

Memorandum

TO: Peter W. Martin
Charles W. Wolfram

FROM: Roger C. Cramton

SUBJECT: Letters Requesting Law Firm Assistance for Narratives
of the Law Governing Lawyers of Seven Leading
Jurisdictions

DATE: November 20, 1995

The enclosed letters to Bob O'Malley and Loeber Landau will bring you up to date on this project. With O'Malley's help, I identified an ethics specialist in seven law firms, each located in a leading jurisdiction: CA, DC, FL, IL, NY, PA, and TX. Each seeks the help of the firm, as a pro bono summer project involving the use of summer law clerks under the supervision of knowledgeable partners, in preparing a textual narrative of the law governing lawyers of the particular jurisdiction. Another enclosure is a draft of a warning notice for the Ethics Library disclaiming any responsibility for harm flowing from reliance on it by a user (O'Malley suggested following the Martindale-Hubbell notice, which this does).

An attachment contains a general description of the plan and the topical outline I am suggesting we follow. It is based in large part, with Chuck's approval, on the organizational structure of the ALI's Restatement of the Law Governing Lawyers. (Peter has already received this document; it is not included to him). I have also written to Geoff Hazard for ALI approval of this use of the ALI's table of contents. Do you agree that this organizational structure is an improvement on one based on the ABA Model Rules? What changes or additions to the topical outline would you suggest?

If we agree on a new topical outline, Peter will have to oversee the transformation of the existing database to that new structure. I would help with cross-references to the ABA Model Rules and Model Code; and I would also move around the pieces of the California monograph to give Peter a revised monograph in WordPerfect 6.1 in the structure of the new outline. I would also add some general material throughout the topical structure--material that each state-by-state narrative would be expected to include (or modify if the jurisdiction departed from the general statement of the law). At that point both new documents would need to be included in FOLIO and hypertext links added. Or is there an easier way, Peter, for this job to be done?

The timetable I envision is as follows: (1) March 1, 1996: get agreement from a major law firm in each of the seven targeted states to undertake this pro bono project using summer law clerks next summer; (2) May 1, 1996: provide each law firm with the revised "Legal Ethics Library," with hypertext links in place. (3) about June 1, 1996: meet at some central location with the partners in charge of the exercise; Bob O'Malley and ALAS might participate, lending their support and a conference room at their Chicago office; (4) early June: Peter and Roger attend the ABA annual professional responsibility conference to demonstrate the library is in its then-current form and to solicit the help of the ABA Center on Professional Responsibility

and state disciplinary authorities in commenting on, developing, and disseminating the library; (5) during summer of 1996: respond to questions and suggestions from the law firms engaged in the project; (6) September 1996: receive the product then completed by the law firms along with a commitment to finish any uncompleted portions in summer 1997 as well as update the completed portion in June 1997; and (7) October 1997: identify law firms in five other major states to undertake the same process with the following states: OH, MA, NJ, MI, GA. Then repeat the same cycle throughout fall 1996 and 1997.

I would like the views of both of you concerning these plans and its timetable. Is it feasible? How could it be performed most efficiently? By whom?

Another thing to think about concerns possible modifications of our Keck grant. In another month I will be submitting our semi-annual report. Joan DuBois has encouraged submission of program modifications. I have been thinking along the following lines: (1) extend the period of our program for one more year (i.e., until June 30, 1998) because we will not expend all of the money by June 30, 1997 unless we radically increase the spending rate; (2) provide more specifically for funding adjuncts from practice to teach ethics-related advanced courses or seminars (e.g., Ethics in Tax Practice); (3) provide limited summer stipends (e.g., \$2,500 per person) to faculty members who agree to spend a portion of their summer time in developing legal ethics understanding and materials for their inclusion in their courses (an encouragement of "the pervasive approach"); (4) expanding the funding of the Legal Information Institute's portion of the program to the extent that is necessary; and, possibly, (5) providing funds to invite Ted Schneyer of Arizona to come to the Law School at a convenient 10-day period to run four two-hour workshops on the law governing lawyers (obviously the Dean and the faculty need to approve of this; Ted did this at Duke last year and Pam Gann and others report it was very well-attended by faculty and a great success in introducing the faculty to the law and ethics of lawyering, including what we know about the legal profession and how legal ethics relates to developments in modern legal theory).

Chuck will be spending the Thanksgiving period with Nancy and Kathryn in Boston. I will talk to him before he leaves. Peter will receive this communication by e-mail so that he can think it over before we meet during the time he is in Ithaca.

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November 20, 1995

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Dear Bob:

Thanks for your help and suggestions concerning our "Legal Ethics Library." I have written the lawyers and law firms you suggested and mentioned your name. The letters were pretty much identical, so I am enclosing only that to Loeber Landau at Sullivan & Cromwell. The others were: Marshall Small (Morrison & Foerster, California); David Isbell (Covington & Burling, District of Columbia); Robert R. Feagin, III (Holland & Knight, Tallahassee); Frank D. (Denny) Mayer, Jr. (Mayer, Brown & Platt, Illinois); Lawrence J. Fox (Drinker, Biddle & Reath, Pennsylvania); and Allan Van Fleet (Vinson & Elkins, Texas).

I am enclosing a full set of the enclosures for each letter. I am also attaching a draft notice of warning to be included in the Library. It is modeled after that in the Martindale-Hubbell law digests. Does it deal adequately with the remote risk of liability to users?

I will look forward to seeing you in April for a repeat of the *Jones, Day* problem.

