

# Western New England Law Review

---

Volume 37 37 (2014-2015)

Issue 2 SYMPOSIUM—FIRM FOUNDATIONS:  
MANAGING THE SMALL FIRM AND  
INDIVIDUAL PRACTITIONER

Article 1

---

2015

## FOREWORD—ESTABLISHING A FIRM FOUNDATION FOR THE SMALL LAW PRACTICE

Eric J. Gouvin

*Western New England University School of Law*

Follow this and additional works at: <http://digitalcommons.law.wne.edu/lawreview>

---

### Recommended Citation

Eric J. Gouvin, *FOREWORD—ESTABLISHING A FIRM FOUNDATION FOR THE SMALL LAW PRACTICE*, 37 W. New Eng. L. Rev. 129 (2015), <http://digitalcommons.law.wne.edu/lawreview/vol37/iss2/1>

This Symposium Article is brought to you for free and open access by the Law Review & Student Publications at Digital Commons @ Western New England University School of Law. It has been accepted for inclusion in Western New England Law Review by an authorized administrator of Digital Commons @ Western New England University School of Law. For more information, please contact [pnewcombe@law.wne.edu](mailto:pnewcombe@law.wne.edu).

## WESTERN NEW ENGLAND LAW REVIEW

Volume 37

2014-2015

Issue 2

SYMPOSIUM—FIRM FOUNDATIONS:  
MANAGING THE SMALL FIRM AND  
INDIVIDUAL PRACTITIONERFOREWORD—ESTABLISHING A FIRM FOUNDATION FOR  
THE SMALL LAW PRACTICE

ERIC J. GOUVIN\*

## INTRODUCTION

On March 26, 2014, the Western New England Law Review sponsored a symposium entitled “Firm Foundations: Managing the Small Firm and Individual Practitioner.” The articles in this volume of the Law Review represent some of the presentations made that evening as the panelists provided perspectives on the often-overlooked world of small firm practice. This Foreword sets the stage for the rest of the volume and elaborates on the opening remarks I provided at the beginning of the symposium presentations.

## I. SETTING THE STAGE

Legal education is in the midst of major changes. For decades, law schools have been unique among university-based professional schools in the degree of disconnection between the academic program and the profession for which students were ostensibly being trained. For most of the twentieth century, would-be reformers of legal education have pointed out that the traditional law school curriculum does little to prepare students to actually practice law.<sup>1</sup> Until quite recently, however,

---

\* Dean and Professor of Law, Western New England University School of Law.

1. As early as the 1930s some educators were advocating for more practical professional skills in the law school program. *See, e.g.*, Jerome Frank, *Why Not a Clinical Lawyer-School?*, 81 U. PA. L. REV. 907 (1933). Every twenty years or so throughout the rest of the century, the call went forth for legal educators to pay more attention to professional skills. *See* ALBERT J. HARNO, LEGAL EDUCATION IN THE UNITED STATES 122-160 (1953); AMERICAN BAR ASSOCIATION SECTION OF LEGAL EDUCATION AND ADMISSIONS TO THE BAR, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT - AN EDUCATIONAL CONTINUUM: REPORT

very little changed in law schools. Clinical programs were established, but were distinctly second-class within the academy.<sup>2</sup> The ABA began requiring “substantial instruction” in “professional skills” as a prerequisite to graduation,<sup>3</sup> but those courses were mere add-ons, not integral to the curriculum. The occasional law practice management course was offered by an adjunct professor, but the rest of the professional identity of lawyers was shrouded in neglect.

All of this started to change during the first decade of the twenty-first century. Starting in 2004 and continuing through the time of this writing (with a small uptick during the Great Recession of 2009-10), applications to law schools have been declining steadily.<sup>4</sup> College students have been deciding not to apply to law school, in part because law graduates were not getting jobs, and, in part, because the cost of legal education was perceived to be too high for the economic benefits it promised upon graduation. When apologists for legal education pointed out that new graduates could always hang out a shingle and start their own practice, a branch of the discussion turned to whether new graduates were, indeed, prepared to practice law upon graduation from law school.

