You will see that the one book you are purchasing for this course is entitled: Lives of Lawyers *Revisited: Transformation and Resilience* in the Organizations of Practice (also by Michael Kelly).


The following pages, taken from the 1994 book, explain the origin and methodology that underlie both books.

Reading assignment:

Pages 18 - 21: start with the first full paragraph on page 18 and read through the end of page 21.

Afterword, pages 223-38: Read all the pages, paying particular attention to the methods used by Kelley to persuade lawyers to let him observe their practice and his approach to interviewing them. This should provide a useful model for you when you prepare to do your own fieldwork investigation of a solo practitioner or small firm for this course.
story of the McKinnon firm in chapter 2, reveals how hard it is to integrate new people, to make a merger or new practice group a success for both entities. Cultural differences between law practices are palpable, not ephemeral, phenomena. Corporate culture is such a significant theme in the literature of business that it is rare to find credible generalities about the sameness of all organizations in a particular industry. Leaders of different organizations confront similar economic circumstances and markets in different ways, treat their employees differently, establish varied systems of internal and external communication—in short, create a unique organizational character that affects the way people in the organizations see themselves and approach the challenges of their industry.

The premise of this book is that the culture or house norms of the agency, department, or firm play a dominant role in the way a lawyer practices. The organization profoundly affects the lives of lawyers: from styles of dealing with clients to relationships with colleagues and coworkers; from the choice of legal work itself to connections with civic and community life; from the social status of the practice to the sense of professionalism; from lawyers' incomes to feelings of satisfaction and fulfillment in a career. Practice organizations now by and large constitute the legal profession(s). Many lawyers and legal educators maintain that a coherent understanding of the practice of law requires a grasp of the ethical rules of the profession, as well as the meaning of professionalism—the law of lawyering, as some call it. I am convinced that another proposition is at least as fundamental: no coherent account of professionalism, legal ethics, or the contemporary legal profession is possible without understanding the workings of practice organizations.

I have chosen to explore the contemporary legal profession through close looks at several different law practices, to make the professional organization emerge more vividly, as the epigraph from Fernando Pessoa would have it, by describing it well. My medium is the story, or the organizational biography, which captures or reveals some of the contours of practice culture. The practices in these stories are varied enough to reflect major forms of professional practice: large corporate firm, medium-sized firm, corporate law department, public agency, and small firm. But these are not typical or representative practices, if only because the search for the typical is a delusion in the contemporary world of law practice. There are no iron laws of professional evolution that bind lawyers to certain types or styles of organization. If there is a message to be drawn from these stories, it is that the institutions of practice have a limitless range of futures, each a function of the ability, imagination, and aspirations of the lawyers who constitute the practice.

These stories should be of interest to several audiences:

lawyers and judges seeking to understand the transformation in the profession and their own practices and courtrooms;
people thinking about a career in law and the range of options in law practice;
law students concerned about understanding and "reading" organizations accurately, and more carefully evaluating their employment options;
lawyers and law-practice administrators encountering challenges of personal development within their practice organization; and
people outside the legal profession interested in the law, professions in general, or organizational change.

The purpose of these stories is to capture the real frontier of professionalism and legal ethics, to attempt to describe the domain that worries lawyers because it most deeply affects the character of their professional lives. This is not a world of the flashy case or the melodramatic client, but the day-in, day-out struggle to build a life in the profession that resolves the competing demands of economic stability and values of colleagueship, craftsmanship, and professional statesmanship.

Part of the reason for the neglect of these issues is the culture of legal academia. A large number of law professors are refugees from the practice world, who arrived in teaching disaffected by the economics of private practice and largely unsympathetic to, if not contemptuous of, examining how lawyers respond to the economic pressures on their organizations. Understanding of the profession is further impoverished by the pervasive disinterest by American law professors in empirical studies of the justice system or the profession. 27

27. There are a number of notable exceptions to this generalization. See for example, Galanter and Palay 1991.
It is not surprising, therefore, that law students emerge from their schooling with a profound naiveté about the organizations of practice. They set out, like Tertius Lydgate in the epigraph from Middlemarch, on a largely unexplored terrain, ill-prepared to cope with the pressures and challenges, let alone the subtleties and realities of practicing in organizational settings. The practice organization is by and large missing from the American law school. It is my hope that this book will stimulate law students and professors to join lawyers in thinking about the character of the organizations that constitute the practice of law.

