Counsel clash with judges over global reach of laws

San Miguel lawyer shares hiring advice

Corporate counsel and judges clashed yesterday over the merits of extraterritoriality. While judges argued that laws must extend beyond national boundaries to prevent those charged with the most egregious criminal acts avoiding prosecution by crossing borders, general counsel criticized the unfairness of many lawsuits brought against them beyond national boundaries to prevent those charged with the most egregious criminal acts avoiding prosecution by crossing borders, general counsel criticized the unfairness of many lawsuits brought against them by foreign courts.

"Crime has become truly international, and criminals do not respect borders," said Lord Peter Goldsmith, attorney general for England and Wales. "Measures are needed to prevent the powerful avoiding the rule of law in their own countries." Diane Wood, judge at the US Court of Appeals, said that unfortunately San Miguel has not yet faced claims that non-US defendants have violated international law anywhere in the world, was prejudiced against companies working in developing countries. Under the ATS, companies have been brought to trial in the US on accusations of collaborating with governments guilty of human rights abuses. "The cost of defending oneself in these cases is enormous," Lawton said. "It is essentially nuisance litigation intended to blackmail large companies into settling." Jan Eijnouts, general counsel at Akzo Nobel, said his company finds itself subject to different corporate governance in Europe from the US, describing the former as "comply or explain" and the latter as "comply or be punished." As a result, his company now spends $20 million a year protecting itself from potential lawsuits arising under the US Sarbanes-Oxley Act, he said.

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San Miguel looks at several criteria: reputation, attorney line-up, deal history," Jardeleza told his audience. "But we tend to shop for a lawyer the old-fashioned way - by word of mouth. A good word from one our existing legal relationships, and trustworthy by a lawyer who I know and have worked with," he told delegates.

Jardeleza was uncertain whether his company would follow an individual who changed firms, but according to Jardeleza it is individuals rather than firms as whole that he looks for when appointing advisers. "The big firms tend to cancel each other out in terms of the phalanx of lawyers and rafts of paralegal support and technology ... the bottom line is that I will go to a lawyer who has been vouched for as competent and trustworthy by a lawyer who I know and have worked with," he told delegates.

Jardeleza was uncertain whether his company would follow an individual who changed firms, instructing the new firm rather than the old, and said that fortunately San Miguel has not yet faced this issue.

Continued on page 2
Panelists heard how extraterritoriality introduces two new costs for corporations procedural waste, whereby companies have to repeatedly comply with auditor requirements in different countries, and costs associated with meeting different public standards internally and externally.

Peter Goldsmith said that only justifiable cases should reach the courts. “Extraterritoriality isn’t, and should never be, a free-for-all,” he said. “It is not a matter of choice but a matter regulated by international law.” He added that it was important to reign in the more extravagant approaches to extraterritoriality.

Judge R ichard Goldstone defended the ATS, saying that critics have made too much of blaming the legislation rather than “the ridiculous cases brought under it”. And Diane Wood pointed out that since the decision of the US Supreme Court in the Savas v Ayas-Mahan case, lawyers cannot exercise extraterritorial jurisdiction unless the matter will have a substantial effect within the US. International laws are coming closer together, she said, and a universal jurisdiction for abhorrent crimes is now possible.

Speakers put forward several proposals for how to minimize the conflicts inherent in extraterritorial application of national law.

Oliver Geurts, special adviser to the competition commissioneer of the European Commission, said that multilateral conventions would help to create a global consensus for the application of civil law. Speakers agreed that the International Convention on Bribery has been successful in this respect. “The more problems there are, the greater the need for an international convention,” said Richard Goldstone.

Delegates also heard how jurisdictional conflict can be minimized through doctrines of deference such as comity (the respect). “The more problems there are, the greater the need for an international convention,” said Richard Goldstone.

Elpidio Villareal, associate general counsel at Schering-Plough Corporation, was philosophical. “Some corporations do commit unlawful acts,” he said. “The Alien Tort Statute may inconvenience good companies. But it’s a threat to bad companies – so there is a limited role for it.”

Professional malpractice lawsuits growing in number, say firms

Delegates took the opportunity to compare notes at a lively session on professional malpractice liability yesterday.

A panel involving lawyers who represent defendants, plaintiffs and insurance companies explained trends affecting their home jurisdictions, with most concluding that life is becoming increasingly tough (and potentially expensive) for professionals.

Looking at trends in Israeli court rulings over the past several years, Dror Zamir of Levin Sharon & Co joked: “If you’re a lawyer, an accountant, a doctor or an architect and you are sued for professional malpractice – just pay.” Claims against Israeli lawyers have risen to more than 700 a year, he said. In some cases involving alleged medical malpractice, the burden of proof, which usually requires plaintiffs to establish more than 50% likelihood of the malpractice having occurred, has been placed on the defendant.

Petra Schaaff, a lawyer from Hamburg noted that in Germany, 58,000 patients die every year from errors made in their medication. She explained that Germany’s medical associations have set up regional commissions of experts to deal with the volume of claims affecting the medical sector and other areas. Although the decisions of these groups of experts, which comprise medical professionals and lawyers, are not binding, they are a cheaper and more efficient way of handling medical malpractice claims, and now process more than 40,000 claims a year.

The US continues to be the jurisdiction with the highest exposure to liability for professionals. Jeffrey M. Alatta of Kirkpatrick & Lockhart N cholos Grahm warned that the scope of potential claims being “expanded to the point where we are losing sight of the extent of liability”, making it harder for lawyers to manage their own risk exposure. This problem is the product of several trends. M alatta noted that an increasing number of lawyers work for large firms and are therefore more at risk of conflict of interest claims. Such claims arise in the US under breach of fiduciary duty cases, which are increasingly being brought by plaintiffs.

