, for example, corporate work, complex coverage issues, bankruptcy, intellectual property litigation and alternative entity work. Then there is the local

Delaware work: real estate, personal injury and representation of local businesses. These different types of practice merit very different marketing philosophies. Variations in firm size also play a role in the quality and quantity of marketing efforts. These factors must be reflected in the firm's strategic plan.

The Firm Brochure

At its most basic level, law firm marketing usually involves some sort of firm brochure that highlights the firm's personnel and capabilities. A brochure is one of the ways a firm conveys a statement about itself and its people. Either inadvertently or by default, however, the brochure (rather than an overall strategic plan) often sets the tone for the rest of the firm's publicly disseminated materials. Frequently, only one or two partners push for the brochure, and it gets designed in a vacuum without due consideration of the firm's overall character or vision for the future. Thus, the firm brochure ends up defining the firm's image, rather than the firm identifying its strengths and using the brochure as part of a strategic effort to position itself in the marketplace.

In some contexts, a firm brochure may not be a useful marketing tool. For a solo practitioner, a personal résumé may be all that is needed. One practitioner commented that she has never been asked to provide any type of firm brochure. She establishes credibility and trust by meeting her prospects face to face and through word-of-mouth referrals.

Welcome to My Website

As Delaware firms become more and more savvy in their marketing activities, websites are quickly upstaging firm brochures. Potter Anderson & Corroon's new website is the "ether version" of its offices, according to Mark A. Morton, chair of the firm's Client Development/Business Development Committee. The firm hired a Washington, D.C. area website designer to provide a very distinctive look and feel to the site. From Morton's perspective, the firm website should be a reflection of the lawyers and provide the same kind of experience as walking through Potter Anderson's front door.

Another Delaware law firm also sees the website and its capabilities as going well beyond a "firm brochure" function. As Ed McNally, managing partner of Morris James Hitchens & Williams, looks to the future, he sees his firm's website as a way to interact with clients through the use of an "extranet," thus transforming the website from an information-only model to a functional model. "It is an offensive move to have a website today," says McNally. McNally is right on target in today's legal marketplace. More and more, prospective clients are turning to the Internet to check out referral names and firms. Having a website to confirm a referral can make the difference for an undecided client.

What About Good Old-Fashioned Advertising?

Even advertising seems to have its role in the Delaware legal marketplace. According to Brenda Thompson of Management Resources, "Advertisements are most effective when they are well-designed, informative and have contact information." She has seen many legal advertisements which fail to give the reader any information on how to contact the firm. Certainly, advertising can be aimed to bring in business as well as to create awareness of the firm and its services. However, in Thompson's view, advertising must be part of an overall strategic plan, not run "on an ad hoc basis."

Many corporate and specialty boutiques advertise in some manner in national legal publications. Although it is difficult to rate the effectiveness of a particular advertisement, firms such as Morris James Hitchens & Williams are encouraged by positive client feedback. Charles Harvath, firm administrator for Morris James, says he has received favorable comments on the firm's advertising campaign in national periodicals "from as far away as London and Canada."

But regardless of whether a firm chooses to advertise, marketing remains a vital function. Today, even law students are learning about marketing. Widener University School of Law offers a Law Practice Management course intended to ward off practice mismanagement. According to Marion Newbold, dean of students for the law school, and one-half of the team that teaches the course, "The law school recognizes the importance of exposing students to business principles, due to the ethical obligations of the profession." Every lawyer remembers his or her professional responsibility class that included a section on advertising and solicitation. How many of us really thought we would ever have to revisit the subject after the bar exam? For many Delaware lawyers, that day has clearly arrived.

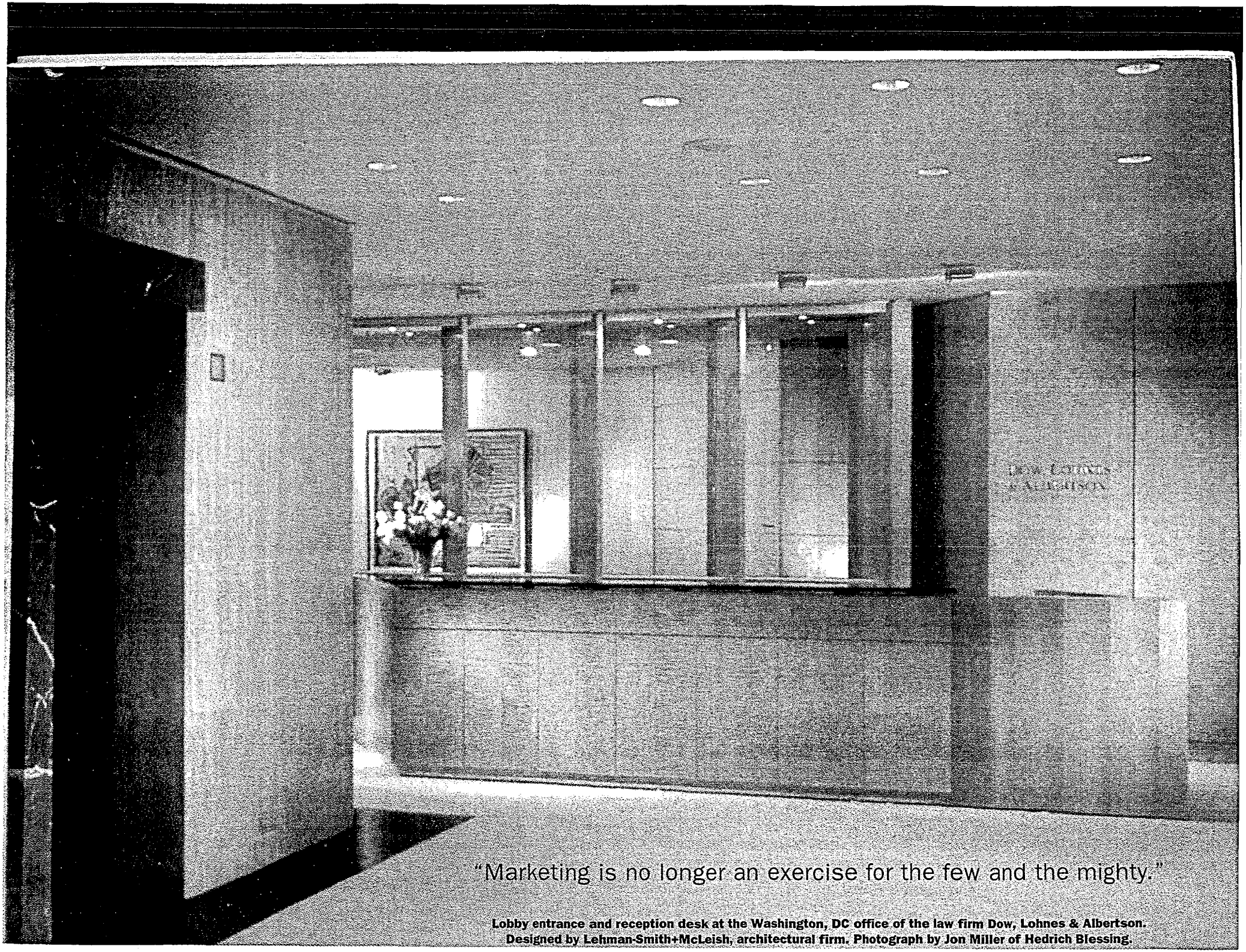
The Password Is: Referrals

Interestingly enough, Stewart & Associates, a corporate and tax boutique firm with a national Delaware practice, does not advertise at all. But then again, if your website is "Delawarecorporatelaw.com," why would you? According to Dawn B. Kilcrease, a director with the firm, there is no need to advertise. Most of the firm's work comes through referrals from around the country and abroad, including banks and Big Five accounting firms. Kilcrease's firm finds the best way to "advertise" is to market directly to its referral sources.

Other Delaware attorneys agree that current clients are a firm's best source of new business. One solo practitioner with an associate forbids any advertising or marketing, relying instead on "word-of-mouth" referrals.

The Cutting Edge: Law Firm "Branding"

Some firms, especially the out-of-state firms with Delaware branch offices, have gone beyond mere advertising to a more sophisticated form of marketing called "branding" (or, as the industry professionals call it, "an integrated marketing campaign"). The title of Saul Ewing's branding program, "Thinking Ahead," is not just a slogan "but the way the firm wants its clients and the community to perceive it," says Tom Kane, the firm's director of marketing and strategic planning and a former practicing lawyer with nineteen years in marketing. Under the firm's action program, each attorney is encouraged to make one call per week to a client or contact with a helpful idea—unrelated to a current matter—at no charge to the client. The firm expects that this will reinforce the brand, by furthering the client's perception that the firm is, in fact, thinking ahead. Kane, along with a member of the firm's Marketing Committee, reviews each attorney's efforts at fulfilling the branding program. Formerly "Lawyers Thinking Ahead," the firm dropped the "Lawyers" in recognition that the firm as a whole can think beyond a client matter or the client's current engagement and provide value. All advertising



"Marketing is no longer an exercise for the few and the mighty."

Lobby entrance and reception desk at the Washington, DC office of the law firm Dow, Lohnes & Albertson. Designed by Lehman-Smith+McLeish, architectural firm. Photograph by Jon Miller of Hedrich Blessing.

is designed to be part of the firm's overall strategic plan, to be perceived as "Thinking Ahead."

The Marketing Professional

Hiring a marketing professional or a consultant is another technique to move a firm towards the cutting edge. Thompson maintains that the right time to hire a marketing professional is really a judgment call on the part of firm leadership, reflecting a commitment to enhance and grow the firm's business. The decision should not be based on firm size or number of timekeepers. Saul Ewing's Tom Kane agrees that the time to hire a marketing professional is when a firm opens its doors. "That person doesn't have to be hired in an in-house position," Kane adds, but can be an outside consultant. Currently, there are only a handful of in-house marketing professionals employed by Delaware law firms. Yet a number of firms have hired outside consultants to develop and coordinate certain marketing activities, and some firms might consider hiring an in-house person in the future.