The discussion of what was wrong with American legal education

---

OF THE TASK FORCE ON LAW SCHOOLS AND THE PROFESSION: NARROWING THE GAP (1992) [the “McCrate Report”]; LEGAL EDUCATION AND LAWYER COMPETENCY: CURRICULA FOR CHANGE 11-32 (Fernand N. Dutilleul, ed., 1981); REPORT AND RECOMMENDATIONS OF THE TASK FORCE ON LAWYER COMPETENCY: THE ROLE OF THE LAW SCHOOLS (1979) [the “Cramton Report”]; ROY STUCKEY ET AL., BEST PRACTICES FOR LEGAL EDUCATION: A VISION AND A ROAD MAP (2007); and WILLIAM M. SULLIVAN ET AL., EDUCATING LAWYERS: PREPARATION FOR THE PROFESSION OF LAW (2007) (the “Carnegie Report”).

2. For a more complete discussion of the status issues of clinical faculty, see Bryan L. Adamson, et al., *The Status of Clinical Faculty in the Legal Academy: Report of the Task Force on the Status of Clinicians and the Legal Academy*, in WASHINGTON UNIVERSITY IN ST. LOUIS LEGAL STUDIES RESEARCH PAPER SERIES 353 (May 2012), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1628117](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1628117).

3. See *ABA Standards for Approval of Law Schools*, AM. BAR ASSOC., Standard 302(a)(4) (2013-2014), available at [http://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2014\\_2015\\_aba\\_standards\\_chapter3\\_authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2014_2015_aba_standards_chapter3_authcheckdam.pdf). This has since been superseded by Standard 303(a)(3) (2014-2015) requiring six credits of experiential learning. *ABA Standards for Approval of Law Schools*, AM. BAR ASSOC., Standard 303(a)(3) (2014-2015), available at [http://www.americanbar.org/content/dam/aba/publications/misc/legal\\_education/Standards/2014\\_2015\\_aba\\_standards\\_chapter3\\_authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/misc/legal_education/Standards/2014_2015_aba_standards_chapter3_authcheckdam.pdf).

4. The year 2004 was the high water mark for applicants to U.S. law schools, with 100,600 applicants applying for admission. In 2013 the total nation-wide applicant pool was 59,400 applicants. Law school entering classes have been contracting as well. The largest 1L entering class was 52,500 students in the fall of 2010 by the fall of 2013 that had decreased by 24% to 39,700. See Daniel O. Bernstine, *The State of Law School Admissions: Where Are We in 2014?*, THE BAR EXAMINER 12, 13 (June 2014), available at <http://www.aals.org/wp-content/uploads/2014/08/State-of-Law-School-Admissions-2014.pdf>.

stopped being a quiet affair within the academy, and took a decidedly public and popular turn. Spurred on by increasingly vociferous bloggers<sup>5</sup> who labeled law school a “scam” because, among other things, it did not prepare students to actually practice law, the mainstream press picked up the story.<sup>6</sup> A few influential books about the state of legal education and the future of the legal profession were written and widely read.<sup>7</sup> The public outcry prompted bar associations across the country to weigh in on the perceived problems of American legal education.<sup>8</sup>

The debate has resulted in some real changes in law school programs. After years of debate about the importance of including

---

5. See, e.g., THE LAW SCHOOL SCAM, <http://thelawschoolscam.com/> (last visited Apr. 7, 2015); INSIDE THE LAW SCHOOL SCAM, <http://insidethelawschoolscam.blogspot.com/> (last visited Apr. 7, 2015); and OUTSIDE THE LAW SCHOOL SCAM, <http://outsidethelawschoolscam.blogspot.com/> (last visited Apr. 7, 2015). Of course, the World Wide Web is overflowing with other law school critics, some of which are much more toxic and others of which are much more moderate. In any event, the power of the internet to give voice to the disaffected law students whose lives were severely disrupted by the economic collapse of 2007-08 played an important role in catalyzing the larger debate inside and outside the academy about the state of legal education.