US lawyers are also finding themselves exposed to claims by third parties. Among these are actions by receivers, trustees and creditors of insolvent companies who, following the example set in recent high-profile corporate collapses, are targeting the lawyers who advised those companies along with other potential defendants.

Government agencies such as the Securities and Exchange Commission (SEC) and the Internal Revenue Service have also been moved by scandals such as those involving Enron and WorldCom to act against lawyers. They increasingly view lawyers as gatekeepers, or agents of compliance. Those who advise on complex securities transactions, in particular, are coming under increased scrutiny because of the potential misuse of those products by companies seeking to disguise their true financial position.

In-house counsel in the US are also starting to be targeted by regulators, both for reporting up-the-ladder requirements and as potential defendants in actions where they are accused of having given bad advice to their company in a business rather than legal capacity.

In light of these trends, lawyers are taking their own liability insurance coverage increasingly seriously. Martin Kaminisky of Pollack & Kaminisky in New York urged delegates to take care in buying their own insurance policies. “Ask sure you know what you’re buying, and make sure you read what you’re buying,” he said. Lawyers can now take out specialist insurance for securities-related claims, and many firms have set up risk analyst teams to work out what coverage they should buy.

This increased exposure is causing many lawyers to raise their level of insurance coverage. According to the panel, German firms typically have around €2 million (US $2.4 million) in coverage, while in Israel mid-sized and large firms have between $5 million and $10 million. Kaminisky said that small commercial US firms usually have somewhere between $1 million and $2 million but noted that large many lawyers, whose exposure on securities-deals could run into the hundreds of millions, usually take out no more than $10 million or $20 million in insurance. Many, he suggested, assume they will be able to settle most claims for around that amount.

The session was hosted by the Neigplegice and Damages Committee of the Dispute Resolution Section.
IBA plans pro bono forum for next year

Responding to requests from lawyers at a breakfast session yesterday, IBA president Francis Neate said the 2006 IBA conference would do more to promote pro bono work. “I will tell two very senior IBA members to organize a session for next year,” Neate told the IBA Daily News. “We will try and find a slot in the main calendar rather than have a breakfast meeting.”

These two members are likely to be Phillip Zeidman, partner at US firm DLA Piper Rudnick Gray Cary, and Michael Simmons, partner at Finers Stephens Innocent in the UK.

The decision comes after several lawyers appealed to the IBA to help match pro bono projects to specialized counsel. Phillip Zeidman said at the breakfast meeting: “It is beyond my imagination that the IBA cannot do that. The one place to do it is Chicago and the IBA could miss a huge chance forever if we don’t shoot for something right now.”

Francis Neate said the IBA does not have the resources to employ additional staff to compile a database of pro bono projects and suitable lawyers. However a forum to promote and encourage pro bono work is possible. “The more formal matchmaking role could be fulfilled by dedicated organizations, such as The International Lawyers Project (ILP), a charity launched at the meeting. ILP has gathered a list of 60 volunteers, and the charity expects this to rise to 500 by next year. Funded by the Jomati Charitable Trust, the ILP aims to pay lawyers’ costs for international pro bono work.

“The speakers at the meeting encouraged solicitors from large city firms to get involved in such initiatives, citing personal satisfaction and long-term gains to the practice as the main benefits. Mark Stephens, founding trustee of the Solicitors’ Pro Bono Group (SPBG) in London, said: “You get renewed pleasure in the law from this work. It’s the reason we became lawyers in the first place.”

He said that large firms should dedicate resources to non-government organizations, such as Oxfam or Greenpeace, rather than to death row and torture cases. These were best left to dedicated criminal firms, commented Stephens.

Jos Saunders, general counsel at Oxfam, outlined the need for pro bono work. His annual legal budget is £100,000, he said. This pays for three in-house lawyers, leaving only £3,000 available for external advice. Francis Neate mentioned he had met with Amnesty International in the weeks before the Prague conference to look at ways in which the IBA could work with them.

Mark Paul Neawdick, chairman of the SPBG, outlined how a pro bono policy is good for the firm as a whole. He argued that it attracts the cream of graduate talent, appeals to clients with corporate responsibility requirements and provides an active retirement for senior partners.

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Oostvogels Pfister Roemers

Oostvogels & Pfister is reinforcing and expanding its tax practice with the appointment of Charles Roemers as Senior Tax Partner. A Belgian national, Roemers was admitted to the Brussels Bar in 1994, and has been a Member of the Luxembourg Bar Association since 2000. He was previously tax partner with Clifford Chance Luxembourg, prior to which he was a Director of PwC’s tax practice. He joins the firm together with a team of 3 lawyers. This move will strengthen the firm’s focus on international M&A work, in particular in the area of Private Equity. From now on, the firm will operate under the name Oostvogels Pfister Roemers.

Oostvogels Pfister Roemers has further announced the opening of a London City based representation office aimed at serving its UK based clients exclusively in Luxembourg law.

Oostvogels Pfister Roemers, which is a completely independent firm, specializes in corporate and tax law, banking and finance as well as contract law. It particularly focuses on structuring investments and LBOs in the field of private equity and venture capital. The firm counts 6 partners for a total of 36 fee earners.

Stef Oostvogels has been appointed Managing Partner, and the other Partners are François Pfister, Stéphane Habert, Delphine Tempel, Martine Gerber and Charles Roemers.

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Private practice litigators were given a window into the minds of in-house counsel yesterday at a lively session hosted by Nicola Mumford of Wragge & Co. The view was not always an easy one, however, as litigators and general counsel discussed how they can best work together.

Logan Robinson, general counsel of Delphi, shared his thoughts on how private practice lawyers should approach global beauty contests, an increasingly common means of winning work for law firms. “By and large, lawyers are poor salespeople,” he said. “Some are brilliant but most are poor.” He recommended that to increase their chances of winning contests, firms should do some pre-interview research into the company and the general counsel that the law firm will be pitching to.

