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John J. Stevens, Esq. or "Jack," as he was generally known, has retired and is reflecting on life choices. Overall, his professional career has been successful, but the changes in his profession have troubled him for some time. He is not sure that his choice was the wisest in the long run.

Since childhood, Jack had been urged by his father to enter a profession for his life's work.

As a child, Jack was not certain what a "profession" meant. As Jack grew older, he had a sense that it was a calling that required a long and comprehensive academic course of study in a specialized field. To Jack , it suggested a life where a person had to first be qualified to enter the profession and, once admitted to the profession, was expected to maintain the high standards of expertise of its members and the highest standards of conduct and ethics of the profession. Still, Jack was not sure of how his understanding of the meaning of a "profession" applied to the fields of study open to him.

His father's choice was the medical profession because he himself had wanted to become a part of that noble profession. Jack's father's choice was not surprising because there had been physicians in his ancestry of whom he had always been very proud. Thus, before Jack could really decide his future career for himself, Jack had his future somewhat preordained. As expected by his family, Jack graduated from a prestigious university having undertaken and completing the pre-medical curriculum - having majored in psychology and minored in philosophy because there was no such thing as a premedical major in those days.

At the time Jack graduated, the country was engaged in the Korean War and Jack was drafted to spend two years in the Army. After completing 16 weeks of basic training in heavy weapons, Jack fully expected to be assigned to the warfront. Instead, Jack was assigned to the Company's hospital. Although he was only a private first class, it was explained to him that he was being placed in charge of a septic surgery

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ward because of the shortage of officers in the Medical Corp and because of his premedical education. So, Jack spent the rest of his two years tending to the wounds of his patients. More often than not, two doctors who were officers arrived to examine the patients at some time during Jack's shift. Jack would follow them as they made their rounds taking notes on what they prescribed for the continuing treatment of the wounded men. Fortunately for Jack, the Korean War terminated before he was assigned to an overseas post and before he was honorably discharged at the end of his two year service.

It was only after spending two years in the Army that Jack concluded that the medical practice was not for him. His decision was made largely from his experience with the two Army doctors with whom he made the rounds once a day. There was no speaking relationship between those doctors and Jack other than whatever questions or directions the doctors directed to Jack as to the wounds of the patients being treated. Otherwise, they talked only to one another, both before and after the rounds. Jack was apparently invisible! Their conversations were on very mundane topics that had nothing to do with respect to the medical profession or to any other topic on which Jack had any interest. On reflection, following two army doctors around a septic surgery ward was not the best example of the life of a medical doctor.

On his discharge from the army, Jack was back to square one on a decision as to his future. Having audited a few prelegal courses in college, Jack recalled that he found them quite interesting.

There is no doubt that the attraction of entering a profession, recognized as such for centuries, was a strong motivation to enter that field.

At the outset, Jack's motivation centered on the intellectual challenges in the study of law. As he learned more about the legal profession, he was attracted to the prospect of being able to work with people in helping them to resolve problems beyond their ability to do so, to work to correct societal wrongs, to pursue his love of learning and to apply his analytical abilities to achieve academically and in his future practice.

After completing his first year at his law school, Jack was thoroughly convinced that his decision was the right one. In college, there typically was a right or wrong answer to any question under study and included in an exam. A good memory basically assured the student of a good test score and a good understanding of the subject matter.

The study of law differed significantly from the approach taken in learning the course material in college courses. In law school, there were rarely right or wrong answers. Jack was soon convinced that the study of law, utilizing the casebook approach to learning the applicable law and the so-called *Socratic* method of teaching law, that is, engaging

the students in a discussion of the case under study, were designed to prepare the student to think like a lawyer – not necessarily to learn the then applicable law.

As Jack approached graduation, he was faced with the dilemma of deciding on what practice area he would like to specialize. However, he universally liked the subject matter of nearly all of his classes so that that factor was not determinative of the practice area in which he would specialize. He did not have to ponder the question much further because the one thing that Jack knew clearly was that he wanted to work with people and their problems – not with corporate officers and problems of business entities. Jack asked himself what practice would keep Jack involved with most of the subject matters that he had studied and in which he achieved while staying with the representation of individuals. Jack concluded that estate planning necessarily involved many other fields – corporate, partnership, contracts, real estate, insurance, torts, litigation, trusts and estates, domestic and international taxes, and almost all practice areas which might impact an individual.

Having reached this decision, Jack concluded that a Masters of Law Degree in estate or tax planning would help to pull into perspective the practice areas that would most likely be part and parcel of a sophisticated estate planning practice. He obtained his Master of Law degree one year after receiving his J.D. degree.

He applied to the few large firms in his city for a position as an estate planner (then referred to as a "Probate Lawyer"). He received offers from the two largest firms in his city. He accepted the offer from the second largest firm because he was concerned about working for a really large firm – which in this case numbered 125 lawyers, compared to the 45 lawyers in the second largest firm. Little did he realize that his active practice would end as a partner of a firm with over 1300 lawyers!

Preparation for commencing his legal career in a large law firm included more than a stellar legal education. It included purchasing a couple of three-piece suits - and a hat!

That expenditure was a significant expenditure for Jack considering that the going rate for a first year associate in a large firm was $450 per month in Jack's metropolitan area. However, the business and professional attire was certainly what Jack had expected for members of the legal profession practicing in a large law firm.

For years, a dress code had been in place for every lawyer and employee of the firm. It was not until some 40 years later that the code had advanced (or regressed in some minds) to "business casual" which largely consisted of a sport coat, slacks, a collared shirt and no tie! Still, a suit and tie was expected for most new clients and for older clients.

This evolution of the dress code was not entirely consistent with how Jack thought a lawyer should present himself to a client, but the change did not constitute a critical change to the profession considering the mores of the times.

On Jack's first day at the office, he was given a brief tour of the office which ended at the "bull pen" which Jack later learned was the name attached to a very large office occupied by three first year associates who started their careers in that office. Fortunately, Jack was transferred to his own office about three months after his starting date.