6. See, e.g., David Segal, *What They Don't Teach Law Students: Lawyering*, N.Y. TIMES, Nov. 20, 2011, at A1; David Segal, *Law School Economics: Ka Ching!*, N.Y. TIMES, July 17, 2011, at BU1; David Segal, *Is Law School a Losing Game?*, N.Y. TIMES, Jan. 9, 2011, at BU1; Ethan Bronner, *A Call for Drastic Changes in Educating New Lawyers*, N.Y. TIMES, Feb. 10, 2013, at A11; Lincoln Caplan, *An Existential Crisis For Law Schools*, N.Y. TIMES, July 14, 2012, at SR10; Jeff Jacoby, *US Legal Bubble Can't Pop Soon Enough*, BOSTON GLOBE (May 9, 2014), available at <http://www.bostonglobe.com/opinion/2014/05/09/the-lawyer-bubble-pops-not-moment-too-soon/qAYzQ823qpf4GQl2OiPZM/story.html>.

7. Among the most notable were: STEVEN J. HARPER, *THE LAWYER BUBBLE: A PROFESSION IN CRISIS* (2013); RICHARD SUSSKIND, *TOMORROW'S LAWYERS: AN INTRODUCTION TO YOUR FUTURE* (2013); and Brian Z. Tamanaha, *FAILING LAW SCHOOLS* (2012).

8. The American Bar Association appointed a committee to examine the “Future of Legal Education.” See, *Task Force on the Future of Legal Education*, AM. BAR. ASSOC., [http://www.americanbar.org/groups/professional\\_responsibility/taskforceonthefuturelegaleducation.html](http://www.americanbar.org/groups/professional_responsibility/taskforceonthefuturelegaleducation.html) (last visited Apr. 7, 2015). State and local bar associations appointed similar committees. See, e.g., CONNECTICUT BAR ASSOCIATION REPORT ON THE TASK FORCE ON THE FUTURE OF LEGAL EDUCATION AND STANDARDS OF ADMISSION (2014); HON. ANN JORGENSEN ET AL., FINAL REPORT, FINDINGS & RECOMMENDATIONS ON THE IMPACT OF LAW SCHOOL DEBT ON THE DELIVERY OF LEGAL SERVICES (2013); JON B. STREETER ET AL., STATE OF CALIFORNIA TASK FORCE ON ADMISSIONS REGULATION REFORM: PHASE I FINAL REPORT (2013); LINDA L. ADDISON ET AL., NEW YORK STATE BAR ASSOCIATION REPORT OF THE TASK FORCE ON THE FUTURE OF THE LEGAL PROFESSION (2011); MASSACHUSETTS BAR ASSOCIATION, REPORT OF THE TASK FORCE ON LAW, THE ECONOMY AND UNDEREMPLOYMENT (2012); NEW YORK CITY BAR ASSOCIATION TASK FORCE ON NEW LAWYERS IN A CHANGING PROFESSION, DEVELOPING LEGAL CAREERS AND DELIVERING JUSTICE IN THE 21ST CENTURY (2013); OHIO STATE BAR ASSOCIATION, REPORT OF THE TASK FORCE ON LEGAL EDUCATION REFORM (2009); OREGON STATE BAR: ADMISSIONS TASK FORCE, ADMISSION TASK FORCE FINAL REPORT (2008).

meaningful practice skills in the law school curriculum, the academy is finally taking skills training seriously. Law schools are slowly embracing an identity as professional schools and are beginning to appreciate the importance of introducing law students to the skills and values of the profession. As Judge Harry T. Edwards trenchantly pointed out, law schools do, after all, grant JDs, not PhDs, and should therefore embrace the idea of being professional schools as opposed to being another academic department within the university.<sup>9</sup>

The newly found recognition of the need for law schools to do a better job teaching professional skills is an acknowledgment of the fact that upon passing the bar, law graduates are officially attorneys and are licensed to represent clients. In another era, those freshly minted lawyers would have become associated with a firm and begun what was in effect an apprenticeship where they would be inculcated into the norms, values and practices of the profession at the side of a master lawyer. Today that “apprenticeship” route is much less common. The economics of law practice have made the traditional apprenticeship model something of an anachronism. As the old saying goes, “time is money,” and modern law firms apparently cannot afford to spend time training new lawyers, especially since firms are getting push-back from clients who refuse to pay for time logged by first and second year associates.<sup>10</sup>

At the same time, entry-level hiring is more competitive than ever with the supply of new lawyers exceeding the number of traditional entry-level law jobs. This is due, in part, to law firms hiring more laterals instead of new graduates in order to counter client objections to paying for the training of new lawyers. Consequently, many recent law graduates today find themselves starting a legal practice on their own or with other inexperienced lawyers.

