# FOREWORD: NEW ROLES, NO RULES? REDEFINING LAWYERS' WORK

*The Honorable Phyllis W. Beck*[*]

This Symposium, "New Roles, No Rules? Redefining Lawyers' Work," is one of the many scholarly activities that has been part of the tenure of Professor Carrie Menkel-Meadow, the Phyllis W. Beck Professor at Temple Law School. Professor Menkel-Meadow is the first incumbent of the chair, which was established in my name in 1997 by the Independence Foundation of Philadelphia. The Foundation funded the chair in order to bring to the law school, from time to time, a visitor in a subject matter or discipline agreed to by the law faculty and the dean.

On November 12, 1999, about 180 people from around the country attended the Symposium. The speakers provided both a national and an international perspective on the future of the practice of law. Although the discussions were broad-ranged and lively, there was underlying agreement among those assembled that, in the future, the practice of law will change dramatically. The Symposium focused on the nature of the change, the speed of the change, and the adjustments that will be necessary to protect the users of legal services.

This essay consists of two parts: first, my remarks at the opening of the Symposium, and second, a brief overview of each session. In addition, this volume of the *Temple Law Review* contains some of the material presented at the seminar, along with articles especially written for it.

## PART I: OPENING REMARKS

First, I want to thank Professor Eleanor Myers of Temple Law School and Professor Carrie Menkel-Meadow, visiting professor at Temple Law School, for assembling such an outstanding group of speakers and topics for today. And, of course, our gratitude goes to Dean Robert Reinstein for encouraging this forum. Bob Reinstein is always ahead of the curve. In legal education, he appointed Carrie Menkel-Meadow as a visitor to explore with the faculty, the students, and the entire legal community the subject of Alternative Dispute Resolution. I have attended several of Professor Menkel-Meadow's performances—I can't call them lectures—they were a "wow." In addition to being a noted constitutional law scholar, Dean Reinstein runs this wonderful law school with four foreign outposts. And, as if that were not enough, he recently initiated an American law program in Beijing, China. Dean Reinstein is a man of the past, the present, and the future. And, like our topic today, he has undertaken new roles, and it seems to me he has made up a lot of rules along the way . . . and they seem to be

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working.

The underlying theme of the conference today is CHANGE. Will we lawyers recognize the inevitability of change and be in the forefront of shaping that change? Or, will we talk the subject to death while other professionals take the lead?

In thinking about this subject, I reviewed what changes have taken place, minimal as they may be, since my graduation from law school. I graduated from Temple Law night school in 1967. I have been a close watcher of, and a participant in, the profession for well over thirty years. And, I have seen some change. Thus far, during that period, two changes have had significance. The first is the influx of women into the profession, and the second is the use of time sheets. I practiced before the influx of women, and I practiced before the introduction of time sheets.

I feel a little like the entertainer Sophie Tucker who said, "I've been rich and I've been poor, and rich is better." As to having more women in the profession, without question it is better for the profession and certainly better for women. As to time sheets, it's been better for lawyers' incomes, but I'm not sure it's been better for the profession.

When time sheets were first introduced, I worked for a large Philadelphia law firm. We were all assured, and then reassured, that the time sheets were to be used loosely so clients could be billed fairly. No lawyer would be judged on the amount of time she put in. We now know that the assurances, while given in good faith, were meaningless. The continued employment of a lawyer in her law firm depends upon a hefty number of hours she works or, in the alternative, her book of business.

What has been the true consequence of time sheets? They meant lawyers could no longer schmooze with their colleagues about theories in the law because they wouldn't know which client to charge for the schmoozing. Time sheets marked the shift from law as a profession into law as a business. The financial bottom line of the law business became controlling and the productivity of the individual lawyer determinative of her future.

And, that shift to law as a business has continued and it has grown until we are today faced with what we euphemistically call the Multidisciplinary Practice of Law. This means that lawyers are in business with, and perhaps even working under one roof with, accountants, consultants, financial advisers, and other nonlawyer professionals. In the future, an enterprise's letterhead may reveal that the organization is owned and run not by lawyers, but by accounting firms, insurance companies, banks, or some form of conglomerate like American Express or CitiGroup.

