Lives of Lawyers Revisited may be helpful to teachers in several different settings:

1. **A short course sponsored by a Law School Career Services or Placement Office.** Much, of course, depends on the purpose and time constraints of a Career Services sponsored course. If the primary goal is to help students learn how most efficiently and effectively to “read” or size up different forms of law practice, reading the stories in Chapters Two through Six might be helpful. Much of the following “Teaching Strategies and Approaches” for law school courses suggests ways to lead discussion of these accounts of different law practices. If the goal is to provide students some analytical tools and alternative conceptual frameworks for understanding how law practices work, Chapters Eight and Nine might provoke lively discussion.

2. **A Pre-Law Course in an Undergraduate School.** Undergraduate courses on law vary widely in terms of subject matter and overall approach and purpose. Lives of Lawyers Revisited may, however, be a useful addition to the syllabus as an introduction to the extraordinary variety within the world of law, a window on what it might be like to work within different law practices, and (apropos Chapter 9) a response to the question of what, if anything, is distinctive about the legal profession or any profession. Some specific suggestions about presenting the book for these purposes can be found in the following “Teaching Strategies and Approaches” for law school courses.

3. **Law School Legal Profession/Legal Ethics/Professional Responsibility Course.** See the extended discussion in “Teaching Strategies and Approaches” that follows.

4. **Graduate or High-level Undergraduate Course on Professionalism.** Lives of Lawyers Revisited can be used in several ways to challenge students to think about the enterprise of a profession: Chapter Nine presents

   - a brief review of some of the major literature on professionalism,
   - a summary of the organizational analysis spelled out in more detail in Chapter Eight that argues for inclusion of business or enterprise values in any conception of a modern profession,
   - a claim that a parochial, industry-focused analysis of a profession like law offers significant insights inaccessible to more comprehensive general theories of professions, and
   - the idea of “profession” in law as a set of incommensurate concepts that lawyers must negotiate and reconcile as they enact a distinctive understanding of living and working in a profession.

Further, the book reflects controversial methodological assumptions or moves about appropriate ways of understanding a profession:

   - It claims that multiple analytical approaches ranging from ethnographic-like descriptions (Chapters Two through Six) to theoretical models (Chapters Eight
and Nine) are, in combination, a superior way to understand a phenomenon as complex as a profession like law (see page 17, and the quotation from William James, one of the epigraphs at the beginning of the book);

• It implies that all social science is more or less a mode of rhetoric designed to persuade people of the validity of certain ideas or insights (see, e.g. endnote 29 to page 17 of the text on page 369);

• It suggests that both an ethnographic approach and more general theories of the profession of law corroborate the repeated claim in the text (see, e.g. pages 6-7, 8-9, 16, 323-7, 332, 348) that organizations of practice—sharing similar economic pressures and subject to the phenomenon of isomorphism within any industrial sector—nevertheless create distinctive organizations by the way they interpret and work through the contradictions and ambiguities of practice and idea(s) of living in a profession.

Finally, the methodological “Afterword” of the book describes a number of assumptions and strategies related to the work of the book related to describing indigenous natives within different law practices.
Some Teaching Strategies or Approaches

for using

LIVES OF LAWYERS REVISITED

In

Law Schools

by Michael J. Kelly

(University of Michigan Press, 2007)
Thinking about the use of *Lives Of Lawyers Revisited* to augment student learning about the practice of law starts with a distinction spelled out in the book on page 13-14 between two types of professionalism:

**Horizontal professionalism** are the rules and principles (“legal ethics”) applicable to all lawyers that address fundamental issues of the rights and obligations of lawyers in relation to clients, courts, adversaries, and third parties. Every lawyer’s license to practice implies restraints and duties in the agency relationship, like zealous representation of clients, confidentiality of clients’ confidences, avoidance of conflicts of interest and many other matters articulated in the Rules of Professional Conduct, court decisions and other institutional rulings governing the practice of law.

This structure of rules and principles fits comfortably within the framework of most modern moral philosophy of the last century or two that focuses on issues of the rightness or wrongness of actions or decisions. The core of most contemporary legal ethics or legal profession courses in law schools falls within this tradition, addressing the propriety or impropriety of actions by lawyers and the appropriate criteria to use in making client-related decisions.

Horizontal professionalism is thus an “essentially flat landscape in which all lawyers are to an important extent considered equal in the eyes of the profession.” Horizontal professionalism is not only critical to an understanding of what it means to be a lawyer, it is also imbedded in the legal framework of the practice of law, typically examined as part of the process of admission to the bar, and monitored and enforced by courts, disciplinary bodies and formal institutions of the profession.

**Vertical professionalism** is a function of the workplace, seen as a network of relationships with colleagues and clients and others that establishes the nature of a lawyer’s practice and the environment and conditions under which the lawyer earns a living.

Vertical professionalism is a highly varied landscape. It represents a dimension or axis of thinking about the nature of law practice in the United States that departs from traditional understandings of the meaning of “ethics” and “profession.” It is characterized by diversity in the work, status, and goods of practicing law—the different ways, or worth of (making a) living in the law. Vertical professionalism emerges from the experience of practice—a mixture of economic interests, organizational and market relationships, and choices made in the context of a career of interpreting law to clients, other lawyers and legal officials.