Although Jack had not thought much about it, he was somewhat surprised to find that the law offices were carpeted, but the hallways connecting the offices were covered with linoleum. Jack was told that the head of the firm believed that the clients of the firm were comforted by the thought that their fees were going into their cases and not into supporting the regal fixtures and furniture of the law office. Later, when the founder had died, new leaders of the firm undertook an elaborate upgrade of the firm's fixtures with expensive woods, new desks and a room allowance for accouterments.

The build-outs were part of a move to a new office building which the new leaders justified by noting that they spent more than one-third of their lives in the office and those offices should be pleasant in which to work. Jack could not help but think that the founder of the firm must be spinning in his grave!

No one could seriously argue that anyone could walk into the office and not immediately sense that the bill was going to be serious! It was pretty obvious that the expense would be largely passed onto the client. Jack's professional conscious was troubled, but he accepted the office allowance and new quarters without objection!

When Jack started his employment, associates always addressed the partners by the formal Mr. Smith and or Mr. Brown, never by his first name. This practice continued until Jack's class attained partnership status some 7 to 10 years later after which it faded out of use except when addressing partners significantly senior to Jack's class. Jack thought that the practice was less "formal" but not less professional.

At the time Jack commenced his practice, the then-modern Selectric had replaced the typewriter that Jack had used throughout his high school, college and law school to prepare all of his written work, from letters, outlines, memorandum, examinations and what have you. As Jack commenced his practice, it was stressed that there could not be any erasures in wills and trusts and other testamentary documents. And, that included carbon copies. At a class on testamentary instruments, while Jack studied for his Masters of Law Degree, someone asked what should be done if a secretary frequently made a typing mistake on a

testamentary instrument. The professor stated, without hesitation – you fire her! Jack thought that that was pretty harsh, but he did not comment. Jack recalls that someone pointed out that erasable paper was then available. Unfortunately, apparently, typographical errors on carbon paper could not be erased without leaving evidence of the erasure. Thank God for the computer! But more of that later.

When Jack commenced the practice of law in his large firm, the head of the tax department was away doing his time as Chief Counsel to the Commissioner of Internal Revenue. Jack was assigned to the corporate department where most of the time, Jack was working on corporate tax issues. When the head of the tax department returned from Washington, he decided that with Jack's educational background, Jack was better suited to be placed in the probate department as it was then called. So, Jack's work transitioned to the then-traditional role of an estate planner or "probate lawyer" and he was assigned to the probate department. Much later, the head of the tax department confided in Jack that he knew very little about estate planning and was uncomfortable in being responsible for it. In addition to estate planning, Jack's work then included the probate of wills of deceased clients or members of the deceased client's family and the preparation and administration of trusts.

Jack's work was apparently well received while working in the corporate department. Jack became curious about the fee charged for his work. In other words, what was he contributing to the revenues of the firm? Of course, he had no part in the determination or of the process involved. Jack was advised that the fee for the work done by the firm involved the analysis of the issues involved in a case, the complexity of the issues, the outcome of the issues undertaken by the firm, the value to the client of the work performed, and the time that it took to resolve the issues. This was in response to the question of how the fees for the corporate work were determined. Because the tax issues were only part of a larger transaction in a situation, it was impossible for Jack to appreciate the factors that the elders of the firm considered in determining the fee to be charged for the work performed by him for the corporation. In time, the billable hour replaced the methodology of how work was billed. Jack thought billing by the hour measured what it cost the firm to do the work, but did not necessarily measure the value of the work done from the client's perspective. Jack had trouble accepting the hourly billable dollar approach as very professional throughout his practice.

Jack eventually found that the fee for the estate planning work for the individual heading the corporate entity which the firm represented was uniformly charged at $50.00 on a separate invoice! It didn't take

Jack long to conclude that the estate planning services to the individual client was managed as an accommodation or a perquisite to the corporate officer. Jack was troubled that his estate planning work did not contribute much to the firm's coffers, but was also disturbed that the perquisite was somehow unethical if not known to the corporation's board of directors. While Jack's altruism was disturbed, it was not so disturbed as to bring it to the attention of any of the partners.

Once Jack had been assigned to the Probate Department, Jack believed that all of his work was attributed to the Senior Partner of the Department and the fees for Jack's work were solely in the discretion of the Senior Partner and Jack was sure that his work was attributed to the Senior Partner as far as the client was concerned.

Among the tasks assigned to Jack in the Probate Department was the preparation of inventories and income tax returns for the estates and trusts that the firm represented. Jack was presented with a tabulator with a handle that had to be cranked every time one wished to enter a number in the tabulation. The number was entered onto a roll of paper which could then be used to check the work. This was not only physically tiring, it didn't seem that it needed three years of law school to prepare for the work.

One day, a young man appeared at the office looking for work in the accounting department.

Fortunately, his services were not needed, but it occurred to Jack that he was the answer to the dilemma that Jack had confronted. The accountant was not at all troubled by the work that Jack described and readily agreed to the hiring. Now, all Jack had to do was to get the partner in charge of the department to agree to the hiring. The proposed hire was not an attorney, he wasn't a certified public accountant, he was the firm's first "paralegal" – a term not known at that time, but frequently used as the years went by. The paralegal was much less expensive than an attorney and relieved the attorney of many of the mundane tasks that the attorney previously had to do. A "win-win" result!

Jack had a sense that the probate practice did not produce a significant source of revenue for large firms compared to their corporate, litigation, real estate and other practice areas. The exception to the rule was when the Probate Department produced statutory fees, and sometimes at an unconscionable level. This sometimes occurred when the fees were generated by a statutory fee controlling the legal fee of probating an estate for ordinary services with the ability to request the court to award fees for "extraordinary services." At the time that Jack commenced the practice of law, the vast majority of estates were probated and distributed pursuant to the terms of a will which was lodged with the court at the time that the executor or executors of a will were

appointed to administer the estate. The use of living trusts as they were then known was not yet commonplace. Virtually all of the estates at the time produced a significant fee for the lawyer because if anything was out of the ordinary, the lawyer could always petition the court for the award of fees for extraordinary services. "Extraordinary services" included, for example, the preparation of a federal estate tax return or income tax returns.

