

2016

Cross-Cultural Challenges, Consensus, and Opportunities for Advancing the Professional Ethical Integrity of Legal System Actors

Rory Little

University of California Hastings College of Law, little@uchastings.edu

Follow this and additional works at: http://repository.uchastings.edu/faculty_scholarship



Part of the [Legal Ethics and Professional Responsibility Commons](#)

Recommended Citation

Rory Little, *Cross-Cultural Challenges, Consensus, and Opportunities for Advancing the Professional Ethical Integrity of Legal System Actors*, 39 *Hastings Int'l & Comp. L. Rev.* 95 (2016).

Available at: http://repository.uchastings.edu/faculty_scholarship/1438

This Article is brought to you for free and open access by UC Hastings Scholarship Repository. It has been accepted for inclusion in Faculty Scholarship by an authorized administrator of UC Hastings Scholarship Repository. For more information, please contact marcus@uchastings.edu.

Cross-Cultural Challenges, Consensus, and Opportunities for Advancing the Professional Ethical Integrity of Legal System Actors

BY RORY K. LITTLE*

On February 26, 2015, UC Hastings College of the Law in San Francisco hosted a group of lawyers, judges, and scholars with an ambitious agenda. Our symposium title asserted that “Professional Ethical Integrity” is the “Cornerstone for Rule of Law Reform Around the Globe,” and the organizers had arranged for a diverse, international group of lawyers and scholars to address that proposition for two days. What follows is a brief summary of the first day’s morning proceedings. A number of the presenters have supplemented their remarks with essays now published in this remarkable symposium section of the *Hastings International and Comparative Law Review* (“HICLR”).¹

But what exactly is meant by the “professional ethical integrity” of actors in a legal system? No precise definition was advanced by

*Professor of Law, UC Hastings College of the Law; Senior Counsel, McDermott Will & Emery LLP. While many colleagues supported the Symposium recounted in this volume, I want to extend my special thanks to Professors Kate Bloch and Morris Ratner. The vision as well as the reality of the Symposium was Kate’s, and the nuts and bolts that held it all together came from Morris’s unflagging attention to detail. In particular, Professor Ratner’s detailed contemporary notes of the Conference have been essential to creating the summary of proceedings that follows. The community of American legal ethics scholars, as well as UC Hastings and myself, are fortunate indeed to have Professors Bloch and Ratner in the fold.

1. Many thanks are due to the hardworking student editors of HICLR who devoted many hours to the Symposium and its resultant volume. Most particularly I would name Justin Globerson, Rishi Gupta, and Samantha Finegan, all UC Hastings ‘16. Other students also contributed, and we are in their debt.

the symposium's participants, and likely none is possible.² Perhaps we meant "legal ethics" such as the Model Rules promulgated by the American Bar Association ("ABA") for United States lawyers. But is "professional ethical integrity" the same as "legal ethics" (which itself may or may not be the same as "professional responsibility" as taught in American law schools)? Or did we instead mean to capture a broader set of values or more general norms of conduct? Or even some shared, international conception of moral action? The label "professional ethical integrity" appeared to be well-accepted by the participants, although its detailed content was assumed rather than discussed. Perhaps that is the best way to start, in the real and diverse world of international actors. As experienced international lawyer Jeff Stone suggested in his lunchtime discussion, when lawyers and judges act in a global practice setting within general "rule of law" systems, a high level of generality may be the necessary beginning – but not the end – of a positive discussion.³ Once a set of general values gains acceptance, further opportunities for definition and development will follow.

For this symposium, we restricted our attention to professional actors in a government's *legal* system, rather than to other professionals such as doctors, accountants, or professional basketball players. That is, the conference focused on lawyers and judges (and at times some nonlawyer government or law enforcement personnel attached to the legal system). We also presumed the existence of a government with a functioning legal system and a desire to move toward "the rule of law" rather than to circumvent it. Professor Kate Bloch's opening essay for the symposium (and in this volume) further discusses the "rule of law" and her engaging vision of how and why the professional ethical integrity of legal actors is essential for "bridging" the distance between theory and real-world implementation of the rule of law.⁴

In my view, the diversity of speakers at the symposium and of the topics they chose to discuss demonstrates the broad and challenging

2. See, e.g., DEBORAH L. RHODE & DAVID LUBAN, LEGAL ETHICS 3 (Robert C. Clark et al. eds., 5th ed. 2009) ("An obvious threshold issue is what exactly is ethics.").