“Hanging out a shingle” is not as easy as it might appear. Having successfully completed law school these new lawyers should possess a significant amount of substantive knowledge about the “law,” but likely know little about how to use that knowledge to help clients solve legal problems. While knowledge of the law is crucially important to being a lawyer, that substantive knowledge alone is not enough to be a competent practitioner.

---

9. Harry T. Edwards, *Renewing Our Commitment to the Highest Ideals of the Legal Profession*, 84 N.C. L. REV. 1421, 1423 (2006).

10. Ashby Jones & Joseph Palazzolo, *What's A First-Year Lawyer Worth? Not Much, Say a Growing Number of Corporate Clients Who Refuse to Pay*, WALL STREET JOURNAL, (Oct. 17, 2011).

The discontinuity between a new graduate's knowledge of substantive law on the one hand, and the possession of skills to use that knowledge to represent clients, was one of the major shortcomings in legal education identified in the influential "Carnegie Report," which noted that while law schools do a good job teaching substantive law, they do a poor job of training students in the professional norms, ethics, values, and practices of lawyers.<sup>11</sup>

Law schools, including Western New England University School of Law, are taking steps to close that gap. Specifically, we recently have: (1) added two courses focused on legal practice management; (2) overhauled the curriculum to provide for skills instruction and writing throughout the program of instruction; (3) expanded our externship and clinic offerings; and (4) added a new course to the first year, Introduction to the Legal Profession. The Introduction to the Legal Profession course requires first-year law students to work with "senior partners" drawn from the local bar to participate in an intense, weeklong role-playing exercise where the students intake the client, decide whether to take on the representation, develop a strategy for dealing with the matter, and then negotiate a resolution.

Despite the efforts being made by law schools, it may well be that those critics who insist on law schools producing "practice ready" lawyers are naïve and unrealistic. As the presenters in this symposium show, some things about law practice must be learned by experience while actually practicing law. Law school externships and clinics help bridge the gap between school and practice, but even these efforts can only produce students who are practice "readier," not practice "ready." The professional maturation process to go from law student to "practice ready" lawyer takes time and requires a joint effort between the academy and the bar. The New York City Bar Association is currently developing some exciting pilot programs that may provide a blueprint for helping new lawyers become practice ready.<sup>12</sup> Forward thinking law schools and bar associations across the country will be keeping a close eye on those experiments to see if they work and if they can be transplanted.

Before getting too giddy with the possibilities of a new era in law school/bar association cooperation, however, we ought to think about what law schools and, in particular, law professors bring to the table when it comes to providing true professional education. While most law

---

11. See Carnegie Report, *supra* note 1, at 47.

12. See NEW YORK CITY BAR ASSOCIATION, REPORT OF THE TASK FORCE ON NEW LAWYERS IN A CHANGING PROFESSION (2013), available at <http://www2.nycbar.org/pdf/developing-legal-careers-and-delivering-justice-in-the-21st-century.pdf>.

professors have been employed as lawyers before joining the academy, their practice experience is generally quite limited. The average length of time for law practice for all law professors is 3.7 years, with the length of time in practice negatively correlated to the rank of the law school in the *US News* rankings.<sup>13</sup> In the typical law professor hiring, the candidate is from one of a handful of elite schools<sup>14</sup> (where they were taught by professors with, on average, 1.4 years of practice experience),<sup>15</sup> and has practiced at a big law firm in a big city.

Not only do most law professors have limited practice experience, the experience they do have is in a very different context from the typical American legal practitioner. Although more recent data is not available, in the last comprehensive survey of the profession conducted by the American Bar Foundation in 2005, almost half of all lawyers in private practice were solo practitioners. Seventy percent of lawyers in private practice were in firms of fewer than ten lawyers. Only fourteen percent of lawyers in private practice were associated with firms of over one hundred lawyers,<sup>16</sup> yet almost all law professors who have legal experience are drawn from those very large law firms.

The approach to legal work in big city mega-firms is much different from the approach taken by small to medium sized firms. In part, it may be a function of the kind of clients served by the two types of firms. For example, although all clients of all firms care about controlling legal costs, the big, national clients serviced by mega-firms are likely to be less cost-sensitive than the typical client being advised by his or her own lawyer on Main Street, USA. The billing practices of firms may seem irrelevant in the context of the best way to educate future lawyers, but it is actually quite important.