Jack remembers an estate consisting, in part, of land on which oil was discovered subsequent to the death of the decedent. Apparently, the decedent was not even aware of the existence of oil on his property prior to his death. The estate produced such an extraordinarily large statutory fee that the firm declared a substantial bonus to all of its partners and all employees of the firm based on the recovery of this one statutory fee alone!

That aspect of the trust and estates practice troubled Jack in that it did not appear to be consistent with what Jack believed was the conduct of a profession – there was no reasonable relationship between the legal work required and the fee charged for the lawyers' work. It was years later that Jack could reconcile that aspect of his practice with one that was fair and equitable to the client for the work involved. It was with some significant relief to him that the law in the state in which he practiced was changed so as to reduce the statutory fee to what now challenged the lawyer to complete the work within the maximum statutory fee that would be awarded by the court. Any fees in excess of the amount allowed by the statutory fee were subject to the court's approval based upon reasonable compensation for the work that was not covered by the statutory fee.

When Jack was hired by the firm, the governance of most law firms was fairly simple. There was one or two, sometimes three, very senior lawyers who autocratically governed the firm. More often than not, those senior lawyers had founded the firm or had "inherited" the firm from the founders who had since passed away or had more or less withdrawn from the firm, often with a continuing monetary interest in the firm.

Depending upon the degree to which the founding partner wished to have the input of other partners, the firm would embrace policies and practices which the managing partner favored.

Jack's firm was clearly in the hands of a single founding partner who consulted with the other older partners as he chose to do so.

Jack was made a partner of the firm after seven years of practice there and remembers his first partnership meeting. It consisted of a presentation by the senior partner of any significant developments he thought were important in the different practice groups that had oc-

curred since the last partners' meeting and the entertainment of ideas or suggestions that had been made by other more senior partners that had been accepted by the senior partner. It didn't take Jack very long to conclude that this was not the place for younger partners of the firm to open their mouths. It was best to relate whatever ideas the younger partners had to the partner in charge of their practice group who could then pass on the suggestion privately to the managing senior partner if the practice group partner saw merit in the suggestion.

Early on, this lesson was emphatically illustrated to Jack, when the head of the Labor Law Practice Group, suggested at a partners' meeting that he had read of statutory retirement plans then available that could be adopted by law firms that would permit lawyers to contribute to a qualified retirement plan that would defer the payment of taxes on the lawyer's earnings that were contributed to such a plan in the amounts permitted under the federal legislation. To the embarrassment of the labor law partner, the Senior Partner replied that any time that the labor law head wished to discuss his retirement, he was free to do so in the Senior Partner's office. That ended the discussion of statutory retirement plans.

At some time or another every large firm transitioned from a tightly controlled governance to a more democratic model typically structured around a chairman or managing partner elected for a term such as three years, with the heads of practice groups appointed for longer terms by a management committee consisting of five to ten or more partners elected on staggered terms of office. In other words, the governance passed to a group of partners who were elected by the other partners to fixed terms to serve on a specified segment of the partnership management.

Eventually, Jack witnessed this transition in his own firm following the death of the founder. The 8 or 9 most senior of the partners assumed they would simply take over the governance of the firm and the highest 8 or 9 spots on the compensation chart. Unfortunately, most of them were then unproductive. An acceptable form of governance was brought about only after many discussions between all partners under a cloud of risk that a number of very productive partners were ready to leave the firm unless significant changes were made to how firm decisions were made and how the partners were compensated. None of the leaders of this "revolution" increased their compensation during this process.

In spite of the large firm governance moving from an autocratic to democratic structure, Jack acknowledged that it seemed that those partners in charge of their practice groups or involved with management seemed to also be more favorably compensated than their less involved

brethren. Jack particularly remembered the observation of one of his slightly more senior partners observing that it was interesting in that no matter how he moved up the ladder of seniority, he seemed to be getting no nearer to the top of the compensation ladder.

Although Jack lived throughout the period during which the governance of large firms evolved to a more inclusive and democratic mode, he did not relate the evolution as inconsistent with what constituted a "profession."

Even though Jack was motivated to somehow contribute to the reform of the law for the good of the public, he was finding it difficult to identify how he could fulfill this altruistic, but perhaps naïve, ambition. Little did Jack realize that the opportunity would soon present itself.

Three years into his practice, Jack was called upon by the head of the Probate Department, as the trust and estates practice was then known, to assist him in representing a client in a divorce proceeding. Jack had no exposure to family law in his law school curriculum nor did he have any desire at the time to practice in that arena. In fact, Jack was not aware that any large law firm held itself out as representing clients engaged in divorce proceedings. The head of the Department explained to his clients that he would represent him or her in divorce proceedings as long as he did not have to represent the client in court. If the matter went to trial, the client had to retain other counsel. Jack thought this arrangement was difficult to reconcile with what he considered were the duties owed to a client in whatever field of practice the attorney was retained. Clearly, to Jack, it represented an opportunity to opposing counsel to take advantage of the situation if he or she knew that the lawyer representing the other party was not prepared to go to trial. The closer negotiations came to resolution of the outstanding issues, the more pressure was on the attorney in the firm to accept settlement terms from opposing counsel lest the work and expense thus far incurred by the firm's client went for naught.

However, it soon became apparent to Jack that Jack knew much more about business entities, community and separate property and tax issues than the average divorce lawyer and Jack was actually able to intimidate the divorce lawyer with potential outcomes of the case under state and federal tax law if they adopted his or her settlement proposals than the divorce lawyer first appreciated. Much of the substantive law that Jack had learned and continued to develop transferred easily into the family law arena. However, Jack had no clue as to establishing the grounds for divorce, and the extent of the discretion the Trial Judge had in dividing property and awarding alimony.