3. See remarks of Jeff Stone, text at n. 22, *infra*.

4. See Kate E. Bloch, *Bridging Rule of Law Theory and Implementation: The Role of Professional Ethical Integrity*, 39 HASTINGS INT'L & COMP. L. REV. 81 (2016). Professor Bloch originated the idea for, and engineered much of the structure and content of, this Symposium. Her essay reflects the high level of energy and intellectual focus that she brought to the venture.

expanse of issues that can be addressed within the framework of “professional ethical integrity” as an essential component of securing the “rule of law” for a citizenry. I am optimistic that the conference demonstrated large opportunities for progress and success. Rather than attempt a further taxonomy, I hope the following summaries will speak for themselves.

***Dean Beth Hillman: Addressing
Sexual Assaults in the Military***

The conference opened with challenging remarks from UC Hastings Academic Dean Beth Hillman. Dean Hillman had recently completed her service as a member of an independent congressional committee appointed to study the problem of sexual assaults in the U.S. military.⁵ She noted that the International Commission on Human Rights has received complaints from U.S. service members about sexual assaults and the perceived lack of adequate response within the U.S. military. That issue is one of professional ethical integrity if the military and its adjudication of criminal activity within its ranks are to be subject to the rule of law. Sexual assault within the military – and, indeed, sexual assaults *in se* – should be perceived as a human rights issue. In addition, Dean Hillman opined that the U.S. military ought to comply with the UN’s International Covenant on Civil and Political Rights,⁶ and she stressed the need for an independent international tribunal to address rights violations that are unaddressed or inadequately addressed by particular domestic governments. The role of lawyers and judges in bringing issues to such tribunals, and in addressing those issues once there, is part of the “professional ethical integrity” necessary to further the rule of law internationally.

Rather than providing simply a comforting “welcome,” Dean Hillman’s remarks immediately set a more challenging tone for the remainder of the conference’s proceedings, signaling that serious, real-

5. In June 2014, Dean Hillman’s Committee issued their final report. See RESPONSE SYS. TO ADULT SEXUAL ASSAULT CRIMES PANEL (June 2014), <http://responsesystemspanel.whs.mil/>. Dean Hillman, a former Captain in the Air Force JAG as well as graduate of Yale Law School and former law clerk at the U.S. Court of Appeals for the U.S. Armed Forces, published some separate views regarding some aspects of the Committee’s conclusions. See *id.*, Ch. Eleven, “Additional Views of Panel Members.”

6. <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

world issues, centered in controversy rather than in artificial consensus, would be discussed. As Professor Geoffrey Hazard later summarized in his remarks, “We [in the United States] have work ourselves to do.”⁷

Professor Kate Bloch: Framing the Connection

The symposium’s visionary organizer then offered an extremely useful “framing essay” outlining the contours of the conference topic.⁸ Usefully analogizing the “professional ethical integrity” of legal actors to the towers, cables, and detailed mechanical components of a mammoth suspension bridge,⁹ Professor Bloch encouraged the dozens of attendees to envision the connection between legal ethics and the rule of law. Her essay, found elsewhere in this volume,¹⁰ was both energizing and clarifying for any legal actor or analyst concerned about the large questions and challenges raised by consideration of legal and judicial ethics in an international context.

Structure of the Symposium

The structure for the two-day symposium was then explained. Two morning panels and the mid-day keynote would focus on professional integrity challenges that face *lawyers* attempting to further the rule of law. Two afternoon panels would then address challenges for the *judiciary*. After a rollicking dinner at a nearby eatery, conference participants would return the next morning and break into “working groups” to examine and articulate specific steps that might be taken as “solutions” to challenges identified in the first day’s proceedings. Finally, a capstone summary discussion of “Commonalities and Differences” from the conference’s proceedings, conducted by three noted ethics and international law experts, would give attendees their charge for future action.

