



Illustration by Andrew O. Alcalá

Managing Change

Jim Bliss

"There is a tide in the affairs of men which, when taken at the flood leads on to fortune . . ." Shakespeare, Julius Caesar.

One day it occurred to me that I liked doing what my clients were doing better than what I was doing. As an associate with a corporate law practice in a large firm, and later as a member of a large corporate law department, I had everything a young lawyer could want—until the day of that epiphany. I had a few other concerns, such as deteriorating professionalism and the need for more funds to support a growing family. Yet, my realization didn't result in immediate action.

Fate did.

My family's business, a regional wholesale property and casualty brokerage and managing underwriter, needed someone to manage its growing claims department, its legal affairs, and, maybe some day, in the way of such things, the company. They made me an offer I couldn't refuse; two months earlier, I would have turned it down. Not now.

A few years of work (part of it during a near collapse of the industry) resulted in my becoming president and, two years later, owner with a family partner. Within two more years, we became a licensed insurer.

That was all more than 20 years ago. After all these changes, I still "practice" law. In a business based, more than any other, on contracts, that was probably inevitable. My law activities range from policy and reinsurance treaty drafting to occasional participation in claims decisions, employment law, or regulatory interaction—a wide variety of issues, all, for me, icing on the cake of business management.

Others have made similar choices. Most whom I've met have few regrets. Many wish they had taken the risk when they had the chance.

Change is taking chances—economically, professionally, and personally. But the rewards for taking that risk can be and in my case were immensely satisfying. ♦

Jim Bliss, Editor-in-Chief-Elect of *The Brief*, is president of Governmental Interinsurance Exchange and Bliss-McKnight, Inc., of Bloomington, IL.

Opportunity Is Knocking

Suzy Bibko

This issue of *TortSource* explores some of the career options available to lawyers today. Long gone are the days of working at the same firm, in the same department, from summer associate to retirement. Instead, change now appears to be part of the legal profession.

As this edition's authors found, the opportunities for lawyers are boundless. It is not uncommon for attorneys to start their own law-related business, join a new firm, preside over a family business, become a judge, switch from being a defense attorney to being a plaintiff's attorney, or even work part-time. Of course, there's always retire-

ment for a change of pace, but as you'll see inside this edition, TIPS members cannot seem to sit still.

While dissatisfaction with a present situation is often the impetus for a new career, change is not always made for a negative reason; change can also be fueled by a desire to perform more public service or to move to the next level of practice. Whatever the reason, many lawyers have successfully made the transition to a new line of work. Shifting gears means taking a chance, but few rewards come without risk. So, take a deep breath and embrace change! ♦

No Joy in Mudville

Diana L. Moro

After practicing law for almost 10 years, I found that the adversarial nature of the practice was not compatible with what I wanted in my life at that point. The majority of my practice was in employment law, both litigation and corporate counseling on employment issues.

As courtroom civility declined in my region of the country, I decided that what I really enjoyed about my work was in fact counseling—helping businesses develop employment-related risk management, training, and compliance programs for diversity and EEO issues. But corporations, particularly smaller corporations, were wary of hiring lawyers in this area; lawyers were too often perceived as deal breakers and problem makers. Consultants, on the other hand, aroused far less suspicion.

Once I realized the source of my work satisfaction, it was easy for me to begin a plan for change. I had no desire to spend 2,500 hours a year making money for someone else and was weary of law firm politics. I had tried my fair share of cases and no longer felt the need to prove myself in the courtroom. The money, while nice, was not what I wanted most in my life.

What I wanted was to spend time with my new husband and start a family. After we

decided to start a family, I knew that litigation and trial work would not be compatible with the amount of time I wanted to devote to raising our child.

Much soul searching and many long conversations with my husband later, we decided that I would leave the active practice of law and start Policy Professionals, Inc., a human resources consulting business that offered most of the things I already did in the counseling and compliance area of my practice. I found that small and mid-sized busi-

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Illustration by Andrew O. Alcalá



Meeting Round-Up

ANNUAL MEETING 2000 SPOTLIGHT

Don't miss the following TIPS events at the Annual Meeting in New York:

PRESIDENTIAL SHOWCASE PROGRAMS:

- The Multimedia Medical Trial: New Developments in Malpractice Litigation
Saturday, July 8, 2000, 9:30a.m.-12:30p.m., CLE Center
- Civil Rights in the 21st Century: Police Misconduct—Profiling and Other Emerging Issues
Sunday, July 9, 2000, 9:30a.m.-12:30p.m., CLE Center

Panel includes Nadine Strossen, President of the ACLU, and Michael Robinson, President of the IACP

BLOCKBUSTER PROGRAM:

- Hackers, Spammers & Cybersquatters—Business Torts on the Electronic Frontier
Saturday, July 8, 2000, 2:00p.m.-5:00p.m., CLE Center

Panel includes William Neukom, VP and General Counsel from Microsoft Corp., Lesley Anne Fair from the FTC, and Orin Kerr from the U.S. Department of Justice.

SECTION LUNCHEON

Monday, July 10, 2000, 11:30a.m.-2:00p.m., Waldorf-Astoria

Guest speaker: Johnnie Cochran



A special congratulations to Trial Academy Chair Peter Neeson for an extremely successful launch of the inaugural ABA Tort and Insurance Practice Section 2000 National Trial Academy that was held April 29-May 3 at the National Judicial College in Reno, NV. Pictured at the Trial Academy are: Peter Neeson, Chair, TIPS National Trial Academy; Frankie Sue DelPapa, Nevada Attorney General; Richard Turbin, Chair, TIPS; Chief Justice Robert Rose, Nevada Supreme Court; Mitch Orpett, Chair-Elect, TIPS.



Jack Gibson, left, was on hand in Dallas to present TIPS Chair Richard Turbin with the International Risk Management Institute, Inc. (IRMI), annual donation to the TIPS Scholarship Fund.



Bonnie Bulla, Spring Meeting Arrangements Chair, and George Fryhofer III, Council member, congratulate Alex Gonzales, nominated in Dallas to serve as Section Chair in 2002.