One way to approach this book is simply to enjoy the stories about lawyers in their organizational setting. But my ambition is that these stories move readers—to paraphrase the epigraph from Goethe—to attend more deeply to the profession, form their own convictions, and use these stories to enliven their thinking about the legal profession in American society. Part 1 of the book will suffice for those who simply want to read some nonfictional stories about the legal profession and to derive their own conclusions.

Part 2 of the book is what I make of these stories, a gesture responsive (in words of the epigraph from Isabel Colgate) to the need to test these stories against such truths as I can lay my hands on to uncover continuities in the effort to understand. In the first chapter of part 2, I consider each of the stories and provide some reflections on their significance. The final chapter of part 2 constitutes my thinking about connections between telling these stories, the stories themselves, and my views of the contemporary legal profession. Finally, in the Afterword, I describe how I came to write the stories and ruminate on this process.

Parts 1 and 2 may be viewed as two different but closely related books. Each part is written in a different voice. In part 1, a historian seeks to describe the nature of five law practices through the narrative device of the practices speaking for themselves. In part 2, a student of the profession talks about what he learns about the profession from them. Part 1 is the book I set out to write. Part 2 was the book I was forced to write by colleagues who kept asking the question, what do you think? Both parts derive from an instinct to understand better the contemporary legal profession and a desire to engage the profession, including its academics, in a livelier and more richly contextualized debate about the current and future course of the legal profession in this country.

Law practice has always been a bundle of mixed values that do not lie in comfortable relationship with each other: values of serving clients' needs, values of colleagueship and support, values of crafts-
Afterword: Writing the Stories

One way to appreciate these stories may be to recount why I came to write them. Twenty-nine months after I had become a full-time law teacher and before I had developed an established specialty or field of scholarship, I became dean of the University of Maryland School of Law. The teaching dean is a tradition in legal education. I decided to offer the course on the legal profession, a subject historically termed “legal ethics” or “professional responsibility.” This seemed to me to be a logical move for someone aspiring to lead an institution purporting to train professionals. But there was a more pragmatic reason: in 1975, professional responsibility was not something respectable law teachers were enthusiastic about teaching. The course was required of all students at most schools, including my own, as a result of historic pressures imposed by the organized bar and amplified in the wake of Watergate. Still, faculty members were skeptical that it was an intellectually coherent subject. I decided that it was easier for me to teach the course than to twist arms to get other professors to teach it. While there is still no consensus about the precise contours or definition of the subject of legal ethics, the last decade has seen a substantial reawakening of academic interest in professional responsibility, and the development of a more sophisticated scholarly literature in the field. We have emerged from the arm-twisting era.

During the late 1970s, teachers of the course on professional responsibility generally agreed that the most effective pedagogy was the problem method. Many of the topics covered in the course—confidentiality, for example—do not have a rich array of judicial cases suitable for classroom discussion. Typically, therefore, writers of casebooks create problems or short scenarios that raise significant issues, and students read background materials such as law review articles, reported cases, and opinions and reports of the organized
bar. The purpose of these problems is to focus discussion on difficult or borderline areas that raise significant issues in lawyers' decision making.

Casebook problems never worked to my satisfaction. Successful textbooks in professional responsibility present students with quandaries of how to apply different systems of norms to individual decision making and the larger issues of the structure of the profession. Criteria range from the regulations of the Code of Professional Responsibility or the Model Rules of Professional Conduct to judicial decisions, ethics opinions, general moral or religious principles, obligations entailed by the special role of the lawyer, and individual relationships with clients. This way of thinking about ethics as discrete decision making based on concepts and rules has come under attack by such modern Aristotelians as Alasdair MacIntyre (1984), but even if one accepts this framework of analysis, it leaves out a crucial component of all decisions: the constraint or guide of what could be called ambition, or a life plan or career concept. A person's sense of place and future in a practice organization is enormously influential in decision making by lawyers.