The main problem was that state law at the time had six or seven grounds for obtaining a divorce. The ones most frequently used being

extreme cruelty and adultery. Further, the law included an "interlocutory" waiting period where the spouses were required to wait for one year before a divorce decree could be entered. Thus, marriage could be held hostage by the spouse resisting the divorce until a favorable settlement would be agreed to by the spouse seeking the divorce. Further, the married person who could establish the grounds for a divorce was designated as the so-called innocent spouse whereas the party found to have been "guilty" of extreme cruelty, was labeled the "guilty" spouse. It was no wonder that the State had a significant number of private investigators in active practice.

Under the then state law, the court was required to award more than half of the community property to the innocent spouse leading to a monetary incentive to establish the defendant as the guilty spouse. Naturally, the vast majority of cases filed had each spouse accusing the other of extreme cruelty leading to often messy proceedings. Clearly, there was a stigma attached to being divorced and a financial reward for the "innocent spouse."

Coincidently, about five years into Jack's practice, the Governor of the state appointed a Commission to study and submit recommendations for the process of the termination of marriage in the State. The Commission was made up of lawyers, judges, psychologists, professors of law and other professionals who were involved one way or the other in the divorce process. The objective of the Commission was to suggest a way to remove the termination of marriages from the judicial system and to place it with an institution where reconciliation was the primary objective of the institution. If the institution failed in saving the marriage, the institution would be responsible for the termination of the marriage, the division of property, the award of alimony and child support and all child custody issues would be addressed as a last resort.

At the same time, the State Bar Association sent out its usual invitation to lawyers to be appointed to the executive committees of the various practice groups in the state.

From Jack's brief exposure to the divorce process in the State, he believed, naively, that he owed it to himself and to the profession to attempt to assist in the reform process. He responded by affirmatively seeking appointment to the State Bar's Executive Committee on Family Law. It must have shocked the State Bar officials in charge of appointments to the committees to find a lawyer from a major law firm seeking appointment to the State Family Law Committee. To the best of Jack's knowledge, no members, partners or associates, of a large law firm had anything to do with the divorce business. Following his appointment to the Family Law Committee, Jack had a great opportunity to work with legislators, judges, the deans of the major law schools in the state and

other relevant professionals for over three years in submitting proposals to be considered by the State's legislation in reforming the divorce practice in the State.

In three years, Jack had become the chair of the Executive Committee and worked with a Senator of the State Senate who was willing to take the suggestions of the committee and was willing to sponsor a different approach than what had theretofore been considered. Neither the Senator nor anyone it seems were interested in taking divorce out of the court system.

Key revisions of the proposed revisions in the law were that grounds for divorce (to be a called a "dissolution") were now simply "irreconcilable differences" that had led to the irremediable breakdown of the marriage. No evidence was admissible to address what the "irreconcilable differences" were, except in a separate proceeding relating to child custody. In other words a "No Fault" divorce process. A "complaint" and "answer" were replaced by a "petition" and a "response," the interlocutory waiting period of one year that had previously applied was now shortened to six months and in every case the community property had to be equally divided with the only exception being to remedy a misappropriation of community property during the marriage by one of the parties and separate property had to be awarded to the owner.

The new Act was passed into law in 1970 after three years of legislative struggles. To his surprise, Jack was asked by the State's Continuing Education of the Bar to lecture on the new Family Law Act throughout the state with two very respected sole practitioners (one of whom was soon appointed as a judge of the Superior Court – a court of general jurisdiction) to explain the new law that now applied to the termination of a marriage. Following the lecture tour, Jack was recognized state-wide as a so-called "expert" in this new field even though he had never tried a divorce case in his professional life!

To Jack's surprise, there were many clients of his law firm who had been following the developments in the reform of the divorce law who had obviously been deferring taking legal action to terminate their marriages. They and many others who were not prior clients of the firm were apparently waiting for a possible change in the law to commence proceedings that could bring about a termination of their marriage without the stigma associated with the preexisting divorce law. Jack's client list exploded!

To have assisted in the reform of the law within ten years of his admission to practice fulfilled one of the aspects of what Jack believed was part and parcel of his concept of a profession. He had contributed to the advancement of his profession in an area of practice with which few firms, if any, wished to be associated. About that time, Jack recalls

concluding that graduating from college with his major in psychology and a minor in philosophy could not have better prepared him for the practice of law.

There were many aspects of the division of assets in a dissolution of marriage proceedings and the allocation of assets in estate planning that were so similar that Jack was convinced that the estate planner brought much more sophistication to the process than did the traditional divorce lawyer or the accountant that the lawyer invariably retained. On the other hand, an estate planner was not educated to handle child custody issues and he would not represent clients who had not already resolved those issues between themselves or, typically, with the help of a child psychologist in a mediated process.

What Jack also learned was that there was great synergy between the family law practice and the estate planning process. The client who had retained Jack to petition for the dissolution of marriage under the new law naturally led to the transfer of all of the client's estate planning work to Jack and, in many cases, much of the new clients' other needs for legal representation to Jack's corporate, real estate and other partners.

Jack felt a sense of pride in helping to reform the practice of law in the field of domestic relations transforming an ugly process, very harmful to parties and their children, to one where there was perhaps no less pain and hurt in the process, but where a vast majority of cases were resolved through civilized negotiations that more often than not preserved the wealth of the parties without destroying the business entities from which their wealth was derived.

Jack felt truly grateful for the opportunity to fulfill one aspect of what he felt was expected from a member of the legal profession.

By the way, one could hardly find a private investigator in business after the new law kicked in.

To make 1970 an unforgettable year for Jack, Jack was invited to join the American College of Probate Counsel which later changed its name to the American College of Trust and Estate Counsel to better describe the work in which its members engaged. While all wills were probated in most states of the country, the trust was the principal instrument in the jurisdiction in which Jack practiced by which one's estate was passed on to one's heirs and beneficiaries and it was Jack's impression that the use of the trust as the principal instrument of an estate plan had soon spread throughout the country.

In due course, Jack determined that the educational programs that the College provided for its members and its work in providing Treasury with insightful and valuable commentary on proposed regulations and

amendments to the Internal Revenue Code was unparalleled by any other professional organization.

The work of the College and of its members personified what Jack had hopefully anticipated would be the organization consisting of members of the legal profession at its finest. Jack's work in the College led to friendships and collaborations with Fellows on the development of estate planning plans, as the law relating to estates and trusts changed starting in 1976.