7. See Naomi Roht-Ariaza, *Capturing the Insights: Commonalities and Differences*, 39 HASTINGS INT’L & COMP. L. REV. 275 (2016).

8. See Bloch, *supra* note 4.

9. See *Multimedia Gallery*, GOLDEN GATE BRIDGE HIGHWAY & TRANSP. DIST., <http://goldengatebridge.org/multimedia/index.php> (last visited Oct. 23, 2015).

10. Bloch, *supra* n. 4.

Panel One: Challenges Facing Lawyers – in Haiti, the United Nations, and Even the USA

Deborah L. Rhode: For the symposium’s opening panel, the first presenter was legendary legal ethics scholar and Stanford Law School professor, Deborah Rhode. Her essay, found elsewhere in this volume,¹¹ summarizes her inspiring opening talk. Professor Rhode addressed a long-festering issue in the United States (and presumably in any other system employing a professional cadre of lawyers): the prohibition of legal “practice” by persons not licensed as lawyers. The legal profession is, in the United States at least, a “self-regulated monopoly.” And most jurisdictions prohibit the “unauthorized practice of law” by nonlawyers.¹² This, in turn, limits the amount of legal assistance that is available, particularly for the indigent or persons of modest means who must engage in relatively routine legal processes that are required for life-necessities like divorce, bankruptcy, probate, immigration issues, and the like. Professor Rhode appeared to imply that a lack of affordable assistance, for routine but required legal processes, impedes a full and fair implementation of the “rule of law,” perhaps even more so in the United States than in some other countries where nonlawyers are more liberally permitted to assist on such topics. Her essay details the arguments and her views far better than I can here.¹³

Jessica Vapnek: An experienced international lawyer-activist then widened our focus to the larger world of less “developed” countries, founded on her fifteen years of experience with the United Nations and extensive work on development and rule of law projects in various African nations and Haiti.¹⁴ She noted that different cultural factors might be at play in different countries, which can affect “rule of law” initiatives in ways that may seem foreign to a purely American perspective. For example, scarce resources,

11. Deborah Rhode, *Professional Integrity and Professional Regulation: Nonlawyer Practice and Nonlawyer Investment in Law Firms*, 39 HASTINGS INT’L & COMP. L. REV. 111 (2016).

12. *E.g.*, Cal. Bus. & Professions Code §§6125, 6126; A.B.A. Model Rule 5.5(b).

13. *See* Rhode.

14. As a project director at Tetra Tech DPK in S.F., Ms. Vapnek oversees rule of law projects in a number of countries. She previously served for fifteen years as a Legal Officer to the United Nation’s Food and Agricultural Organization. *See* TETRA TECH DPK, <http://www.tetratedpk.com/about/our-team.html> (last visited Oct. 23, 2015).

poverty, strong generational family or tribal relationships, and government instability are all factors that can make “professional ethical integrity” – or, at least, its U.S.-centric conception – more challenging to accomplish in some other countries than in the United States. Not only the average citizen, but also the “professional” class of lawyers and judges may face poverty and other stressors that Americans do not normally associate with the legal profession. “Our work” on rule of law initiatives, Vapnek stressed, must include efforts to “tailor” projects to the specific conditions at play in individual countries.¹⁵ This is an important principle to keep in mind when discussing international rule of law and professional integrity challenges. What works in one place may not always fit comfortably in another.

President Carlos Hercule: The conference was then honored to be addressed by the President of the Federation of Bar Associations in Haiti, Carlos Hercule. This organization is similar to the American Bar Association in the United States: a national, voluntary association of lawyers with thousands of members. The ABA, of course, exerts great influence on legal and “rule of law” issues in the United States. My impression is that President Hercule’s Association seeks to be similarly influential in Haiti.

Speaking in French with the aid of an excellent Haitian interpreter, President Hercule treated us to a specific, fascinating, and I think candid picture of the Haitian legal community. He presented five shorthand descriptions for values that he believes must be pursued to further the rule of law in Haiti (a country whose government has been somewhat unstable for many years): honesty, independence, competence, confidentiality, and loyalty. He then offered specific thoughts on each principle. The list was comprehensive and quite similar to the animating principles found in the American Bar Association’s Model Rules of Professional Responsibility for Lawyers. It was thoughtprovoking to hear that similar value sets underlie the aspirations to professional ethical integrity in two very different countries.