Law teachers and lawyers have generally felt that vertical professionalism is undiscussable because it comes close to asking a question—what is the meaning of life?—too basic to yield anything but fuzzy and entirely individualized answers. The
meaning-of-life question in the contemporary legal profession could be rephrased, “Is a career in law, with all the economic and other pressures of law practice, a worthy and fulfilling way to make a living?” This question is a palpable and extraordinarily important question on the minds of law students and practitioners today.

*Lives of Lawyers Revisited* offers a way to structure a serious conversation about vertical professionalism using the lens of close descriptions of five different law practice organizations and some analytical approaches to understanding the organizations of practice. The book provides a means of talking about a career in the law by focusing on something that is discussable—the ways practice organizations reflect or create values. The premise of the book is that vertical professionalism is no less important a subject of the “ethics” of the legal profession than traditional horizontal professionalism.

The goal of this manual is to stimulate a teacher to think about different approaches he or she can take to introduce students to the world of vertical professionalism and to make the engagement a powerful learning experience.

Most law schools require completion of a course on the Legal Profession, or some equivalent, that varies in content depending on the interests and predispositions of the teacher, but usually covers key elements of what we have referred to as horizontal professionalism and the obligations of practicing lawyers enunciated in various state adoptions and variants of the Model Rules of Professional Conduct tested by many states in bar examinations or via the national MPRE, the Multistate Professional Responsibility Examination.

One way to make use of this book would be to segment the course by creating a separate unit or component devoted to a different concept of legal ethics (spelled out on pp 9—13). The book analyzes this different kind of legal ethics primarily by examining organizations (see pp 14-15), a strategy that should appeal to many students who are naturally curious about different forms of practice and the way organizations function in the legal profession. Chapters 2 through 6 lend themselves to classroom use because the teacher can select which of the five practices are likely to be of most interest to students and because the stories of the practices can stimulate differing interpretations or readings that can lead more robustly to interesting theorizing.

Which stories to use, if one is pressed for time and wants to devote no more than, say, a few weeks out of a term to these materials? Chapters 5 (37 pages) and 6 (53 pages), the Mahoney and McKinnon firms, may be the most interesting stories from an analytical point of view since the contrast between the two is so stark: these are private firms representing relatively large clients with profoundly different management structures and assumptions. But the danger of using these two exclusively is that it drastically limits horizons, excluding a form of small firm private practice/public interest law (Chapter 2, 31 pages), a public agency law practice (Chapter 3, 43 pages), and in-house corporate practice (Chapter 4, 33 pages) from consideration.
The challenge of using the stories of Chapter 2 through 6 is to stimulate students to think seriously about law practices, to begin to understand how they work, to grasp what are the mechanisms that underwrite the agreements, conventions and the coherence of communal practice. My interpretations of each of the stories are contained in Chapter 7, and it may be helpful to read that chapter if only to deal with the parrot phenomenon from students who may read it on their own. The promise of using Chapters 2 through 6 is that the stories can stimulate an intellectually rigorous classroom discussion about a subject commonly exiled to snatches of student conversations and gossip about placement in the course of using the school’s “career services” facilities.

Use of the stories of practices in the classroom is designed to reveal how elements of each practice reflect, consciously or not, ideals and a structure or course of life in the law. I recommend a four-part strategy of exploiting these stories for this purpose:

A. Entering the stories, taking the stories seriously, attending to salient details (See Appendices A1, A2).

B. Examining, largely by comparing different practices, how the practice works, how it stays together and what motivates people in the practice (See Appendix B).

C. Exploring the future of the practice, the problems it needs to resolve in order to thrive.

D. Reflecting on the desirability of this kind of practice

A. Taking the Stories Seriously

The pedagogical problem of using Chapters 2 through 6 is that descriptions of law practice are a form of material largely alien to law students in the setting of legal education. Special efforts need to be taken to stimulate students to take the descriptions seriously and then guide them into ways of analyzing and learning from stories about law firms and agencies. Simply assigning students reading of one of the chapters of Part I of the book is unlikely to lead to a productive discussion. Students are unfamiliar with how they are to approach these stories, or what kinds of questions are likely to be explored about the reading in the classroom. These stories are remote from the style or structure of an appellate case, so it is important to establish a framework for student reading so they understand the degree of analytical rigor expected of them.

Chapter 8 of *Lives of Lawyers*, the predecessor volume of *Lives of Lawyers Revisited*, suggests that major themes or critical story lines useful for reading or getting a swift understanding of the values of a law practice are:

- **history**, particularly the way the practice has overcome or re-interpreted elements of its history in order to succeed or survive,
• **economics**, in terms of how it allocates the goods generated by the practice and motivates its lawyers to strengthen the financial and/or other fundamental underpinnings of the practice,

• **clients**, how they influence the ambitions and character of the practice,

• **style**, of communicating and dealing with members of the practice, support staff and key outside influences on the practice,

• methods of, and relative success or failure in, resolving the inevitable **conflicts** that arise in law practice, and

• **leadership**, in terms of a person or the people at the top of the organization, their style, their goals, the respect they generate, and the directions they have set for the organization.