The problem method has additional problems, not unlike the criticisms leveled at business-school case studies by economists and professors of finance. It often amounts to a celebration of ad hoc decision making that abandons any pretense of a coherent approach to a subject. I coauthored the legal profession course for a few years with David Luban, a brilliant moral philosopher, in an effort to provide both general perspective and analytic tools with which to work through the subject. I ultimately abandoned overt use of philosophy in the course as a result of the incomprehension of both students and law teacher, and a growing realization that contemporary moral philosophers have little to offer in terms of systematic perspective to solve many of the dilemmas posed in the world of legal ethics.  

Any classroom is an unreal place, and all classroom decisions are vicarious. But the structure of play decision making in the classroom can affect the depth and sophistication of discussion. Casebook problems fail, in particular, to place decisions, to put them in the social context in which they are invariably made, such as in a law firm or legal department or agency. Few of the classic dilemmas of lawyers—for example, weighing a sense of social responsibility against professional duties to individual clients—present themselves outside the particular pressures of a particular client in the setting of a firm or organization that has its own ways of approaching such issues. The legal profession course seems to generate even more pontificating and blather than the usual law school classroom, precisely because the presentation of the profession, particularly the dominant context of the practice organization, is so abstract. Casebooks do little more than offer background snippets about the sociology or realities of the profession.

My dissatisfaction with the course on legal profession went beyond the superficiality of the classroom dialogue. Lawyers, particularly those I considered the most thoughtful, seemed totally disinterested in the course I was teaching, except for the area of conflicts of interest, which has important practical or tactical significance in client relationships and litigation. These same lawyers, however, were deeply concerned about the problems of the profession, particularly tensions within their organizations between the need to create environments supportive and attractive to lawyers, and competitive pressures in fiercely difficult marketplaces for both clients and talented lawyers. These lawyers were wrestling with problems for which no real literature existed, other than the new legal journalism touting the size, the troubles, the average partner's income, and the biggest deal makers of the nation's largest law firms.

By the late 1970s, it had become clear that there were major transformations occurring within the legal profession, changes that have accelerated in the 1980s and 1990s. The more self-consciously business and bureaucratic focus of the organized profession has led to considerable discontent and unhappiness among lawyers. Yet the casebooks and teaching of the legal profession course in law schools seemed oblivious of a profession in major transformation.

I set myself the task of writing about the legal profession in order to capture for the classroom something of the complex forces

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2. Other contributions to this revival of virtue or character ethics are Wollheim 1988, Stocker 1990, and Taylor 1989. Taylor makes a distinction between ethics seen as thinking about decisions or actions, and ethics as a form of inquiry about the meaning and direction of a life. The latter best describes the idea of ethics underlying this book.

2. I take some pride in having led Luban astray, however. The result is a superb book that offers both systematic and analytical insights on legal profession issues (Luban 1988). See also Rhode and Luban 1992.
of change and adaptation at work in the institutions of practice. I began with a largely instinctive decision to write case studies of law practices. I was trained as a medieval historian and as a lawyer, not as a sociologist. Narrative accounts of people and institutions come naturally to me. But my preference was grounded, I believe, in a form of reasoned instinct. At the time I began writing, there was almost no theoretical work available to enable one to understand the transformations occurring in the profession. One advantage of descriptions is their power to generate (rather than test) hypotheses, which in itself is a useful contribution to a theory-lean field. But there was also the problem of too much theory. Law professors are particularly quick on the draw when it comes to pointing out the decline in professional values generated by some phenomenon, such as the rise of in-house corporate counsel. Like their students, they tend to focus generalizing attention on the large corporate law firm, which is home to probably no more than 15 percent of American lawyers. A deliberate effort to put aside theorizing and do some basic work seemed to me to be a positive contribution to understanding the profession. Watching the profession attentively might be a helpful leaven to some of the half-baked pronouncements of academics about a world some of them had once visited early in their careers.

Case studies also respond to problems I saw in law school pedagogy about the profession: they have what I felt at the time to be the advantage of being real, not fictional scenarios or constructed problems, and they provide much richer contexts in which to examine decision making by lawyers. They may be particularly useful because a student lawyer, through cases, has access to a particular leader in a firm as the leader approaches an issue and solves a problem. Reviewing how a thoughtful lawyer works through a decision in context, given the peculiar pressures of his or her firm, may be as informative to a budding decision maker as studying the structure and economics of practice in general. Cases reveal what counts, that is, how a decision maker evaluates the incommensurate worlds of personal loyalties, the ideals of the firm or agency, the structure and economics of the organization, relationships with relevant clients, general professional ideals, and a variety of other principles.