Most law students practice in small-to-medium-sized firms serving

---

13. See Richard E. Redding, "Where Did You Go to Law School?" *Gatekeeping for the Professoriate and its Implications for Legal Education*, 53 J. LEGAL EDUC. 594, 601 tbl.3, 605 (2003) [hereinafter "Redding"] (showing that among "top 25" law schools, the average length of practice was 1.4 years and at all other schools, it was 3.8 years, giving an average overall of 3.7 years).

14. During the period 1996-2000, one-third of all new teachers graduated from either Harvard (18%) or Yale (15%); another third graduated from other top-12 law schools, and 20 percent graduated from other top-25 law schools. The remaining 14 percent graduated from a school not ranked among the top 25 law schools and most of those new professors were hired by the same school from which they had graduated (48%). *Id.* at 599.

15. *Id.* at 601, tbl.3.

16. These employment numbers are drawn from a compilation of demographic data available on the website of the American Bar Association. *Lawyer Demographics*, AM. BAR. ASSOC. (2013) [http://www.americanbar.org/content/dam/aba/administrative/market\\_research/lawyer\\_demographics\\_2013.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/market_research/lawyer_demographics_2013.authcheckdam.pdf).

clients who are very concerned about billing. Being mindful of the billing sharpens the focus of the lawyer—the advice given must be legally correct, but also practical and cost-effective. Law professors who understand that dynamic might find ways to bring it to life in the classroom. Law professors who are not in tune with that dynamic might prize legally correct (but impracticable) responses to legal issues over the pragmatic solutions that will be called for in practice.

Some law professors are willing to go the extra mile to learn or re-learn these important lessons about the practical side of practice. A few years ago my colleague, Professor Amy Cohen, took a sabbatical in practice to gain insights on the art of practicing law in the “real world.” The lessons she took away from that experience were a real tribute to the lawyer’s craft:

A law professor has the luxury of taking a position on an issue without worries about losing a client or not getting paid for time spent researching an issue to its depth; a practicing lawyer does not have that luxury and thus, in some ways, must be more creative, more resourceful, and more realistic in addressing legal questions. Every law professor should at some time during his or her teaching career be forced to confront that reality, not only because it will make that professor a better teacher and a better scholar, but also a better, less cynical, more humble and appreciative representative of our profession – the one we share with the lawyers we have all educated and sent out to the world of practice.<sup>17</sup>

Finally, it should be noted that law professors whose practice backgrounds were in big firms in big cities not only practiced in a different cost environment, their interactions with clients was likely markedly different from the reality of law practice in most small firms. Associates in big firms typically do not have a lot of direct client contact, they are not responsible for bringing in new business, they typically do not have their own clients, they do not make the big decisions in the development of the representation, they do not handle the client billing, they likely have never had to say “no” to a client, or deliver bad news to a client, or strategize with the client’s top decision makers about how to proceed. They have been employees in a big business, not owners of a small business. So, they are smart and they have worked on cutting-edge matters, but they have not been in the role of the lawyer as that role is actually practiced in the American bar outside of mega-firms.

I am not disparaging the value of large law firm practice, but I am

---

17. Amy B. Cohen, *The Dangers of the Ivory Tower: The Obligation of Law Professors To Engage in the Practice of Law*, 50 *LOY. L. REV.* 623, 644 (2004).

pointing out in the context of a symposium on small firm practice that professors whose practice experience was in big Wall Street firms are unlikely to be useful in providing meaningful insight into the challenges facing small firm practitioners.

None of this bodes well for law schools doing a better job of preparing their students for practice in the small firm setting, but being aware of the challenges is a necessary first step in doing something about them. This symposium is a very good second step.

## II. THE SYMPOSIUM PRESENTATIONS

The symposium provided a varied array of perspectives and observations on the realities of practicing law as a solo or in a small firm. The symposium's keynote speaker was Attorney Jared D. Correia, the Assistant Director and Senior Law Practice Advisor for the Massachusetts Law Office Management Program (LOMAP). LOMAP is a free service of Lawyers Concerned for Lawyers, the Massachusetts lawyer assistance program. The program helps attorneys to set up efficient offices, adopt smart practice management techniques and avoid ethical pitfalls.