Jack's opportunity to contribute to the development and reform of the law was soon again presented to him.

A great opportunity came to Jack with the passage of the *1976 Estate and Gift Tax Act*[1] that completely changed the law applicable to the transfer tax system. The State's Continuing Education of the Bar asked Jack to write a summary of the new Act with the assistance of another attorney whom Jack would select. The attorney selected by Jack was a good friend of his approximately his own age and experience and they produced the publication within a month, followed by lectures throughout the State to attorneys eagerly awaiting assistance understanding the changes in the law that not only revised existing estate and gift tax provisions, but introduced entirely new concepts in the law. The major changes effected by the Act were:

1. The substitution of a single unified rate schedule for estate and gift taxes and a unified credit against both taxes;
2. The increase of the estate tax marital deduction for small and moderate sized estates to the greater of $250,000 or one-half of the adjusted gross estate and the increase of the gift tax marital deduction to $100,000 plus one-half of gifts over $200,000;
3. A new generation-skipping transfer tax for transfers to someone more than one generation below that of the transferor. This was a concept that later underwent many modifications.
4. The introduction of a 'carry-over basis" for most property acquired from a decedent;
   This was relatively soon repealed, much to the consternation of early book writers on the subject matter.
5. The substitution of a special use valuation method to value real property devoted to farming or other closely held business uses; and
6. The liberalization of requirements for obtaining an extension of time for the payment of estate taxes.

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[1] Tax Reform Act of 1976, Pub. L.94-455, 90 Stat.1521

Later, Jack mused that the *1976 Estate and Gift Tax Law*[2] resulted in thousands of hours of work for attorneys as they worked to amend and revise most of the major components of the Act and to repeal the generation-skipping transfer tax and the carryover basis laws as they were first enacted, but only after years and years of work by the legal profession.

This was exactly the kind of work that Jack most enjoyed – the scholarly approach to the law and its wide fields of interest. Quite soon, Jack was invited to speak at law schools, institutes of continuing education of the law and bar associations on all aspects of the *1976 Estate and Gift Tax Law*[3] because he had written and lectured on all aspects of the new Act. Jack soon became known for his scholarly work on all aspect of the new law. Jack made many friendships during his speaking engagements which he continued to have throughout his professional life.

From Jack's appearances at speaking engagements, he met many estate planners from throughout the country who naturally formed a welcomed referral base of estate planners who were able to refer prospective clients and their friends and family to estate planners who they knew personally and professionally.

Soon after the introduction of the new law, the personal computer became available to the practitioner.

There can be no dissent from the proposition that the introduction of the personal computer made an incredible and lasting impact on the law practice. The personal computer was not introduced to Jack by his firm's IT Group. In fact, there was no IT Group when Jack was first introduced to the personal computer. Rather, it was a gift from his children in the mid-1980s. On Christmas, Jack received his first personal computer. As Jack's children presented him with a new Macintosh, they watched enthusiastically expecting Jack to be bowled over by their combined generosity. They probably were a little surprised and disappointed when the first words out of his mouth were: "Well, there go my Sundays!"

There was some hesitancy on the part of the firm to embrace the personal computer, but the interest in the application of the computer to the practice of law was sufficient to authorize the Trust and Estates Group to be outfitted with "personal computers" to see how the adoption on an experimental basis worked before launching into a firm-wide embrace of the personal computer. Jack's Macintosh was a true personal computer. The computers that the firm would install at the desks of their attorneys and their secretaries would all be connected to the

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[2] *Id.* at 10

[3] *Id.* at 10

firm's main frame and were not stand-alone personal computers such as laptops that came much later. There was no "wireless" in those days.

The trial of the computer with the Probate Group was a big success. The only problem that surfaced was that several of the older partners could not type!

Of course, a practice that produced a multitude of documents such as wills, trust agreements, powers of attorney, foundations, and many other related documents produced in more sophisticated estate planning was a natural for the personal computer. The use of the personal computer in the Trust and Estates Group reduced the time to produce documents immensely because so many of those documents consisted of multiple pages of so-called "boiler-plate" language that was captured in master forms which did not need significant review or revisions. Further, estate planners soon developed their own collection of master forms that could be modified to serve as the estate planning instruments for new estate plans for existing clients or for new clients starting out fresh.

Advances in technology were to result in the IPhone, the IPad, and numerous other advances in instrument production and storage and communications that propelled the legal profession into the 21st century.

The computer also ushered in a number of unfortunate results in many law firms.

The death knell of the probate or estate planning practice in many large firms began when all practice areas in large firms were analyzed with the help of the computer from their positions as profit centers for the firms' revenue. There were few large firms in which the trust and estates practice (whatever it was called) was competitive with the profitably of its corporate, litigation, labor or other more traditional practice areas. As large firms shut down the trust and estate component of their legal services, those former partners and associates found themselves practicing as sole practitioners or united with other former large firm estate planners to share overhead and generally practice as partners or practicing in a cooperative relationship, sharing overhead costs.

Theoretically, there was an increase in the profitability of the large firm now shed of its practice area which had been run at a loss or very small profits compared to the productivity of the balance of the firm's practice areas.

Jack did not experience the downsizing as large firms reordered their practice areas, because of the estate litigation and family law practices which he kept in his department, but he was very troubled by the phenomena. Somehow, the dismissal of a partner who was performing at the highest level of his or her profession and who had worked for

many years for the firm struck Jack as somewhat unethical or unfair, at least inconsistent with the image he had formed of a profession.

On the other hand, he could clearly see that the action was supportable in the conduct of a business.

Speaking of business, a major change in the practice of law in a large firm occurred when a national legal newspaper started to print the annual financial results of large firms across the country. When Jack started his practice, it was unthinkable that a partner would switch firms or would solicit a partner in a firm to switch firms. Once the income per partner in the firms was published in the annual review, the partners in the various firms would compare what he or she was making compared with what the average income of a partner in another firm was making, he soon could determine that the partner was interested in taking his or her "book of business" to the other firm.