My preference for cases was not based on the conclusion that they are superior, that one necessarily learns more from them than from a more structured exposition of concepts and ideas. American law schools offer many examples of cases doing poorly what a good lecture or serious text can do better. But case learning has peculiar virtues. Cases are stories, and thus obviously more open textured, less conclusory, more susceptible to varied interpretations than analytic material. They may stimulate questions and answers the reader is looking for, rather than the questions and answers of the writer. Like any parable, they can prompt nuanced learning, layers of meaning, reinterpretation, and retelling over time. Cases are often vivid. They stay with us because they are stories, each with its own setting or framework, its characters and movement, and sometimes even an illusive plot or moral.

Stories or cases have another notable distinction. They work well in conveying character. If the world of law is beset by many different pressures and lawyers adapt their practices to a rapidly changing environment, the likelihood is that talented lawyer-leaders are making decisions about their practices without any clear set of guidelines of the right thing to do. The coherence of decision making is discovered over time, or after the fact, as the character of leadership and a leader's innate sense of professional mission is revealed. Character is taught largely by example, even the vicarious example of a story. In a world where the direction of a profession and its standards are controversial and up for grabs, the character of leadership may be the surest guide to professional integrity.

Having determined to write cases, and having chosen the business-school case study as my model for creating accessible teaching materials, I arranged a sabbatical visit to the Harvard Law School, where for a number of years the Program on the Legal Profession sponsored the writing of case studies. During the sabbatical I enrolled

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3. But, more recently, we have both Nelson 1988, a sociological study of four large Chicago firms, and Galanter and Palay 1991. Nelson reviews the impoverished state of theory about the changing nature of the corporate law firm (1988).

4. See the related complaint of Galanter about "macro assertions... as if the motions of social life could be grasped without any attention to the institutional sinews and joints that connect and shape individuals and great social structures" (1989, 597).

5. Since we all carry about with us a huge, relatively unexamined bag of understandings of the world, I recognize that it is preposteous to suggest that doing field work is a renunciation of theory. My method, if that is not too dignified a term for the way I went about my work, could be described as spare of theory, not unencumbered by theory.

6. Some of these studies have been published in Heymann and Liebman 1988.
in a business-school course on teaching by the case method and became aware of the peculiar constraints of writing cases that work well in the classroom.

Many business-school teachers view cases as vehicles to put vicarious managers in vicarious decision-making environments. A case must be relatively short, contextually rich enough to generate competing analyses and discussion, but not so rich as to create a cacophony of conclusions. A case is structured to require students to solve a business problem. It must seem real and be relatively open-ended. Sequels to the initial story reveal decisions made and attendant results, and these, in turn, can stimulate further classroom discussion. A business-school case is fundamentally a story of a decision to be made. And it is part of a course representing particular lessons the instructor wishes to build into the syllabus of the course. The art of writing case studies is to help students find the moral of the case but not make the process too facile. Case-study pedagogy is an exercise in disingenuity: the power of the learning comes from students discovering or finding for themselves the lesson of the case within a series of lessons that comprise a course. The craft of teaching by cases is to make an interesting experience out of helping students discover what the instructor has planned for them.

I began by writing stories of both individual lawyers and organizations. The individual stories came relatively easily and, when used in the classroom, worked well. In contrast, the organizational accounts were much more demanding and seemed less suitable for classroom use. They required scores of interviews. The stakes to the organization were high and created much more tension in relationships with people. Both capturing the feel or character of the enterprise and organizing the materials in a coherent fashion proved to be challenging. But I found myself drawn to the organizational stories, and I turned away from the individual accounts. The stories of individuals were, in fact, largely about people reacting, in some fashion, to organizations, and I was fascinated by the puzzle of these organizations. Thomas Hardy in *Tess of the D’Urbervilles* wrote, “Every village has its idiosyncrasy, its constitution, often its own code of morality.” I felt it was more interesting to capture the spirit or essence of the professional villages I was describing. The stories of individuals only reinforced my belief that organizations, or lawyers acting in their organizational capacities, are the main force, the effective actors generating change in the contemporary profession. I became intrigued with how lawyers in an organization structure the terms, the conditions, and the norms of contemporary practice—how they respond to, remake, manipulate, sometimes transcend their organizations—how the pieces or dynamics of the organization work to create an organization’s personality, or special character of the house or village.