Defining the role of an in-house marketing professional is the most important decision in the hiring process. Some law firm management structures will not support the concept of turning over marketing decisions to a marketing professional. In that instance, a firm might want to start with a coordinator-level position to provide administrative support. When a firm does commit to hiring a senior-level marketing professional, the firm must be ready to provide that professional with the right information to do the job properly. "Marketing encompasses everything from business development to compensation systems to staffing," says Thompson. Ultimately, a senior-level marketing professional is a strategic partner in the business, just like a CFO, accountant or executive director.

"Marketing for Dummies": What Every Firm Can Do

Admittedly, only a few law firms have the resources in time, money and human capital to develop and execute an integrated marketing campaign. But there are many routine activities that every firm can do to optimize its marketing efforts. For instance, every firm should have an electronic contact database. Paper Rolodexes are a thing of the past. Today, with Microsoft Outlook, GroupWise and Palm Pilots, contact databases are easy to keep. For those firms on the cutting edge, sophisticated marketing databases such as Interaction or Elite's Marketing Module provide functionality well beyond an electronic Rolodex. No matter what system is used, contact database information should be networked so that all attorneys can view these relationships. The database contacts should be categorized as either clients, referral sources, prospects or professional colleagues. Then, whenever the firm decides to write a newsletter or present a seminar, it can easily identify those contacts who might be interested.

More and more, prospective clients are turning to the Internet to check out referral names and firms. Having a website can make the difference for an undecided client.

Firms should also know who their clients are in terms of geographic location, industry or SIC code, and the type of legal service the firm provides. This information can be captured during the client intake stage or as part of a conflicts clearance process. Laying hands on this information can be critical if and when management decides to develop a strategic plan for the firm. Keep in mind that client analysis is an ongoing marketing activity. This information will help the firm choose seminar topics, determine content for newsletters, identify niche areas and uncover firm strengths. It can be very useful for preparing Requests for Proposals as well.

Every firm needs to be aware of where its work is coming from and who its referral sources are. Stewart & Associates, for example, has identified its referral sources and works to maintain these relationships. Even small firms and solo practitioners need to have this type of information at their fingertips. Again, this information can be distilled from client intake forms or new case memoranda. One Delaware insurance defense firm recognizes the critical importance of maintaining good contacts with the decision-makers who hire Delaware lawyers, particularly as more out-of-state firms open Delaware branch offices. "Some of these Philadelphia firms have better relationships with the insurance companies," commented one attorney whose practice consists of representing national insurance companies. If the out-of-state firms can now handle Delaware work, the Delaware firm must maintain its relationships, or it could have an impact on the firm's bottom line.

As a firm begins to implement these basic marketing activities, patterns will begin to appear. By understanding the demographic makeup of its clients and who is referring those clients, a firm can best determine where to spend its marketing dollars. Then it is poised to undertake more sophisticated marketing activities. Client surveys are an excellent way to get useful feedback. Any lawyer who just assumes he or she knows what a client prefers in terms of delivery of legal services is probably wrong! Surveys can be very informal—performed over lunch or a visit to the client's office—or extremely formal, using a written survey prepared by a consultant. Personal marketing plans can be used to gather information regarding the marketing activities of individual attorneys. The information can be coordinated for maximum effect and minimum expense. Nonbillable hours spent on the marketing function can be tracked to determine a return on the firm's investment.

The moral of the story is clear: No matter the size of your law firm or the nature of its practice, these basic information-gathering and tracking activities can help you to formulate an overall strategic plan, and to successfully market the Delaware law firm into the 21st century. ◆

FEATURE

David M. Swayze
William E. Manning

STRANGERS NO MORE: THE DELAWARE OFFICE OF THE NON-DELAWARE FIRM

In the Beginning

The migration of non-Delaware law firms to Delaware's shore began slowly but auspiciously in 1978 when New York-based corporate and commercial law titan Skadden, Arps, Slate, Meagher & Flom opened its Wilmington office. In what would become a common pattern among the other pioneers that settled in Delaware from 1978 to 1985, Skadden built its Delaware presence around a cadre of well-established and highly regarded Delaware practitioners: Rod Ward and Steve Rothschild, together with two of their proteges, Dave Ripsom and John Small, all plucked from Prickett, Ward, Burt & Sanders. Later, Irving Shapiro, the retired CEO of the DuPont Company, would also join the Skadden ranks. When we said auspicious, we meant auspicious.

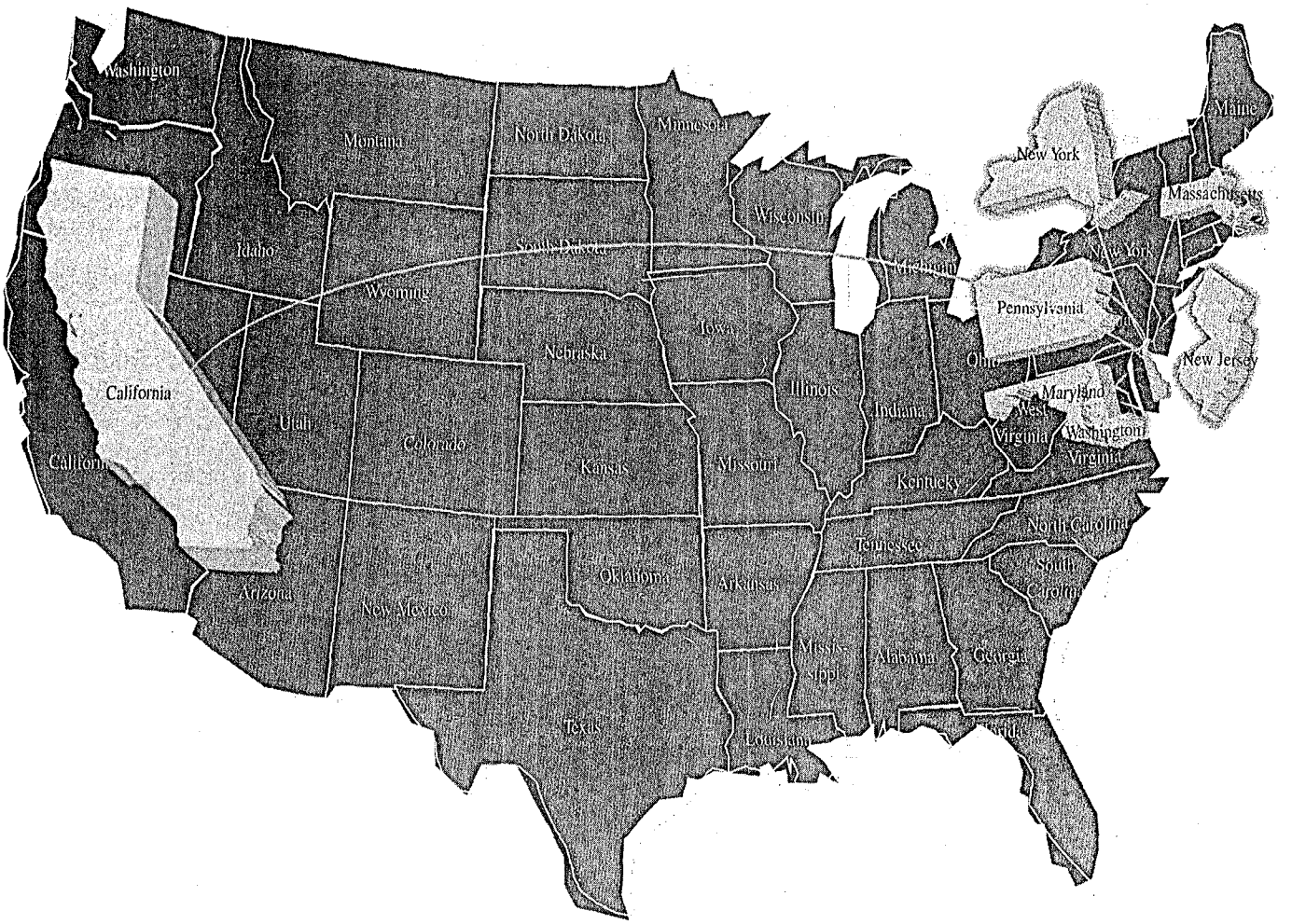
After Skadden, New York firms sat on the sidelines while a host of major Philadelphia firms took their turns in establishing a Delaware beachhead. In 1986, your authors and David Ripsom joined two lawyers from an earlier and unsuccessful Wilmington office of Obermayer, Rebmann, Maxwell & Hippel in forming the Wilmington and Dover offices of Duane, Morris & Heckscher. Pepper, Hamilton & Scheetz and Saul, Ewing, Remick & Saul soon followed.

What had been merely a trickle of non-Delaware law firm immigrants quickly became a torrent. Today, there are no fewer than 110 law firms with offices in Delaware whose partnership or limited liability company claims another state as its home address. Practically every major Philadelphia firm is here, as one might expect. But, in addition to New York and Philadelphia, originating venues include Baltimore, Washington, DC, a number of New Jersey cities, Boston, and even Los Angeles. Most, to be sure, are mere outposts, with between one and four lawyers in residence. Other than Skadden, very few have grown beyond 10 lawyers. Yet every firm had an economic reason or reasons for coming to the First State, whether valid or not. This article examines these economic reasons, and suggests some economic and due diligence "rules of the road" for the benefit of both non-Delaware firms that are considering a Delaware presence and Delaware lawyers who might be considering practicing law with one of those firms.

One postscript to this preamble: As the influx of non-Delaware firms progressed, Skadden was not followed (except for two or three one-person outposts) by any of the other major New York corporate firms. With the demonstrable success of Skadden's Delaware operation, one might ask why. Read on.

Why They Came

The decision by a "white shoe" New York firm, heavily engaged in merger and acquisition litigation and thus no stranger to the Court of Chancery, to establish a physical beachhead on the once-exclusive turf of Wilmington's largest and most prominent firms, sent shock waves through the Delaware bar then, and tremors remain. But that decision had solid, and indeed conservative, economic underpinnings. First, Skadden made the wise decision to join, rather than compete with, "the club" by enticing leading members of the Delaware corporate bar to found its Wilmington office. Second, Skadden's omnipresence in the merger and acquisition transaction and litigation arenas makes the firm beholden to no one



In addition to New York and Philadelphia, originating venues include Baltimore, Washington, DC, a number of New Jersey cities, Boston, and even Los Angeles.