David Seidler (second from right) is thanked for his time and efforts as Midyear Meeting Arrangements Chair by Bo Phillips, Mitch Orpett, and Liz Medaglia.

Photos courtesy of John Pavlou



Legislative Update

Leo J. Jordan

Election Year: Issues of Interest

Managed Care and ERISA Shield

Last October, the House passed a major managed care bill. Included in the bill is a provision that would permit actions against employer-sponsored health plans in state court under state health care liability laws. The Senate bill, passed in July 1999, does not contain the "right-to-sue" provision. The ABA supports a civil action provision passed by the House.

A joint House-Senate Conference Committee was appointed to iron out the differences in the bills. Somewhat surprisingly, the House leadership, opposed to the state civil action provision, refused to appoint House conferees supportive of the right to sue. The most notable absence is Rep. Charles Norwood (R-GA), a major force in managed care reform.

Despite the absence of civil action proponents, the conferees have made progress. As of mid-April, a tentative

agreement was reached on an appeals process for patients denied care by health maintenance organizations. *The New York Times* (April 15, 2000) and *Daily Monitor* (April 14, 2000) both reported progress on "concepts" for an independent external review of denial of coverage.

The independent nature of the appeal appears promising. If a patient is denied coverage, his or her complaint would first be reviewed by the insurer. If denial is sustained, the appeals board would determine whether the appeal would be allowed to continue. If allowed, it would be turned over to at least one licensed doctor who would serve as an independent reviewer. As presently set out, the reviewer's decision would be binding on the plan.

The biggest issue, the right to sue, remains unresolved. Negotiators from the House and Senate argue that a well-

designed appeals process could reduce the number of lawsuits. It is important to stress that these early agreements are tentative. Nonetheless, trust and confidence among the conferees is building.

Breaking the Litigation Habit A New Approach?

An apparent new effort is now underway to change the process of injury reparations. In early April, Rep. Dick Armye (R-TX) was a principal speaker at a luncheon in Washington to announce the release of "Breaking the Litigation Habit," a new policy statement by the Committee for Economic Development (CED). This CED policy statement outlined a new approach to legal reform patterned in part on Auto Choice legislation. According to the CED policy statement, "the current compensation system, administered through litigation, is too intrusive, too complex, too slow, and too expensive." Two specific litigation alternatives were offered; both can be implemented by either federal or state legislation:

Early offers: Potential defendants are given an incentive to make an early offer of settlement to pay all economic loss incurred by the injured party, including reasonable attorney's fees. Because the opportunity to make an early offer is time-limited, the injured party is assured of rapid compensation. If the offer is rejected, the plaintiff faces a higher bur-

den of proof (clear and convincing) and a different standard of liability (intentional misconduct) for recovering non-economic (pain and suffering) damages. A newer version of the "loser pay" rule would also apply; and

Auto Choice: Under Auto Choice, car owners have the option of buying less expensive insurance that quickly compensates them for economic loss resulting from personal injury and protects them from claims for non-economic loss by other drivers. The promised benefits include quick payment to the injured, cheaper insurance (an estimated 24 percent reduction) and, on average, higher recovery for serious personal injuries. (Anticipated savings are predicated upon deduction of both non-economic loss payments and transaction costs (attorney fees).)

Reports from those attending the CED luncheon reveal that the concepts embodied in early offers and Auto Choice legislation would be the subject of long-term legislation support. A legislative period of four years plus a new Congress and administration underlie these proposals. ♦

Leo J. Jordan is Chair of the TIPS Governmental Affairs Committee and thanks the Government Affairs office in Washington.

With lawyer mobility on the upswing, it is sometimes difficult to find lawyers who have spent their entire careers at just one law firm. What prompts attorneys to move their practices? Is it the promise of higher compensation? the prospect of redirecting or expanding their practice? or something else?

Larry Schiffer, chair of TIPS' Electronic Media Coordinating Group, recently moved with 10 other lawyers from his firm of 15 years to New York's LeBoeuf Lamb Greene & MacRae. Schiffer made his move with mixed feelings. He regretted closing his firm and parting with long-time friends and colleagues; at the same time, he looked forward to the opportunity to move his practice to the next level.

As a boutique, his former firm practiced insurance and reinsurance litigation and arbitration. His new firm offered him the opportunity to develop his practice internationally and serve clients from a number of foreign offices. With increased resources at his disposal, he was also able to offer more expanded services for his clients. According to Schiffer, the move to LeBoeuf was illustrative of a larger trend in the legal industry, away from boutiques and to large firms.

Adapting to life at a mega-firm has required more than a few adjustments.



Illustration by Andrew O. Alcalá

Do You Want to Switch Firms?

Neal Ellis

After receiving a warm welcome from his new colleagues, Schiffer has made special efforts to get to know the lawyers at LeBoeuf. Although he notices a temptation to let the world come to him, Schiffer says that the new firm stresses getting out and meeting colleagues, over lunch, for example, and being involved in firm activities.

Like Schiffer, John Allen, a member of TIPS' Long Range Planning

Committee, moved from a firm he helped build into one of Michigan's largest firms over a period of 20 years. When he decided to shift to another of Michigan's largest firms, Varnum Riddering Schmidt & Howlett, last year, he did so only after thorough deliberation. Allen's former firm was already redirecting its client focus; after conferring with two other partners who were also heads of practice

groups, Allen and his colleagues decided to move to the new firm.

Allen advises that change is now a part of the profession; it constantly impacts our clients, their marketplaces, and how clients use lawyers. Instead of resisting change, we need to embrace it and be prepared for it. The profession, Allen believes, also needs to help lawyers and their families cope with the impacts of change.

Both Schiffer and Allen counsel that moving to a new law firm is a momentous decision in both a career and life. If you believe that you will have an opportunity to better serve clients at a different firm, they urge, explore the possibility—but talk with existing clients first about these options, and meet with lawyers at the new firm to ensure there's a good fit. Most important prior to making a move is to talk with your family and closest colleagues and make sure that they are on board. ♦

Neal Ellis is a litigation partner with the law firm of Hunton & Williams; he serves as Chair-Elect of the Section's Trial Techniques Committee and as a member of the Section's Professionalism Committee.