The title of today's Symposium "New Roles, No Rules?" is apt. However, I don't know why the question mark is in the title because, in my mind, there is no doubt that there will be new roles, and lawyers will be operating in those new roles while the legal profession invents new rules. I do not underestimate the creativity and ingenuity lawyers will have to demonstrate as they invent and tackle difficult issues, such as lawyer independence, client loyalty, confidentiality, and fee splitting. Lawyers are natural problem solvers, *par excellence*, and they

will resolve these dilemmas. I compare multidisciplinary practice to a train on the track that's left the station, and I do not think it can be stopped. The question for the legal profession is not whether it can stop the train, but how to control its direction. The legal profession is in a position much like the medical profession ten years ago. The doctors never believed managed care would take hold and, consequently, they never insisted on a seat at the table where the rules of future health care would be decided. Lawyers should not make the same mistake.

Multidisciplinary practice, which started in Germany about fifty years ago, has been proliferating in Europe and to a lesser extent, but also significantly, in Asia. This is true whether the variety of professionals are in a single organization or whether the professionals, such as lawyers, consultants, and accountants, have formal or informal alliances with one another. One reason for the growth of multidisciplinary practice is the global economy, where it may be to the client's advantage to deal with a multi-service organization that has worldwide capacities. Another reason is the convenience of one-stop shopping. Why should an individual client who is using the expertise of a financial planner have to go to a lawyer in a different organization and to a separate accounting firm to complete the work? Why should a divorcing couple who are conflicted about the custody of their children consult with a psychologist practicing in a clinic and then shift to a lawyer's office to perhaps inflame a fight?

Multidisciplinary practice follows the overpowering trend in our economy towards consolidation. The claims for consolidation are efficiency, economy, and synergy. I do not mean to imply that there are no dangers in consolidation, because there are. But it is the flood tide at the moment, and I am persuaded that the legal profession will be swept along with it.

It is said that multidisciplinary practice does not exist in the United States. This is not completely accurate. The five major accounting firms employ about five thousand lawyers who claim not to be practicing law. They say they are offering tax and other quasi-legal advice. So the United States is inching its way toward multidisciplinary practice, whether the local, state, or American Bar Associations have endorsed it or not. Lawyers ought not to talk too long while other professionals dominate the legal profession's future direction.

With certain exceptions, change is afoot in the practice of law, no question about it. Lawyers will be reinventing themselves, playing new roles, and devising new rules for the future.

There is one other change in the practice of law that I would like briefly to mention. Alternative Dispute Resolution ("ADR") will be discussed this afternoon. Two national figures in the field, Professor Carrie Menkel-Meadow and the author of a new book on the subject, Bennett Picker, will discuss the topic under a title that I find upbeat and hopeful, "Lawyers as Third Party Neutrals and Problem Solvers." ADR as a method of resolving problems has existed for a very long time. ADR casts lawyers into different roles. They become problem solvers. Here, rules have been better developed than in multidisciplinary practice. ADR's growth has been slow but steady. When I practiced law many years ago, in urging my clients to settle or avail themselves of

ADR, I would always ask them whether they really wanted some stranger—namely a judge . . . and perhaps a jury—to solve their problems where the outcome would be totally unpredictable. It is important that, in the future, ADR establish a firm foothold in American legal practice. Two thoughts occur to me. One, law schools must devise a method of teaching that does not depend so heavily on litigated appellate cases. Rather, the study of law must demonstrate the need for and advantage of using forums other than the courtroom to resolve disputes. Two, we must convert TV shows such as *Law and Order, Ally McBeal, The Practice, Judge Judy,* and *The People's Court* into programs that show peaceful alternative dispute resolutions to problems instead of people in the courtroom screaming and posturing. If we can do that, ADR will blossom immediately.

Finally, I'd like to share with you my thoughts about the Phyllis W. Beck chair. How did it come about? In addition to my judicial work, I am chair of a foundation called the Independence Foundation. In terms of assets, it is the ninth largest foundation in this region. The Foundation approached me because it wanted to establish a chair in my name. I did not have to think twice because I knew immediately there was only one choice for me, and that was Temple Law School. It would be a wonderful way to express my gratitude to this institution, which gave me a chance to get a law degree when no other school would. In 1962, I was an unlikely law student. I was out of college for a while, had four young children, could only attend part-time, and didn't have time to read too many cases. Temple's philosophy was it would give me a chance. If I could do the work, nothing else mattered; and if I couldn't, I would be out of there. My night school class began with 110 students and eleven of us eventually got our J.D.s; so you can understand the debt I owe this outstanding school.