(including any indigenous firm) in assuring an adequate Delaware case load. Third, Skadden has a national corporate practice, and its Delaware office provides a strong cadre of litigators whose skills are exported to cases throughout the United States where Delaware corporate law issues are *sub judice*. Finally, Skadden appears to have no difficulty importing New York hourly rates (and—shudder—New York associate salaries) to its Delaware business.

If the Skadden model is so successful, why then have not other "white shoe" New York firms followed suit? The first reason is obvious: Few, if any, other New York firms have the dominant position that Skadden holds in the corporate marketplace. Thus, few could generate the critical mass of high value litigation and transactional work in a Delaware office. Second, many of the rival firms have correspondent relationships—a source of referral business—with indigenous Delaware firms which would dry up with their establishment of a Delaware office. Third, many of the "white shoe" firms reason that they really do not leave that much on the table by not having a Delaware office, because their lawyers routinely sit as first chair in the Court of Chancery or the Delaware District Court, and all do a vibrant business in Delaware opinion work, notwithstanding the lack of a Delaware presence (to say nothing of a certificate of admission to the Delaware bar). Finally, the major New York corporate/commercial firms have almost without exception aggressively turned their attention (and their capital) to international practice as they seek a larger return on investment associated with helping their clients open and establish markets outside of the United States.

In contrast to the Skadden model, the prevalent economic model relied upon by most non-Delaware firms in establishing a Delaware presence is represented by the principal Philadelphia firms. That model has four basic premises: first, that the vibrant Delaware legal market represents the logical "next step" for the regional firm looking to expand geographically; second, that there is almost unlimited potential for new entrants in certain practice areas (bankruptcy and intellectual property in the Delaware District Court, for example); third, that with the near demise of state boundaries as a business factor, the multistate firm can offer sophisticated regional and even national legal services to Delaware clientele doing business outside of Delaware; and fourth, that the lawyers in the firm's offices outside of Delaware have an economically significant volume of Delaware business (holding company, corporate documentation and opinion work, and Delaware business trusts by way of example) that they now refer to indigenous Delaware counsel, and that represents money left on the table. Each firm that has adopted this multi-faceted model places different weight on each of these factors, depending upon the nature of its business. For example, boutique firms such as Fish & Richardson, P.C. (intellectual property) and Pachulski & Stang (bankruptcy) are focused almost exclusively on the pursuit of their specialties in the Delaware District Court, while Saul, Ewing, Remick & Saul, with its real estate and business practice, and its specialty in municipal finance, has found value in all four factors. Most other entrants fall somewhere in the middle of this continuum.

The bottom line is that non-Delaware firms have a number of paths to profitability through a Delaware office.

The bottom line is that non-Delaware firms have a number of paths to profitability through a Delaware office. After two decades, many of them have discovered one or more of those paths by knowing their strengths, adapting those strengths to the Delaware market, and selecting the right indigenous and imported personnel. The harrumphs in the early years from the indigenous population about carpetbaggers and the need for new letterhead rules have dissipated as the practice of law in Delaware becomes a regional and national practice. Once regarded as having Liechtenstein-like eccentricity, "Wilmington" now appears in neat columns on firm letterheads listing cities throughout the world, and with sufficient economic clout to explain why.

Why Not to Come

If there is one economic rationale for a Delaware presence that has not proven itself, it is that a non-Delaware firm should follow a major client to Delaware or risk losing that client, or at least a major piece of its business. Two highly regarded firms came to Delaware principally for that reason—Buffalo's Phillips, Lytle, Hitchcock, Blaine & Huber and Baltimore's Semmes, Bowen & Semmes. The clients that brought them to Delaware are now gone, and so are they.

A Primer for the Non-Delaware Firm Considering a Delaware Office

If you are a non-Delaware firm considering a Delaware office:

1. Honestly appraise what value your firm brings to the Delaware marketplace. Is the practice area you plan to exploit really underserved? If not, are your practitioners so good that they will likely grab an economically significant amount of the present business? If the honest answer to either question is "no," don't come.

2. Build your Delaware practice around one or more "big foot" Delaware practitioners. No matter how able the talent you plan to import, an institutional understanding of the judges before whom you must practice and the lawyers you must practice against, and the lore regarding both, is indispensable. Having the respect of the local bench and bar doesn't hurt, either.

3. Do not build any significant referral business into your business plan. If there is one constant underlying the Delaware practice of a non-Delaware law firm, it is that many indigenous lawyers will sacrifice their eldest children before they will refer a matter to you. This phenomenon provides unvarnished proof that the indigenous firms regard the immigrant firms as an omnivorous competitive threat. (It is, however, our experience that Delaware lawyers who practice with non-Delaware firms are entirely deferential to pre-existing relationships

between client and Delaware counsel. Hence, we regard the defensive angst among indigenous lawyers with wonder and amazement.)

4. Do not count on making a profit during the first year or two of practice, no matter how vibrant your proposed areas of practice, and no matter how solid the historical book of business of your Delaware hires. Even if your business plan proves out, your new office has no aged receivables to collect (unless you are swallowing a local firm whole), and no significant cash flow for at least the first ninety days. Additionally, start-up expenses rival those in much larger commercial markets because of the squeeze on class-A office space in Wilmington and the airtight labor supply for both lateral attorneys and non-legal staff.

5. And, speaking of expenses, begin with a three-year plan. Amortize all start-up expenses over that period (or longer), and, if you are planning a major presence at start-up, consider borrowing a portion of operating expenses—even partners' salaries—to mitigate dilution of your firm's bottom line. Nothing will depress the "new office enthusiasm" more than the knowledge that this year's partner compensation will be reduced thereby. Talk about starting with a target on your back....

6. Do not assume that you can charge major market hourly rates to the preponderance of Delaware clientele. Sure, you may be selling a level of expertise in some exotic specialty that is not otherwise available in the Delaware bar. Sure, you are only asking that the Delaware client pay the same freight for that specialized skill that your clients in other jurisdictions pay. It matters not. You are offering the service in Delaware, and prevailing Delaware rates will generally trump imported rates. (This is why you seldom see Skadden chasing locally derived business: no need to take a haircut if you don't have to.)

A Primer for the Delaware Practitioner Who Is Considering Joining the Delaware Office of a Non-Delaware Law Firm

1. If your current book of business depends to any significant degree on referrals from indigenous Delaware firms (particularly in the corporate litigation and transactional areas), see paragraph 3 above and stay where you are.

2. Ask yourself what added value to your established practice will likely occur as a result of your association with the non-Delaware firm. Is the firm leaving money on the table in your practice area because of its inability to service Delaware clients? Does the firm offer some caché, or special marketing advantage, or measurable synergies that will likely enhance your practice? If the answer is "yes," is the projected enhancement enough to overcome the dislocations of establishing a new office?

3. Ask hard questions about the degree of commitment which your prospective non-Delaware employer has for its Delaware office. Does the business plan parse? Are budgets realistic, particularly on the cost side? Do the marketing and growth plans for the Delaware office seem tentative? If the firm's business plan is designed primarily to assure that the firm can bail with a minimum of fuss and bother, stay where you are, or go elsewhere.

Do not accept on faith the representations of the principal recruiters of your prospective firm regarding how wonderfully you will fit into its culture.

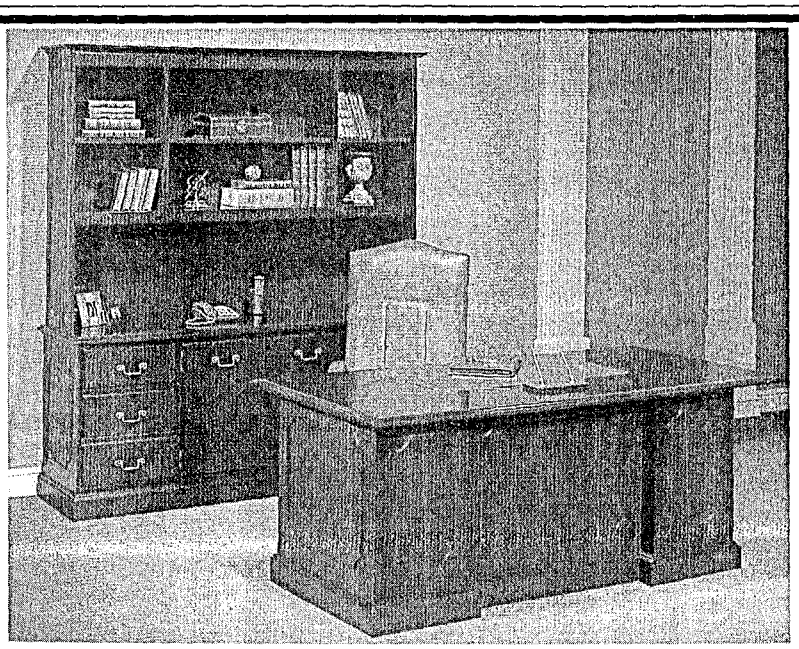
4. Do not accept on faith the representations from the principal recruiters of your prospective firm regarding how wonderfully you will fit into its culture, and how collegial you will find your new comrades. (In fact, if you hear the word "culture" more than three times in the first conversation, run.) Carefully test such representations by interacting with as many of your prospective colleagues as possible, and pressing as many knowledgeable outsiders (particularly former lawyers at the firm) as you can find for a candid assessment. Also, most established regional and national firms have a reputation in their marketplace. While this too should be tested, our experience is that the common perception of a firm usually has a reasonable basis in fact.

5. If discussions are serious, conduct a thorough conflicts check immediately. Multistate firms have very large and diverse client bases. It will surprise you to discover the number of your clients with operations outside of Delaware who appear in the client database of the firm with whom you are talking. You need to know from the outset whether such listings show your clients as mutual, or as adversarial. Where your current clients show up as clients of your prospective new firm, you may want to discuss compensation related issues such as origination credit, billing credit and responsibility etc. When your biggest client turns out to be adverse, reach a very clear understanding of how your important relationship can be preserved and be prepared to discuss it with your client before signing on.