Part-Time Success

Juanita B. Luis

When I left my position as group general counsel, I was working 60- to 70-hour weeks. I decided to work as an independent contractor, with my goal being to work part-time. Some lessons I learned during this transition follow.

Social (and personal) identity in our culture is largely based on your job title. When you leave the corporate world, create a new, attractive identity for yourself. Saying, "I'm an attorney who has decided to work only part-time for a few clients" may not provide economic stature but it sure attracts social envy: Everyone wants more time for themselves.

Corporations are more receptive than law firms to using part-time independent contractors. (It may be they've worked successfully in non-law departments.) And corporations don't have to search for a rainmaker.

Sell your flexibility as something a business will want and can use. Stress the advantages of part-time professionals. For example: You can work peak periods without adding to overall

head count. You provide expertise they don't need on a full-time basis. You can take on special projects and leave when they're done, without further obligation on either side. You can come in during maternity or disability leaves.

Read business newspapers and magazines, identify likely employers, learn all you can about them, and network to make contacts or learn about openings.

Don't actively pursue too many employers at the same time—you could end up working full time and more!



Send news of your professional or community accomplishments to the editor of TortSource: bibkos@staff.abanet.org.

Cultivate long-term relationships. Otherwise, you'll spend all your free time looking for the next part-time job. I've been fortunate in finding three clients who have kept me busy for two or three regularly-scheduled days per week for the past five years, with only small exceptions.

Work at their office whenever possible. Seeing you around will help them think of you for other part-time projects. You'll also learn more about the business and its clients, so you can serve them more effectively. You also save money by using their support staff, library, servers, and other resources.

Be flexible and be professional. Be available during the days and hours that best suit the employer, whenever possible. Be willing to take some calls at home. Avoid being gone more than one day in a row—be sure to check voicemail and e-mail regularly. Give plenty of notice for your own vacations or personal matters. ♦

Juanita (Nita) Luis is part-time Associate General Counsel for UnitedHealth Group and consults with other clients on insurance regulatory and corporate transactions.



In Motion

Glenn M. Burton, Christopher J. Schulte, Paul M. Weekley, Thomas M. Hoeler, Josh L. Poe and Mindy P. Robbins, formerly of Shear, Newman, Rosenkranz, Burton & Lamb, P.A., have formed **Burton, Schulte, Weekley, Hoeler, Poe & Robbins, P.A.** in Tampa, FL.

Kim E. Ebert, formerly of Locke Reynolds LLP, recently became the managing shareholder of the new Indianapolis office of **Ogletree, Deakins, Nash, Smoak & Stewart, P.C.** Kim has also been asked to join the firm's management committee.

Apologies to **James C. Milton** for the misspelling of his name in the Spring issue of TortSource. **James C. Milton** of **Doerner, Saunders, Daniel & Anderson, L.L.P.**, participated in the recent "Database Detectives" ABA Connection Teleconference, a free CLE program tied to the *ABA Journal*.

Suzanne Bibko, an attorney with several years of publishing experience under her belt, is the new staff editor for three TIPS publications: *TortSource*, *The Brief*, and *Fidelity & Surety News*. If you see her at the Annual Meeting, say hello!

Does This Look Like Retirement to You?

Juanita B. Luis

Can you retire more than once? **Jack Blaine** has retired four times—so far! As General Counsel of the American Council of Life Insurers (ACLI), Blaine enjoyed being on the cutting edge, working with insurance industry leaders and legislators to make policy and find solutions to deal with such issues as AIDS and unisex rating. He then moved on to use his government relations skills as head of the Reinsurance Association of America (RAA), after which he served as of counsel to LeBoeuf Lamb Greene & MacRae.

Blaine's next move assumed the presidency of the National Organization of Life and Health Guaranty Associations (NOLHGA), where he contributed to organizing the Guaranty Reassurance Corporation's takeover in Florida of insolvent insurers and served on the boards of several insurance companies. After he retired from NOLHGA at age 65 and spent a few months not working and "climbing the walls," Blaine became of counsel to Sutherland Asbill & Brennan, where he mentors associates and provides regulatory advice to clients.

Blaine works full time but has remained flexible. He sees many opportunities at firms for lawyers with insurance and corporate experience to do transactional and regulatory work—particularly as the financial industry consolidates and evaluates opportunities created by the Financial Services Act.

Can the enthusiasm return? **Rita Theisen** thought she would retire from LeBoeuf Lamb Greene & MacRae when husband Jack Blaine retired from NOLHGA. Her mentors at the firm were also retiring, and she no longer felt enthusiastic about the practice of law—something she didn't feel a lawyer should be halfhearted about.

Early in 1999 she did retire, but not for long. At the urging of a friend, Theisen rejoined the Health Insurance Association of America (HIAA), where she'd worked for six years in the early 1980s. She has found trade association work to be quite different from how she remembered it, however. The business of health insurance has changed dramatically in the last 15 years, as has the membership of the HIAA and the issues it faces. The task of representing health insurers in the legislative and regulatory arena has never been more challenging than it is today.

Non-legal challenges also beckon—and Theisen predicts they won't have to wait long! There is French to brush up on, tap dancing to be mastered, and a big world to travel. It was the travel bug, not a malaria mosquito, which bit the couple while they were on safari in Africa earlier this year. They are now planning a trip to Italy with Blaine's siblings, and Theisen never gives up hope of spending more time in her native Montana.

So stay tuned. We may yet find them retired to their home on the Corrottoman River in Virginia, involved in the local community and daydreaming on their boat.

Can you handle 10 cases a night? **Leo Jordan** retired from his posts as vice president and counsel for State Farm in late 1996. After years of commuting between Illinois and New Jersey, he was able to settle down with his wife, Carla, in New Jersey, where she is vice president of operations for State Farm.

In the interim, Jordan pursued his interest in mediation and arbitration by taking a 40-hour federal mediation training course and becoming a certified mediator. He now conducts mediations and arbitrations in New York and New Jersey. About once a week, Jordan serves pro bono as an arbitrator in the New York City Courts.