Mr. Correia's talk, "Legal Analytics: The Future of Intelligent Design," and the article he co-authored with Heidi Alexander and included in this symposium, *Big Data, Big Problem: Are Small Law Firms Given a Sporting Chance to Access Big Data?*, make the case for keeping track of key performance measures and using those indicators to make business decisions about the practice. The paper initially focuses not on law practice but on the management of professional baseball teams. Developing the familiar "Moneyball" perspective on baseball management, it then makes the link to the management of a law practice.

The paper notes that while large law firms invest in statistical analysis that draws on "Big Data"—both internally-generated and industry-wide—smaller law firms often fail to track and learn from information gathered through and related to their businesses. It observes that most small firms make decisions based on "gut reactions and guile," rather than analyzing numbers that might inform the decision-making process with empirical data. The paper then makes the case for small firms to at least use "small data" and apply some relatively simple statistical analysis when running their practices.

The paper discusses hypothetical steps by which a solo or small law firm might work with "small data" in ways that would positively affect firm management. It starts by thinking about what to collect and how to collect it. A good intake form is crucial and keeping good data on

marketing efforts makes a lot of sense. It then proceeds to talk about how to analyze the data and take action informed by it. Most firms use some kind of a law practice management (LPM) or customer relationship management (CRM) software and those tools can help the lawyer leverage the value of the data collected.

The paper suggests that small firms might be nimble enough to spot trends in data before competitors do and capitalize on that insight. For example, an uptick in business in a particular area of practice might lead to more intense marketing cases in that area, which could, in turn, result in a head start over other firms in being the expert in that area. Alternatively, a lawyer who tracks time and finds inefficiencies will be able to cure those inefficiencies, making more time for billable work.

The paper's thesis is that the more an attorney relies on internal information systems to make informed decisions about practice management, the less likely they will be to rely on gut feelings about what works and what does not. Implicitly, the paper trusts that a better decision-making process will result in better decisions.

After the keynote, the panelists (in order) included Attorney Tara L. Knight, Managing Partner at the firm of Knight & Cerritelli, LLC in New Haven, Connecticut. A perennial Connecticut "Super Lawyer," Ms. Knight frequently appears in the media as an expert on criminal law. Her talk, on "Client Outreach and Networking," discussed one of the most crucial survival skills for any practicing attorney in the twenty first century—especially for small firm and solo practitioners who need to "eat what they kill." Networking presents a psychological block for many new lawyers, but it is an important skill to master in the competitive legal services environment in which every lawyer at every firm needs to know how to connect with potential clients.

Following Ms. Knight was Attorney Ronda G. Parish, a Solo Practitioner from Springfield, Massachusetts. Attorney Parish is regularly selected by her peers for listing in *The Best Lawyers in America* book in the areas of Trusts and Estates and Employee Benefits (ERISA). She spoke about the development of her practice.

After her, Attorney Kyle R. Guelcher, a Solo Practitioner and active member of the Massachusetts Bar Association and the American Bar Association, located in Springfield, Massachusetts, related lessons learned in starting his own firm, merging with a larger firm, then going back to being a solo. His talk, "Challenges of Starting a Small or Solo Firm," carried with it the credibility of someone who has been there and back.

Attorney Laura Bradrick, an associate at Goldman, Gruder, &

Woods, LLC, discussed some of the most important psychological attributes necessary for successful small firm practice. In her presentation, “Confidence, Relationship Management, and Expectation Management,” she discussed some of the “intangibles” that every practicing attorney needs to have at the ready. Specifically, establishing a client’s confidence and maintaining that confidence through the relationship, being a strong manager, and setting expectations are the key intangibles every lawyer must possess. The more one can build these skills in their own practice, the better they will become in all aspects of their career.

Following that presentation, Attorney Andrea Momnie O’Connor, associate with Hendel & Collins, P.C., in Springfield, and deeply involved bar member, made her presentation on “Planning for Your Financial Success.” She started by reminding the attendees that the legal services marketplace is indeed a market that is not immune to the laws of supply and demand. Following the Great Recession, the demand for legal services declined while at the same time, law schools kept graduating new lawyers. The “oversupply” of lawyers makes operating a law practice at a profit very challenging.