President Hercule also stressed the need to teach the principles of professional ethics in Haitian law schools, and he emphasized the need for an effective system of enforcement or lawyer discipline to

15. Jessica Vapnek, *Cultural Factors and Ethical Integrity*, 39 HASTINGS INT’L & COMP. L. REV. 123 (2016).

support the implementation of such principles in the real practice of law. He also agreed with Jessica Vapnek that poverty can interfere with the achievement of lawyers' integrity – attorneys must “survive” before they will think about higher professional principles. President Hercule concluded on a hopeful note: progress and remedial initiatives are possible. But he stressed that these initiatives must originate broadly in bar associations, law faculties, and governmental regulators; and that systems of enforcement must include specific rewards for exhibiting and endorsing integrity in legal practice.

Questions-and-Answers, Panel One: A brief but lively question-and-answer session followed. Highlights included:

1. President Hercule observed that governments (and not just Haiti's) often do not look favorably on lawyers. He also stressed that, in Haiti, the appointment of judges who lack strong, legitimate qualifications is a problem. Legislation to address this problem in Haiti has been drafted, but it has not yet been introduced because of uncertainty regarding its enactment and enforcement.
2. Professor Rhode observed that, because American judges are almost always drawn from the ranks of lawyers, there is no truly “independent” regulatory check on American lawyers. This is different from the medical profession and from other countries that have separate and often governmental regulatory bodies. (The normative question of whether the latter situation is better or worse than the American self-regulatory system for lawyers was neither asked nor answered.)
3. Jessica Vapnek suggested that simply making more information publically available could be part of the solution for professional integrity – for example, posting standard lawyering fees in a public place where all villagers can see them, and publicizing standard rules and fees for bail in criminal cases.
4. Professor Rhode and President Hercule had an interesting exchange about self-regulation and the possibility of adding

external regulation by nonlawyers for some (only serious?) professional integrity issues. President Hercule reported that his organization would be introducing a national code for lawyer ethics in the Haitian legislature in Spring 2015.

Panel Two: Exploring Solutions for Integrity Challenges Facing Lawyers in China, Haiti, and Elsewhere

The second morning panel was moderated by Professor Bloch and showcased the following presenters: a Haitian law school dean; the Deputy Secretary of the Taipei (Taiwan) Bar Association in China; and a former country director for China in the ABA's "Rule of Law Initiative."

Dr. Daniel Ping Yu: Now a consultant, Dr. Yu previously served as the "country director" for the ABA's rule of law project in China.¹⁶ Much of his presentation was descriptive, which for the many non-Chinese individuals attending the conference, was quite useful and interesting. Dr. Yu began by noting that, while China has an ancient, historical tradition of "rule of law," it has recently (in the Mid-20th century) instituted a governmental structure that is very different from that in the United States: a "party-state power structure." There is only one political party, and the party, rather than a legislature, originates projects and decisions, which the government then implements. Although the lawyering profession is quite old in China, lawyers were abolished in the 20th century and reinstated only in 1979. Starting with only 212 lawyers that year, there are now over 250,000 lawyers in China.¹⁷ In China, the concept of lawyering as a profession that provides service to society and has a client-servicing perspective is even more recent (beginning in the 1990s).

Unlike the self-regulated bar in America, which Professor Rhode critiqued earlier, the bar in China is not self-regulated. Rather, a governmental Ministry of Justice regulates the profession. This

16. See generally ABA Rule of Law Initiative, available at http://www.americanbar.org/g/advocacy/rule_of_law.html.

17. By contrast, roughly 1.3 million lawyers are currently active in the United States. See ABA Legal Profession Statistics, available at http://www.americanbar.org/resources_for_lawyers/profession_statistics.html.

perhaps affects the first of three problems for lawyering integrity that Dr. Yu discussed: corruption. The social relationships among Chinese officials, judges, and lawyers are often unofficial and unseen (this point is similar to Jessica Vapnek's earlier discussion of cultural factors influencing professional ethics). Corruption and bribery "thrive." There is no complete "solution" to all the issues, but Dr. Yu offered four recommendations:

1. Move further toward insulating judges from lawyers, and from prosecutors in particular.
2. Foster judicial independence from the government and the party. Chinese judges are government officials and there is little feeling of independence among them.
3. Increase legal education. The ABA recently assisted China in publishing its first textbook on legal ethics. There should be much more of this.
4. Create a legislated code of ethics. There is no such code now; there are only regulations for the profession promulgated by the Ministry of Justice, which largely do not address ethics.