At 6:30 p.m., nearly 300 people arrive in court and are generally told that their cases cannot be heard by a judge that evening and that they may have to return several times before this happens. If, however, they are willing to accept arbitration, cases can be handled that evening. Enter Jordan, who will generally hear 10 cases that include an interesting variety of employment issues, auto accidents, slip and fall matters, and actor/producer disputes. After listening to the case, Jordan makes his decision but does not have to supply his reasoning. His written decision is later mailed to the parties.

Jordan was also admitted to the New York Bar upon motion, although his nine-

month application process leaves him with hope of streamlining that system. He now is admitted to the bar in four states, which is an important factor when lawyers decide where to live and what they will be able to do after retirement.

Jordan receives numerous requests to provide expert counseling or serve as expert witness on insurance bad faith issues. He also remains active in the ABA, talks with its D.C. lobbyists a few times a week, and goes to their office every two months. He continues to work for the ABA Commission on Minorities, preparing the filing of an amicus curiae brief on behalf of the ABA in the *Hopwood v. Texas* affirmative action case, although this probably will not occur until after disposition of *Hopwood* by the Fifth Circuit.

As if this is not enough activity, Jordan continues to write for TIPS publications and remains active in the Federation of Insurance and Corporate Counsel, where he chairs the ADR committee and serves on its admissions committee.

Jordan says it's good to get away from the stresses of corporate life, although he clearly remains very busy; he says he can't imagine not working in some capacity.

Fortunately, the couple still finds the time to visit their children and grandchildren across the country.

Can you walk to work? **Daniel Blom** retired as executive vice president and general counsel of Family Life Insurance Company 15 years ago and returned to his partnership at Ryan Swanson & Cleveland with the intention of working only three more years. Though Blom eventually chose of counsel status, he still goes to the firm every day when he is in Seattle, and he's still bringing in new clients. Blom enjoys learning new areas of his insurance regulation specialty and being around younger people as the firm's "resident patriarch."

He makes sure, however, to leave time for outside activities. He chairs the Arts Committee for the Rainier Club, a business and professional club. The position involves sponsoring programs with writers and artists, managing the Club's extensive art collection, and

arranging for special exhibits. He also instituted a new program to designate a prominent writer or artist as laureate. Blom has a personal collection of art and rare books and still reads a great deal.

He is also physically active, with a routine that includes walking at least two miles a day—and sometimes all the way to his office. He owns a cruising sailboat and enjoys sailing in the Canadian Gulf Islands. Blom points out that health often determines whether or not a person can continue to work and believes that "pleasure is working when you don't have to."

Blom and his wife take time to travel extensively and have been to Antarctica, China, Russia, South America, and cruised to remote locations in the Indian and Pacific oceans. They continue to attend many TIPS and NAIC meetings. Blom especially enjoys his connections with TIPS and looks forward to seeing good friends at meetings.

Can you retire to your dream locale? Former TIPS chair **Donald Haskell** retired at age 55 from the Chicago firm of Haskell & Perrin. He'd fallen in love with the Astoria, Oregon, area during a college summer job and many subsequent visits, so that's where he and his wife moved.

Haskell is very involved in civic affairs in his dream locale. He says he was talked into running for county commissioner, and he served a four-year term full of controversies. Haskell took and passed the Oregon Bar Examination (how many of us want to face a bar exam after retirement!). Though he never practiced law in Oregon, he was appointed by the Oregon Supreme Court to a four-year term on the Board of Bar Examiners and became its chair. Currently, he's a member of the planning commission for Astoria and a trustee of the Columbia River Maritime Museum. He also writes frequent guest editorials for the local newspaper.

Haskell loves the water, is an avid swimmer, and has a beautiful office building set on pilings over the Columbia River—and an ocean-front beach house. His twin-diesel boat has taken him up to Alaska, through eight controversial dams on the Columbia and Snake Rivers to Idaho, and around the San Juan Islands—with the wonderful scenery enhanced by Beethoven's *Ninth Symphony* playing on the CD player! Unfortunately, many of his activities have been put on temporary hold while he recovers from an injury: his foot and leg basically separated and are now held together by eight pins plus a plate. He reports the enforced inactivity is driving him crazy!❖

Juanita (Nita) Luis is part-time Associate General Counsel for UnitedHealth Group and consults with other clients on insurance regulatory and corporate transactions.

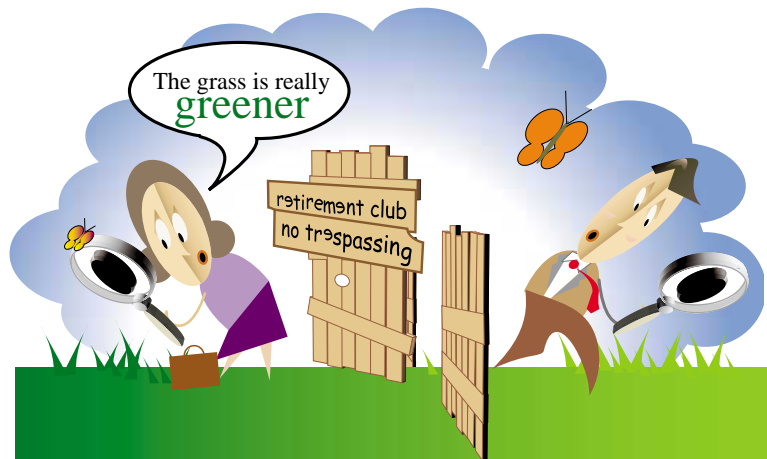


Illustration by Andrew O. Alcalá

So You Want to Be a Judge. . .

Neal Ellis



Illustration by Andrew O. Alcalá

appears in my courtroom receives justice,” Bjorkman says.

Prior to his appointment as judge of the 30th Judicial Circuit in Michigan 24 years ago, Judge Michael Harrison, former chair of the National Conference of State Judges, served as a county civil attorney. Like Bjorkman, Harrison has found that his volume of cases has increased markedly, and that the management of cases, including scheduling conferences, pretrial conferences, and mediations, consumes a great deal of time. But he finds the intellectual challenges of the job have been most rewarding. Sitting in Lansing, the state capital, Harrison hears a variety of constitutional, complex tax, and other cases. He says lawyers lack of preparedness and increasing lapses of civility and contentiousness represent his greatest problems with lawyers appearing in his court. But hearing a well prepared case with good lawyers remains one of his greatest joys.