In this environment, every lawyer must have a solid understanding of business in order to succeed. Although law is undoubtedly a profession, it is also a business. A good business makes money. A successful law practice, like any other business, requires the proper balance of income and expenses and of assets and liabilities in both planning and implementation.

Attorney Christopher S. Todd, a solo practitioner also in Springfield presented next. His experience representing criminal clients in Massachusetts District and Superior Courts as well as Federal District Court informed his talk, “Helping your Fellow Man while Helping Yourself: How to Use Court Appointed Work to Build your Practice and Maintaining a Substantial Life with a Busy Practice.”

The final speaker of the evening was Daniel McKellick, a third year law student at the time of the symposium. In addition to being a Production Editor of the Law Review, Mr. McKellick participated in many practical experiences during his time in law school, including the Small Business Clinic, International Moot Court, and an externship with Magistrate Judge Neiman at the Federal District Court.

While a student in the clinic, Dan and his partner analyzed a sticky ethical issue, which resulted in him being awarded the 2014 Law Student Ethics Award for Western New England University School of Law. The award is made by the Association of Corporate Counsel, Northeast

Chapter, to recognize a law student for an exceptional commitment to ethics in the course of their studies. At the symposium, Mr. McKellick talked about ethical issues arising from increasing use of cloud computing by attorneys. The three goals of the article, as he enumerates them are:

To provide a general background on the cloud and its application in the practice of law; to identify issues that Massachusetts attorneys should be aware of before introducing the use of cloud computing into their business model; and to provide other possible sources, beyond the ethics committees opinions, where attorneys who wish to meet their professional obligations while storing their clients' information in the cloud can turn.

His paper reports on state legal ethics committees' responses to cloud computing, noting that many have articulated a reasonableness standard to govern attorney conduct. The reasonableness standard permits the storage of confidential client information in the cloud provided attorneys take reasonable steps to protect against property loss and inadvertent or unauthorized disclosure of confidential information. In addition, the standard requires lawyers to act with appropriate due diligence to protect client information from threats.

Implicit in these ethics opinions is the recognition that cloud computing offers lawyers the opportunity for efficiencies and cost savings as long as they can ensure ethical compliance. Most of the ethics opinions, however, are quite vague. As any first year law student quickly learns, when the word "reasonable" appears, disputes can arise. Attorneys planning to use cloud computing, therefore, must generally venture beyond state ethics opinions because, generally, the reasonable care standard fails to provide adequate guidance.

Some ethics committees have added gloss to their formal opinions by providing guidance on how attorneys can meet their professional obligations, such as specific suggestions of what "reasonableness" may include, while others have provided guidance by imposing mandatory requirements. Although mandatory requirements are clearer than a fuzzy "reasonableness" standard, commenters fear that rigid mandatory rules will not work well in an environment of rapidly evolving technologies, and may even have the negative side-effect of stifling innovation.

In analyzing the Massachusetts ethics opinion on cloud computing, the paper shows how the reasonableness standard alone can be misleading and how reasonableness alone falls short of providing sufficient guidance to Massachusetts attorneys who seek to satisfy their professional responsibilities while using the cloud.

As an alternative to the reasonableness approach, the paper proposes that Massachusetts attorneys instead be subject to consumer protection regulations which could offer direct guidance on how attorneys can comply with their ethical obligations while obtaining the benefits of the cloud. The paper makes a strong case that consumer protection statutes can provide a better framework for the attorney wishing to use the cloud in a manner that is compliant with the rules of professional responsibility.

In all, the talks given on the evening of the symposium and the papers presented in this volume of the *Western New England Law Review*, cover a lot of territory and illustrate even more clearly how challenging (and rewarding) law practice can be.

#### CONCLUSION

By the end of the evening, everyone agreed that the symposium had been a great success. The goal was to bring together practicing lawyers, from a wide range of perspectives, on the topic of small and solo firm practice and for them to exchange ideas and bring important issues into focus. This goal was met and exceeded.

Special thanks also to the staff of the *Western New England Law Review*, who have worked tirelessly (and patiently) to bring this issue to press, especially Laura Fisher, Colleen Monroe, and Julie-Anne Stebbins. I hope you, the reader, find these articles as stimulating and informative as I did.