“I wouldn’t worry about who your competition is in the contest. Going negative doesn’t help,” said Robinson. One effective strategy, particularly in international contests, is to try to get two meetings with the potential client, one to discuss business, the other as a more social occasion, he said. That way, firms can help distinguish themselves from their rivals. Robinson also recommended customizing presentations and paying attention to the client’s staff lawyers who attend the meetings, because they are likely to be the ones doing most of the work with the outside firm.

The panel went on to discuss how, having won the mandate to advise a corporate client, it is important for litigation firms to manage the relationship carefully. A key element of this is billing, which the speakers agreed should be transparent, detailed and should omit what they regard as extraneous costs, such as photocopying. Logan Robinson said that, despite having looked at a variety of models, qualified hourly billing, perhaps with a soft cap in certain circumstances, was generally the most effective means of charging companies.

It is also important for law firms to manage their clients’ expectations. In a vote cast among those attending the session, most in-house counsel said they asked their outside firms to quote a percentage-based chance of success in litigation, and most private practice lawyers said they gave such figures.

Some of the panelists expressed misgivings over the rise to prominence of multinational corporate law firms. Robinson said that he understood the pressures on firms to grow and to open foreign offices, particularly when their competitors did so. “But for sophisticated international clients I really don’t get it,” he said. “All I see is good, traditional local firms getting absorbed into multi-national cross-selling organizations.” Despite this, Robinson said that he would use large US- or UK-based firms in jurisdictions where the legal market is still developing.

Adam Rubin of Nexen shared these concerns, saying that the consolidation in the legal market had, in his experience, increased the cost of using outside counsel and the number of conflicts issues.

Carl Belding of IBM EMEA in Paris struck a more optimistic, though not entirely positive, note. “Over time, if firms become more like corporations then efficiency will hopefully come to bear and billing rates will fall. But I think that is a long way off,” he said. A speaker from ANZ in Australia was more comforting to many in the audience, saying that his bank prefers to work with larger firms because doing so enables it to manage a greater number of projects more easily.

In-house lawyers also have to justify their retention as counsel by their own clients – the company. The panelists described how they try to present their internal legal functions as a benefit to their companies. Although many continued to view legal departments as a cost centre, Jean-Claude Najar of GE Oil & Gas described how his team files reports to illustrate how it can save and even make GE money.

Adam Rubin said that each year his legal team compares its salary costs with the cost to the company of using outside counsel for the equivalent work.

The meeting was a joint session between the IBA’s Corporate Counsel Forum and its Litigation Committee.
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Networks seek new ways to bring value to their members

An international law firm network must seek to add value to its members’ practices. Daniel Andrews looks at what networks are doing to justify the coalition approach.

Earlier this year, Lex Mundi became the first law firm network to appoint a director of professional development. Terri M Ottenhead’s brief is to develop a programme of best practice for the 162-firm group that will extend to education, training and networking. “We are trying to provide more a professional support network for independent law firms rather than just a referral network,” says Lex M unidi president Carl Anduri. Whether other network leaders will follow Lex M unidi’s example is uncertain. Many are wary about extending the aims of their associations beyond a traditional referral model. “A network has to appreciate its limitations,” explains Giles R ubens, a director at consultants Hildebrandt International. “The majority of firms that seek network affiliation are independents that value their autonomy. There will always be a tension between this and an approach that focuses on common methods and standards.” The decision of how and where to strike the balance between cooperation and independence lies at the heart of a wider question facing Anduri and other network leaders: how best to continue to serve their member firms.

Quality first
For many the touchstone of the value of a network is the quality of its membership. The reason for joining an association is undermined if referral firms provide weaker levels of service to clients. “The functioning of a network depends on the quality of its members and the willingness of this membership to explore opportunities to create work,” says Globalaw president Terry Leggett. So screening applications is vital and networks operate rigorous systems to vet new members. Candidate firms seeking to join the Multilaw network, for example, face review by a standing committee of the chairman and three regional chairs, followed by referral to an executive committee for further scrutiny and possible recommendation to existing members for approval.

The sensitivity of reviewing existing members, an exercise that is usually performed on a voluntary basis, makes it especially important that only the best candidate firms are allowed to join a network. Networks tend to exude formality and reviews are often conducted in ad hoc committees in the absence of any centralized administration. The process under which a member might raise concerns regarding another firm is often characterized, out of necessity, by secrecy. Such an approach also fits neatly with the culture of professional firms: “Quality, trust and integrity are absolutely essential in partner work,” says M utilaw chairman Job von Wahlert.

Some networks, though, operate a more formal review process. Lex M unidi, for example, reviews its members every three years. The network’s membership review policy was originally adopted in August 2001 and has resulted in a number of exclusions from the network. “Maintaining consistently high-quality levels of service represents the biggest challenge to an extensive network,” says Anduri.

At the 66-member network Interlaw the peer-review process takes place every year. “A network must be no more than a loose referral association that simply puts together a roster of members,” says Interlaw executive director Beverly Weis. “Failure to conduct proper due diligence and develop a culture of quality, responsibility and information sharing could be an expensive mistake... and devastating to the client who relies on the network to vet the quality of independent firms.”

Independence
The same desire to control quality has driven the rapid expansion of international firms, particularly over the past decade. And to an extent, international mergers and global networks have sprung up as alternative ways to meet the same challenge. During the 1990s several independent firms seemed unsure which model to follow and aligned themselves with international peers, only for those tie-ups to fall through: Grimaldi with Clifford Chance; Linklaters with De Brauw Blackstone Westbroek and Gianni Origoni. For those firms, the necessary loss of independence and decision-making autonomy proved too high a price to be part of a firm with global coverage. Supporters of the network model see the opportunity to retain autonomy and independence as one of its strengths.