6. Understand what it is that makes you valuable to the non-Delaware firm, and understand how you will benefit if that value is realized. For example, if your value is to service the Delaware business of lawyers from the firm's non-Delaware offices, but the firm principally compensates its partners based upon the business they originate rather than the business they service, you are not a fit. Look for a linear relationship between the value you will add and the degree to which the compensation scheme of the firm rewards that value.

7. Finally, be certain that the non-Delaware firm will respect and support your autonomy to conduct yourself and your practice with the civility and collegiality that are hallmarks of the Delaware bar. While we Delaware lawyers may puff a bit too much about our distinctively pleasant relationships among bench and bar, we really do have a nice thing going here and multistate practice should not change that. Your new partners need to understand this.

8. Do you want to run an office—administratively? If so, determine whether you will have the necessary authority and time. If not, make sure



some administrator at your new firm can ensure that (assuming this is a "beachhead" situation) offices are secured, computers installed and networked, secretaries are welcomed, phones ring when clients call, announcements are mailed, press releases issued and spouses given the correct health insurance information. If there is such a person, we recommend shameless fawning and a case of thirty-year-old scotch.

Conclusion

Using various iterations of the multi-factor economic model described herein, non-Delaware law firms have established a significant and profitable beachhead in Delaware. To date, the profitability of these firms has not come at the expense of indigenous corporate and commercial firms, who continue to parlay good lawyering and a tradition of enduring correspondent firm relationships throughout the United States into solid franchises that have shown little vulnerability to the foreign firm onrush.

To date, the profitability of these non-Delaware firms has not come at the expense of indigenous corporate and commercial firms.

If anything, the growth in foreign firm presence should accelerate, muted only by a possible downturn in the national economy. This is largely because the disciplinary rules governing multi-jurisdictional practice are in flux, and the trend is toward their relaxation. Consider, for example, the recommended change in Rule 8.5 of the Model Rules of Professional Conduct as proposed by the

American Bar Association Commission on the Evaluation of the Model Rules of Professional Conduct (Ethics 2000) (chaired by our own Chief Justice E. Norman Veasey), which would create four "safe harbors" for a lawyer practicing outside the licensing jurisdiction. In the same vein, President Dennis Schrader of the Delaware State Bar Association has recently established a committee of the Association which will evaluate and make recommendations regarding changes to the Delaware Lawyers' Rules of Professional Conduct as they affect multi-jurisdictional practice. While the changes that result from these initiatives may amount to little more than squaring the

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rules governing multi-jurisdictional practice with the realities of the marketplace, they nonetheless presage a continuing evolution of the practice of law in all but a few localized practice areas towards a national practice. Fortunately, the Delaware bar has already demonstrated its capacity to take these changes—at least economically—in stride. So far, so good.

As for your authors, although members of indigenous firms occasionally characterize us as being members of some foreign culture, we are not. Instead, we are—by training and heritage—lawyers steeped in the remarkable traditions and ways of the Delaware bar, and proud of it. ◆

Photograph by Heidi Schoing

Karen L. Pascale

SMALL WONDERS: LESSONS FROM DELAWARE'S SMALL FIRMS AND SOLO PRACTITIONERS

The jury had been out for three days. Millions of dollars were at stake, and the plaintiffs' attorney was getting nervous. He had tried the case single-handedly for five weeks against three defense attorneys. His clients had already turned down a settlement offer which was larger than anything he had ever recovered in his solo practice. He had taken on this case after several other attorneys had failed to get it to trial. The case was a huge gamble—was it mistake? Had he gone out on a limb, and expended untold hours and effort, all for nothing?

The jury returned. Verdict: for the defense.

Welcome to the world of the solo and small-firm practitioner, which can sometimes make "Survivor" look like a walk through Brandywine Creek State Park. Darryl Fountain wasn't laughing at the time, but after years of reflection the Wilmington-based solo has come to realize that despite the loss at trial, his gamble on the multimillion dollar case actually paid off in the end. "It was a dark moment on the surface," he admits. "But what had happened, and I didn't realize it at the time, was that my career had jumped into a different stage. I had shown that I was not afraid to try any case, no matter how big, no matter what the problems were, against any defense firm." With his new credibility and confidence, Fountain's practice started to take off—and it's still growing.

What leads some lawyers, like Darryl Fountain, to seek out the tremendous risks and even greater rewards of solo and small-firm practice? Former Delaware State Bar Association president and longtime solo practitioner Harvey Rubenstein offers some insight: "It's a combination of experience and ability. I think the first thing a lawyer has to do is to understand him or herself, to figure out who they are, what it is they want. Do they really have the personality to be a member of a large firm and work in a specific legal area for years and work long hours and probably receive substantial income? Or is their personality such that they rebel at that kind of thing? Do they really need to have the luxury of making their own decisions in their own time? And if they do have that personality, do they have the discipline to apply to it?"

There is no single formula for building a successful solo or small-firm practice. Nevertheless, my informal survey revealed that these types of practitioners share certain fundamental skills and attitudes. Do you have what it takes to outwit, outlast, and outlawyer the large-firm masses?

Lesson 1: Do a Few Things, Very Well

It's more than just a rumor. The days of the solo or small-firm "general law practice" appear to be over (or at least numbered). Harvey Rubenstein recalls that when he started practicing law in the late 1950s, lawyers who were sole practitioners would take on just about any type of matter. No longer. Today, he notes, "You have solo practitioners who are virtually specialists." Rubenstein, whose practice concentrates on plaintiff's personal injury and workers' compensation matters, counts himself among the new breed of specialists. What forces have led to this sharp and steady trend towards specialization? "Law has become much more complicated than it was years ago," says Rubenstein. Beverly Bove, who confines her two-attorney practice to plaintiff's personal injury work, agrees. "I think it causes a big business problem for people who are in small firms and try to dabble" in various areas of the law, says Bove. "The client gets short shrifted, because it's virtually impossible to keep up with that many areas of the law. Things fall through the cracks." Indeed, among the lawyers I spoke to, there is a general consensus that the increasing specialization of solos and small firms serves the public interest, because lawyers

are more likely to be practicing within their areas of high competence. As another plaintiff's personal injury attorney, small-firm practitioner Joe Rhoades, put it succinctly: "I have limited my practice to nothing but what I do well."

How does a solo or small-firm lawyer choose one practice area, or a handful of areas, in which to specialize? For some, like Andy Aerenson, it is a natural progression. When he left the Wilmington firm of Ashby & Geddes to strike out on his own several years ago (he's now in partnership with his father), he was doing everything from litigation to collections. But real estate work appealed to him, and he came to realize he wanted to do more of it. With hard work (and some help from a robust economy), his real estate practice grew, and he was able to phase out the non-commercial aspects of his practice. For others, like Wilmington solo Dan Hogan, it is partly a process of elimination. As the son of a lawyer, Hogan remembers the late-night and weekend phone calls from his father's domestic law and criminal defense clients. Having observed firsthand the way those types of matters can impact a lawyer's personal life, Hogan opted to go in a different direction, concentrating on real estate, foreclosure, bankruptcy, and plaintiff's personal injury work. Peter Hess parlayed a longtime interest in shipwrecks and scuba diving and into a solo practice focused almost exclusively on maritime law. ("After I bring a lawsuit, I get to bring a wetsuit," he jokes.)

A related (and perhaps more critical) question is: How do solo and small-firm lawyers gain the necessary expertise in their chosen practice areas? Seminars and treatises can be helpful, but by and large, most solo and small-firm practitioners have learned the art of lawyering from other lawyers. Very few folks hang out a shingle immediately after graduating from law school, and with good reason. "It's hazardous," says Harvey Rubenstein. The importance of mentors cannot be underestimated. Andy Aerenson insists he can always spot the solo or small-firm lawyer who does not have a mentor to lend instruction and guidance. "They're sometimes missing the obvious," observes Aerenson, who notes that such errors are to be expected from self-taught attorneys who are still low on the learning curve. "I've got to believe that young electricians without mentors get shocked more often than young electricians with mentors." Regardless of whether they are fortunate enough to have a mentor, Harvey Rubenstein strongly urges solo and small-firm practitioners to take advantage of continuing legal education programs such as Judge Bifferato's Superior Court Trial Practice Forum (which is free), and to build seminars and self-educational activities into their schedules. "You have to make the effort," says Rubenstein. "You can't say 'I'm too busy."

Lesson 2: Pick the Right Clients and Cases

Any client is better than no client at all, right? Wrong. Here's the harsh truth: If you do not learn the art of picking the right clients and cases, your practice is unlikely to flourish. Listen to Andy Aerenson: "Larry Ashby gave me the best piece of advice when I left Ashby & Geddes. He said, 'No matter how early in the process you are and how hungry you are, don't take the bad cases. They will still be bad cases when you get busy, and then you're going to have good cases you can't adequately service because you're burdened with these bad cases. So always be selective.'" Wilmington solo Lee Goldstein agrees: "It's a matter of being smart up front, to know how much of a time investment is required versus what the return is likely to be. When you're on your own, you've got to constantly be making those decisions, or else you're not going to survive." Similarly, Darryl Fountain believes that "the biggest pitfall for a young lawyer is to accept cases without looking at the time that will be required to turn over an acceptable result."

You have the freedom to say 'no' to the potential client who seems to have unreasonable expectations or who just makes your skin crawl.

Like so many things in life, it all boils down to experience and good judgment. For plaintiff's attorneys, "You have to know the law, number one," says Beverly Bove. "You have to know how a jury is going to respond to a case." Darryl Fountain agrees that successful attorneys have the ability to assess how a case will play to the jury. "The strength or weakness of a case is largely a function of how it appears in the courtroom. The best cases can be made to look bad in the courtroom, and vice versa," notes Fountain.

It also helps to be a shrewd judge of character. And, as Lee Goldstein recognizes, there is no substitute for experience in developing that skill. "After you've had a thousand people tell you their stories, you become more intuitive. You can pretty much sort people out, and choose the clients you're going to feel comfortable working with." Goldstein notes that this is particularly important in domestic law and personal injury matters, which can last for years. Darryl Fountain echoes this sentiment. "Because a lot of civil cases take a long time, I think you have to be interested in the work, or really wanting to do something well on behalf of a client you really like or admire," he says. "It's too tough to hang in there over the long haul if you don't have a client you really empathize with or you're not really interested in what the claim is about."