I began to chafe under the pedagogical distortions required by the business-school case method. I did not want to write to a lesson plan, or to design a series of important decisions in law practice around which I would write stories meant to stand for the contemporary legal profession. My initial instinct, driven by my classroom teaching, was to look for ethical issues. I soon had to abandon this approach when, in my first story of the Legal Division of the Maine Public Utilities Commission, I found myself drawn to write about a law-practice organization that seemed to have its own logic or story rather than the ethical problems for which I was looking. The logic of the classroom seemed to interfere, or be incommensurate, with the logic of what I was seeing and attempting to describe in the practice environment. My instincts as an historian got in the way of being a teacher with an agenda. I decided to go with my instincts, abandon the pedagogical focus of the writing, and describe honestly what I saw and heard.

If I was drawn by a certain logic or order that imposed itself on what I saw and heard in these practices, I also found myself developing, quite by instinct, and with just as strong a sense of logic, a method of dealing with the practices. I was able to write only about organizations with people or friends of people willing to vouch for me. Law firms and lawyers are notoriously jittery about outside analysts scrutinizing their work. Nothing remotely resembling the business-school case study tradition prevails in law. And lawyers are particularly squeamish about revealing confidential client-related information and articulating internal procedures in their firms, because these could be relevant and damaging in potential legal claims against them. Since the only way I could gain access to a firm was

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7. Several years after drafting this account of discovering a logic in these organizations, I stumbled across Robert Jackall’s more sophisticated description of “institutional logic.” See Jackall 1988, 249.

by saying, "Trust me," I moved to methods to reinforce this trust. I cannot say these procedures were well thought out, but they seemed the decent thing to do.

The protocol with which I approached the organizations consisted of several commitments. I gave assurances of anonymity to the organization, and in some cases individuals within the organization, in short, creating a veneer of fiction in order to strengthen the quality of the nonfiction. 9 I also felt the need to assure those whom I interviewed that I would give them the text of whatever could be attributed to them in my account of the organization. I was interested in describing the practice honestly and deeply, not in scoring points on the practice or individuals within it. I wanted them to see how I was using their words and insights before their colleagues saw them. Although I did not explicitly make a commitment to edit or censor quotations of individuals, I found myself accepting almost every correction a lawyer wanted to make in the attributed material. An extremely high percentage of people—perhaps nine out of ten—made no changes whatsoever or made utterly inconsequential changes. The changes by the one in ten consisted of toning down or lessening the acuity or cynicism of a remark or expanding a remark to make it more intelligible.

A second review occurred when I circulated to everyone I interviewed the complete text of my description of the organization for comments and corrections. The only commitment I made to change the text at this stage concerned sensitive financial information and the cosmetics needed to assure the anonymity of the organization. But I often changed the text to respond to comments, either to clear up what I became convinced was an inaccuracy in my description, or to remove material so sensitive that it would be gratuitously offensive to members of the organization to include it. 10

After my first experience with the Maine case, I decided it was important to question people in an open-ended and nondirective style. I had a few basic questions with which I usually started most conversations (after laying out my method, which I hoped set a tone of my trustworthiness): Where did you come from? How did you land in your current situation? What do you like about the practice? What do you dislike or what annoys you about the practice? What is likely to be next for you? Where might you go, when or if you take a new position somewhere? What’s happening around here? After these opening questions I simply pursued questions that interested me from the answers I received from people in the practice. Only in the McKinnon firm, where the task of interviewing some two hundred lawyers was daunting, did my sponsors in the firm organize, with my agreement, an initial framework of assessing two recent mergers that limited my interviewing to fifty or sixty people.