It was hurtful to Jack to hear how much of the public deprecated the role of the lawyer. Most everywhere he went, there appeared to be more jokes in which the lawyer was the butt of the joke, in attributing greed, incompetence and even dishonesty to the lawyer. And it appeared to Jack that no more than a week went by without hearing or reading an account of some client having found a lawyer that would bring a legal action on behalf of the client for the most trivial and preposterous cause of action. But even worse, some court would find in favor of what appeared to Jack to be a frivolous lawsuit. Of course, it pained Jack to defend the integrity of the legal profession that remedied wrongs that escaped the attention or interest of local newspapers or television reporters that brought relief to so many people who had been allegedly financially or bodily injured with no recourse to recompense without the aid of a lawyer,

Further, Jack was not at all certain that everybody saw it his way. One man's frivolity could be another's salvation!

Of course, the work of the lawyer in recouping some if not all of the damages done to his client had to be paid for. Therefore, even successful plaintiffs saw part of their recompense payable to his or her attorney. It is no surprise that such a client could entertain the thought that the justice system favored the lawyer who had to be paid whether or not the client was successful. Or, if successful, would demand a large part of the recovery.

The favorable image of a lawyer was more often than not the experience of the public with the Perry Mason-type hero (or his modern-day television counterpart) who seemed to always successfully represent the client with a brilliance often endured during the trial by some clever tactic developed during the trial.

Even though the role of an estate planner rarely brought an occasion where the client perceived his or her lawyer as the type of lawyer who was the butt of disapproving jokes or a defendant in a lawsuit brought by a client, the professional standards which Jack sought to attain throughout his practice was challenged by the public's perception of a judicial system where lawyers were for sale or rent to remedy a wrong, but only if the wronged could afford representation.

While Jack was in law school there was but one woman in his class. When Jack commenced the practice of law in his firm, there were no women in the firm – partners or associates. Further, there were no African-Americans or Asians in the firm as well.

This state of affairs was very troublesome to Jack. It was not consistent with his concept of a profession. Was the legal profession one in which women and minorities were excluded from the profession even though they were fully qualified to practice law?

In the first five or six years of his practice, Jack taught estate planning courses to the night school students of a local law school that offered an opportunity to men and women who worked during the day to complete their legal education. During this period, he noted the progress of a female law student who stood very high in her class and in all probability was going to graduate number one in her class. Jack very carefully approached one of the senior partners in the firm who was easily the most politically liberal partner in the firm – he and Jack had marched in a demonstration to support the end of the Vietnam War. The topic, of course, was the possibility of making an offer to this number one graduate in her class to join the law firm. To Jack's surprise, the partner would not even privately discuss the possibility with the then-autocratic leader of the firm. The rationale for the partner's position was that the firm was not about to hire a woman because the firm's clients would not want to be represented by a woman. By the firm's clients," he was referring to the officers of the firm's corporate clients which made up virtually all of the clients of the firm. Years passed and more women were entering into law schools and graduating from them in due course. Still, the presence of women in large law firms was not appreciable.

This lack of diversity in the law firm troubled Jack and his concept of what a profession meant, especially a legal profession where gender would not seem to play any significant role in the accomplishments of a member of the legal profession.

Jack became active in the firm's recruiting efforts and was appointed to the recruiting committee in charge of all recruitment for the firm. The firm's criteria in its hiring practice was to hire from the top 10% to 20% of a graduating class depending on the prestige of the law

school. As more and more women applied for admission to the firm, few met the criteria that were applied by the firm in making hiring decisions. As legal newspapers commenced to publish statistics citing the number of women in large firms, Jack was pressured by the younger partners of his vintage and basically all of the associates in the committee which he chaired, to set aside the criteria for admission to the firm and to hire more women. This criticism of Jack's position was hurtful to Jack and he began to think that his position was too rigid. Accordingly, he went and spoke individually to each of the five or six women who were senior associates or young partners and expressed his concern that lowering the standards of the firm in order to admit more women was very harmful to them because I would think that they would be troubled and would risk losing confidence that their clients had in them if it became known that there was a second class of lawyers in the firm that were admitted, not because they met the firm's criteria, but because they met some self-perceived importance of improving the diversity scores in legal newspapers. All of the women in the firm agreed with Jack.

Jack reported that result to the hiring committee and in response to how the firm was ever to be in the position to hire a representative number of women, Jack confidently told them that there were more women in law school at that time than ever before and even though there were few, if any, in the top 10 or 15% of the law schools from which associates were hired, the ranks of women in the top 10 or 15% would soon rise as more and more women came into the legal profession and populated prestigious law schools. Sure enough, that phenomena occurred to a point where it became readily acknowledged in most law schools that indeed the top 10, 15 or 20% of the graduating class of the most ranking law schools were composed of women. As time went on that number increased to 50% or higher of the top 10% or 15% of the graduating class.

The same phenomena existed in Jack's firm and in most large law firms at the time with respect to African-American and Asian-American students. The solution to that aspect of diversity in a law firm was more difficult. To begin with, there were not that many students in law schools who were minorities. Whenever an African-American student graduated from a prestigious law school in the top 20% of his or her class, that student was deluged with offers from firms across the country, making the competition for such minority students fierce. Again, Jack did not wish to lower the standards for admission to the law firm, lest he create a second class associate and/or partner. However, Jack was confronted with a factor that was not readily apparent to him but which should have been. While trying to recruit an African-American who was graduating from Harvard in the upper echelons of his class, that

man asked to speak to Jack privately and although he was immensely impressed with the people at the firm and the work in which it was engaged, he asked Jack: "Why should I come to work for your law firm where although the people I've met appear to be very nice, there is not a single African-American in the firm. Why shouldn't I join a law firm of equally nice people with interesting work that is largely, if not entirely, made up of African-American lawyers?" At the time, there were real and significant sociological factors that impacted an African-American's decision as to the law firm he or she would join. (Jack set aside his recruiting skills and responsibilities to the firm in favor of serving his profession to the best of his abilities.) He paused and said: "Robert, I cannot honestly deny that the concerns you have for your personal happiness while practicing law in a large firm aren't real. I can only tell you that if every intelligent and attractive African-American male joined a firm where you were practicing with only your fellow African-Americans, no firm in this country would ever achieve the diversity that ultimately will benefit the development of every attorney in that firm – white, black, Asian or Latino." Robert joined the firm and he and Jack maintained a close relationship throughout Jack's life at the firm. Clearly, Robert's presence in the firm was of great benefit in the development of the younger lawyers at the firm and throughout Robert's life with the firm. Jack was pleased that Robert was held in high respect by the firm and by everyone, client or otherwise who came in contact with him. Jack was never sure that the sociological concerns Robert first expressed were ever totally met to his satisfaction, but he certainly pioneered the inclusion of minorities in the firm's matrix quite visible to anyone reviewing the firm's composition.