Chapter 8 of *Lives of Lawyers Revisited* presents analytical material relevant to three of these elements: **economics** or organizational structure (pp264-273), **clients** and markets (pp279-284), and **leadership** or politics and control (pp273-279 and 329-332 of the final chapter).

A teacher can enter the analysis of the stories fruitfully through any of these six windows, either by an open-ended question that elicits spontaneously one of the themes that is then pursued, or by questions posed in advance or specific questions in class. Appendix A1 offers some examples of questions that can serve to open these windows with possible answers related to each of the five practices.

### B. Examining How the Practice Works

This part of the classroom discussion is indispensable to students’ understanding of different practices and the profound impact the practice setting has on a lawyer’s life. A good start might be an open-ended question like, “What is the glue that holds this practice together?” (See a list of some challenging centrifugal forces that require attention on p327 of *Revisited*).

The classroom discussion might move naturally to the way the practice motivates its lawyers and support staff to sustain and support the enterprise, but if not, there are a number of questions that can help generate momentum. For example, page 268 lists three threats to all law practices articulated by “agency theory” economists:

- Grabbing (negotiating within the practice, usually by threats to leave or use of one’s stature in the organization to get a greater share of the profits or other goods of the practice)
- Leaving, and
- Shirking (underperforming, coasting, going through the motions, contributing barely enough to get by).

Grabbing is likely to be less prevalent, or certainly more subtle, in public law practice than private firms, and while shirking may be a publicized problem for legal aid bureaus and public defenders, it is a serious problem in all forms of practice. The agency theory challenges need practice-specific answers to questions like:
What do lawyers get out of practicing together in this organization? What motives
them to stay and work together to give their best to the organization? [See Appendix
B, I].

• How does the practice deal with grabbing? [Appendix B, II]
• How does this practice reward high performers? [Appendix B, III]
• How would you imagine this practice handles those who give only a minimal or half-
hearted effort? [Appendix B. IV]

Answers are likely to lead to explorations of the economics, leadership, clientele or
distinctive elements of the character of the firm.

C. Exploring the Future of the Practice

Questions about the future or long-term prospects of the practice force students into a
mode of thinking with which they are uncomfortable because they have limited experience
and knowledge. A long-term perspective is an extremely important mode of operating within
a practice in which a sense of the future deeply affects the interpretation of current
conditions and the judgments lawyers make about staying, leaving, or working to change the
practice. Talking in terms of the long-term also connects well with the next, or fourth of my
suggested discussion strategies, namely making an assessment of whether this practice
represents something close to the kind of life a student wants as a lawyer.

Some context-setting that might be useful for discussion of the future of these practices is
the review of data in Chapter Seven about the profession, and the extensive consolidation
and marginalization occurring in the law described on pages 226-232 (with detail in the
Appendix of the book).

Talking about the future of the practices described in the book is a form of guessing. The
point of the questioning is to insist that it be guessing with reasons, informed guessing that is
grounded in the facts about the organization and students’ reading and vicarious experience
of the practice. This is another mode of encouraging students to identify core features of a
law practice that are likely to sustain it and give it momentum over a significant period of
time.

An open-ended question, such as “What is the future of this practice?” may be an
appropriate start provided it is quickly followed by follow-up questions like “Why?” and
“What are your reasons for this prediction based on what you know about the practice?”
Other possibilities:

• What, if any real growth in average income or the size of the organization would you
 anticipate for this practice over the next five years?
• Will the lives of lawyers in this practice—defined in any way you think relevant—be
 better in three years? Five years? Ten years?
• What are the two major challenges facing this practice? What is your prediction of
 how successful the practice will be in overcoming or resolving these challenges over
 the next five to ten years?
• What is your prediction about the internal conflicts this practice will face in the coming decade?
• What kind of leadership will the practice need in order to resolve future conflicts and respond to its major challenges? Describe the three most important skills, elements or characteristics of leadership needed in this practice going forward if the practice is to be successful by its own terms.
• Chapter Nine reviews three different concepts of the meaning of a profession and suggests modern law practice faces the constant challenge of working within all three. How would you assess the way this practice negotiates its understanding of these differing ideas of a profession?

D. Reflections on Life in Practice

The most difficult but arguably the most important part of framing the learning to be derived from Lives of Lawyers Revisited may be discussion of student impressions of each of the practices and student conversation about what’s important (positively or negatively) about particular law practices. If the analytical work of describing the practice, understanding how it works, or predicting its future is pursued with sufficient rigor in class, the result may spill outside and lead to invaluable out-of-classroom conversations. While it may add to discussion in class to have students express distaste for, or attraction to, a given practice, the dialogue can deteriorate if the teacher does not press for reasoning, or connect strong preferences or dislikes to relevant characteristics and details of the various practices about which students have only a reader’s knowledge.

It might be helpful to list the elements or criteria most important to students considering their careers in law, for example stability (the dissolution of a practice, students need to be reminded, is a threat to almost all forms of private law practice, not limited to an in-house practice like Standish), supportive working environment, interesting clients and cases, time for a family and a “balanced” life, money, power, influence, a clear trajectory or future, etc. Practices can be compared and evaluated in terms of which does a better job, offers more, based on a particular criteria, leading perhaps even to ranking the practices. It could be instructive to see if a class can reach some degree of consensus or well-focused disagreements about these criteria and rankings.