Now that I could pay the school back, how should I do it? Conventional paths were suggested such as a chair in constitutional law, or maybe family law. I knew if I went that way, it would please the Dean because it would ease his budget woes. But other thoughts germinated in my mind. From my experience as a student, and later a faculty member, at the Law School, I decided that endowing a chair for a visitor was part of my vision for Temple Law School. The school had a fine faculty. However, the faculty and students would be immeasurably enriched by inviting persons to the school for a period of time to teach, to stimulate, and to energize the school. I did not think such a person had to be a law professor or even a lawyer. I could imagine the slot going to a criminologist, a political scientist, or an economist. It might go to a person who recently completed government service.

I must say that Temple's selection of Professor Carrie Menkel-Meadow as the first incumbent of the Phyllis W. Beck professorship has been a home run. Her tenure here, culminating in this conference today, has done just what I hoped. She has educated, she has stimulated, and she has energized.

As I mentioned at the beginning of my remarks, this conference is about CHANGE. Carrie has brought to the law school a vision of CHANGE . . . in her case, change revolves around Alternative Dispute Resolution.

I am gratified that she has been the incumbent of the chair. She epitomizes

the intelligence, open-mindedness, and creativity that the entire legal profession must begin to show to address change—which, in my view, is inevitable.

## PART II: OVERVIEW OF THE SYMPOSIUM

The Symposium began, appropriately enough, with a presentation by Professor Paul Brest, past dean of Stanford Law School and current president of the highly regarded William and Flora Hewlett Foundation. He reminded us that lawyers do not, and should not, restrict themselves merely to the law. They are first and foremost quintessential problem solvers. He also observed that clients naturally expect their attorneys to integrate issues for them and address all components of their "problems," not just the legal ones. He further reminded us that problems can be averted by planning and decision making designed to prevent disputes. His presentation provided a thoughtful and thorough foundation for the range of ideas that followed.

Following Professor Brest were Dickinson Law School Professor Laurel Terry and outspoken Philadelphia attorney Larry Fox. The pair's task was to give an overview of just what multidisciplinary practice ("MDP") is and might become. They ably presented the breadth and the depth of the issues. Professor Terry asked whether lawyers are better off thinking about MDP as a "threat" or as an "opportunity." She provided statistical evidence of the growing number of lawyers employed by large accounting firms and discussed the wide range of issues upon which MDP will impact, including but not limited to, client confidentiality, forms of association, conflicts of interest, and scope of practice. Professor Terry reminded us that both Main Street and Wall Street will be affected by the changes that are occurring in the legal profession. She cautioned that we consider both interests when formulating a position on the topic and urged us to consider primarily client protection and public interest.

Larry Fox boldly and without hesitation characterized our profession as the victim of an "attack" from the nation's Big Five accounting firms. These firms, as he saw it, were simply trying to hone in on lawyers' fees, without the accompanying restraints and responsibilities in our code of ethics. He opposed the "acceptance" of MDP and insisted that rejection was necessary to maintain and protect the independence of lawyers. Highlighting the differences between accounting firms and law firms in the contexts of confidentiality, conflicts, and liability, he warned us that welcoming MDP would damage the profession significantly. He finished by stating that demand for MDP was an illusion and that "one-stop shopping" just wasn't worth the cost.

Once the audience understood the parameters of the debate, it was presented with an in-depth, detailed look at the questions and concerns that accompany MDP. A lively and informative roundtable discussion moderated effectively by Temple Law Professor Phoebe Haddon provided a myriad of perspectives on the topic, each with a distinctive and valuable point of view.

Professor Mary Daly of Fordham Law School suggested that there was a public demand for MDP as well as a significant value for the client in one-stop shopping. She advised, however, that change was not without risks. Focusing on

the role of general counsel, Professor Daly suggested that its own functions may be "out-sourced" with the coming of MDP. She advocated the retention of general counsel's "counseling" function, emphasizing its importance, particularly in the ethics arena.