All but a few networks are non-exclusive, meaning that members can receive work from and refer matters to firms outside the network. Members are expected to refer other network firms where possible but are often free to belong to several different associations. For example, Glawpalaw president Terry Leggett’s own firm, Eugene F Collins, is also a member of the TerraLex network for inward referral purposes only. “The aim of Globalaw is to provide access to high-quality mid-sized firms anywhere in the world,” says Leggett. “But where this is not possible, members are free to use their own contact firms.” Globalaw includes several members in each jurisdiction. In France, for example, the network’s members include Cabinet Chouchana Mey, D’O rucchi D’O rucchi and C M Socie e d’Avocats.

Some cross-border deals are of such intricate complexity that clients are always likely to seek specialist local advisers regardless of network affiliation or whether those lawyers work for a global firm. Although Clifford Chance acted for Banco Santander in its acquisition of UK bank Abbey N ational, Santander also turned to Spanish independent, and Lex M unidi member, U ria M endez for Spanish advice. “Joining a law firm network represents a different approach, rather than a competing model to merging with an international law firm or attempting to grow a practice organically,” says R ubens at Hildebrandt: “There is no single model for providing clients with access to international advice,” says Job von Wahlert, chairman of the Multilaw network.

For some independent firms, however, even the bonds of network membership are too much of a compromise. U ntil three years ago, German law firm H uking Kuhn L ier W ojtajk was part of the Denton Wilde Sapte-led network Denton International. Despite maintaining ties with the UK firm, H uking left the association in 2002, preferring to establish its own relations with firms in other jurisdictions on an independent basis. “Large clients appreciate our independence,” says partner Ralf W ojtajk. “Joining a network raises the perception of formal relations, even though this may not be the case in practice.” W ojtajk concedes that a network can add value from the interaction between member firms, particularly in establishing industry-sector focus, but says the benefits of independence outweigh the advantages of the network.

Communication
Network leaders say communication is the key to balancing centralized initiatives with the desire of their members to remain autonomous. Their hope is that knowledge sharing and contacts will grow naturally from opportunities for lawyers at

Reach across borders

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For a full list of member firms, please see our Member Directory available on www.multilaw.com
member firms to meet regularly. "Member firms must be proactive," says Terry Leggett at Globalaw, "it is not enough to sit back and expect the work to come in."

Globalaw, for example, runs an academy for junior lawyers from its member firms. The annual trip, likened to a week-long boot camp by von Wahlert, is intended to "You get out what you put in."

Multilaw, sponsored by its member firms, now operate in more than 2,000 offices in 160 member firms, with over 100 member firms operating over 200 offices in 101 countries. The network comprises more than 5,000 lawyers worldwide. Membership is non-exclusive. The size of firms varies, from 1,200 lawyers to as few as five.

Multilaw sponsors a number of programmes and activities, including three regional conferences each year and an annual conference, special interest practice groups in selected practice areas, seminars to facilitate electronic communications among member, regular member newsletter updates, staff-exchange programmes, online legal bulletins, and an annual academy; a week’s training course for young lawyers.

TAG Law
TAG Law is one of the largest international networks of law firms, with over 100 member firms operating over 200 offices in 61 countries.

TechLaw Group
TechLaw Group includes over 2,000 lawyers from firms headquartered in the principal centres of business and technology in the US and selected cities around the world.

World Link for Law
World Link for Law was established as Euro-Link for Lawyers in the late 1980s and now comprises a network of 58 law firms with 66 offices in 40 countries worldwide. The network is registered in Zurich and consists of 300 member partners and 500 professional staff.

Who’s who

Globalaw
Globalaw is a non-exclusive worldwide network with over 3,000 lawyers in more than 75 jurisdictions. Most member firms are medium-sized within their jurisdiction. Globalaw does not operate a referral fee system and member firms retain discretion in the selection of foreign counsel.

Interlex
Interlex is one of the oldest international legal networks, having been founded in 1973. The network lists over 30 firms as members in around 27 countries. The network is non-exclusive and member firms do not pay referral fees to one another. Membership criteria are selective.

Interlaw
As many as 5,500 attorneys at 66 law firms belong to Interlaw, which was founded in London in 1982. Membership is selective and by invitation only. The association is sustained by subscription fees: an initiation fee and annual dues. The rate of fees is based on the number of attorneys in the firm.

Interlaw is governed by a 12-member board of directors including lawyer members from each region and is administered by a three-person Secretariat in Los Angeles.

Ius Laboris
Ius Laboris is an alliance of leading law firms providing specialized services in employment and labour law, pensions and employee benefits, covering all legal services related to human resources.

Lex Mundi
The Lex Mundi network is based in Houston, where the secretariat is responsible for a membership review process. The network was founded in 1989. It comprises more than 16,000 lawyers in 160 member firms, with more than 560 offices in 191 countries. Members firms operate as the network’s exclusive representative for their jurisdictions and membership can be terminated if a firm does not continue to meet the required quality standards.

Multilaw
Multilaw was founded in 1990 and has 64 member firms in 50 different countries. The network comprises more than 5,000 lawyers worldwide. Membership is non-exclusive. The size of firms varies, from 1,200 lawyers to as few as five.

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The blogging craze that has swept the web can provide a valuable way for law firms to promote themselves, says marketing expert Larry Bodine.

**Blogs galore**

As of September 2005 there were 17.3 million blogs online, up from 6.5 million in February 2005, according to Technorati.com.

According to Pew Internet research, 27% of U.S. adults online read blogs (32 million people). 40,000 new blogs are created daily and the blogosphere (all blogs combined) is doubling in size every five months.