Here, the teacher needs to feel free to express disagreements with the perceptions of students, bringing to the attention the advantages and disadvantages inherent in different practices. It may be necessary, for example, to remind students with fixed ideas about the relative interest and pleasure of corporate practice versus individual representation that corporate entities are comprised of people experiencing difficult problems and pressures, or that representing individuals can be extraordinarily demanding and fulfilling work.
APPENDIX A 1

I. HISTORY

In what way has the practice had to overcome, or re-interpret, some elements of its history in order to survive?

**Marks, Feinberg et al.**
A firm that started as a civil rights firm committed to practice for “the little guy” has always struggled to attract paying clients. It has taken some steps to preserve its history and sustain this tradition by:

- marketing the practice more broadly through a brochure and website;
- changing its mix of cases to include more fee-generating business, including doing more hourly rate and less contingency fee work;
- forming collaborations with other firms to take on large corporate defendants that might generate substantial fee recoveries.

**Maine PUC**
The legal division of the agency has, under pressure of a huge caseload and legislatively authorized restructuring of the regulatory system:

- ended adversarial proceedings in most rate cases and thus changed the entire regulatory structure;
- become more of a collaborative organization with the other units in the Commission like engineering and economics;
- assumed important new duties like structuring “standard offer” electric utilities bids and deals;
- migrates, under legislative authorization, back to conservation work characterizing the PUC in the 1980s.

**Standish**
Continues with its strong tradition of:

- automating form leases and variants and using paralegals to negotiate;
- simplifying lease forms to avoid unproductive disputes;
- chafing over the difference between staff and line bonuses, and having to comply with company policy on this matter.

**Mahoney**
Adheres to its commitment to a distinctive law practice by:

- developing more financial discipline, including announcing target figures for annual hours;
- making modifications in its lockstep compensation system;
- migrating to more lucrative work (e.g. in litigation, exiting most workers compensation work);
- working hard to deal with profitability imbalances of different divisions of the practice (e.g. litigation versus transactional);
- making sure there is only modest deference to women who desire part-time practice.
McKinnon
Alters its tradition of being an entrepreneurial firm representing entrepreneurial clients by:

• attempting to migrate away from its “eat what you kill” compensation system to a system that rewards collaborative work for large institutions;
• reconfiguring branches to make them more integral to the firm’s institutional practice;
• maintaining a trajectory to become a significant national firm;
• carefully establishing a successor/leader who maintains the traditions of the firm.

II. ECONOMICS

What are the major financial threats or challenges facing this practice?

Marks, Feinberg et al.
Several challenges:

• building a stronger revenue base;
• attracting younger lawyers who can carry the practice in the future since some young people reject the mixed caseload because they are interested in pure “cause” lawyering, and some reject it because the revenue is too limited to sustain their financial expectations of law practice;
• the way the principals of the firm are unwilling to relinquish to younger people significant cases or systematically bring them along to be contributing partners to the firm.

Maine PUC
Since compensation appears not to be a significant issue among staff, the key challenge is keeping the legal division relevant to major changes in regulatory expectations and needs of the Commissioners.

Standish
Struggles with:

• compensation differentials within Standish between line employees and staff employees;
• taking on much more complex and demanding work, (which it appears to have done successfully);
• the pressures of remaining an extremely lean unit to comply with the larger corporate interest in reducing operating costs.

Mahoney
Deals with:

• large firm competitors that can pay significantly more to attract entry-level, mid-level and every level lawyers;
• an extremely difficult market for experienced associates in transactional work;
• the pressure to continue to be financially successful, apparently essential to maintaining its compensation system for lawyers;
• growing demands of clients at a time when it is difficult for the firm to expand quickly to meet these needs.

McKinnon
Works on:
• a compensation system that is enormously draining on management time and attention, many lawyers feeling the costs of the system outweigh the benefits;
• the pressure to increase compensation for senior lawyers in a competitive market for top legal talent in world where if you live by the lateral sword, you also die by the lateral sword;
• migrating from a dog-eat-dog competition for clients to a compensation system that rewards group work for servicing large institutions—a movement that defies many lawyers’ expectations;
• integrating the branches into the larger firm and handling potentially fractious issues like retirement policy for older lawyers.

III. CLIENTS

How do clients affect the character of this practice? To what extent do clients determine the nature of this practice?

Marks, Feinberg et al.
• “Individuals of relatively modest means who are in trouble seek champion who pursues their interests without regard to the lawyer’s economic interest.” The reputation of the firm and word of mouth attracts clients. The lawyers explicitly disavow specializing or particular marketing. They take, after filtering for valid claims, what comes in the door or over the telephone. The inability to make much headway with white collar crime clients is a function of the Marks firm being perceived as untrustworthy to protect corporations, at least that may be the point of view of corporate lawyers who tend to share and cross-refer this business.