The good news is that as a solo or small-firm lawyer, you have the freedom to say "no" to the potential client who seems to have unreasonable expectations or who just makes your skin crawl. A graceful exit strategy is important, however, even if your only contact with the potential client is by telephone. As Dan Hogan explains, "I don't want confidences coming at me. I don't want them to be able to think under any circumstance that there's been any attachment of attorney-client privilege or any creation of a relationship." Lawyers will frequently choose to explain that they are unable to take on the case due to other pressing matters, and if they are uncomfortable about referring the case directly to another attorney, they will provide the referral service number of the Delaware State Bar Association.

Lesson 3: Give Away Some Business

Believe it or not, there are all kinds of reasons why good attorneys looking to build their practices can and should turn away some business. The potential client who sends up a red flag should certainly be shown the door, as we've seen. The tougher, or at least less intuitive, lesson is that you should refer matters to other attorneys if: (a) they are outside your area of high competence; or (b) you do not have the time or the personnel to handle the work properly.

Many attorneys, like Joe Rhoades, freely acknowledge that it is difficult to say "no" to a potential client, especially if you have built your practice by saying "yes." Yet he and other successful solo and small-firm attorneys have clearly acquired the confidence to refer out matters that are not within their areas of expertise. Andy Aerenson is not unique when he says that over the course of a year, he probably refers out one-half of the matters that come in from his existing client base. "The most common referral for me is estate work and family law. I don't do that kind of work, and I don't want to do it. So I have a couple of people who are my referral sources. I give to them, and for the most part I get things back from them. So it's an unofficial association." Harvey Rubenstein has long advocated the establishment of a more formal referral network among solo practitioners and small firms. He believes that if the Bar Association was able to coordinate a master list which indicated the specialty areas of each solo practitioner and small firm, "It would be a safety net, because you could refer out the kind of cases you don't handle, and in return you would get referrals for the kind of cases you can handle."

Rubenstein would also favor a relaxation of the disciplinary rule against fee sharing. As it is currently written, Rule 1.5(e) of the Delaware Lawyers' Rules of Professional Conduct prohibits a lawyer from sharing in the fee for a matter which he or she has referred to another lawyer, unless the referring lawyer actually works on the matter, and the fee received is in proportion to the services performed by each lawyer. As Rubenstein sees it, a change in the rule could be a win-win situation. "Solo practitioners can get into trouble by taking cases where perhaps they're not as qualified as they should be, because they're anxious to develop a practice. So some lawyers do not refer cases that they should." If the lawyer could send the case to another sole practitioner and receive a referral fee in return, however, that would be one way to "induce lawyers to refer out those cases." And, as Rubenstein notes, there is no harm to the client so long as the overall fee is "reasonable" (as required by Rule 1.5(a)). Rubenstein might just get his wish: The Ethics 2000 Commission of the ABA Center for Professional Responsibility has recently proposed that Model Rule 1.5(e) be amended to permit lawyers to divide a fee, irrespective of the proportion of work performed by each, so long as the client agrees to the arrangement in writing.

Solo and small-firm practitioners must also be careful about taking on too much work, even in the areas in which they specialize. Harvey Rubenstein has observed over the years that many disciplinary matters involving solos have their roots in an overextended practice. "Lawyers taking more work than they could handle, and therefore not being able to respond to a telephone call" is an all-too-frequent problem, says Rubenstein. "Perhaps not pushing a settlement that could be achieved. Being assigned work in different courts at the same time and not being able to answer to it." Therefore, "A sole practitioner has to have great discipline," counsels Rubenstein. "You have to know what your limits are." Rubenstein hopes that the upcoming seminar he is coordinating as part of Judge Bifferato's Superior Court Trial Practice Forum (scheduled for June 22, 2001, and tentatively titled "Ethics: It Works for Everyone") will encourage solos and small firm members to reach out to the Board on Professional Responsibility for advice and assistance in keeping their practices under control.

There are all kinds of reasons why good attorneys looking to building their practices can and should turn away some business.

Lesson 4: Don't Be an Island

One significant downside to the solo or small-firm practice is the lack of office camaraderie and a ready pool of lawyers down the hall to bounce ideas off of. In this respect, remarks Peter Hess, solos in particular "are walking a tightrope with less of a safety net." In response to that deficiency, attorneys must learn, in the words of Joe Rhoades, "to tap into the fraternity of small-firm and solo practitioners." Fortunately, as Andy Aerenson points out, "This is another example of where the cordiality of the bar still exists, as it always has, among people who need it."

Indeed, Aerenson describes a typical situation when he notes that he and other attorneys who are in direct competition for local real estate work freely share their knowledge and experiences with each other, even though, from a business standpoint, "it's Macy's calling Gimbels." Members of the plaintiff's personal injury bar in Delaware are also very approachable, according to Beverly Bove. "I think everybody sort of has the notion here in Delaware that if you lift one person up, you lift the entire profession up." Bove also observes that for the solo or small-firm practitioner who needs some extra help, the important thing is "to have the confidence to go to somebody. You have to have the sense to ask, and ask before it's too late."

In short, it is crucial for the solo practitioner or small-firm lawyer to develop a network of mutually supportive individuals. These networks are particularly important for solos, who despite their best scheduling efforts sometimes need help in covering emergencies and vacations. Dan Hogan describes one part of his network as the "Trolley Square Bar Association," a group of solo and small-firm attorneys in the Trolley Square area of Wilmington who get together for lunch on a regular basis and take the opportunity to discuss various legal issues that might have come up in their practices. Other attorneys, like maritime

lawyer Peter Hess, have established both a local network and a nationwide network of individuals they can tap for expertise in their specialty. Among those attorneys doing primarily plaintiff's work, the Delaware Trial Lawyers' Association is frequently cited as a tremendous resource. Its website, e-mail Q & A network, and deposition banks win high marks from attorneys like Beverly Bove, Joe Rhoades and Lee Goldstein. The Small Firms & Solo Practitioners Section of the Delaware State Bar Association, currently chaired by Dawn Kilcrease of Stewart & Associates, is another good networking resource, and continually strives to find new ways to support the unique needs and concerns of its membership.

Lesson 5: Forget About Advertising

There's no point in saving up for that big ad in *The American Lawyer*. If you are a solo or small-firm practitioner, the kind of advertising you want is the kind you can't buy. It must be earned. As Joe Rhoades points out, the key to a successful practice "is doing a great job for the clients that you have right now, because they are your best advertisers." Darryl Fountain agrees wholeheartedly that "a lawyer's best marketing tool is satisfied clients." Simply put, solos and small firms get most of their work from referrals. There is no shortcut to building a reputation based on years of doing good work and creating positive interactions with a wide variety of clients, attorneys, judges and members of the community.

If you view the marketing function from this perspective, then the best strategy for a solo or small-firm attorney is to approach every aspect of the work and the practice with client satisfaction in mind. Communication with the client is critical. Harvey Rubenstein and Beverly Bove, among others, stress the importance of returning all phone calls—the same day if at all possible—and continually keeping the client up to date on the status of a matter. The right office location can also boost a practice. Several attorneys, such as Andy Aerenson, Beverly Bove and Lee Goldstein, have chosen to move their offices out of downtown Wilmington. All are enjoying the free parking at their new locations, and report good feedback from clients. As Aerenson notes, "People don't want to go downtown if they can help it."

The beauty of networking (see Lesson 4) pays off again when it comes to marketing your practice. Your network should include not only attorneys within your chosen specialty (to whom you can refer matters within your practice area when you have a conflict of interest or are too busy) but also attorneys in other practice areas (to whom you can refer matters outside your areas of high competence). Hopefully, they will send you business in return. Of course, every practice area adds its own twist to the marketing game. For attorneys who seek referrals from attorneys in other jurisdictions, like Dan Hogan (who frequently serves as local Delaware counsel for bankruptcy claimants) and Peter Hess (with his nationwide maritime law practice), a comprehensive listing in Martindale-Hubbell is indispensable. In the real estate world, by contrast, the critical step is getting your name on the "short list" of attorneys which Realtors provide to buyers, by demonstrating to the Realtors that you have the skills and temperament to handle a difficult settlement.

Most solos and small firms have jumped on the technology bandwagon, viewing it as a great equalizer that has leveled the playing field between large and small firms.

Several attorneys mentioned lecturing and various professional association activities as having raised the profile of their firms. Some small firms and solos have also gravitated, perhaps intuitively, towards a subtle version of the "branding" strategies now being employed by many larger firms. This is not surprising, because in many ways it is easier for a small firm to exercise control over the various facets of the firm's public image. Beverly Bove, for instance, has enjoyed the freedom to build her own standards and philosophies for plaintiff's personal injury work right into her practice, as reflected in everything from client-favorable cost advancement and reimbursement policies, right on down to small details such as office furnishings, stationery and client mailings.

Darryl Fountain sees some irony in the fact that when he became a lawyer over fifteen years ago, large firms did not advertise. Now, he notes, "All of the big firms advertise. They publish pictures of the attorneys in their firms. They buy the back cover of the telephone book in some cities. It's really comprehensive." Only time will tell whether the big firms have lost sight of what the solos and small firms have always known about advertising—that without the expertise and commitment to individualized service to back up the shiny pictures, it's all just hype.

Lesson 6: Embrace Technology

Technology "is kind of like skiing and snowboarding," notes Dan Hogan. "There's a certain age, and if you're older than that age, you're probably not going to try snowboarding. And really, the same goes for technology." He might be on to something. Harvey Rubenstein confesses that he "hung onto the strike typewriter as long as I could" and has yet to put a personal computer on his own desk (although his secretary uses one). Rubenstein also points to technology as one reason why "the practice of law is so much more difficult today. There's e-mail, faxes, and delivery services. We are being pressured by technology to make instant decisions." Thus, Rubenstein points out, lawyers are increasingly deprived of time for careful thought and reflection.