With warm best wishes to you and your family,

Sincerely yours,

Roger C. Cramton
Robert S. Stevens Professor of Law

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November 18, 1995

Walter Loeber Landau, Esq.
Sullivan & Cromwell
125 Broad Street
New York, NY 10004

*Re: Creation of Textual Narrative of New York Legal Ethics
as a Pro Bono Project of Your Law Firm*

Dear Loeber:

I am writing to ask for Sullivan & Cromwell's help in a project of great importance to the understanding, accessibility and improvement of legal and judicial ethics in the United States. Cornell's Legal Information Institute, with financial support from the W. M. Keck Foundation, is in the process of creating a legal information library on legal and judicial ethics, arranged in a state-by-state format, available to anyone in two electronic forms: (1) on the Internet at <http://www.law.cornell.edu/> free of all charge to users, and (2) on computer disk for a modest charge (currently \$20) that covers some of the cost of preparation and handling and a royalty for use of FOLIO software. Enclosures provide information about the Institute [Attachment 1], outline our plans for further development of this unique resource [Attachment 2], and provide a textual narrative of California legal ethics as a partial sample of what we have in mind for other states [Attachment 3]. A CD-ROM demonstration disk, containing the presently available materials dealing with legal ethics, is also enclosed [Attachment 4]. (If you do not use CD-ROM technology, you may want to ask your firm's librarian or technology guru to take a look at the disk to assure yourself that this information library is as useful, flexible and user-friendly as we say it is.)

The initial collection of key materials on legal ethics includes the ethics codes of four major jurisdictions (California, District of Columbia, New York, and Texas) as well as the ABA Model Rules and Model Code. All are connected by hypertext links to a topical outline. That outline allows a user to begin with an issue and, for example, compare its treatment in California and New York. A user can also make a Boolean search, as in Lexis or Westlaw, to discover all places containing, for example, the terms "former client" or "migratory lawyer" or a combination of the two, moving by hypertext link from the narrative discussing case law and ethics opinions, to the state's ethics rules, and so forth. The software program allows users to annotate the narrative text by attaching their own notes dealing with the particular issue.

During the next few years we want to expand the core materials on legal ethics in two ways: *First*, inclusion of the ethics rules of the dozen jurisdictions that contain over two-thirds of the nation's lawyers: California, New York, Illinois, Texas, District

of Columbia, Florida, Ohio, Pennsylvania, Massachusetts, New Jersey, Michigan and Georgia (listed in order of number of lawyers). Other states would be added as feasible. *Second*, creation of textual narratives of the law of lawyering of each of these states. A monograph discussing California's law of lawyering that I have prepared is currently available on Internet, CD-ROM, and in hard copy in partially completed form [Attachment 3]; in the relatively near future its organization will be changed from that of the Model Rules to that of the topical outline included in Attachment 2.

Creation of the state narratives is a major project, one that is unlikely to attract talented academics or professional text writers because it is not sufficient "scholarly" in character or because the final product will be made available free of charge on Internet and for a modest handling charge on CD-ROM. Royalties for authors are not contemplated. Nor are law students likely to do an adequate job without supervision of lawyers who are thoroughly familiar with the law of lawyering of a particular jurisdiction. Yet a resource that provides detailed information concerning the law of lawyering of each major jurisdiction and enables comparisons with the ABA ethics codes and with the law of other states would be immensely valuable to lawyers, the law school world, the courts, and the public.

Helping to create such a resource is a task for which you and your firm have a unique capacity. As a major law firm situated in a leading jurisdiction, you and your firm's ethics committee or specialists have detailed knowledge of your jurisdiction's law of lawyering. A pro bono project involving the services of summer law clerks under the supervision of associates and the firm's ethics specialists would simultaneously provide: (1) a valuable service to the profession and the public, (2) a significant publication under your firm's name used throughout the United States and the world (compare the "law digests" of state law in Martindale-Hubbell), and (3) an interesting and rewarding project for a number of summer law clerks, who, given sufficient supervision and monitoring, could perform the bulk of the work.

I have talked with Robert O'Malley of Attorneys' Liability Assurance Society (ALAS) who has expressed a strong interest in this project and suggested you and your firm as an ideal choice for New York. I hope you will discuss this proposal with other senior partners and decide at a minimum to explore the proposal further. I plan to telephone you in about ten days to speak personally about the proposal, provide further details, and deal with questions that I may or may not have anticipated in this tentative and introductory plan of what we have in mind.

Sincerely yours,

Roger C. Cramton
Robert S. Stevens Professor of Law

IMPORTANT NOTICES

The Cornell Legal Information Institute's "Legal Ethics Library" is a general reference source for lawyers, law teachers, law students, judges, and members of the public. The Library is not meant to provide legal opinions or advice, and is not a substitute for the advice of counsel. The Library is not to be used as the basis for advice to clients or applied to particular matters. Local counsel in the applicable jurisdiction should be consulted as to the current law applicable to a particular situation.

The Institute and those who have cooperated with it in supplying material have used their best efforts in collecting and preparing material for inclusion in this Library, but they do not warrant that the information is complete or accurate, and do not assume, and hereby disclaim, any liability to any person for any loss or damage caused by errors or omissions in the Library whether such errors or omissions result from negligence, accident or any other cause.

The summaries of the law of lawyering of particular states have been prepared by distinguished law firms--acknowledged leaders of the bar of their respective jurisdictions. Every effort is made to insure that the summaries reflect developments as of the date of the most recent revision, but the user should recognize that any summary of a complex subject is bound to be incomplete and inaccurate in some particulars.