Maine PUC
• “Agency wants effective and responsible action for the public interest.” Before Tom Welch took charge of the Commission, the lawyers could, through the advocate function, play an enormously important role in determining the public interest. Post Welch, the lawyers are representing the Commission as their client and have only an advisory role in determining the agency’s approach to defining the public interest in the world of utility regulation.
• “Corporation wants cost-effective, value-adding lawyer partners in the development and management processes of a real estate development enterprise.” The client is many different people within the company, some of whom greatly respect the ability of the lawyers to negotiate very complex deals. Other clients are more influenced by the CEO who has only grudging respect for the work of the lawyers.

**Mahoney**

• “Large, relatively stable organizations seek good service, wise counsel, and a long-term relationship with a civic-minded law firm partner.” Mahoney tends to attract clients. The firm determines what it thinks is the unique nature of their practice. Clients tend to recognize and respect the quality of the Mahoney practice. As part of the long-term relationship and sense of common enterprise, clients are sometimes engaged in helping Mahoney choose new personnel.

**McKinnon**

• “Aggressive entrepreneurial business clientele seeks like-minded lawyers.” McKinnon aggressively seeks large institutional clients in order to cross sell its expertise and expand the nature of its business practice. Clients are a lawyer’s most significant assets in this firm, the primary source of a lawyer’s income and influence in the firm. Clients play an enormously important role in the nature of the firm.

### IV. STYLE

**How would you characterize the way this practice communicates internally?**

**How important is this “style” of communication to the practice?**

**Marks, Feinberg et al.**

• An informal, open, and casual office style predominates along with a supportive atmosphere amongst the small staff. Relationships with the two senior principals are more hierarchical, but not necessarily formal. Some evidence that the four partners do not communicate well.

**Maine PUC**

• Extensive internal communication among staff, relaxed, pleasant scene (after the troubles with reorganization, zero based budgeting, etc. died down), but under Welch, all communication centered around responding to the client who headed the Commission.

**Standish**

• Relaxed and open communication under Leyman and Simpson about the department and the company contrasts markedly with the communication style of the CEO which remained a mystery and a perceived threat to the legal division.

**Mahoney**

• Constant relentless communication about almost everything and with everyone predominates in the firm. Expectation, enforced, that people will
not treat each other badly, and that issues must be confronted and not left to fester. Careful consultation on sensitive issues.

**McKinnon**
- Open critical “talking back” is encouraged among partners and lawyers of similar status, but openness is a function of status and probably does not apply to support staff. Not a passive aggressive firm: once a decision is made, people are expected to accept it and move on.

V. CONFLICT RESOLUTION

*Describe significant conflicts or series of conflicts in this practice and their resolution. Was the practice entity fully successful in dealing with the conflict?*

**Marks, Feinberg et al.**
- Revenue might be considered a conflicted area of ongoing concern, well short of a crisis, and the firm has agreed to address this via some marketing, collaborations with other lawyers on major revenue-generating cases, and careful selection of the types of cases it chooses to take.
- Some hints exist of conflicts among the partners.

**Maine PUC**
- Serious conflict within the agency when Heather Hunt was a member of the Commission when staff had the impression that the Commission thought poorly of their work and wished to rid themselves of the staff. Resolved in the wake of the crisis of too much work related to the restructuring when the staff supported Tom Welch and the end of the advocate system brought the staff and Commission into more of a working team. The conflict just faded away in the context of everyone working hard to accomplish the restructuring.
- Ideological or policy conflict between the staff and Commission over the role of conservation in the regulatory process—ultimately disappeared the Legislature at the end of Welch’s term.
- Conflict over the various state administrative initiatives like TQM and zero-based budgeting, and agency-based reorganization basically disappeared when Welch realized none of these could be successfully implemented at the PUC. Some residual good effects continue with a somewhat changed role of the Joanne Steneck as the head of the legal division.

**Standish**
- Compensation was the ongoing complaint, if not a crisis. It was, in part, a factor that precipitated the departure of Frank Leyman. The CEO, Jack Fry, in effect, forced Leyman out, thus reinforcing the company’s decision not to make staff positions comparable to line positions in terms of eligibility for bonuses. The lawyers essentially decided to lump it.
• The second great crisis was the sale of the company. Apart from a small handful of lawyers, the staff of the legal division essentially voted with their feet.

_Mahoney_
Most conflicts are a function of the firm’s commitment to a distinctive character and the means needed to enforce or support this commitment.

• The case of the two lawyers airing views and threats to take action perceived by their partners as challenging the role of the managing partner and, in therefore undermining the common understanding of the practice. The partners met to confront this challenge, supported the managing partner who listened to the discussion and decided it would be wiser to back off the confrontation.

• The unbalanced economics of the litigation department not generating revenues commensurate with the transactional practice. The managing partner designated younger lawyers to plan how to address the problem, and an apparently good solution emerged that everyone could support.

• Compensation adjustments to the lock-step system were simply announced by the managing partner who gave everyone a chance to react and discuss the decision. After two years of largely symbolic changes, the threat to the common understanding about compensation appears to have passed.

• The debate over part-time employment involved the managing partner weighing in heavily and carrying a vote of the partners, after pursuing a careful process to treat the main proponent of change with care and respect and helping the young woman at the center of the debate to find a job that met her needs.

_McKinnon_
Conflict, or potential conflict, over compensation is the central issue of the practice.

• The firm’s leadership has built an elaborate system of hearings and conversations with every partner to underscore a process of listening, respecting all partners, and careful calibration of rewards to meet the needs of the practice. This occurs only by-annually in order to reduce the time expended on this form of conflict.

