

LOOKING FORWARD

BY PETER F. VAIRA

In my editorial comments in the last issue, I set out some topics that I thought should be explored by our readers. We received some very pointed responses, one of which appears in this issue in our new feature, Reader's Forum. We intend to make Reader's Forum (Page. 6) a permanent feature of the magazine. Thank you.

Discovery Abuse

Last year I published the following tongue-in-cheek commentary on discovery with a fictional interview with G. Rowland Zigwhy in *The Legal Intelligencer*.

"Q: Professor Zigwhy, I have learned that the Denver University Law School and the American College of Trial Lawyers have formed a national task force to study and remedy abuse in the discovery process. What is your view on whether there is such abuse?"

A: There is no abuse and no need for such a task force. Discovery is the key to putting an end to trials (and it produces good billing). One local law school will soon offer an LLM in Discovery, and there is a movement to form the American College of Discovery Specialists."

In reality, The American College of Trial Lawyers and the Denver University Law School are working on a report on discovery, and recently published an interim report which made these conclusions: "Although the civil justice system is not broken, it is in serious need of repair... [our] survey shows that the system is not working; it takes too long and costs too much. Deserving cases are not brought because the cost of pursuing them fails a rational cost-benefit test, while meritless cases, especially smaller cases, are being settled rather than being tried because it costs too much to litigate them."

Strong Words. Have the litigators abused discovery as the report indicates, and has the bar rationalized the practice as described by the fictional Professor Zigwhy? Give me your views.

This Side of Paradise – The Economy and the Practice of Law

The serious downturn in the economy has brought under scrutiny the method of practice utilized by the large firms. Like the character in the F. Scott Fitzgerald novel *Babylon Revisited*, who looks fondly and sadly back on the jazz age after the 1929 crash, it is time to evaluate the practices that were used from the 1990s to the present: staffing cases with numerous associates, very high hourly rates at all levels, large starting associate salaries, signing bonuses for starting associates. Add to the plot the general counsel who accepted all these costs because they needed a "Mercedes Benz" law firm that would please the board of directors. (We are aware of one general counsel which requested a law firm to increase its fees because it might appear not enough was being done on the assignment, and another law firm which requested a private investigator to raise his rates to assure the client that the firm had employed a top-notch investigator.)

The 1990s model is unraveling, the clients are tightening their belts, and those days on *This Side of Paradise* are gone, perhaps never to return in that form. Where are we headed? We would welcome some realistic commentary on this subject from law firms and corporate clients.

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Clearing the Record

An article in the Fall 2008 edition of *The Philadelphia Lawyer*, "Alive and Well," confused A. Charles Peruto Jr. and A. Charles Peruto Sr. A. Charles Peruto Jr. represented Gary Heidnik. His father, A. Charles Peruto Sr., represented Pennsylvania Supreme Court Justice Rolf Larson. The statement about the 10,000 reasons for representing Heidnik was made by A. Charles Peruto Jr. A. Charles Peruto Sr. is winding down his practice. A. Charles Peruto, Jr. is currently in the active practice of law. *The Philadelphia Lawyer* regrets the error.

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Legal Practice Issues

Dear Editor-in-Chief:

Congratulations on your list of issues to be discussed by the Bar in 2008-9 ("Pen to Paper," Fall, 2008); for a long time I have been hoping that my fellow lawyers would open up and discuss some of the most important, "inconvenient," truths of our legal practice today.

For 22 years I practiced law at two large Philadelphia firms, following eight years at the U.S. Department of Justice in Washington where I handled a mix of civil and criminal, trial and appellate cases for the Environmental Protection Agency. It was the perfect training ground for a very green (in the old sense) law graduate.

Your issues listed No. 2 and 5 intersect each other: "Are too many lawyers admitted in America every year?" and "Who will train the lawyers?" There are many indicators that we admit too many lawyers per year, that many are enticed into the profession by unrealistic notions that they will find (and keep) lucrative positions at firms or companies, and that, with minor polishing, they each can meet and exceed the demands of the legal profession and be happy. There are more books sold (and almost as many seminars taught) on how to transition out of the profession than how to succeed in it. I doubt it is a coincidence that ethics counsel to firms are seeing more (and more egregious) breaches of ethical standards, that "codes of civility" are proliferating, and that highly respected judges complain that legal briefs are more often "a drag" than a help – or worse.

A major part of the problem is that law schools are big business. A few years ago the Dean of the George Washington University School of Law called for reduced enrollment and a more hands-on approach. His superiors promptly rejected his request and reminded him that the law school was

the most profitable arm of the university (you just need a classroom and a teacher). When I explored the idea of teaching legal writing at a few of the local schools, I was shocked by the size of classes and sections. I had "tutored" young associates at my firm in legal writing at weekly luncheon sessions where we exchanged actual written work and constructively critiqued it. I would never have expected to make a meaningful change in the personal writing habits of a "student" in a group of more than eight. After a law student graduates, no fly-by attendance at a CLE can take root with regard to writing.

The solution to this dilemma lies in two places: the law schools and the firms. At firms, tutoring and good mentoring, more often than not, succumb to the pressure for billable hours. I suppose the internal and external competition inherent in the law firm practice inhibits the genuinely collegial approach we had at the Justice Department (at least when I was there and I believe today); there was everything to gain from close review and mentoring of younger lawyers.

I have never liked the phrase, oft repeated by one of my former managing partners: "You get what you pay for." It suggests that everything can be bought. In fact, you can throw as much money as you want at a top law school graduate, but if the firm isn't willing to allot the partner time (even retain the senior partners) needed to provide the training, experience and mentoring needed, the young lawyer will rarely soar. And he or she knows that – as one sought-after summer associate candidly told us – in her acceptance letter before I left.

Sincerely,
Bradford F. Whitman

The Philadelphia Lawyer

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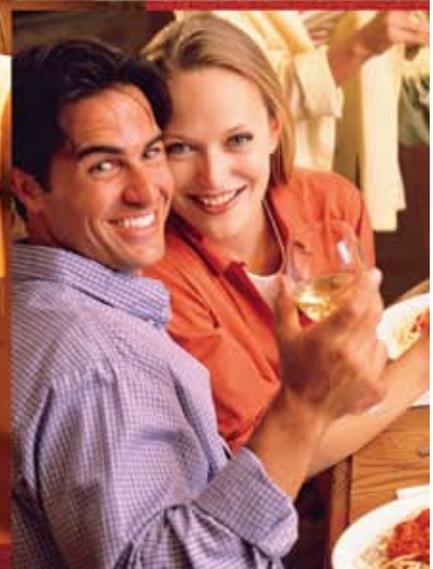
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