I started from these individual histories to obtain some sense of how people’s lives intersected with the practice. The lawyers were of particular interest, but I made it a point in virtually every practice to interview secretaries and support staff and clients so that I would have a variety of perspectives with which to assess the practice. In one practice, my initial draft described how women with family-rearing responsibilities were less active in the social functions of the practice, something I believe is an accurate description of the reality of that practice. The women in the practice were deeply distressed to read this description and urged me to remove it on the grounds it unfairly singled them out. They argued that some men were also limited participants. I removed the offending material, which I thought was peripheral to the description of the practice.

Gradually I realized I had created a kind of method. 11 I wrote from what people in the organization told me. If I did my job well, I created out of these materials an accurate description of the organization, at least as they saw themselves, a mirror that people in the organization could use to look at themselves. I am not certain I understand all the implications of this method, but some are obvious. Inherent in it is some self-censorship, or a decision that certain subjects are too awkward to raise without the organization feeling betrayed. Narratives of this kind run the hazard of face-saving and self-justificatory accounts by individuals of their relationships and roles in the practice. I worked hard to make sure that my generalizations seemed honest reflections of consensus in the organization, not necessarily idiosyncratic perspectives of individuals. If I had one methodology it was as an historian—checking, verifying, making sure I had it right. As a result, I suspect I did not give full justice to dissenters, people who had cynical or disparate views. And, of

9. The Public Utilities Commission of Maine is the only exception to this rule.
10. Some, if not most, of the removal of sensitive subject matter occurred in the writing on my own initiative, not in response to comments.
course, the self-selection through which I had access to these organizations meant that I was dealing with self-confident groups, willing to open themselves up to scrutiny, and therefore not likely to be experiencing substantial conflict or sense that they were operating with false assumptions about themselves. In virtually every case I was dealing with mature, stable organizations willing to tell their stories to an historian.

Fictionalizing was a pledge I made to the organizations I visited. All the pieces involved replacing real names and places with fictional ones, except for the people in the Public Utilities Commission of Maine. Particular markers or identifiers of the organization, for example, an employee benefit unique or notorious in the local community, were omitted to avoid identification. I also changed specialty areas or altered elements of a story within the story. For example, the high-profile case described in Marks and Feinberg is fictionalized to prevent people in their community from identifying the lawyers. I feel confident this fictionalizing is superficial and does not affect fundamental elements of the practice I was describing, with one major exception: ethnicity. The ethnic identity of members of the organizations—an extremely important element of practice culture—was often lost in an effort to protect the identity of the practice. Some practices were too clearly identifiable if I did not change or neutralize their ethnic character.

Some information I uncovered would fit in the we-can’t-talk-about-this-openly category, such as arrangements made to cope with various forms of incompetence. Sometimes I did not have time to pursue an issue. For example, in one practice there was a hint of a problem of sexual liaisons in the office. I did not consider this matter a major theme critical to delineating or characterizing the organization. Focusing on these problems, in my judgment, was inaccurate, in view of my own sense of purpose as well as the relationship I had with each group.

Some incidents in the histories of the organizations are written with much less detail or richness than the information I had at my disposal. A few examples that come to mind are the assumption by Schultz and Isaacs of the leadership of the Mahoney firm, and the controversy over compensation of senior lawyers at Standish Development. My accounts of these events are not inaccurate, but they are not as detailed as they could be. The cost of making the stories more vivid and richly textured (as, for example, the one-sided story of the Butler and Standish fight over fees) would have been to open wounds needlessly or require a long period of investigation, sifting of evidence, and weighing the accuracy of different participants' perhaps sharply differing recollections of events. I had insufficient time to undertake such investigations.

Some stories contain thumbnail sketches of lawyers in the organization. I asked every lawyer to review these, and the changes I received were minimal. Only one lawyer asked to have the brief biography deleted completely, and I complied with that wish. Quotations or comments by individuals were rarely changed, and the request to change usually involved tidying up the quotation.

Sometimes people convinced me I was inaccurate, had drawn the wrong inference, or was too loose in my characterization of opinions. The reaction of a number of people at Mahoney to my initial draft, which indicated (as does the current text) the dominance of Schultz in the firm and the crucial importance of succession to leadership at Mahoney, led me to add some material that I believe accurately reflects the efforts of Schultz and others in the firm to broaden leadership and policy-making functions within the firm.