Bjorkman says that it is rewarding to have a positive impact on people's lives. Most difficult are bearing witness to broken relationships and failed lives and sending young people to prison. As a judge, agrees Harrison, “You are dealing with society's mayhem”—unhappy situations, injured people, relationships gone astray, and sometimes-horrifying criminal conduct.

Anyone seeking a judgeship needs to be

disabused of the notion that judges have it easy. Schedules no longer belong to you; the court calendar controls your life. Also important is the right judicial temperament. As Bjorkman explains, “Although you may listen to more versions of ‘the dog ate my homework’ than imaginable, you need to be judicious, patient, and keep an open mind.”❖

Neal Ellis is a litigation partner with the law firm of Hunton & Williams; he serves as Chair-Elect of the Section's Trial Techniques Committee and as a member of the Section's Professionalism Committee.

For almost all lawyers at some point in their careers, wielding the gavel and wearing the black robe at the bench in a courtroom are a dream. For some, the dream comes true.

In the case of Judge Louise Bjorkman (chair of TIPS' Appellate Advocacy Committee), dream became reality early in her legal career. After practicing with Rider, Bennett, Egan & Arundel in Minneapolis, handling civil appeals and litigation, Bjorkman was appointed by the

governor to a seat on the District Court (trial level) bench.

The draw of public service and desire to “give something back” had prompted Bjorkman's decision to seek a judgeship. Although mastering new fields of law was somewhat difficult at first, the greatest challenge she has faced has been dealing with the mind-numbing volume of criminal cases she sees, as many as 100 in a single week. “It takes a great deal of energy to make sure that everyone who

Making the Transition

Mark Sklan

From Transactions to Litigation: The Time Machine

The transition from litigation to transactional work is a common career arc. Litigators envy the transactional attorney's freedom from the tyranny of judges and the tight deadlines imposed by the rules of civil procedure. They envision a sedate practice in which deals are constructed at leisure, there is time for lunch at the club, perhaps some golf with their physician clients on Wednesdays, and plenty of time for the family.

Transactional counselors know that the litigator's fantasy of their practice exists in daydreams and screenplays. Only in Televisionland is a transactional attorney free of tight deadlines imposed by the demands of an accelerated marketplace. The judge's tyranny is replaced by the over-worked government's. Lunch at the club is really a club sandwich at a crowded desk.

Mark Sklan, a lawyer at The Law Office of William I. Chopak in Costa Mesa, CA, made this change and recommends it. He points out that his relationships with clients changed as a result of his switch from negotiator to litigator. “Transactional work attempts to structure the future,” Sklan says.

“The relationship with clients is a collaborative effort to predict the unpredictable.” Litigation tries to right wrongs that occurred in the past, he continues, either wrongs done to the plaintiff or wrongful accusations against the defendants. “Clients want vindication.”

Sklan found his transition a way to work for justice rather than just work. “A great deal is one where no one ever reads the documents after they are signed, while a great trial result from an appeal can outlast us all.” The chance for change in the law and a chance that justice can be done is worth all the pressure of litigation, Sklan says.

Transition from Panel to Staff Counsel: Closer to the Source

Another transition lawyers are making is from panel to staff counsel. After speaking to several attorneys, it became evident that motives for leaving panel counsel for staff counsel vary. Some want to “break the time sheet chains”; others want to avoid the long hours. Still others are concerned about the future of their practices. These lawyers realize that they are forced by market conditions to charge the same price for their services in 2000 that they had charged in

1985. The price squeeze makes it harder to provide the kinds of service they want to deliver to their clients and still make a profit. The attorneys found that they were freed from many economic and time constraints when they could simply represent clients without worrying about the time it took to accomplish a task.

Those who are uncomfortable with marketing mention job security. “I just could not figure out what to do to get more files. I thought winning cases was enough, but I was wrong,” confides one staff counsel attorney. “I was never good at the lunch-and-golf circuit that seemed to deliver work to some of my friends in other firms. Now I don't have to worry about where my next file is coming from and can just concentrate on representing my client,” she says.

In the age of e-mail and wireless transmissions, client communication is also an issue, remarks another lawyer who made the switch. “It's easier to talk to the claims folks as staff counsel because we are on the same team. When I was a panel attorney, I worried about saying the wrong thing and costing myself a major client. As staff counsel, I can advocate more forcefully for my client while still meeting my obligations to my employer—after all, good representation of my clients is also good customer relations for my employer.”❖

Mark Sklan is a trial attorney in the Construction Defect Section of the Law Office of William I. Chopak in Costa Mesa, CA.



Did you know . . . that as a member of the Tort and Insurance Practice Section you are entitled to valuable discounts on TIPS library of publications? Visit www.abanet.org/tips/pubs/home or call 800-285-2221 for a copy of the new 2000 TIPS Publications Catalog today!

Survey Says...

You call 24 hours a day “flexible”?

A survey of 500 professional working mothers in Los Angeles, Boston, and New York conducted by Flexible Resources, a consulting and staffing firm, showed 64 percent of the women were about to quit or had already quit their jobs to seek flexible work arrangements.

A large signing bonus? . . .

Any signing bonus? . . .

A nationwide survey of 3,000 college students and recent graduates by Jobtrak.com, a leading online job listing service, showed almost two-thirds value lifestyle above financial considerations. Most-desired benefits included the following:

- Flexible hours: 35 percent
- Stock options: 19 percent
- Vacation: 13 percent
- Ability to telecommute: 13 percent
- Better health plans: 12 percent
- A large signing bonus: 12 percent.



“When I Was a Young Lawyer”

Robert E. Hirshon
President-Elect of the ABA

“My Mentoring Advice: There Is No Substitute for Hard Work”

What was your background like and what inspired you to become a lawyer?