• The acquisition of the Salgonick firm led to decisions that signaled to opponents of the costs of the merger (and its implications for their compensation) would best take their compensation demands elsewhere. Opponents voted with their feet.

• Handling retirement and support of older lawyers has, in the context of the story at the time it was written, not been resolved

• Conflict with leaders of branches was resolved by swift moves and incentives to move the troublemakers out of the firm.
VI. LEADERSHIP

How would you characterize the leadership of this practice? And how important a role does leadership play in the life of the organization?

Marks, Feinberg et al.
- The four partners share net profits via a predetermined percentage formula and divide up management responsibilities so it is unclear who is the firm’s leader. The informality, emphasis on quality work, and general orientation of the firm toward “have nots” of the world are a product of some kind of consensus of the four partners. The partners have little interest in specific organizational issues, other than the minimum activities necessary to maintain their form of practice.

Maine PUC
- Joanne Steneck is the head of the legal division who serves to some extent as a buffer between the lawyers and the other major leader/lawyer at the PUC, the Commission chairman, Tom Welch. She maintains the tradition established by her predecessors of a supportive, consultative environment with some additional emphasis on being directive compared to her predecessors.
- Welch has driven the changes in the work of the lawyers, and restructured their relationship with the Commission as advisors along with other experts in the agency. His strong views and sense of direction has driven most decision-making at the agency.

Standish
- Fry sets the tone and direction of the company. Perhaps more important than setting the legal division’s budget and the bonus status of the lawyers, his stated low opinion of lawyers in general impacts the sense of self-worth of the lawyers and the value attributed to lawyers at Standish;
- The legal division leaders in this story, Leyman and Simpson, who are buffers between senior corporate management and the lawyers and paralegals of the division, are highly respected practicing lawyers in the division as well as people who are honest and effective communicators. Leyman in effect took the risky route of challenging the leader of the company, while Simpson was cautious and realistic about what he could do. They both maintained the attractive working environment for lawyers and the respect accorded to the large paralegal contingent critical to maintaining the high volume of lease negotiations.

Mahoney
- Although technically not founder of the firm, Schultz is, in effect, the founding managing partner of the firm as it has grown and developed. He remains a powerful influence as the creator of the firm’s operating procedures, its business model and the distinctive character of the place.
- The great care that Schultz is taking in developing a successor attests to the high priority he puts on his own leadership and the quality and experience of the firm’s future leader.
Schultz is the key player in resolving every major conflict. He is central to the firm’s self-understanding and sense of its future

McKinnon

- The managing partner is careful, measured, and focused on the future development as well as the current performance of the firm.
- The managing partner is critical to the success of the firm as the
  - prime mover on all mergers and acquisitions of even small practices
  - the person in charge of branch development
  - the individual who is currently handling the older lawyer problem of the firm on an individual basis, and will eventually have to move to resolve the retirement policy of the firm,
  - leader who attends to the oligarchs, those other major leaders and rainmakers of the firm that need to be consulted on compensation and other significant conflicts and decisions at the firm.

APPENDIX A2

Following initial questions about elements of a particular practice, a more complicated comparative question can help students begin to differentiate organizations by highlighting significant features of each.

For example:

The leadership at the two firms described in chapters five and six: how are the two leaders similar? How do they differ?

Similarities

- “hands on” with the lawyers but both use a #2, Nance using the firm’s CFO, Murphy, and Schultz using June Smith as a surrogate
- effective in guiding the destinies of the firm while keeping the support of the lawyers
- insightful about how the firm works and what it takes to improve it
- look to the future (one in terms of choosing a successor, the other in terms of extending the national reach of the firm)
- listen carefully (Schultz in terms of the case of the two lawyers, Nance in terms of the merger he worked hard on but his partners rejected)
- seek advice for key players before decisions, most issues are therefore consensus decisions
- highly attentive to managing the economics of the practice
- extremely interested in cultivating and servicing long-term institutional clients
- good decision-makers

Differences
views of the profession (Schultz despises large firms like McKinnon)
one is effective a founder (Schultz) and one a successor to the two founders (Nance) with less accumulated respect.
ways of treating people (highly respectful at Mahoney, probably a bit rough at McKinnon)
concept of community service or pro bono (a marketing effort at McKinnon primarily, while fundamental to Mahoney self-concept as a firm.)
beliefs about what motivates people (money at McKinnon, a sense of service and commitment to the organization at Mahoney)
clients (Nance trying to migrate the compensation decisions away from the prevailing eat-what-you-kill system in which clients are “owned” by billing partners, Schultz having built a firm where the clients are the firm’s, not the lawyers’)
financial goals (Schultz leads by taking much less than he would ordinarily be entitled to, Nance must be committed to making sure top rainmakers are extremely well compensated)
ideas about building the firm (Schultz committed to moderate growth and building to extent possible by bringing in younger people who eventually make partner; Nance committed to fast growth through acquisition of lawyers with “movables”—clients who come with them—or by merging with other firms.
Need to control (high with Schultz, while size of McKinnon requires Nance to rely on delegation of control to department heads and branch heads with the assumption that the critical control function is that of compensation decisions).