There are many personal and travel blogs, political rant blogs, student and music blogs. In contrast, U.S. lawyers are creating sophisticated professional blogs, discussing new court opinions, transactions and regulatory changes. (Sometimes a law or legal related blog is referred to as a blawg.) According to Blawg.org, there were only 1,052 blawgs as of September 2005, so the idea is still very new.

**Firms big and small**

Law firms of all sizes have started blogs as marketing vehicles.

Andrew Ewalt, a solo practitioner in the US, started a blog at [http://andrewewaltlawdaw.blogblogs.com/](http://andrewewaltlawdaw.blogblogs.com/). His exploits are being covered by the American Bar Association’s Law Practice magazine, and the Connecticut Law Tribune interviewed him in an article entitled: “Solo Aims to Blog His Way to New Clients.” He says his blog has attracted over 100,000 hits.

“Firms must be visible on the Internet,” says Robert W. Boyd in Chicago, the author of the blog [http://theenvironment.ws/default.aspx](http://theenvironment.ws/default.aspx). Boyd targets the blog as his single best marketing service. It was named the number one all-topic blawg as measured by Blawg.org. Boyd targets his blog to current clients and writes to deepen his relationships with them. He says his blog is his single best marketing effort in a 20-year career.

Sheppard Mullin (40 attorneys in nine offices located throughout California and in New York and Washington, D.C.) has its Antitrust Law Blog online at [www.antitrustlawblog.com](http://www.antitrustlawblog.com), one of seven blogs the firm publishes in place of its newsletters and PDF files. Within four months of its launch, the blog attracted 50,000 readers a month. "It's an unbelievable number of hits," says Robert W. Doyle Jr, a partner in the firm's antitrust and trade regulation practice.

Davis Wright Tremaine's FCC Daily newsletter, highlighting important FCC activity on telecommunications issues and related industry developments. DWT put the newsletter into blog form because it wanted in-house counsel and corporate executives, who now regularly use search engines during the lawyer selection process, to retrieve content from the FCC Daily when performing an internet search.

Lowenstein Sandler's (220 attorneys, in New Jersey and New York) blog The Environment, can be found at [http://www.thesizearch.environment](http://www.thesizearch.environment). With 16 lawyers contributing content, the blog addresses environmental, health and safety issues for the business community.

Preston Gates & Ellis' (430 attorneys practicing 13 locations on the U.S. west coast, in Washington, D.C. and in Asia) publishes its Electronic Discovery Blog. "One of the primary marketing objectives of our practice was to increase our visibility as knowledge leaders in electronic discovery and grow our client base on a national level," says David Bowerman, business development manager of the firm. One attorney was assigned the duty of posting all the content, including a 160-page book of electronic discovery issues, trends and insights, referred to internally as "The Tome." Within the first month the blog garnered more than 70,000 hits, drew 3,000 unique visitors and replaced the voluminous Tome. "The blog has become a core element in our marketing and business development efforts," Davidson said.

**Six reasons to blog**

An attorney’s professional blog ordinarily covers a niche area of expertise. It is published by one partner or practice group. The blog is as easy to update as sending an email — just enter a title, text and address — no coding knowledge is needed. People find the lawyer’s blog with Google and Yahoo, which have tuned up their algorithms to give blogs high page rankings.

There are six compelling reasons for lawyers to start their own blogs. They are easy to set up and use. Simply go to [eBlogger at www.typepad.com](http://www.typepad.com) and open an account. It's so easy that I have personally helped lawyers and other professionals set up blogs over the phone in 10 minutes. To post a new entry, a lawyer can simply type in the text of a message in an online box, and click a button to put it online. The software will select a Web address for you. They are cheap. You can get a month's free trial of the software, and pay about $14 a month for the account. Compare this to the much higher cost of a regular website. They are highly visible and quickly draw visitors. Search engines rank blogs highly because they predominately contain text and they are updated frequently. Firm
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blogs will gradually get more traffic than the firm’s main website and will quickly be listed on the first page of search results. My blog, Larry Bodine’s Professional Marketing Blog at http://blog.larrybodine.com attracts 30,000 visitors a week on average. The nation’s top corporate blogger, R. Obert Scoble at Microsoft, gets 3.5 million visitors to his Scooble blog each month.

They can be about anything. A blog can simply recount a professional’s analysis, viewpoints and news. They can also be used for firm announcements, client newsletters, legal updates, and answers to common questions. They give the author instant credibility and expert status on the topic. I want new bloggers to get ready for calls from the media. News reporters love blogs, because they provide the journalist with a quotable source who’s an expert in his field.

If you fail to set up a blog on your special topic, someone else will claim it before you do. The attention and traffic goes to the early adopters, not the professionals who wait to decide to join the trend a year later. We all remember who was the first to fly across the Atlantic, but not any of those who follow. Law firms are even winning awards for their blogs. The 18-lawyer intellectual property law firm of Dunlap Codding & Rogers recently won the best law blog award among the Business Blogging Awards, a kind of online Oscars, for its PhOStA blog. The name comes from a legal acronym relating to patents: “Person having ordinary skill in the art.” Patent partner Douglas Sorocco started the firm’s IP blog in 2003, much to the scepticism of his technophobic partners. They were soon convinced of the blog’s marketing value, though. “The first client referral from the blog really solidified things,” Sorocco says.

Sorocco sees the blog as a means of reaching out to the larger community interested in intellectual property and technology law issues. “My goal is to write about the quirky fun stuff,” he says. “The majority of my readers, outside of lawyers, are graphic design professionals who wait to decide to join the trend. They go online. Firms should determine whether the rules of professional responsibility regarding advertising govern their blog. They probably do. Lawyers are well advised to check the rules in their jurisdiction.”