I grew up in Portland, Maine (pop. 65,000), the largest city in my state. Each of my grandparents immigrated from Eastern Europe to this country in the early 1900s and ultimately moved to Maine. My father's parents traveled to Portland; my mother's parents ended up in Waterville.

Education was very important to my family. My father was the first in his family to go to college. He received his undergraduate degree from the University of Maine and dental degree from the University of Michigan. My mother had three siblings: a brother and two sisters. They all graduated from Colby College and each attended graduate school. I always knew that I would attend both college and graduate school.

During my senior year in high school, I had a slight disagreement with my father regarding my future. I wanted to go to the University of California at Berkeley (it was the 60s) and he wanted me to go to Princeton. We compromised and I attended the University of Michigan. I anticipated becoming a doctor and took several pre-med courses. However, it didn't take much to convince me that public speaking was more fun than organic chemistry; thus, I switched my major to pre-law. I still wasn't sure, however, that I wanted to be a lawyer. I seriously considered attending Woodrow Wilson or Fletcher. My political science teachers convinced me that the State Department was controlled by lawyers and that if I were truly interested in international politics, I should first become a lawyer.

Where did you go to law school and what did you do right after that?

The University of Michigan offered me a full tuition scholarship and I stayed in Ann Arbor. I maintained my contacts in Maine and was fortunate enough to obtain a summer clerkship with Pine Tree Legal Assistance after my first year. I worked with and for the poor in a small Maine mill town and realized immediately that I wanted to come back home and practice law. I joined the law firm of Drummond Woodsum & MacMahon, which was only 10 years old at the time and had 10 lawyers. The firm was committed to public service and, to this day, I remain happily, if not gainfully, employed by them.

What are your favorite kinds of cases?

My favorite cases are those that test my oral advocacy skills and allow me to negotiate creative solutions for complex problems. Although Maine experienced very difficult economic problems during the late 80s and early 90s, my representation during that time of several major banks and the Resolution Trust Corporation in major workouts offered me just the type of challenges I enjoy the most.

Whom do you most admire?

Senator Edmund S. Muskie. Senator Muskie came from a poor family, put himself through college and law school, and confounded all odds by being elected the first



Bob Hirshon—
then and now.



Democratic Governor in the State of Maine in many decades. He was also a U.S. Senator and Secretary of State. In 1990, he joined a large Washington law firm and, rather than simply enjoying the good life, he dedicated himself, until his death, to helping Maine's poor obtain free legal service.

What is your greatest source of professional pride?

Nomination as President-Elect of the American Bar Association.

What got you started with ABA involvement and how did you move on from there?

Although I first became a member of the ABA upon graduation from law school in 1973, I did not become active until 1986. In the Spring of 1986, I was introduced by Senator Edmund Muskie, who was a member of the Maine State Bar Association and was aware that I was president of that organization. He had just been contacted by Keith Davidson, Chair-Elect of TIPS. Keith had asked the Senator to become Chair-Elect of the Section's International Tort & Insurance Law Practice Committee. The Senator, professing a lack of knowledge of bar association activities, asked if I would be a vice-chair. Shortly after that conversation, I received a call from Keith; he asked me whether I was also interested in becoming a member of the Professional Issues Committee.

As president of the Maine State Bar Association, I gave several speeches on the need for lawyers to become more involved in pro bono activities. One of these speeches came to the attention of the Chair of the Standing Committee on Lawyers Public Service Responsibility. Apparently, he and the staff counsel, Lynn Sterman, recommended that I be appointed to the Standing Committee. I served as a member and the Chair of that Committee. Subsequently, I was asked to lead a working Committee to restructure pro bono activities with the ABA. The result of that effort was the Center for Pro Bono and I was asked to be the first Chair of the Steering Committee that oversaw the activities of the Center.

During this period of time, I was elected as the Maine State Bar Association's Delegate to the House of Delegates. A few years later, I was elected to the

Nominating Committee of the House of Delegates. I was also elected to the TIPS' Council. Subsequently, I was elected the Section's Chair. After serving as Chair of TIPS, I was asked to serve as Chair of the ABA's Membership Committee. I was reluctant at first, because it violated my own personal rule of never chairing a committee in which I had not first served as a member. Obviously, I agreed to become Chair and have absolutely no regrets. A couple of years ago, I decided to toss in my hat to what I knew would be a crowded ring of ABA presidential hopefuls. Several months ago, I was fortunate enough to be nominated as the President-Elect of the American Bar Association.

Bob Hirshon's Advice for Young Lawyers:

- Take risks. Nothing ventured, nothing gained.
- Work hard. While luck may play a role in a successful practice, there really is no substitute for hard work.
- Get involved. Your community needs you whether it is Bar Association work, civic, or religious involvement. Volunteer your time and don't forget that through pro bono work you truly can make someone happy.
- Be polite, admit your mistakes, and move on.

What was the worst professional advice you ever received?

To focus on billable hours rather than becoming involved in bar activities. The person who gave me that advice will remain anonymous.

What was the best professional advice you ever received?

Actually it wasn't advice but rather an order from the managing partner of my law firm that upon my admission to the Bar, I should join the ABA.

What personality trait has served you best over the years?

A willingness to take calculated risks combined with a very competitive personality.

One thing I can't stand is . . .

People who pretend to be experts on subjects about which they actually know very little.

What challenges you the most?

Balancing my "office life" with my ABA activities.

What can TIPS do to be a good home for young lawyers?

Most lawyers my age sharpened their skills by apprenticing as associates or by being mentored by senior members of the Bar. Times have changed and Bar Associations need to provide younger lawyers with the tools that will make them better practitioners. If TIPS provides these younger lawyers with products, services, and client development opportunities, it will offer a "wonderful" home. ♦

Anne Spencer Ellis

TortSource

A Publication of the Tort and
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Larry P. Schiffer

Web Portals: The Latest "Killer App" on the Web

The latest "killer app" on the Internet is the Web portal. What's a Web portal? A Web portal is a Web site that the user can customize and through which the user can access many different applications, information, and shared files. There are two types of Web portals. First, there are the public Internet Web portals like Yahoo, Excite, Go Network, Alta Vista, and Snap.Com. These Web sites all allow various levels of customization and provide registered users with personal or shared calendars, instant messaging, news feeds, chat rooms, and other services, all at one convenient location. The Law News Network is a type of Web portal for attorneys, but does not have the personalized features of Yahoo.