Secretary General Sally Yen: China is an increasingly influential international player, so it was quite fortuitous that the next presenter was also Chinese: Ms. Sally Yen, the Secretary General of the Taipei Bar Association. Taipei is the capital of Taiwan, and while Taiwan is now a part of China, its history and relationship with mainland China are complicated. Secretary Yen did not directly address this relationship, but she noted that in Taiwan (and unlike mainland China as Dr. Yu had described), the lawyering profession was left in place during the 20th century. The island now has its own bar exam for lawyers, and it has about 8,000 lawyers for its population of 23 million. Secretary Yen reported that, in Taiwan, there was a focus on legal ethics in the 1990s. Indeed, Taipei published a lawyer code of ethics in 1985, although it was largely ignored for want of enforcement. Around 2003, there was a scandal involving Taiwan's largest law firm, so the popular media focus on professional ethics has grown. Legal ethics has been a part of the bar exam in Taiwan since 2011. Given the competition for business and China's increasing economic influence in the world, this focus is likely to increase. Competition creates challenges in how to ethically practice law and compete in the lawyering business.

Secretary Yen stressed that she assisted with the enactment of a legislated “Attorney’s Act” in 1992; the Act states that one mission of lawyers is to protect human rights and advance social justice. Lawyer discipline committees were formed and various reforms to the legal system, including development of legal aid, were instituted. Secretary Yen’s influential bar association continues to push efforts to further the rule of law within its ranks.

Dr. Jomanas Eustache: The focus of the panel then shifted back to Haiti as Father Jomanas Eustache, the Dean and founder of a fascinating private law school in Jeremie, Haiti,¹⁸ took the podium. Dr. Eustache focused on a 1979 decree governing lawyers, and on two more recent laws in Haiti that address the profession. Dr. Eustache believes these three laws define lawyers as public servants and require them to serve the interests of honesty and justice. Haitian lawyers are required to take an oath to abide by the law and moral conduct. He believes that transparency and ethics are necessary for professional integrity.

Dr. Eustache suggested a number of keys to furthering the rule of law by encouraging professional lawyering integrity. He asserted that there is a lack of respect for the rule of law more generally in Haiti, and that the Haitian legal profession and judiciary reflect this to some extent. He offered three suggestions:

1. Establish and enforce control of bar associations over lawyer conduct, including a system of lawyer discipline.
2. Enforce existing statutes governing the legal profession and adopt a more detailed code of legal ethics.
3. Establish mandatory law school courses in ethics and encourage the mass media, as well as law schools and the legal profession, to focus on legal ethics issues. Stress, to the public, the importance of integrity in the legal system and profession.

18. For information on Dr. Eustache’s law school in Jeremie, *see generally* <http://law.shu.edu/ProgramsCenters/PublicIntGovServ/CSJ/Haiti-Rule-of-Law.cfm>.

Question-and-Answers, Panel Two: In the subsequent question-and-answer period, interesting moments included:

1. A discussion between Dr. Eustache and Secretary Yen about the virtues of mandatory versus voluntary bar associations. There are cultural differences here, and in some countries a “voluntary” bar association functions much more like a mandatory state bar in the United States. Some form of mandatory lawyer membership organization seems important to establish and enforce professional integrity norms.
2. A discussion about how mainland China might move toward a more independent set of lawyering norms. Secretary Yen explained that there has been an evolution in Taiwan, and lawyering has moved from being a dangerous profession to being openly involved in politics and government. Dr. Yu added that, in mainland China as well, a group of “die-hard” lawyers sometimes advocates against the Communist Party of China, at some risk to the lawyers’ practices and freedom.