Most solos and small firms have jumped on the technology bandwagon in a big way, however, viewing it as a great equalizer that has in many respects leveled the playing field between large and small firms. Now, even the solo

practitioner is able to create briefs, exhibits and presentations that are every bit as professional as those from 50-lawyer firms. Solos and small firms are also using all of the newly available tools to track deadlines and schedules, automate routine filings and mailings, check conflicts, handle timekeeping and billing, communicate with clients and other attorneys, and to perform work from any location. "I would find it inconceivable to practice without the technology," says solo practitioner Bob Lefton. "It's a performance enhancer," agrees Darryl Fountain. "There's no doubt that technology generally makes a solo or small-firm practitioner more competitive," says Joe Rhoades. And, Rhoades observes, solos and small firms have taken full advantage of the many audio-visual support companies that have sprung up over the past ten years. "Before, getting an enlargement of something usually took an Act of Congress," jokes Rhoades. "Now, the person is right around the corner. And in a very short period of time, I've got a great presentation."

After one false start with software from a company that went out of business, Rhoades has been able to institute a case management system that tracks every matter for every client, starting with the initial client contact. "We've become far more organized just by virtue of having that computer program in place," says Rhoades. "It can be an extra employee for you, basically." Dan Hogan is another vocal fan of the technological revolution. Hogan, like Rhoades, retained a consultant to give advice and to handle computer installation and programming issues. "I probably spent more than I necessarily should have," says Hogan, who also has a website in development, "but I've gotten a great return on the investment. It's been a great boon for us." But, Hogan warns, "It's like anything else. If you don't utilize it properly it's going to be garbage in, garbage out."

Lesson 7: Find and Keep a Great Support Staff

Although there are some solo practitioners who truly go it alone, without so much as a part-time secretary, most solo and small-firm attorneys rely heavily on staff. "As a trial lawyer, I'm rarely in the office," says Darryl Fountain. "And the only reason that works is because I've got an excellent support staff." Andy Aerenson observes that in a real estate practice, most of the clients' interactions are with support staff who perform the majority of the preparatory work for settlements. Their role is so central, in fact, that Aerenson believes "the staff is as important, if not more important, than the lawyer."

Lee Goldstein agrees that "when you're a solo, retention of personnel, and continuity based on that" are absolutely essential. "Life is just a mess if you're constantly training new secretaries ... it can have a bad effect on your entire practice." Reliability is paramount, says Goldstein. "If you have a secretary who's counting her sick days to see if she's taken them all, then you've got a problem." Bob Lefton boasts that he has an outstanding secretary/office manager/paralegal "whom I married some years before starting my practice." He allows, however, that "this solution may not be widely available."

Getting a grip on the bottom line is frequently the difference between success and failure.

Good help is hard to find these days, true, but in no way do the large firms have a monopoly on the best legal assistants. "There's a pool of secretaries who aren't interested in working for the large firms, for the same reasons that there's a pool of lawyers who aren't interested in working for the large firms," Andy Aerenson points out. "We operate on a handshake." There might not be an employee manual to address every personnel issue, but "we all smile more," says Aerenson.

As a rule, solos and small firms approach hiring decisions with the utmost care. As Joe Rhoades confirms, "When you have a small office, if you hire somebody and then have to let them go because you don't need them, it's a big deal." On the other hand, if you are too reluctant to add staff, you might find that "you're always an employee behind where you want to be," says Rhoades. "You start to see that your other employees are unhappy. And you have to able to pick that up. You've got to learn what the problem is, and then see how you're going to solve it."

Joe Rhoades is not alone when he confesses that he wishes he'd "known more about being a boss" before he left Young, Conaway, Stargatt & Taylor to start his own practice. "All of a sudden, every [staffing] decision that had to be made was mine." One of the hardest things to learn, according to Rhoades, is that "there are times when you can't be everybody's friend." Being a boss, in other words, necessarily involves "making tough decisions that are going to be fair to everybody." Ten years into his practice, Rhoades believes he has finally put in place the ideal staff (two associate attorneys, two paralegals, and two legal assistants), such that he is at the top of a "pyramid" of workers who employ a "complete team approach" to handling his cases.

Some practitioners viewed the leap to solo or small-firm practice as an opportunity to expand their support staff. One of Beverly Bove's primary goals in establishing her own firm was to "have enough staff to service my clients." Now, with an associate attorney, three paralegals, and three other in-house staff members, Bove is able to concentrate on larger cases, legal strategy, business development and associational activities. "I know there are people who probably think I have too much staff," Bove admits, "but then they don't know my caseload either." Similarly, Dan Hogan acknowledges that "to a lot of people's thinking I'd probably be considered to be overstaffed" with three full-time paralegals for his solo practice. But Hogan, like Bove, maintains that the generous staff is necessary "in order to do things properly and stay on top of the work we have."

Lesson 8: Keep an Eye on the Bottom Line

For the typical attorney in a large firm, notes Joe Rhoades, "everything is taken care of for you. You don't really have as clear a sense of what the 'bottom line' is in terms of running the business. You just know that it's running. There are people there who are either charged

with the responsibility or who just enjoy that aspect of the practice. And everybody just depends on them to do that." For the solo practitioner or small firm, by contrast, getting a grip on the bottom line is frequently the difference between success and failure. Bob Lefton, for one, recommends that anyone starting their own practice should be able to cover their start-up costs and have six months' operating costs and living expenses in the bank.

In terms of firm overhead, "Don't overdo it," advises Harvey Rubenstein. "You don't have to have an office that's been designed by some interior decorator." Space-sharing arrangements are also frequently cited as a way to for those starting out to keep costs under control. As for staffing, flexible and imaginative solutions are the key to covering necessary office functions at a reasonable price. "You don't have to hire someone full time," notes Rubenstein. "Or you can hire a secretary who has some training in bookkeeping, who can do more than answer your phone and type up your work. There are different mixes and matches that will help you out."

If low overhead is one key piece of the puzzle, then a steady cash flow is the other. After all, "it's not just the cost of getting up and running, but staying up and running" notes Lee Goldstein. Can your practice generate the necessary volume and cash flow to sustain itself as an ongoing business? Rubenstein recalls that when he was establishing his solo practice in the late 1960s, there were many part-time salaried positions available for lawyers, which helped to provide that all-important cash flow during the practice-building phase. "I was an assistant county attorney. I was an attorney for the State House of Representatives. I represented unions. There used to be part-time attorneys general." And, Rubenstein notes, these positions also served as valuable training grounds. The relative dearth of such part-time positions "is one of the reasons why I say going out into solo practice today is much more difficult."

Concerns about cash flow can also shape the very nature of the practice. As Goldstein puts it, "It would be nice to sit back and say, 'I only want to do this particular type of work,' but am I going to have the volume and the income to do that? There's always the concern about cash flow, not only what you're making generally, but what you're making week to week." Goldstein has found that his real estate and domestic law matters, which provide a reasonably steady influx of cash, are a good mix with his contingent fee-based plaintiff's personal injury practice. Dan Hogan also stresses the importance of creating that steady cash flow. "I know essentially what I need to make each month before I get paid a dime. So I've budgeted to that. And again, technology is wonderful for doing all that." From Hogan's perspective, lawyers owe it to their clients to have the firm's finances on an even keel: "If I have to worry about whether or not I can pay my bills, then I'm not doing an effective job for my client, because I'm not worried about their problem, I'm worried about my problems."

Most solo and small-firm attorneys consider pro bono work to be an important part of the "professionalism" side of the equation.

Lesson 9: Master the Administrative Details

The nitty-gritty details of financial record keeping, payroll and taxes, billing and collections, and compliance with Bar requirements can be intimidating to the lawyer considering the start-up of a solo or small-firm practice. Some, like Beverly Bove (who served on the executive committee of her former firm), have had hands-on experience with all of these issues and are able to hit the ground running. Others are more like Joe Rhoades, who admits that the prospect of having to shoulder new administrative responsibilities led him to delay his decision to leave his old firm. Rhoades himself was finally rescued from indecision by his wife, who came to him and said, "Look. If it will take me taking care of the books to get you to start your own business, I'll do it."

Lee Goldstein agrees that "in the beginning, when the solo sobers up and realizes that the books must be kept properly, in accordance with the Bar requirements, it can be tedious." But, says Goldstein, "once you get things underway, it's kind of self-perpetuating. I don't see that as a burden now." Solos and small firms are all over the map when it comes to these administrative duties. Some utilize office managers and rely heavily on outside accountants, bookkeepers, payroll services, and benefit consultants. Others do most, if not all, of the administrative work themselves. Some use the latest software programs, while others are still doing a lot of record keeping, reconciliation and billing by hand. The important thing is to find the system that's right for you, and to cover all of the bases.

Lesson 10: Strike a Balance Between Professionalism and Commercialism

"You've got the practice of law, and then you've got the business of law," observes Dan Hogan. "And you've got to find a balance between the two. Otherwise, you're either going to be practicing law and you're going to be poor and broke, or you'll be practicing solely with a profit margin in mind, in which case you're likely to be so far afield of the ethical concerns you have as a lawyer that you're going to run afoul of the bar." Hogan speaks for most attorneys when he says, "I think the [Delaware] bar has done a good job of constraining people within that area, to say, 'We know this is a business, but before it's a business, you are a professional, and you're going to be held to a high standard.'" The common view is that the ability of Delaware's attorneys to strike this balance is a large part of what gives Delaware such a professional legal practice, particularly compared to other states.

Solos and small firms in particular can find that "there's a tension between getting something done quickly and getting something done properly," says Joe Rhoades. The trick to running a successful practice, notes Rhoades, is to find that balance, "to resolve a person's claim in as expeditious a fashion as it can be resolved, without doing any injustice to the client's legal rights." It's also important to remember that in a law practice,

as in any other business venture, you sometimes have to spend money (and time) to make money. "I learned how to try a case at a law firm that did whatever it had to do to get the job done," recalls Rhodes. "And to their credit, they would get much better results because they wouldn't spare any expense and they would do whatever it took." Rhoades has followed through on that philosophy with his own firm, "and it's paid off over the years. You just have to keep your mind on the goal. And the goal is to do the best you can for the client, and you don't look down at the numbers that are on the paper, because you'll get really scared sometimes!"