The Marks and Feinberg lawyers corrected only obvious mistakes—matters I had wrong. This was the only story in which I became a player, an unpaid consultant or stimulus to the firm to consider various ways to bring in fee-generating cases. I assisted in framing the initial draft of the firm résumé mentioned in the story.

The most difficult set of negotiations over the text occurred with McGill, the head of the Standish Legal Division. McGill worked over my text as if it were an indenture agreement for which he was responsible. Seventy-five to 80 percent of his suggested changes were corrections of factual mistakes, or improvements in the text which I found helpful. But he was also the relentless advocate for his division, determined to negotiate for the best face on everything. McGill wanted profanity removed from the text. I refused. McGill wanted a rewrite of a footnote listing of the schools—many of which are fictional—of Standish lawyers. He wanted fictional schools of higher status than some of the schools I listed. I refused. McGill objected strongly to an inference or interpretation that he felt reflected poorly
on the department, or parts of the department, and I sometimes
modified the text slightly, but in my view not significantly, to respond
to his criticisms.

One could argue with some accuracy my method pulls a lot of
punches. On the other hand, if I was at all successful in building a
relationship of trust with the people I interviewed—including those
not entirely happy with the organization—the second review (during
which I sought criticism of the description of the practice) was an
opportunity to determine whether people in the organization felt my
writing was an unrealistic perspective, or some form of glossy jour-
nalism, or a public relations piece. My overriding concern was to
capture what it was like to be in that organization, so that the
people in it would say I was being fair, that it was an honest por-
trait—not brutally honest to the point of indiscretion, or a needless
reopening of old wounds—but an honesty that reflected the realities
of the place, a portrait by an honest friend, not an enemy or an
academic showing off.

The fact that I was writing for the people I observed as much
as the audience of readers observing the practice solely through
the writing unquestionably shapes the structure of this work. These
stories are both less revealing, in terms of unveiling some of the embar-
nassments of the organization, and more revealing because they are
written with a form of assent, or participation in the story writing,
by the characters of the story.

In my estimation, these are relatively superficial portraits of law
practices compared to what an extensive amount of time and more
sophisticated methodology might generate. They are the descriptions
of a visitor or traveler who spent some time talking with the inhab-

tants about village life. I had virtually no access to those most private
and vital lawyer-client interactions that could reveal dimensions of
professional quality more poignantly and persuasively than any
amount of self-explanation by lawyers.\footnote{For one of the rare examinations of such interactions, see Felstiner and Sarat 1986.} I engaged in some particip-

ant observation of meetings within offices, barely enough to con-
vince me what I was being told about the organization was not clearly
inaccurate. More time and effort devoted to watching interactions
might have greatly enriched my accounts of the practices.

I am convinced that the people I interviewed were more forth-

coming because they felt that a dean, unlike most academics, is more
understanding and tolerant of how the world works. There were
advantages brought to the intellectual table from the perspective of
the dean as manager: a generalist’s unfocused curiosity, a tolerance for
personal and institutional foibles, an instinct for reading organiza-
tions. But there were also disadvantages, in particular, the constraints
of a busy administrator with negligible time for in-depth research.
Some decades ago, the world of legal education was closely identified
with the profession. Today, the worlds of legal academic and prac-
titioner have drifted so far apart that it is necessary for one to write
the anthropology of the other. Indeed, the profession itself is so
divided that stories that talk across cultures are necessary if one part
of the profession is to understand another. Perhaps deans, peculiarly
cross-cultural figures who work with academics, law-practice man-
gers, lawyers, and various professional associations, have special
translation skills to bring to writing about the profession.

I have mentioned the logic of the organizations I was describing
and the logic of the procedures to which I was drawn in relation to
these practices. A third logic emerged as I began to organize my
material, the peculiar demands of writing narrative. Some of the
stories of practices, in first draft, came out shapeless or flat, and I
felt the need to round out or finish the story or give it some frame-
worked. If I was to respect the logic of the organization, the story
frame could not be imposed artificially like some injection of drama
designed to pique interest. Rather, it had to be discovered in the
material itself, and it had to be true to the material, representing a
perspective that caught the practice in the right light, so that the
account had resonance, depth, or clarity. I can only use metaphors
to describe this pressure or logic. Perhaps, if I were trained as a
social scientist or literary theorist, I could better evoke this sense of
obligation I felt to the demands of narrative—and to the demands
of portraying honestly the law practice. The account of the Legal
Division of the Public Utilities Commission of Maine, for example,
languished for almost four years before the course of events helped
me tie it up with the ceremony honoring the founder of the division
and resignation of his successor.