Possible downsides
Microsoft’s Scooble attributes the popularity of his blog over those written by the company’s 3,500 other bloggers to his different writing style. He writes in a “blinking style,” straight from the head, using his first instinct. It’s a style that can also lead to controversy. Of course he discusses the company’s software, but he also talks favourably about Microsoft competitors and when warranted he criticizes Microsoft management, including Bill Gates. He defends his actions, saying his views discussing Microsoft flaws are not really telling anyone anything they don’t already know. He says he discusses competing products to demonstrate his authority in the field. And his enormous following has given him the courage to critique the boss, a risky thing for any blogger to try. Law firms should establish clear-cut guidelines when it comes to attorney and employee blogs. An editor should be named as the person responsible for the content of the blog. The firm’s attorneys and marketing professionals can suggest or even write posts, but the editor must approve them before they go online. Firms should determine whether the rules of professional responsibility regarding advertising govern their blog. They probably do. Lawyers are well advised to check the rules in their jurisdiction.

Firms should also be careful about allowing readers to post comments. Lawyers must avoid forming an attorney-client relationship unintentionally, for example, by commenting on the facts of a visitor’s specific situation. And the same disclaimer that is posted on the law firm’s website should also be posted on firm blogs. “You don’t want to give advice to specific situations,” says Reid Trautz, a practice management consultant in Washington, DC and author of Reid My Blog. “Lawyers all have to be careful that their comments on other blogs aren’t construed as legal advice.”

There is also the danger of getting fired. Some notorious examples include:

- Heather Armstrong, whose blog at Dooce.com led to the phrase of “getting Dooced” to mean getting fired because of your blog. She blogged about a company holiday party, naming people who drank too much, making fun of an Asian employee, and quoting the comments of partypathers. She was fired, telling readers of her blog, “I’m advice to you is BE YE NOT SO STUPID. Never write about work on the internet unless you lose your job.”
- Mark Jen, who lost his job at Google. Perhaps hoping to be the next R. Obert Scoble, he started a blog called In MyFirstIneeroz the day he started work. Shortly he began complaining online about the health care benefits and compensation offered by the company. Then he also blogged about an internal Google financial presentation, discussing company revenue and new target markets. That got him fired.
- Ellen Simoniets, a former Delta flight attendant, put racy photos of herself online, wearing a Delta uniform inside a Delta aircraft. It was not the sort of image the airline wanted to convey and she got the axe.

So far, no lawyer has gained notoriety for this kind of bungling. In fact the reverse is true, as blogs attract new business. “The blog must contain practical information, and not just be a bunch of random thoughts or opinions,” says Kevin D’Keefe, lawyer and founder of LexBlog in the US.

Subscribing to blogs with RSS
An advantage to a blog is that anyone can subscribe to new posts as they put out online using online news aggregators, such as FeedDemon, Newsgator, Bloglines, amphetadesk or Feedreader. A reader simply opens an account with one of the news aggregators and plugs in the information (the blog’s RSS feed) — including which blogs they want to be notified about. RSS (which stands for really simple syndication, or rich site summary, depending on whom you ask) is a technology that lets you publish news over the Internet and push it out to interested readers. “RSS has wider uses and is quickly being adopted by businesses as a new communications channel and an efficient way to distribute information,” says Fergus Burns, CEO of Nooked in Boston in the US.

Every blog automatically comes with an RSS feed so that readers can subscribe to it. The technology is so handy that many law firms are adding RSS feeds to their regular firm websites to boost their readership.

A law firm’s public relations staff would be wise to follow blogs that cover the firm’s activities and practices. Similarly, law firms can offer their press releases and stories to bloggers just as they offer them to newspapers and TV stations. Blogs also work well as crisis communications tools, allowing the company to make its side of the story public without the filter of a journalist. Lastly, blogs can be used as a periscope, according to Nick Wreden, a branding and customer loyalty expert based in Asia. “It can provide insights into what customers, prospects and even the disenfranchised are saying about blogs,” he says. Once again, technology has been applied to marketing to turbocharge its effect. In the past 10 years, law firms have learned they cannot be without a website. Email was once considered the killer application and is still being used to distribute email newsletters. Now blogs have come to the marketing forefront, and time is now to join the latest online revolution.

Based near Chicago, Larry Bodine can be reached at +1 630 942 0977 and LBodine@LawMarketing.com

www.ibadaily.com IBA Daily News - Thursday, September 29 2005
Today’s schedule

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<td>IBA golf tournament (tee-off time 0930)</td>
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**Lunch**

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- Guarantees
- Dispute resolution
- Computer contracts
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ISBN 08225517794, $1,119 Print U.S.; $1,188 CD-ROM U.S.
Globalization, client demands and the introduction of professional reforms are forcing law firms to rethink their approach to financing. Here Richard Meddelton and Ian Collard of Royal Bank of Scotland give their views on stock market listings, managing cash flow and how the most successful firms of the future will mark themselves out from the rest.

There has been a steady improvement in the central management of law firms over the past five to 10 years. Now that many firms are more conscious of the need for sound planning, how should they go about forecasting financial performance? Firms must be realistic. For example, headline fee income forecasts, say, 25% when the peer group is forecasting 10% are likely to lead to early disappointment and re-budgeting. If it is unrealistic then it is probably doomed to failure, with knock-on effects on partners’ morale and fees in subsequent forecasts.

The forecast should be available before the year commences. And firms should ensure that each department’s lawyers air their expectations fully. It is also important to incorporate the financial budget as part of the overall business planning process and to constantly review the forecast. Firms should challenge their practice heads on variations to plans on a regular basis. In other words, they should avoid surprises for all stakeholders, including external advisers such as the banks. At the same time, management should keep a close watch on key performance indicators such as fees earned, profitability, working capital lock-up (debtor days) and also work in progress, conversion and utilisation rates.

How should firms gauge their historical performance and what should they measure?

Realistic budgets, regular updates and appropriate key performance indicators are vital. As with any business measuring, actual out-turns against expectations is a fundamental need.