APPENDIX B, GLUE QUESTIONS

I. **What do lawyers get out of practicing together in this organization? What motivates them to stay and work together to give their best to the organization?**

*Marks, Feinberg et al.*

The members of the firm take enormous satisfaction over the work of the firm that

- is committed to a noble ideal of justice for the underprivileged and ultimately, service to the U.S. Constitution;
- values craftsmanship, quality work product, and respect for clients, most of whom are in trouble;
- remains, by and large, a generalist firm, taking a wide variety of cases in civil and criminal litigation for fee paying and non-fee paying clients; and
- educates and trains associates and law students.

*Maine PUC*

The legal division of the agency is committed to

- representing the public interest and serving the people of the state,
- a benign working environment, collegial and supportive, and
• steady and interesting specialty work, modestly compensated, related to rapidly changing industries (like telecommunications, electric power and natural gas) that are of crucial importance to Maine.

**Standish**

- strongly prefer practicing in a system that does not entail marketing, billing and business-generating pressures of private law practice;
- appreciate the challenging transactional work in real estate development that is equal or superior to the quality and complexity of most real estate development practices in private law firms;
- enjoy the experience, as fellow employees, of being partners and collaborators with their clients and the deep knowledge of the corporation that enables them to make better decisions for their clients;
- value a supportive work environment, the efficiency of a large support staff to handle more routine high volume work, and the benign internal politics of the division compared to people doing comparable work in private law firms.

**Mahoney**

- a certain pride in the organization and its leader, a sense of being part of something distinctive in the world of law practice;
- the satisfaction of helping others, either through close and enduring relationships with institutional clients, or civic, religious and political activity;
- the cohesiveness and supportiveness of the organization and its management;
- the lack of internal competition, the civil atmosphere and the cooperative work ethic underwritten by the firm’s “equal sharing” system; and
- the secure economic base and future of the firm.

**McKinnon**

- their compensation;
- an understanding within the firm that financial rewards are distributed fairly, based on a lawyer’s specific economic value to the practice in terms of work performed or clients attracted to the firm;
- straight forward internal politics: the people who lead the firm want or expect people to speak their minds openly, and they make decisions largely on the basis of what will improve the overall economic performance and welfare of the firm; and
- the self-perception of a well-managed growing firm leading to a stronger economic future for everyone.

II. **How does the practice deal with grabbing?**

*Marks, Feinberg et al.*
The orientation of the practice and modesty of its resources is unlikely to attract “grabbers” in the first place. There is not all that much to grab.

The way profits are allocated is hardwired against grabbing, which would require the whole partnership compensation arrangement to be restructured, a highly unlikely prospect.

Maine PUC

In public agencies, a typical way to address pressure for greater compensation or more authority is to create new levels of responsibility that bring somewhat higher compensation levels. The PUC’s civil service system limits the extent to which this can occur.

The remarkable longevity of the staff in their current positions suggests that the PUC legal division neither attracts grabbers nor currently employs them. Grabbers simply leave because there is so little to grab. There have been few PUC lawyers leaving for private practice over the last few years.

Standish

With no client to take with them, no record of billable hours, and with an overabundance of talent in the real estate sector of law, there are limited possibilities for achieving anything by threatening to leave. Management at Standish would not perceive a grab as credible. In fact, only one Standish lawyer after the sale of the company and dissolution of the legal department ended up at a private firm in an “of counsel” (i.e. contractual) arrangement.

As with the PUC, a response to grabbing would involve creating new ranks or titles or levels of responsibility with corresponding salary increases. The overall lean orientation of the company, along with the disfavored position of lawyers conceived of as staff compared with line employees (leasing agents and other deal makers) implies that grabbers would not have much leverage at Standish.

Grabbing, to succeed, must originate within certain “clients,” company executives who have with leverage in the company, not the lawyers. It is the clients who can stimulate compensation awards to attorneys whom they think do outstanding work.

Mahoney

The firm has a number of ways it inhibits grabbing:

- No one but the managing partner and his delegates has access to information about the relative profitability to the firm of any single lawyer’s practice.
- The slightly modified lock step compensation system of the firm precludes grabbing being a factor in compensation. Compensation is on automatic pilot and involves no decision-making other than a predetermined formula allocating the profits of the year that everyone in the firm is aware of.
- The firm does not hire people they even suspect of a tendency toward grabbing.

The relentless celebration of “equal sharing” and complaints about the evils of grabbing at large firms serve as constant reminders to attorneys about the firm’s anti-grabbing orientation.
The two lawyers confronted by Schultz in a partnership meeting arose from their attempt to “grab” more associate resources and their unhappiness with the way Schultz allocated support in the firm. The lessons of that conflict reveal to everyone how resolute the firm is in addressing grabbing. The two attorneys narrowly escaped being expelled from the firm.

The whole system of servicing clients at Mahoney creates an understanding by both clients and the firm that these are “firm clients,” not clients of particular lawyers. Any threat to leave is undermined by the fact that a lawyer is unlikely to be able to leave with clients. The firm, does, however, have a couple of attorneys who could take clients if they left, but have not done so. The modification of lock step by Schultz was, in part, designed to forestall that possibility by recognizing those lawyers’ contribution to the firm.