Most solo and small-firm attorneys also consider pro bono work to be an important part of the "professionalism" side of the equation. Says Hogan, "I do pro bono work, and I find that if you do a little bit as you go along, it doesn't really have much of an impact on the bottom line. I also find that it makes me feel better about what I do as an attorney. If my motivation is solely to make money, I'm probably going to realize that goal, but it's going to be fairly empty result. I might have a pile of cash, but there's no social connection." Andy Aerenson expands on that notion: "I think it's just as important to do pro bono work in the world, not as a lawyer. I do a ton of community service work. I'm not acting as a lawyer, I'm acting as a responsible member of the community. That, to me, is as important as wearing my lawyer hat and servicing a pro bono client." Beverly Bove also commented on the importance of maintaining a broader societal perspective: "People who are just insular and do nothing but try and practice law and spend ninety hours a week doing it, I think don't do a service to their clients. They're not well-rounded, effective attorneys."

Lesson 11: Measure Your Intangible Wealth

Don't make the mistake of judging career success by the size of your paycheck. "In general," observes Andy Aerenson, "I don't know many lawyers who work in large firms, who are in the prime of their careers, who say that they love what they do. I guess they make a lot of money, they have nice toys. But, when you open up their lids and say 'Do you enjoy what you're doing?' I hear more 'no' than 'yes.'" In the solo and small-firm world, attorneys are apparently more willing to define success by reference to personal development and quality of life issues, including the "immense satisfaction" that comes from "the feeling of standing on your own two feet," says Harvey Rubenstein.

Aerenson maintains that when "the big firm people all talk about how good things used to be," they might not appreciate the fact that "it is still that good in the small-firm world." Aerenson cites "the informality of the practice of law" as a plus, and he believes that "the client relationships are more friendly-based, more trusting" in the small-firm atmosphere. "It's an easier life," continues Aerenson. "I don't do billable hours. That's an existence that creates a hellacious lifestyle that I'm not willing to buy into." The quality of small-firm life is greatly enhanced by the lack of big-firm stressors, explains Aerenson, such as the inability to control your own schedule. "If somebody comes in and needs a contract, and I'm busy, by the time they leave the office they're going to know when they're going to get their contract." If that's not good enough, Aerenson says, he will let the matter go to another lawyer. But unlike a big-firm lawyer, particularly an associate, "I'm not going to schedule things out and then have somebody drop a new packet of work on my desk."

In the solo and small-firm world, attorneys are apparently more willing to define success by reference to personal development and quality of life issues.

Dan Hogan also appreciates the flexibility inherent in having his own practice. "Recently, I have had to turn away some work because we just had a new baby. I decided to scale back a little bit for the first month, and it's nice to be able to do that." This family-centered view is shared by Joe Rhoades, who counts his ability to make time for his family as one of his best accomplishments. "Unless I'm standing in front of the Chief Justice, or standing in front of a jury, I'm at my son's wrestling match on Thursday night."

Peter Hess warns against falling into the mold of the lawyer "who lets their law practice manage their life. I don't do that," says Hess. "I try to keep everything in perspective. I put in the hours, but I make sure I get away and do things I'm meant to do because you only live one time." For Hess, the rewards of a solo practice far outweigh the hypothetical big-firm partner's paycheck. "I've never thought it was worth having to pay significantly more overhead, and to jeopardize not being able to do what I really want to do," which is a tremendous amount of pro bono work for organizations like ProSEA (the Professional Shipwreck Explorers Association) and The Explorers Club. "It's something that's important to me," stresses Hess. "It's personal. I hope that it'll be able to leave some kind of legacy to future generations of explorers to then go out there and make some incredible finds." Then are the small but important freedoms, like "not having to go through a management committee to decide if I can do a diving helmet logo or not, or if I can have a porthole in my office door." And surely Hess is the only Delaware attorney to have a freighter named after him—a gesture of appreciation from an foreign client who, with Hess's help, purchased and refurbished the ship while it was in Delaware waters. "I think that's kind of a nice thing to get out of your law practice," says Hess.

Lesson 12: Take the Plunge

Regrets? None of the solos and small-firm attorneys I spoke to have any. To the contrary, the overwhelming sentiment is something along the lines of: "Why didn't I do this sooner?" "I wish I'd known how good it was." "Wow, I should have done this a year ago or two years ago." "Why didn't I do this five years ago?"

If you, too, have that streak of independence and self-reliance, then the ultimate lesson from the solos and small firms is clear: Go for it. ◆

FEATURE

Allen M. Terrell, Jr.

MANAGING THE BIG FIRM

A law school friend who served as managing partner of a large New York firm once told me that managing a law firm is like herding stray cats. While president of Richards, Layton & Finger, I presided over the firm as it grew to more than 100 attorneys. I never thought of the job as herding cats, but I did realize that law firms can't be run like ordinary businesses. When I was asked to write this article, it was an opportunity to reflect on my three years as president or managing partner of a large firm. I will identify why law firm management is difficult, analyze trends impacting law firms, discuss the management structure of the firms, and make some suggestions for a firm manager.

A. Characteristics of Firm Management

Law firms and lawyers have certain characteristics which make law firm management particularly difficult.

First, lawyers are trained at law school, not at business school. Most of us became lawyers because we enjoyed the study of law and were not particularly interested in running a business. Law firm managers are usually lawyers who have practiced law for a number of years and are asked by their colleagues to manage the firm for a few years. Rarely have managing partners been trained in management or in business. In a sense, law firms worth millions of dollars are managed by amateurs.

Second, good lawyers are often aggressive advocates and keenly aware of problems. Their professional skill is to persuade other people to accept their views and opinions. Similarly, lawyers are trained to find problems and to warn clients of pitfalls and dangers. Most lawyers are adept at recognizing risks. Thus, the manager of a firm deals with lawyers who are not easily persuaded and who are accustomed to emphasizing the problems in a situation.

Third, a law firm is not structured like a business. In most firms, all partners have equal voting rights. Partners rarely report to another partner or are liable to be fired for disagreeing with another partner. While law firms do not expect all partners to agree on all management issues, firms probably spend an extraordinary amount of time seeking some consensus because there is little or no hierarchical structure in a law firm.

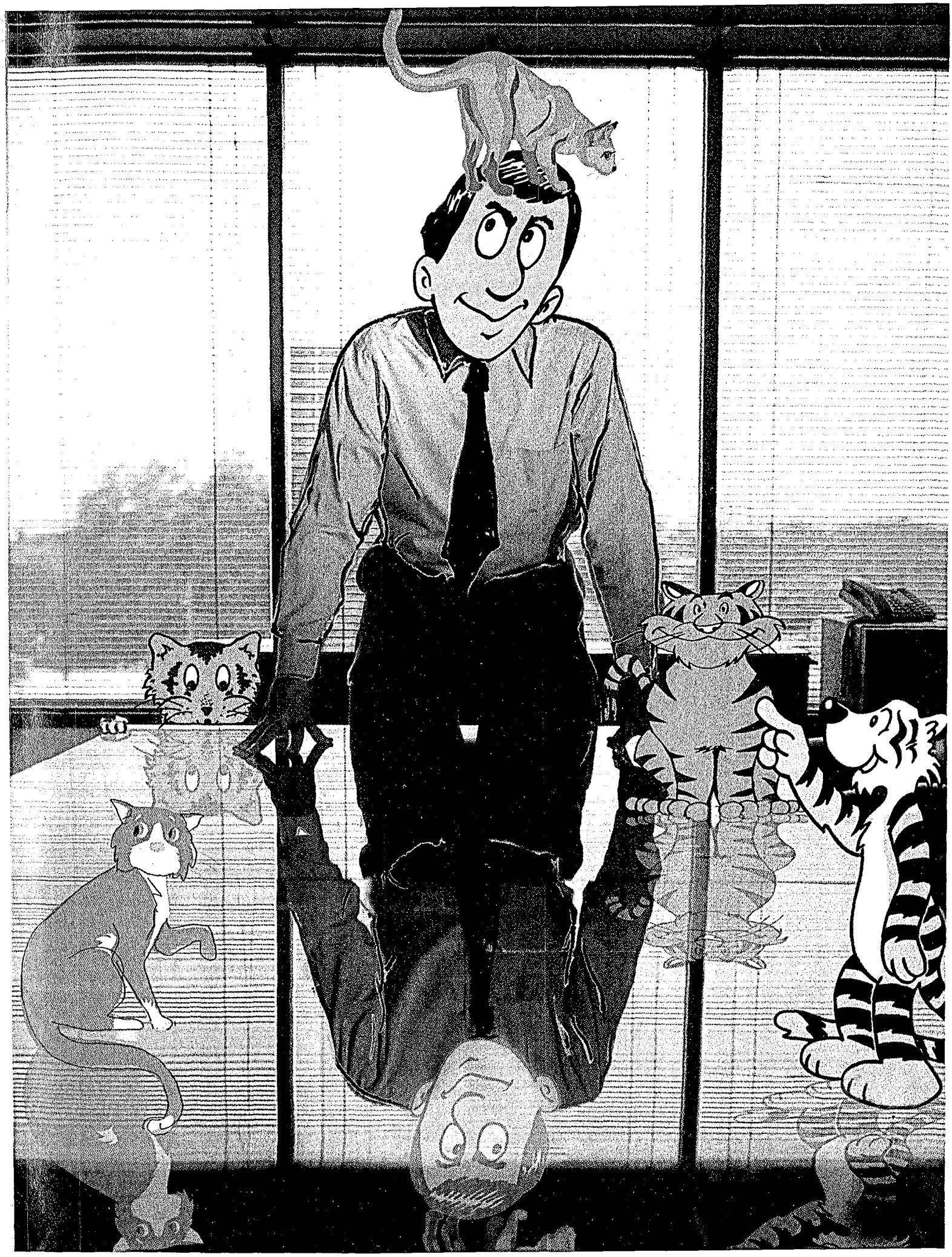
Fourth, the managing partner does not spend all his time managing. Most managing partners also have a substantial legal practice with demanding clients. Studies indicate that managing partners of large firms spend approximately one-third to one-half of their time on management, with the balance of their time in the practice of law. Thus, most law firms are only managed part time by the lawyers responsible for the firm.