Jack was also very gratified that the firm was very motivated to abandon the fears that the firm's clients would not want to be represented by women, or any minority, if there ever was basis of truth in the concerns of Jack's really liberal partner. This result stems from the fact that the corporate officers of major corporations all across the country are themselves often women and minorities and universally concerned with the diversity of the attorneys who represent them, their gender or ethnic background.

As a profession, lawyers can take comfort in that lawyers are regulated by the State Bar Associations or the Supreme Court in most states that enforces rules governing the behavior of lawyers and investigate situations which may represent serious breaches of fiduciary duties owed to the client. Those regulatory bodies do little to impact the behavior of lawyers in their personal relationships with one another. Unfortunately, Jack noticed changes in the behavior of attorneys over the years in which he practiced. When Jack started out, it seemed that law-

yers with whom he worked in representing his firm's clients were on the most part courteous and exercised a professional demeanor.

When Jack began the practice of law, the *American Bar Association's Canon of Professional Ethics*[4] and later, the *Model Code of Professional Responsibility*[5], consisted of both disciplinary rules and ethical considerations that would guide the conduct of lawyers in their practice. However, it was the State's Supreme Court that had to adopt the model code, or later the model rules, to make them apply.

The guidelines to the practicing attorney in connection with advertising were disappointing to Jack and his mostly-held belief that he was a member of a profession. When he started his practice, one of the worst things you could call a lawyer was an "ambulance chaser." This was often depicted in cartoons and deprecating jokes as an attorney who rushed to an automobile accident and immediately started passing out his professional cards to the parties involved in the accident.

Of course, placing advertisements in newspapers and other media was strictly forbidden as was advertising one's services via radio or television or other social media. As time went on, Jack was appalled to find his own firm advertising in the Wall Street Journal and running sophisticated commercials on television. By the time that Jack concluded his practice, law firms were running advertising campaigns seeking out potential clients who had ever taken a particular prescribed drug or pharmaceutical or who had ever undergone a particular surgical procedure with the promise of a possible monetary recovery by a firm that was not even in the potential client's state or jurisdiction!

This was ambulance chasing on a mammoth scale! Whatever justification could be argued for the greater good in the abandonment of the rules against advertising by attorneys, the change was not consistent with Jack's sense of the characteristics of a legal profession.

However, the *U.S. Supreme Court*[6] decided that the advertising restriction was an unconstitutional limitation on the right of free speech.

Without doing any research on his own, Jack rationalized the drastic change in the rules pertaining to advertising to be the presumed greater importance in making equal representation and remediable injury to the general public. However, the trends that Jack observed in resolving contested issues, especially in many of the younger lawyers, and especially in family law cases, was the aggressiveness and duplicity of opposing counsel - the word of opposing counsel was no longer his bond. This type of behavior was never witnessed by Jack dealing with

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4 ABA Canons of Professional Ethics (1908)

5 ABA Model Code of Professional Responsibility (1969)

6 Bates v. State Bar of Arizona, 433 U.S. 350 (1977)

attorneys from other large firms, but was largely restricted to encounters with solo practitioners or very small firms in contested family law cases.

Of course, Jack recognized the impact that technology had on the practice of law and its irreversible impact on the profession. That included the role of the computer, the cell phone, the face-to-face communications by television coupled with the computer technology, the open competition among large firms and small firms alike although the competition among large firms was fairly open and accepted. The impact of technology on the practice was most recently visited on Jack at a hearing on an Order to Show Cause at which he had brought two binders full with the copies of the papers that had been filed in the matter, copies of the applicable cases and an outline of the arguments he planned to make at the hearing. Much to his surprise, when his opponent started addressing the court, he spoke from an I-Pad which contained everything he needed, including the ability to call up any case to which the court might refer!

In keeping with Jack's concept of the law practice as a profession, his particular affinity to estate planning was the practice area in the profession where he found the most gratification. The opportunity to work with individuals as opposed to corporate entities was especially attractive to Jack. As Jack progressed in his representation of estate planning clients, it was clear to him that he was soon becoming a family counselor to his estate planning clients where he brought his knowledge, expertise, and desire to help others and to be a wise counselor on all matters in which his engagement was requested.

He often wondered about his role in the firm and how that role might change as time progressed. He early decided that he did not want to become a corporate lawyer or litigator or labor lawyer or any other discipline that was practiced by the firm if it meant that he had to give up the role as an estate planner. Therefore, when he was offered an assignment of assuming the "bank desk" he turned it down, much to the displeasure of the more senior attorney who had previously held that position before becoming the representative of the bank which was a very large corporate client of the firm. It was clear to Jack that if Jack had to leave the firm for any reason in the future, he could not take the bank as his client to wherever he moved even if he did rise to the position of being the firm's representative to the bank. However, his estate planning clients would, largely, always be his and his alone which would be the case if he ever left the firm for any reason.

Along those lines, Jack remembered when his fellow associate and good friend was told that he was now being transferred from the firm to the bank as in-house counsel – a position that didn't exist prior to this transfer.