McKinnon

- Like most other major issues, the compensation system is designed to address and control this threat, which is no doubt a constant problem requiring the attention of the leaders of the firm.
- The elaborate hearings and dialogue with lawyers built into the compensation process are designed to project the fairness of decision-making in the context of setting mutual expectations of the firm and the individual lawyer.
- The fact that the data about hours, billing and other key factors that make up the compensation system are widely and regularly disseminated to the lawyers means that everyone has a relatively clear picture of their relative value to the firm. People have a roughly accurate sense of where they stand in the pecking order of the firm.
- The loss of some grabbers at the time of the Salgonick merger was a clear signal that the firm put clear limits on grabbing in the context of the commitment to invest in expansion of the firm.

III. How does this practice reward high performers?

Marks, Feinberg et al.

- Limited resources and the partnership agreement on dividing profits makes it difficult to reward high performers financially, particularly junior lawyers who could inherit the practice.
- This difficulty is one element in the uncertain future of the practice after the retirement of the two senior partners.
- The constant search for new revenues, within the framework of a generalist litigation practice representing individuals, is the primary route the practice has taken to improve its financial situation, but there is no evidence from this account of the practice that rewarding high performers is an issue on anyone’s mind at the firm.

Maine PUC

- The same methods described above for dealing with grabbers: create new levels of responsibility that bring somewhat higher compensation levels. The PUC’s civil service system limits the extent to which this can occur.
• The story of the PUC in the earlier volume, *Lives of Lawyers*, identified high turnover (correlated with limited resources) as a major problem as people left for opportunities in private practice or public utility agencies in other states. No such problem affects the legal division during the course of the story of the agency in *Revisited*. Perhaps the ambitious lawyers all left, leaving a core group of lawyers satisfied with the challenge of the work, the working conditions and the compensation structure of the agency.

• Lawyers are rewarded, at least during the course of this account of the practice, by Tom Welch’s attention and willingness to give them responsibility for projects of interest to him.

*Standish*

• Some possibilities exist of promoting to titles with some managerial responsibilities and commensurate compensation advantages, but these are limited by the top heavy nature of the staffing of the legal division and the company’s commitment to keep staff support lean.

• High performers receive the most challenging assignments, and the opportunity to work with in-house real estate developers who treat them as an important part of the deal making team. Such assignments can lead to compensation awards recommended by powerful clients.

*Mahoney*

• All partner year-end bonuses are equal at Mahoney. The firm works relentlessly to transmute individual performance into an object of firm pride that creates a tide that lifts all compensation boats. Outstanding performance provides the resources needed to enhance, through investment, in the good of the entire enterprise.

• Outstanding performance—described as phenomenal service to a client, or superb community service, or public recognition (never as contributing to the firm’s profits)—is constantly celebrated at the firm and expressed as the gratitude and respect of the firm conceived of as a family or social unit.

• The alterations that Schultz initiated in the lock step compensation system are rewards of additional compensation. But these rewards are more or less (because they don’t track individual profitability which is hidden from partner view) symbolic identification of outstanding performance in relation to transactional clients of long term importance to the future of the firm as a whole. They were accompanied by compensation decreases that were similarly small enough in scale to serve the symbolic value of identifying someone who is not pulling their weight.

*McKinnon*

• Pays for performance, and all expectations—the social contract at the firm—are that the core integrity of the compensation system is geared to reward high economic performance. This includes bringing new business to the firm, but more recently is being enlarged to reward lawyers who are highly successful and collaborative ‘minders’ of large clients. McKinnon lawyers know that they will eat what they kill (and collect) within the framework of a general understanding of the overall financial capabilities and compensation structure of the firm.
• Encourages high performers, through the compensation hearing process, a bi-annual opportunity for partners to present their case for financial recognition. That dialogue leads to a sense of realism in high performers realism about the value the firm attaches to their work, the standards for high(ly rewarded) performance and mutual expectations of their future performance.

• Because data on financial performance of every partner is widely and regularly circulated, each lawyer knows that his or her colleagues are regularly scrutinizing performance. Peer pressure and competition are powerful incentives for high performers.

IV. How would you imagine this practice handles those who give only a minimal or half-hearted effort?

Marks, Feinberg et al.

• They would be asked to leave, if a junior person at the firm. The long standing partnership would be threatened by such a problem which would be difficult for the firm to handle.

Maine PUC

• Presumably, Joanne Steneck would be asked to handle the problem by confronting problem lawyers. The ability to remove a lawyer who is coasting is likely to very limited by the PUC’s civil service system.

Standish

• The offending lawyer would be warned and, if performance did not improve, fired. Complaints of client business executives of the company would be taken seriously.

Mahoney

• Confrontation, first in meetings with Schultz and June Smith, then strong encouragement to leave. The firm is quick to identify problems and move people out of the firm. Changes in the compensation system, at least at the time of this account of the practice, are designed to be rare and therefore not meant to address recent performance or commitment problems. They do, however, signal perceptions of the value of the lawyer to the firm as a whole.

McKinnon

• Lawyers—partners, associates, lawyers of counsel or on contract—would be fired for not meeting expectations and working effectively enough or hard enough to sustain the firm’s economic engine.