Increasingly, law firm managers are focusing on areas such as profitability (both overall firm profit and profit per partner), fee income, cash and some measurement of lock-up (that is, work in progress and debtor receivables) days or investment in clients.

Performance management of partners, staff and non-fee earning staff is becoming more sophisticated. This might include comparisons not only with budgets and previous years but also between peer groups. In the UK, the continued steady trend towards LLPs has made financial information, at least on an annualized basis, more readily available, giving peer group comparisons more meaning.

Will the future see firms have outside ownership in order to raise external finance?

In the UK, one of the recommendations of the Clementi Review is that law firms should be able to be owned by non-lawyers and thus obtain external capital. The implications of this are far-reaching and controversial. Some people hold the view that stock market flotation of a law firm is probable, possibly in the short term, thereby mirroring the moves in the accountancy and property management sectors.

The corporate structures becoming more common in law firms are helping this move, although for many the partnership culture of firms will remain a barrier.

Valuing a law firm is an interesting challenge and likely to be the subject of much debate. From the experience of the accountancy sector, this is likely to focus on a multiple of fee income but the levels have not yet been clearly defined for law firms.

The key question has to be why capital is being sought. With the consolidation of law firms, the creation of larger firms producing enhanced trading and capital growth could work in favour both of lawyers and investors. At the same time it will remove, to some extent, the risk for lawyers (such as in the UK where total liability remains for each partner’s actions under the traditional pre-LLP partnership format).

What are the biggest challenges facing finance directors?

The role of the finance director has evolved significantly over the past decade with, in particular, representation on the management board of the firm becoming common. Treasury functions overseen by the finance director are growing in sophistication. This reflects the growing complexity in the nature of running law firms both in terms of the firm’s funding requirements and also, increasingly, the handling of substantial levels of deposits for clients and the need to protect these “trust funds” while at the same time maximizing yields.

While the status and recognition of finance directors has improved significantly, it is a fact that they are not lawyers and cannot be a fee-earning partner. To overcome this many have profit-share elements built into their contracts so that a quasi-ownership culture is generated.

In the UK, the Clementi proposals will include ownership by non-lawyers. This might well be attractive to many finance directors and enhance the firm’s ability to recruit and retain the best candidates. A possible downside, however, is the loss of the detachment that they finance directors can bring to the debate as non-owners.

Lastly, the relationship with and support of the managing partner is essential. This is especially the case if a firm has to bring about cost cutting to maintain or improve profitability.

What will separate the best law firms from the rest in the future?

Management at the best firms will have a clear sustainable strategy supported by measures, internal and external, to monitor performance. They will have a clear identity and a strong brand and will have considered the benefits of different corporate structures. We have seen in the UK, for example, the increased trend towards LLP conversion, driven in part by the need to attract the best recruits.

Successful firms must be adaptable and alive to the opportunities presented by emerging markets but recognize the risks involved in entering those markets, such as a lack of knowledge of different cultures.

Getting the best staff and keeping them will continue to be vital. Some successful firms will choose to focus on their strengths in niche areas of work. And some will increasingly look to outsource their repetitive, high-volume operations away from high-cost centres such as London and New York. This may even involve using call or processing centres in different countries.

R ichard Meddelton is head of professional practices at Royal Bank of Scotland and can be contacted at r.meddelton@rbs.co.uk. Alternatively, contact Ian Collard, director of origination, business services & professional practices, at Ian.Collard@rbs.co.uk.

Law firm financing options

The range of financing options for law firms has increased and now includes revolving capital loans, club deals, syndications and bond issues. Most firms use a combination of the more traditional financing methods. These include:

Partnership capital loans

These are long-term debt provided directly to individuals on becoming partners as their capital injection in the firm. An under-taking from the firm is held (to pay the capital back to the bank) when the partner leaves – through retirement, joining another firm, or death. The key advantage to the individual is that the loan is made available for a term up to about 30 years with no capital repayments and only interest to be met. To the firm the key advantage is the long-term certainty of funds to enable better planning and balance sheet management. The loans are financed off balance sheet (as they are in the name of the individual partners) thereby enhancing the financial picture of the firm. The drawbacks are minimal. But, if the firm is cash rich these loans generally cannot be offset against the partner’s individual loans.

Working capital funding

Taking the UK as an example, for law firms, day-to-day working capital is funded by way of an informal arrangement called an overdraft. It is highly flexible and essentially exists on a stand-by basis. The key advantage is that the cost is minimized to days when funds are needed only, and at the level used. When the firm is cash rich the facility simply sits in reserve. Overdraft facilities can be supplemented with more complex Treasury lines, but again with the benefit of only using debt lines when necessary. The only drawback is that technically such facilities can be withdrawn on demand; for example, in the event of financial difficulty. Whereupon the bank would seek to agree more formal arrangements depending on the circumstances.

Structured facilities

These are usually for specific strategic events such as acquisitions, capital expenditure projects or business development. Term debt can be provided to firms, the terms for which will be designed to meet the specific circumstances. These are based on one-off discussions and tailored accordingly.

External finance

The changes proposed by the Clementi Review will alter the potential for outside investors to invest in law firms and so this is likely to become another avenue of finance. In the UK a number of law firms have expressed a view that floating on the stock market is something they would consider. The advantages of longer term, possibly cheaper finance against the downside of meeting shareholders’ dividends and capital growth expectations will be interesting to watch unfold. Internationally, some firms have approached the bond markets, but this does not appear to have gathered a great deal of momentum.
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US debt private placements set to increase

The trend for European issuers to raise finance through US debt private placements is set to grow, delegates at a seminar run by the Banking Law Committee heard yesterday.