James Jones, APCO Associates, Inc. Vice Chairman and General Counsel, attempted to quell any anxieties that might be brewing. He put MDP in an historical perspective by recalling that there has been an alarming reaction to nearly every major change in the legal profession over the years. The very first law firms met with much opposition from single practitioners, as did the use of paralegals. Mr. Jones concluded that there is indeed a demand for MDP and he characterized it as just "one way to improve the efficient delivery of legal services."

Professor Russell Pearce of Fordham Law School described the debate as one between the "traditionalists" and the "reformers." Professor Pearce, whose expertise is professional responsibility and legal ethics, focused primarily on public trust. As a lawyer who clearly is concerned with our profession's reputation, he underscored that the public at large does not trust lawyers, and this distrust must be borne in mind as the profession begins its foray into multidisciplinary practice.

The Symposium luncheon was carefully orchestrated. It provided an opportunity for all attendees to discuss a particular area of interest by choosing a table with a "host" who had specialized knowledge in various aspects of MDP. These "affinity tables" provided for the discussion of a variety of topics, including curriculum development and legal education, dispute resolution, Bar responses, core values of "independence" and "loyalty," in-house legal practice, and lawyers in accounting firms.

Professor Carrie Menkel-Meadow, as the keynote luncheon speaker, performed with ease and grace. She delivered a "lecture" by chatting with the audience about problem solving, about lawyers as neutral parties and about changing the role of the lawyer from advocate/adversary to problem solver/peacemaker. She expressed her enhanced and optimistic vision of what lawyers have the capacity to become. Her thoughtful and thought-provoking article on this topic is included in this publication.

Bennett Picker, author of *Mediation Practice Guide—A Handbook for Resolving Business Disputes*, responded to Professor Menkel-Meadow. As partner and chair of the Philadelphia firm of Stradley, Ronan, Stevens and Young's ADR Practice Group, he illustrated stratagems by which a lawyer can accomplish some of the goals Professor Menkel-Meadow placed before us. He presented a positive portrait of the big firm lawyer drawing on his problem-solving skills and expanding his practice to include more than just litigation.

The afternoon session brought a second roundtable discussion, this one focused on independence and loyalty for the in-house lawyer. Moderator of the panel Professor Eleanor Myers addressed the duty a lawyer owes to her profession. She spoke of a lawyer's ability to stand apart from clients and remain independent.

Former Dean of the University of Pennsylvania Law School Robert

Mundheim, who also served as chief counsel for Solomon Brothers, likened general counsel to a "protective umbrella." University of Pennsylvania Law Professor Susan Sturm emphasized the role of the in-house lawyer as a "safe harbor" for an organization, with an orientation toward compliance on all levels. Dennis Arouca of United Airlines extolled the virtues of establishing a method of corporate internal dispute resolution. All of the roundtable speakers revealed thoughtful—and often novel—approaches to the changing role of the in-house lawyer.

The final presentation of the day brought three distinguished speakers: University of Pennsylvania Law Professor Howard Lesnick, Georgetown Law Professor David Luban, and Dean Robert Reinstein of Temple Law School. This trio did an excellent job of putting the entire day in perspective.

Professor Lesnick viewed the lawyer's life on a personal level. He challenged lawyers to "look for their own answers," to fight without violence, and to seek justice with peace. He opined that we share an "endlessly challenging craft" through which we must search for personal fulfillment. Professor Luban requested that we consider the lawyer as "public citizen." He also recommended that we let the market decide whether there exists a demand for MDP. If there is a demand, he suggested, MDP will flourish. If no demand exists, it will fail. He speculated that the lawyer of the future may fill a different role. Finally, Dean Reinstein urged all those assembled to continue to be active participants in our evolving profession.

The Temple Law School Symposium Committee, consisting of Professors Eleanor Myers, Carrie Menkel-Meadow, Jane B. Baron, and Phoebe A. Haddon, is to be commended for conceiving of this Symposium and assembling an outstanding group of speakers to explore the changing legal profession. Special accolades are due Professor Eleanor Myers, chair of the committee, who from the beginning spearheaded the Symposium and was its guiding force.