The second type of Web portal is the corporate or enterprise portal. This portal is like a corporate intranet, but with many more features, integration, and collaborative programs. Many of my firm's clients are setting up corporate Web portals for their staff. Some may be thinking about allowing outside counsel into parts of the portals. Law firms that have intranets are also moving toward portals for their employees and

attorneys. By using the collaborative tools available with portal integration, law firms will be better able to share information and leverage their firms' intellectual capital.

The advantage of either type of Web portal is that information is centralized and accessible through a Web browser. No matter where you are, as long as you can access the Internet, you can access your portal and take advantage of the news, programs, calendars, and other information available to the users.

If you have any questions about the Internet, or any favorite Web sites that might be of interest to TIPS members, please send them along to me. ♦

Larry P. Schiffer (lschiffe@llgm.com), a partner with LeBoeuf, Lamb, Green & MacRae, LLP, in New York, concentrates on arbitration and litigation of insurance and reinsurance disputes. He is a past chair of the TIPS Technology Committee.

Visit the Tort and Insurance Practice Section's newly redesigned website at www.abanet.org/tips.

No Joy in Mudville

continued from page 1

nesses were not hesitant to hire me as a consultant; they believed my legal background was an advantage. I also associated with a law firm as of counsel, which enabled me to handle litigation when necessary.

For most of the last five years I had been in full-time practice, I realized, I was unhappy. Many of the attorneys I dealt with lost the ability to engage in common courtesies; every conversation was adversarial and there was no joy in Mudville! When I thought of what I wanted to do with my life, I found I knew this much: I wanted to get up in the morning and enjoy my work. Law was no longer fun.

I do not miss active practice. I enjoy being my own boss and being able to accept or reject work for my own reasons. I enjoy being able to say to my clients, "I'm sorry, but I can't meet on Tuesday mornings because that's when I take my daughter to swimming lessons." I do not miss the salary.

Without a doubt, the loving support of my husband, who wanted a happy wife, was key in making this huge change in my life. Without his support, emotional and financial, I would not have been able to do what I have been doing since August 1, 1998.

Now, when people ask what I do, I explain that I am a mother, a consultant, and of counsel with a law firm—in that order. My time with my daughter Michaela is important to both my husband and myself—too important to let her spend her first years in the care of someone else. I don't miss flying 25,000 miles a year or trying multiple cases each year. I love solving problems for a small business, training people to understand the dynamics of a healthy work environment, and being able to watch my daughter play under my desk in my home office.

Full-time legal practice? Not right now, thank you. Will that change in five years? Maybe. But for now, a law-related occupation is what's right for me. ♦

Diana L. Moro is President of Policy Professionals, Inc., a full-service human resources consulting firm based in the Philadelphia area. Diana is also of counsel with the firm of Durkin & Associates, P.C. in Philadelphia.

Reader Response

This letter was sent in response to the tech.tips column on PDAs that appeared in the Spring 2000 issue of TortSource.

[To the Editor of TortSource]:

While I enjoyed reading this edition, I thought that the article on PDAs contained some inaccuracies and omissions that could cause a reader to select the wrong PDA. I am presently using a Palm IIIx, but have used various PDAs including those based on Geo, Windows CE and Palm OS operating systems, and believe that the article was inaccurate or incomplete in the following respects.

1. The Palm IIIc does offer a color screen for the user who desires one. In my use of both color and monochrome screens, I have not found the need for color screens to warrant the additional cost in terms of money, speed and memory; however, this may change as PDAs are connected to digital cameras.

2. Palm Pilots normally have less memory than Windows CE devices because the Palm processor and Palm OS operating system require much less memory than the Windows CE operating system. Further, the article implies that in order to get a Palm with 8 megs of memory one would have to purchase the Palm Vx at \$375. This is an unfortunate implication because the Palm IIIx offers 8 megs of memory (which may be comparable to 32 megs in a Windows CE device) for well under \$200, significantly less expensive than the Casio E-100 with 16 megs of memory mentioned in the article.

3. For attorneys, the single most important aspect of PDA operation is the synchronization of the information on the PDA with the information on the attorney's desktop computer's calendar and contact manager. The synchronization must be easy, quick and reliable. Our experience with CE devices is that they have a far greater number of problems with synchronization than the Palm OS devices.

4. The availability of business-related utilities for the Palm cannot be overstated. Innumerable products are available on the Internet for extremely modest prices (typically \$0 to \$30), and the programs are easily downloaded to a desktop computer and installed on the Palm Pilot during synchronization. At the present time, I have added a news-clipping service (Avantgo, \$0) and Palm Journal (about \$20), a calendar-linked memo program.

5. Perhaps the most important consideration is that a number of manufacturers are abandoning their Windows CE devices. A smaller market share of such devices will almost certainly mean less support, less innovation and fewer third party applications.

We are increasingly finding that PDAs are a necessary part of our practice, particularly for those of us that have calendars that change many times a day. However, if the PDA is not easy to use and reliable, it will be discarded quickly. I hope that you will share my concerns with your readers. ♦

William L. Schuette
Baton Rouge, LA



Mark Your Calendar!

ABA Annual Meeting, July 6-11 in New York and July 16-20 in London (312-988-5672 or www.abanet.org/tips/cle/annual00)

Tort and Insurance Practice Section Fall Meeting, October 12-16 in Bolton Landing, NY (312-988-5672)

Aviation Litigation, October 19-20 in Washington, DC (312-988-5708)

Managing and Litigating the Complex Surety Case, October 25-26 in Philadelphia (312-988-5708)

Life Insurance Law, Health and Disability Insurance Law, Public Regulation of Insurance Law, and Employee Benefits Committees 27th Annual CLE Midwinter Meeting, January 10-13 in Palm Beach, FL (312-988-5672)

Fidelity and Surety Law Committee CLE Midwinter Meeting, January 25-26 in New York (312-988-5672)

ABA Midyear Meeting, February 14-20 in San Diego (312-988-5672)

Transportation MegaConference, March 15-16 in New Orleans (312-988-5708)

Emerging Issues in Motor Vehicle Product Liability Litigation, March 29-30 in Phoenix, AZ (312-988-5708)

TIPS Spring Meeting, May 3-6 in Monterey, CA (312-988-5672) ♦



To register or receive additional information on any of these programs, call 312.988.5672 or visit www.abanet.org/tips.