There is also an effort in Taiwan to encourage lawyers to abide by professional integrity norms even when judges or other actors appear not to. But whether and how to follow integrity norms when others do not are difficult questions.

3. There was a fascinating exchange among all panelists on some “big questions”: Is there a universal “rule of law” conception? How can it be defined or agreed upon across cultures? Doesn’t a shared conception of right and wrong always depend, at some level, on cultural context?

This last exchange inspired us conference organizers, because it indicated that everyone in the room was focusing on important rule of law and professional integrity questions. The goal of this conference was to raise questions and stimulate thinking as much as to consider specific solutions. A feeling of consensus on the “big questions,” even across international borders, was encouraging.

Keynote Lunchtime Panel: Challenges of Running an International Law Firm

As attendees munched, an experienced Justice of the California Supreme Court, Carol Corrigan,¹⁹ moderated an energizing discussion between the leaders of two global law firms based in the United States. Jeff Stone is the Co-Chair of McDermott Will & Emery, a law firm comprised of over 1,100 lawyers spread among 22 offices in at least eight countries.²⁰ Peter Engstrom is General Counsel for Baker & McKenzie, an even larger global law firm with over 4,000 lawyers practicing in 77 offices in some 47 countries.²¹ What follows is a highly condensed and edited account of their discussion, which spanned over an hour.

Justice Corrigan: To some extent, professional ethics are reflective of the values found in the country where one practices. How does a global law firm manage professional ethical norms across multiple countries in which cultural norms differ?

Engstrom: We work on our firm-wide “corporate culture.” We have rules and internal discipline and we make our expectations clear to people that join our firm. We tell them “You can’t necessarily do what people in your home town are doing.”

Stone: In global law firms, a majority of lawyers or employees are likely not U.S. citizens, and much of our economic growth is outside the United States. But McDermott stresses a set of shared core values, and “a strong component of this is an ethical component.” We have produced a video distributed to all of our lawyers and employees entitled, “The Fabric of our Firm: Code of Conduct,” which speaks to shared, required norms at a high

19. Justice Corrigan, previously a California county prosecutor as well as trial and appellate judge, has been a force on the topic of lawyering ethics for decades. *See, e.g.,* Carol A. Corrigan, *On Prosecutorial Ethics*, 13 HASTINGS CONST. L.Q. 537 (1986).

20. *See Firm Overview*, MCDERMOTT WILL & EMERY, (Oct. 23, 2015, 3:52 PM), <http://www.mwe.com/about/uniGC.aspx?xpST=AboutUs> (United States, Belgium, China, France, Germany, Great Britain, Italy, and South Korea).

21. *See generally About Us*, BAKER & MCKENZIE (Oct. 23, 2015, 4:01 PM), <http://www.bakermckenzie.com/aboutus/>.

level of generality.²² We think “there is a business imperative there” and it is “the right thing to do.”

Justice Corrigan: When part of an international practice is a fear of “losing competitive advantage,” how are ethics a part of the business practice?

Stone: We stress long-term over short-term consequences. A bribe might get you a contract, but in the “long view,” it can cost you “hundreds of millions” in internal investigation and compliance costs.

Engstrom: We also believe that our clients want ethical, honest lawyers. Corporate client “shareholders demand that.” They too have “internal rules and codes of business ethics.”

Justice Corrigan: How do you operationalize your norms? President Kennedy once famously said that, in a large organization, “there is always some guy who does not get the word.”

Stone: Distributing the “Fabric” video and written code of conduct²³ firm-wide is one tool, as is talking about it frequently when firm leadership visits other offices. “A clearly articulated message” is vital, coupled with occasional internal discipline that is not “quiet and discreet” but rather well-publicized, at least within the firm. And we need to make sure that staff and staff leaders – not just lawyers – are part of the message because “you are most at risk in your weakest link.”

Engstrom: A written code is important; law firms have been “lagging a bit on that.” And face-to-face meetings and discussions are essential; we spend \$6 million – 10 million on an annual, firm-wide partners meeting. Training is also essential; we require compliance and ethics training for all.