Lastly, managing partners spend most of their time dealing with immediate crises, rather than engaging in long-term planning or focusing on the big picture. Each day there is a problem that needs solving or a partner who has a concern or complaint that needs addressing. The day-to-day management issues occupy most of the time of the managing partner. One of the most difficult challenges for the managing partner is to find the time to study the trends in the legal industry and to focus on long-term goals for the firm.

Without assuming that all firms are the same or that the trends that are discussed below affect all firms equally, let me suggest that the following trends involve challenges for larger firms and need to be addressed by the managing partner.

B. Challenging Trends

First, technology is changing the practice of law—and its costs. Larger firms are now wired with their own networks. Most



attorneys use either desktop or notebook computers. There is a daily flood of e-mail from clients and other attorneys. More communications today come through e-mail and fax than through the mail. E-mails from clients often require prompt responses. This means of communication puts extreme time pressures on attorneys and often creates a "crisis" atmosphere in the workplace. Technology has changed both the burdens of our practice and the costs of our operations.

The costs for technology are extremely high, as compared with ten years ago. Not only is there the initial capital expense of buying the hardware and the software, there is the annual cost of upgrading and expanding the technology. Firms can be spending hundreds of thousands of dollars annually on technology. This cost cannot be passed directly through to the client.

The biggest technology cost may be the in-house technical staff needed to service the technology tools used by the attorneys and the training staff needed to educate the attorneys on the technology available to them. This is known as the MIS ("Management Information Systems") Department in many firms. The labor cost of the MIS employees may be one of the most rapidly increasing firm expenses. Finally, there is the hidden cost of attorney time spent in technology training and education.

Second, a firm has to give more attention to the needs and costs associated with the firm's most important labor component, its associates. The lifeblood of a good firm is its associates who will progress to become the partners of the future. The time and cost of addressing associates' issues have grown rapidly. Recently, associate salaries jumped significantly higher. This added cost also cannot be easily passed on to clients. Billing rates are reflective of firm costs, but rates are also subject to competition. At the same time, associate turnover and morale are of concern to firm management. A firm must make the associates aware of how important they are to the firm and of the firm's interest in promoting their legal careers. Firms also need to be responsive to the quality of life concerns of the associates.

Third, competition for legal business is intense. Many clients are shopping their work and are no longer loyal to a single law firm. Management of the firm has to devote some time to the care and feeding of the firm's major clients. In some firms the pressure for business leads to extensive business development programs, including the hiring of professional business development staffs. Whether it is an aggressive approach to attracting new business or simply a recognition of the importance of maintaining the firm's relationships with existing clients, the managing partner has to devote time to business development and client support.

Fourth, the competition for legal business is also reflected in the growth of branch offices and law firm mergers. About every week the legal periodicals report on law firm mergers. There has been a dramatic increase in the number of branch offices opened by major firms around the country. Wilmington has experienced this trend, particularly in the bankruptcy field. In some cities (fortunately not yet in Wilmington), key lawyers in a firm may leave to go to another firm where there might be greater rewards for them. The managing partner of a firm needs to be aware not only of the competition in the firm's market that is coming from other firms, but also of the risk that members of the firm might leave to go to another firm. Regretfully, clients, associates and partners are all demonstrating less firm loyalty than in the past.

The managing partner needs to be aware not only of the competition in the firm's market, but also of the risk that members of the firm might leave to go to another firm.

All of this means that the managing partner's duties can, at times, be overwhelming in managing the firm. Thus, I submit that as a firm gets bigger, it needs to have a structure or organization that shares in the management of the firm. Not only does this sharing ease the burden on the manager, it may also foster a sense of participation and teamwork among the lawyers.

C. Structure of Large Firms

While there is no consensus on the model or structure for a large law firm, from what I have learned in meetings with other managing partners and in attending seminars, I suggest that a firm should have in its firm manual a clear statement of the roles and responsibilities of its officers, committees, and senior nonlegal operational personnel.

The managing partner or president of a law firm should be a defined position. The position should be set forth in writing, including its duties and how the manager is chosen. A managing partner should be elected by all the partners and probably should have a fixed term. I recommend a three-to-five year term, since it takes about a year to learn the job. I suspect that after five or six years, a managing partner is either "burnt out" or is assuming so much power that others in the firm either feel left out or alienated by the decisions over the years.

It is difficult to say who should be elected to the position of firm president. On one hand, it should be someone who is respected and who can gain the support of the other partners to major firm decisions. On the other hand, the job is so time consuming that the firm may not want the most productive partner to cut back on the practice of law so as to manage the firm. Clearly, the manager must be someone willing to commit the time and capable of handling the stress of "herding stray cats."

In addition to the president or managing partner, the firm should have an executive or management committee that meets regularly and is representative of the major departments or practice groups of the firm. The executive committee would meet at least every couple of weeks and be on call if a problem arises. The president should be empowered to make day-to-day decisions, but the more significant matters should come before the executive committee. The committee can

be helpful to deliberate with the president on tough decisions. Major matters affecting the future of the firm, such as the admission of new partners or the relocation of the firm, should be decided by the partnership as a whole.

The executive committee members should be elected for specific terms. It is probably helpful to have staggered terms for the members, so that there will be continuity on the executive committee. Firms may want to have a range of backgrounds and ages in the partners on the executive committee. Firm consensus is more likely to result if the committee broadly reflects the firm.

In addition to the executive committee, the firm partnership agreement or firm manual should provide for certain standing committees. The committees' responsibilities ought to be set forth in writing. Committees can carry out some of the work necessary to administer the firm. They also provide an opportunity for more partners to participate in management, which may help to build law firm morale. Possible standing committees could be responsible for matters such as associates, compensation, finances, ethics, pro bono work, hiring, operations and technology. Some firms run with a few committees, whereas other firms have more than a dozen committees.

I would caution against having a lot of committees or appointing ad hoc committees to study each new issue facing the firm. A large number of committees probably indicates that the firm is spending too much time on management issues. It can also lead to conflicts over the jurisdiction or responsibilities of the particular committees. The firm's manual should make clear exactly what tasks or responsibilities are to be handled by each committee.

Firms cannot be successfully managed by lawyers alone. Large firms rely on professional managers and skilled personnel who are not attorneys. A firm with 50 or more attorneys probably will want to have a chief operating officer (C.O.O.). He or she should have the power to manage most aspects of the firm, subject to review by the managing partner and/or executive committee. The C.O.O. can be responsible for the hiring and supervision of all nonlegal employees. Often the C.O.O. is expected to implement the major decisions of the firm. Since the C.O.O. usually has more financial skills and accounting experience than do most attorneys in the firm, the books and ledgers of the firm

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Large firms will also have a chief financial officer, as well as a C.O.O. Like other non-lawyer skilled personnel, law firm administrators work full time at their management jobs and are not subject to fixed terms. The managing partner should have a clear understanding as to what these non-lawyer managers and skilled personnel are doing.

Once the managing partner has identified some of the trends affecting the firm and has built an organization with committees and skilled personnel, what more should the managing partner do? While I will next try to answer this question, there is no clear answer for each firm.

D. Manager's Role

First, the managing partner has to make decisions. The managing partner cannot try to please everyone. Just as a judge ultimately has to decide, leaving one party disappointed while the other is the winner, so too must the managing partner often resolve a controversy between partners or make a judgment that negatively impacts some partners. Day-to-day decisions cannot be deferred to a committee that only meets occasionally. The managing partner needs to be seen by the other partners as one who can and will make a deliberate and thoughtful decision.

Second, the managing partner must encourage teamwork within the firm. Just as the structure I have described above contemplates the participation by many attorneys on firm committees, so too should the managing partner use the skills and energy of other attorneys in the firm to solve problems. A matter might be referred to an ad hoc committee, which the managing partner selects and charges with the responsibility to develop a proposal for the firm. Teamwork within the firm is also important in meeting clients' needs. Larger firms are usually working on larger matters or cases in which more than one attorney is involved. Teamwork promotes firm spirit and pride in collectively reaching a solution or strategy either for the client or for the firm. Teamwork also reduces the isolation and "client control" that can cause a partner to defect to another firm. The managing partner needs to create and foster teams working within the firm.

Third, a managing partner needs to be accessible and available, while also maintaining some discipline and control over the day's schedule. The managing partner might spend some of the day

walking the halls and keeping the door open, in order to see and hear what is going on in the firm and to be available. While the managing partner should not micromanage and be involved in everything that the firm does, the partners and associates should feel that the managing partner is interested and concerned about everyone in the firm. However, it is also necessary that the manager's day be organized so that there is some time to work or reflect without interruptions, except for emergencies.

Fourth, the managing partner has to know the firm's financial picture. The financial statements can be the warning signs of firm problems. Declining attorney billable time, escalating account receivables, growing write-offs of significant matters—these are all things that should be disclosed on the firm's financial statements. The managing partner should get periodic reports on the firm's billings and collections. The numbers will disclose, far better than will casual office chat, what practice areas are profitable and which ones are in decline.

Finally, the managing partner needs to address from time to time the major problems of the firm, challenges and trends affecting the firm, and whether the firm's goals or objectives are clear and obtainable. For example, a firm may decide that it needs to devote more resources to a particular practice area because certain of its clients are in need of these services. Management cannot expect the attorney servicing the particular client to be able to address such a need. It is a good idea for the president to identify in writing what are the concerns and needs of the firm and to brainstorm with the executive committee how these needs might be met. Some firms try to discuss major matters in firm retreats. However, firm retreats can be a waste of time if the agenda is not well planned. Management needs to analyze the major matters in depth and to propose to the firm solutions or approaches, before a retreat or meeting among all partners is likely to be productive.

Most lawyers are goal-oriented people who have achieved a lot in their lives. They work hard at their jobs and they need to know that the managing partner is focusing on the goals and needs of the firm. When the managing partner is working with the executive committee and with other members of the firm on the major needs and goals of the firm, the role of the managing partner can be extremely satisfying. ◆

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