Practice Management

Charles F. Huxsaw

Measuring Contribution from Litigation Associates

Realization—A Fundamental Benchmark

The textbook definition of realization as applied to law firm economics is—the amount of money that is actually collected by the firm from the billable charges that are ultimately billed to clients.

To calculate the realization rate one divides the actual revenue to the firm by the anticipated revenue. This calculation can be done firm-wide to measure the firm's overall success in achieving income for the work that it does or to individual attorneys to measure their efficiency and revenue contribution to the firm.

For example, an associates' realization profile may look like this: anticipated revenue for the year was \$300,000 (2,000 billed hours x \$150 per hour); actual revenue, however, was \$345,000 (2,300 billed hours x \$150). The happy realization rate for this associate then was 1.15 percent (actual revenue of \$345,000 divided by anticipated revenue of \$300,000), or \$1.15 of income for each \$1.00 of anticipated income.

“Anticipated Revenue” v. “Actual Revenue”

Each year, at budget time, an “anticipated revenue” budget should be established for each fee-earner in the firm. Calculation is straightforward—anticipated billable hours times billing rate. Anticipated revenue for an associate as per the example above is 2,000 hours times \$150 per hour, or \$300,000.

But clients are rarely billed at 100 percent. They understand that work by associates is often inefficient and will seek reductions in associate time charges. Either hours are discounted or

the effective billing rate is cut in response to client inquires or expectations. “Actual revenue,” then, is defined as the amount actually billed by the firm and received from clients.

The Consequences of “Agreed Rates”

Agreed rates, as the root of actual revenue, can undermine the value of realization as an evaluation tool. The agreed rate is the amount that the client agrees to pay in response to the firm's bill and the amount that the partner agrees to accept as payment. Partners are always negotiating bills with clients.

What gets negotiated, however, is often the associate's billed hours and charges. In response to clients' concerns, partners will often reduce the bill by writing down the time charges billed. Partners, however, don't usually write down their own time. Sacrificed are associate hours, with potentially damaging consequences.

Return to our example above. If the supervising partner determines that the billing associate's time charges should be reduced by a factor of 20 percent, the associate's actual revenue contribution drops from \$345,000 to \$276,000 and the associate's realization rate declines to .92. The associate falls below his or her expected contribution. Write downs by partners may adversely affect an associate's standing in the firm.

It is the forward-thinking and equitable law firm that prohibits a partner from agreeing to a write down reduction in associate time on a billable matter without taking a comparable percentage reduction in his or her own time.

Litigation and Contingent Fees

Factors other than partner write downs may affect the realization rate achieved by litigation associates. Often, insurance company clients cap the acceptable hourly rate or hours that may be billed for which they will pay for a particular class of cases. And substantial awards won at the trial court level are often dramatically reduced on appeal, thus reducing the firm's contingency fee. In both instances, the “agreed rate” for the associate litigator's services, and his or her realization rate, is negatively affected.

As the cost of associate labor escalates, the need for reliable evaluation tools for associate performance becomes evident. Such tools exist but can be challenging to use and subject to misinterpretation, especially for associates in litigation practices. ♦

Charles Huxsaw is a lawyer, author, and publisher based in Bedford, Massachusetts. A member of TIPS, he frequently writes on practice management topics.

Neal Ellis is a litigation partner with the law firm of Hunton & Williams, he serves as Chair-Elect of the Section's Trial Techniques Committee and as a member of the Section's Professionalism Committee.

dealing with large firm insurance lawyers, he now works with everyday working people. Although his experience and knowledge of the insurance industry has proved a major benefit, he has been challenged by learning the nuts and bolts of trial practice and about new areas of liability.

Before switching sides, both Sullivan and Jorgensen spent a lot of time seeking counsel. Jorgensen found that TIPS plaintiffs' lawyers were sources of wise counsel.

Both lawyers advise that defense and insurance lawyers should refrain from making moves in the heat of passion. Practice careful due diligence to determine as best you can whether a plaintiff's practice might be right for you. ♦

Over the years, Sullivan noticed that top litigators at defense firms were leaving, and then one of his good friends, a partner, switched sides. Now practicing with a pre-eminent plaintiff's firm, Butler Woollen in Atlanta, Sullivan has found the practice invigorating, intellectually challenging, and free of the frustrations he endured

As a risk manager for more than 10 years, Rian Jorgensen (Chair-Elect of TIPS Professionals, Officers and Directors Liability Committee) was well versed in insurance practice. But he wanted an opportunity to develop as a trial lawyer and so sought the close mentoring offered by a plaintiff's practice.

Because results in many cases turn on evidence revealed in discovery, Sullivan now emphasizes the aggressive pursuit of discovery in his practice.

At the same time, Sullivan now sees a lot of heartbreak, cases with horrible injuries that have no remedy. He spends a lot of his time and energy screening cases.

Terry Sullivan and Rian Jorgensen are recent converts. As a founding partner of his own insurance defense firm, Sullivan defended medical care providers, doctors, and hospitals for more than 23 years. He enjoyed the defense practice but chafed at the insurance companies' increasing micro-management of cases. Documentation and approval of every litigation decision and scrutiny of billings added to the burden.

While defending an insurance carrier client, have you thought you might want to try your hand at “wearing the white hat”? More and more, lawyers frustrated with the defense practice have opted to switch sides. Have they been attracted by the glamour of a plaintiff's practice and stores of riches beyond belief? Or were they simply repelled by the demands of the defense practice?

Do You Want to Be a Plaintiffs' Attorney?

Neal Ellis

TortSource

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