Hayden White argues that the sense of compulsion I felt in the
need to frame these descriptions, or stories, or organizational biog-

raphies, derives from “the impulse to moralize reality, that is, to
identify it [the story, description, etc.] with the social system that is the source of any morality that we can imagine” (White 1981, 14). White continues,

... The reality of events does not consist in the fact that they occurred but that, first of all, they were remembered, and, second, that they are capable of finding a place in a chronologically ordered sequence. Narrative appeals to our desire for “formed coherency” that only stories possess. Reality wears the mask of meaning.

White argues that “the demand for closure in the historical story is a demand...for moral meaning, a demand that sequences of real events be assessed as to their significances as elements of a moral drama.” Narrative has become a convention or form, a discourse that “signals at once its objectivity, its seriousness, and its realism,” a value that “arises out of a desire to have real events display the coherence, integrity, fullness, and closure of an image of life that is and can only be imaginary” (White 1981, 19–20, 23).

If, for White, narrative is a convention expressing an imaginary image of life, it is an extraordinarily important convention, a primary and irreducible form of human comprehension, an article in the constitution of common sense” (White 1981, 252). Stories allow us “to accommodate the notion of human intentions, aims, and purposes in our representations of human affairs...and permit us to judge the moral significances of human projects [and] provide the means by which to judge them, even while we pretend to be merely describing them” (White 1981, 253).

If, in Hayden White's sense of that activity, my function consisted of “narrativizing” the interviews with members of these various organizations, the results sometimes emerged with startling coherency to the subjects of my inquiry. My writing can perhaps best be characterized as description constructed out of listening to and observing lawyers in conversation about their practices. Its cognitive authority was first put to the test when I circulated a full description to the entire firm or organization. I wrote descriptions I felt were favorable to every organization I visited. I found myself attracted to, I liked, the vigorous and effective people doing interesting work in every organization I described. I had convinced people in the organization that I had gone about my work honestly in creating an organizational self-portrait. In one respect, I saw myself writing their story, the story they would write if they were being honest about their practice. They could not write the story off as something other than what they had told me: the protocol was too strict to allow them to be angry at me for misusing them or misquoting them, or being unfair to them. And the effect was sometimes extraordinarily powerful.

It was not uncommon for people to be disturbed by what they read. Symptoms included depression over what I wrote, strong efforts to convince me to sanitize the script and eliminate important elements of the story, or the expression of anxiety that I had not captured the special character of the organization—an anxiety corresponding to an inability to respond to my willingness to enrich the story to meet perceptions of its inadequacy. To some extent I take these rather unhappy reactions as a partial testimonial that the stories struck home as being real, or at least vital to the characters portrayed in them, animated by their perception that there was little room for criticism of the unfairness or partiality of my methods. And reactions were mixed: at one organization where several people were most disturbed with the description, another lawyer asked my permission to use it to recruit a new lawyer who would be given the text to learn about the practice in some depth.

At least one organization was largely indifferent about what I wrote. A disadvantage of being a dean was that I had difficulty finding time to write. Some of my subjects therefore did not see a complete description until two, three, or as much as four years after I interviewed at the organization. The passage of time made some critics grow fonder of, or less interested in editing, the portrait I painted of them, a blessing I came to appreciate. Change in the practice had made my description “historical,” and therefore less threatening.

If, as White argues, in a way I find convincing, storytelling is of necessity a morality tale, then perhaps the exercise of writing these stories is best seen as a form of descriptive ethics. The style of the telling is crucial to whether these nonfictional tales carry conviction. I have tried to describe lawyers' lives in organizations as honestly as I know how, without denunciation or acclaim. My hope is that these stories will form part of the “constitution of common sense” about
the contemporary profession, a modest contribution to our understanding of people pursuing this special endeavor, and a basis on which readers can make thoughtful judgments about the lives of lawyers.