European companies have an opportunity to raise debt finance more cheaply than through conventional bond offerings, said speakers. Issuers can access a market where potential demand is about $70 billion a year and is growing by 3% to 5% annually.

The first seven months of 2005 showed a steady increase in issuance volume, and investor demand continues to outweigh supply, said Christian Voss, head of US private placements at BNP Paribas in New York. Already, European companies account for close to 50% of all issuance, but advisers are confident the volume of deals will continue to grow.

"We are convinced, if anything, US private placements will become more popular for European issuers," said Thomas Werlen a partner at Allen & Overy and chair of the session.

The imbalance of supply and demand creates an issuers' market, which is marked by tight spreads and oversubscribed transactions, explained Voss. Issuance volume in the seven months to August was about $3.5 billion according to BNP Paribas estimates, and with a busy September the firm predicts overall issuance this year to match or exceed last year's total of $5.1 billion.

Debt private placements are treatable notes sold to a market of pension and insurance funds, but there is little liquidity in the market. These deals are different from Rule 144A offerings, which are sold to qualified institutional buyers under an exemption from US registration requirements for securities, but are expected to be held by a broader group of investors.

The product was until relatively recently confined to the US domestic market, but over the past four to five years deals from European issuers have increased rapidly to meet strong demand from still predominantly US investors.

Now there is a sense that the market in Europe is growing further, said Adam Farlow, a securities lawyer at Allen & Overy. Several of the US investment banks are growing further, said Adam Farlow, a securities lawyer at Allen & Overy and chair of the session.

There is also a sense that the product could be attractive to issuers in central and eastern Europe, which is one of the reasons that the session leaders chose to present this topic at the IBA, said Farlow.

Thomas Krauser, a vice-president at Priscoa Capital Group, who spoke at the session to give an investor's perspective, echoed that view. Priscoa already has European offices in London and Frankfurt, he said, adding: "It would be great to one day have a small office in eastern Europe as well."

Krauser's view is that investors are also likely to increase their level of interest in sub-investment grade credits. "My hunch is that over the next few years we will go down the ladder," he said, investing in credits that require more of a "credit call" by his firm.

The advantages of private placements are that issuers can avoid the onerous reporting requirements of public deals. Private placements are also cheaper because the participation of external advisers in due diligence is reduced.

The usual cost of a public debt offering is around €700,000 ($840,000) in auditor and legal fees, compared with about €150,000 to €200,000 for a private placement, for example. Some issuers might also favour the product because they lack the reporting history that is necessary to execute a public deal.

Unlike Rule 144A debt offerings, which are sold to a broader group of investors, there is no true offer document in traditional private placement deals. The due diligence process also comprises direct contact between a far smaller group of investors and the company. Deals are normally marketed to 30 or 40 potential investors, with five to 10 taking part in the final placing.

Because the investor base is more concentrated, easier to identify in the event of the issuer getting into difficulty, and because of the active participation of investors in the due diligence process, the role of outside counsel is less extensive than on Rule 144A transactions. Meanwhile, much of the documentation on traditional private placements is standardized and three standards are adhered to fairly rigidly except in certain areas such as financial covenants.

The opportunity for investors to go into the company and "kick the tyres" provides a good defence in the event of litigation, explained Ian Clark, a partner from Latham & Watkins in London. Because investors are intimately involved in the due diligence process there is less of a need for agents banks to take legal advice and to carry out extensive due diligence on their behalf.

The popularity of private placements could be seen as part of a wider trend towards reducing costs in the finance markets by limiting the role of intermediaries, a trend that is not necessarily welcome for law firms. However, Werlen points out that overall the market is growing rather than US private placement deals of this type replacing 144A offerings, which are a better source of income for legal advisers.

Cova says GCs must control outside selection

A s the former lead counsel to the administrator of Parmalat and general counsel to the Fiat group for over a decade, Bruno Cova understands better than most the need for a good relationship between in-house and outside counsel.

Speaking to IBA Daily News earlier this week, Cova said the reason Parmalat was able to deceive investors for longer than normal was a breakdown in communication and organization between the company and its legal department. The problem was worsened because outside counsel chose to believe that Parmalat’s fraudulent managers were the client rather than the company itself.

"The outiside view, this represents one of the biggest pitfalls for outside counsel: losing sight of who the real client is. It is too easy to find yourself working for a manager willing to take risks to close certain transactions quickly, or skip procedures to get a bonus, he said. Potential demand is about 14 law firms must cultivate better relationships with general counsel. “A company’s in-house lawyers are effective gatekeepers between management and outside law firms, because they are hired to ferociously defend their corporation,” Cova says. “When the in-house team isn’t involved, outside counsel are far less likely to spot potential problems.”

Cova suggests a number of practical points that in-house lawyers should consider to minimize risk and improve their relationship with outside counsel.

Firstly, in-house counsel should always be involved in the selection of outside counsel, and it should be in-house counsel that approach external law firms. Law firms should learn to be wary of any company that solicits advice through its managers rather than its legal department.

If this happens, Cova’s second suggestion is for in-house counsel to prefer long-term relationships with a single firm over repeated beauty contests. This encourages that firm to have a vested interest in the wellbeing of the corporation. “There are situations where a bidding process is more appropriate—such as banking transactions, where the legal service provided is more like a commodity, and the company is looking to minimize costs,” he said. “But in the majority of situations, a close relationship with one firm is better.”

However, he warned that in-house counsel should be cautious not to rely exclusively on a single firm. The danger is that the firm’s turnover could be dependent on the corporation, or that the external firm could come to wield more influence than the internal legal team.

Lastly, in-house counsel should be more proactive in determining the integrity of outside counsel. “This is not an easy thing to do,” Cova said. “The best thing is to ask your peers, general counsel and outside counsel, to find out about someone’s reputation. Otherwise outside counsel might ambush you with a huge bill.”
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