Jack often had occasion in continue his friendship with his former fellow associate over lunch or dinner or other social occasions. Jack's former associate was reasonably content with his role at the bank although it was largely a liaison between the bank's officers and the firm's representative. However, it became clear to both of them that the only way he would advance within the bank's structure was to increase the legal staff of the bank to be able to handle the more routine legal work that the bank was required to have performed and, which at that time, was done by the more junior associates of the firm, in addition to finding ways to lower the legal expense to the bank for the work that had to be done outside of the bank. At that time, it was not a significant concern of the bank based on its existing relationship with the law firm in that which it envisioned at the time. However, in later years, Jack recalled these conversations with his former associate and noted that the in-house counsel's office had grown to rival the size of the number of mid-size law firms to large firms and had finally resulted in the end of the exclusive representation of the bank by a law firm in a quest to subject the undertaking of those cases, that could not be handled in-house, to any one of the many large law firms who could then bid for the case. This expansion of the role of the in-house counsel took on a new role in lowering the legal costs to the bank.

With this explanation of the billing process, it did not take Jack very long to assess the value of the trust and estate practice as it was then known to the firm at the time he was hired when he noted that the charge to a client who was more often than not a corporate officer of the firm's corporate client as $50 without regard to any of the criteria that was said to apply to the billing practice.

With the growth of three or four of the largest practice areas in the firm, the firm decided to focus on those areas and to pursue the business that required the services of those groups to wherever they were located in the United States, thus leading to establishment of branch offices within the state and other states of the United States and in also foreign countries. While this strategic move certainly required a change in the firm's governance and policies, the culture of the firm had already changed and the firm went down a path that proved to be irreversible. Once again the culprit was the billable hour.

When Jack joined the firm, the firm's billing practice was said to consist of several factors that included: the outcome of the case, the value of the case to the client, the complexity of the legal issues, the number of key partners and of attorneys and support staff committed to the case. All of these factors were said to have to be evaluated before a final bill was fixed. The amount charged to the client was virtually always reached after consultations with the client so that the client's ex-

pectations were reasonably related to the charge finally made. While the advent of the billable hour, facilitated greatly by the introduction of the computer to the firm's operation, provided certain benefits to the firm's billing practice, it not only facilitated the quantification of attorney hours invested in the case, it created a new approach to determining the compensation of the firm's associates and the facilitation of determining whether the associate should be retained, dismissed or advanced. Jack was reasonably certain that these were not the only factors taken into consideration in assessing the value of the associate to the firm, but it was a fairly simple and reasonable way to come to decisions on associates that weren't clearly visible by the partners working on the cases in which the associate was assigned. It was also an important factor in determining the profitability of the firm year to year that the firm considered attainable.

As might be expected, this led inexorably to an increase in the target hours that were expected from associates before they were eligible for a bonus at the end of the year. Inevitably, the target rose to 1900 hours and higher with bonus level hours ranging from 2000 to 2400 per year. In addition, the associate was expected to include his or her pro bono hours, continuing education hours, and his new business-getting efforts. Although Jack was totally sympathetic to the near impossible task assigned to the associates, especially those who had families and were involved in bar associations developing valuable contacts and identity in the bar, he was very disappointed to observe clear instances of associates padding their hours on some rationale that Jack did not want to find himself discussing with them.

Naturally, it was quite simple for corporate clients to put work out to bid based upon hourly rates or capped fees on the work put out to bid. Further, it was relatively easy for these same corporate clients or potential clients to insist that they not be billed for any work performed by first or second year associates which was perceived as a training ground for the associates which should not be passed on to the client. The result in many cases was the hiring of contract attorneys, who were clearly not on partnership track or even considered associates, and even non-legal personnel to perform certain of the work required to service the client and whose work world ordinarily have been performed by the junior associates.

In some cases, the billable hour, the number attributed to associate and partner alike, could not alone place the firm in a position to successfully compete with other firms vying for the same corporate business, whether involving corporate transactions or litigation. In bad economic times, it inevitably led to "downsizing" of associates and even the early retirement of partners who were no longer pulling their weight. This

was not at all consistent with the concept of a profession as Jack viewed the legal practice.

This also led many large firms to retract their offers to graduating students from law schools to whom they had extended offers which were accepted to join the law firm's summer class. In some cases, the law firm would adopt programs to assist the now rejected graduate survive the financial blow from having graduated often with significant student loans, until the economy returned to a position where legal employment was once again available.

It also impacted the partner's practice. No longer could the partner write off time which the partner believed to be excessive for the work performed by the associate on that account. The write-down had to be explained to some administrator in the firm whose job responsibilities included the determination of the reasonableness of the bill charged to the client for the work performed. This was true even though no one was in a better position to make that determination than the partner in charge of the client's account.

All these changes crystallized in Jack's mind as the end of the profession as he knew it, even though these changes had evolved over a number of years. The combination of the structure of the legal practice in large firm, made it clear that the practice of law in large firms with its many financial commitments and responsibilities, was strictly a business. Perhaps it is only as a business organization that a large law firm can survive especially in very difficult economic conditions, but if Jack wanted to become a businessman he would have most probably obtained an MBA and focused on the world of venture capital, real estate investments, manufacturing companies or other segments of the business world. At least then he would not harbor the thought that he was entering a profession, as he knew it then.

There was a concept to which Jack had always thought was always part and parcel of being a professional. That is the concept of "giving back." It was reminiscent of what Jack dimly remembered from this days studying philosophy. He could not remember the philosopher to whom the phrase was attributed, but the thought was that every philosopher stood on the shoulders of every philosopher who preceded him. In a rough parallel, Jack thought that every estate planner should participate in the continued education of the profession.

Imagine how appalled Jack was to hear that some lawyers were actually advocating the patenting of estate planning ideas and procedures. Where was the sense of professionalism?

When Jack closed the book on his practice, he was struck by the changes in what he thought of as the legal profession. If someone were looking for the life of a person who dedicated himself or herself to a life

of helping others, he or she could do a lot worse than working alone or with a small firm of professionals of like minds.

Lastly, if he or she could rise to the level of expertise that would lead to an invitation to join the American College of Trust and Estate Counsel, he and she would be joining a group dedicated to the principles which Jack had always believed were the principles that characterized the practice which he could proudly call a *profession*.