22. See THE FABRIC OF OUR FIRM, <https://www.youtube.com/watch?v=CLJC-0fueTs> (last visited Oct. 23, 2015); See also THE FABRIC OF OUR FIRM, CODE OF CONDUCT, available at <http://www.mwe.com/info/code-of-conduct.html>.

23. *Id.*

Justice Corrigan: “Character is what you do when no one is looking.” How do you keep others on track?

Stone: Speaking of cultural norms, Americans don’t like to “rat out” others. But “we’ve found that, in almost every situation with an ethical lapse, there were persons who knew or were suspicious long before.” “We’ve tried to confront that question head on . . . You are expected to give voice to your concerns.”

Justice Corrigan: “Few people set out to be unethical” from the start. Instead, problems arise “in the moment.” How to address that?

Engstrom: “People are prone to error. Lapses have to be addressed promptly. Very few problems solve themselves with the passage of time” and “few clients like delay.”

Stone: The problems become “infinitely more complex” in a multi-jurisdictional practice. For example, we are now involved as lawyers in a world-wide cartel matter. Our lawyering team is led by a partner from Paris, with support from Japanese and other international lawyers. Simply communicating clearly and making sure that everyone understands what conduct is appropriate is essential. Setting up competent teams is vital. For example, “we tell our lawyers in China that they will be judged by international standards” as well as their own.

Engstrom: With most multinational clients, “they know the rules.” But if they want a lawyer who plays only by local ethical rules, then we tell them, “You need another counsel.”

Stone: Client counseling is difficult. There are some jurisdictions where we just won’t open an office “because we can’t be sure that McDermott standards will be met.” We may instead “affiliate” with local counsel. “These are real world business questions.”

Audience question: Do you work in countries with less well-developed legal systems to help develop missing elements or integrity components?

Engstrom: We do work in such countries, and we “bring our Western values and experience.” But we generally “don’t take an activist role in terms of trying to improve the system; that is not usually well-received.”

Stone: “Part of my job is to manage risk. There is no single client or engagement worth putting the entire firm at risk.” Russia, for example, has presented issues for us.

Dean Hillman²⁴ [from the audience]: How do you deal with the status of women attorneys worldwide?

Engstrom: “Twenty percent of our partners are women,” but “it is a struggle” in places where there is culturally-accepted discrimination (and cultural discriminations are not just along gender lines). “We try to be apolitical Our clients come first.” We have to “manage cross-cultural issues” and we adopt “aspirational targets.”

Stone: We have a somewhat higher percentage of women partners, but a two-tiered partnership model and in fewer countries. Meanwhile, “it’s not my job” to have the firm take an active role in “effecting rule of law changes.” As Peter said, we represent clients, and our role is “not to propound a political philosophy.” Still, at the same time, law firms do occupy a privileged position. We can choose to exercise our power, when it does not hurt our clients, in line with a moral obligation to see people operate within a rule of law ethic or system. “We have to stand for something more than just being hired guns.”

Engstrom: Finally, some norms are clear. When I am asked, around the world, “What’s your policy on bribes?” I say, “We

24. See *supra*, note 5 (Hillman background).

have one: we don't pay." But then, of course, some lawyers will ask me to "define 'bribe.'" There are no perfect 100% answers.

Conclusions After the Morning Panels

Following the fascinating and too-short lunchtime discussion of real-world challenges in managing transnational law firms, the conference shifted to the afternoon panels, which focused on addressing professional integrity challenges faced in the Judicial Branch. Discussions from the afternoon panels are summarized below.²⁵

Few specific conclusions can be drawn from the morning panels. But the apparent consensus on the need for professional ethical integrity among legal system actors and the desire for a "rule of law" system, in general, was reassuring. The challenges are real and complex, but there seems to be a shared desire across countries and cultures to establish some level of integrity norms for lawyers and judges, and a shared understanding that such professional integrity norms are relevant to furthering the rule of law. Appreciation of broader cultural norms and differences is essential to establishing professional ethical integrity. The increasingly global nature of law and legal practice presents real-world challenges, but it also presents opportunities. On the whole, the morning seemed a great success and foreshadowed further progress to come.

25. Morris Ratner, *Judicial Ethical Integrity: Challenges and Solutions*, 39 HASTINGS INT'L & COMP. L. REV. 149 (2016).