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POINT OF VIEW

Re-thinking Retirement

BY WHITNEY NORTH SEYMOUR JR.

Life is short. It is up to you to make it sweet.

Sadie Delaney at age 102

A few months ago, my wife and I went to a dinner party in honor of a friend's 70th birthday. Seated at our table was a college classmate I had not seen for many years. He used to head the litigation department at a major New York City law firm. Under the firm's partnership agreement, he had been forced to retire at 65, and he and his wife had moved to the Florida Keys, where he goes swimming every day. Both he and I are now in our late 70s. At 10 p.m. my wife reminded me that it was time to go home. "You've got to go to the office in the morning," she said. My classmate looked up in surprise. As we shook hands, he asked me if I still worked as a lawyer.

When I said "Yes," his response was pained: "How I envy you."

I have visited Florida on occasional trips over the years. I have seen the many manicured condominium communities behind chain-link fences with uniformed security guards, some of them with swimming pools and golf courses. The sight always gives me a chill. A self-imposed prison sentence.

At the 50th reunion of my law school class in 2000, I listened with sadness as talented lawyers – once so full of promise – talked about going shopping at the supermarket every day or so, and taking alumni group tours to St. Petersburg or the Greek islands. All I could think of was the colossal waste of years of experience and expensive education that could have been put to use to help real people with real problems, whom our system of justice has failed.

I "retired" 19 years ago from the Wall Street firm where I had worked for 30 years. Since then, I have spent full-time working every day in my own

two-partner law office, representing real people; rarely charging a fee; and having the most exciting and enjoyable professional experience of my life.

Along the way, I learned by trial and error how to overcome the economic obstacles that make law so costly that ordinary people simply cannot afford to hire legal counsel. Our law firm often does not make money – neither do golfers – but the excitement, variety and challenge of this form of "retirement" beats any easy life in a retirement community where one can only look forward to boring oneself to death.

We are located in low-rent space in the old fur district of Manhattan, just south of Penn Station. The area is not elegant, but it is colorful. Our clients know right away that ours is not a "boutique" law practice, but a shirt-sleeves operation. However, we almost always have fresh flowers in a vase near the entrance, and we take time out for tea every day. There also are lots of interesting paintings and objects to look at around the office – including our library, which is made up mostly of history books, very few legal treatises.

Our part-time legal secretaries are the best in the business – fast, smart, and experienced. They turn out beautiful pleadings and briefs – which sometimes may be thinner on the law, but are stronger on the facts and always look like a million dollars. Our papers get out right on schedule – we never ask for adjournments, even when that means working nights and weekends to get things done.

It is amazing how much you can help people simply by writing a letter on a law firm letterhead. Our very first fee was two bottles of Irish whiskey from a local grocer after we helped him collect an overdue account from the estate of a deceased customer, just

by writing a letter to the executor demanding an accounting.

My partner has found time to serve a two-year term as President of the New York County Lawyers' Association and to teach a course at New York Law School. I spend a lot of my time on non-profit activities, helping start-up groups get things accomplished, and providing them with free legal services.

We practice law on "first principles" – to borrow the phrase of the late U.S. Supreme Court Justice Robert H. Jackson, who practiced for many years as a small-town lawyer in Jamestown, N.Y. When we get into a new matter, we interview the client thoroughly until we know all the facts. Next, we go to the bar association library, spend several hours browsing through treatises until we find the legal theory that fits. Then we go to work drafting a complaint. If we are off-base, our adversary educates us soon enough with a motion to dismiss. We then make the necessary corrections in our legal theory and go for broke. While our first-impression legal theories may be shaky, we are always solid on our facts.

We never flinch from tough cases – indeed the tougher, the more enjoyable the challenge. Of course, we lose many of them. But the client knows we did our best, and they have had their day in court. We do not get fees in these cases, but we do get hand-written thank you letters.

We are generalists. We have learned that you do not need to specialize. Some of the legal fields which we have litigated include: civil rights law, class actions, consumer fraud, copyright infringement, derivative shareholders' suits, domestic relations law, ERISA law, FCC regulations, general business law, landlord-tenant, Lanham Act, Medicare regulations, SSI law, software piracy, and trust accountings.

In their book, *Having Our Say*, the two elderly Delaney sisters said that when they were children they learned from their minister father a family motto, which they had always followed: "Your job is to help somebody." Lawyers who apply that same precept to a small, low-overhead law practice, instead of playing golf every day, can find true happiness in their "retirement" years.

Here are the practical operating principles we have learned through our own hands-on experience at Landy & Seymour:

Prerequisite You must have sufficient retirement income and/or savings to cover:

1. Family living expenses and taxes.
2. Office overhead and staff salaries (for a year or even two, if necessary).

Operating Principles

1. Represent only individuals you like and respect. Limit commercial corporations.
2. Satisfy yourself that your client is in the right. You should believe strongly in the justness of his or her cause.
3. Never charge a fee for the initial interview with a prospective client; that will only screen out the most deserving cases that really need your help.
4. Prepare a retainer letter agreement immediately after your initial conference with the client, clearly spelling out fee arrangements. Have the client sign duplicate originals, one for you and one for the client.
5. Do not expect to charge fees directly to the client. This will give you an immense tactical advantage against "scorched earth" adversaries who think they can stop you in your tracks by increasing your client's legal costs.
6. If possible, plan litigation so you will be eligible for court-awarded fees (class action, EAJA, civil rights, qui tam, etc.) or so you can share in any recovery on a contingent-fee basis. You will need occasional infusions of cash flow to cover support staff salaries, disbursements and office expenses.

Peter Zenger's Lawyer

In 1735, when journalist John Peter Zenger was prosecuted in the Colony of New York for libeling the Royal Governor, local counsel were disbarred for challenging the court's jurisdiction. Andrew Hamilton, Esq., was imported from Philadelphia to replace them. Hamilton successfully tried the case and won his client's acquittal from the trial jury, establishing the principle that truth is a complete defense to a charge of libel – a major landmark in the history of Freedom of the Press.

Hamilton was 80 years old at the time. He represented Zenger without fee. The author of the accompanying article urges modern-day lawyers to follow Hamilton's example.

7. Form a two-member partnership or make some other arrangements with another lawyer you respect so you will always have a colleague available to brainstorm and discuss legal and tactical questions.

8. Do not be afraid to base your legal theory on "first principles" of justice and fair play. Your adversary will educate you on adverse case precedents soon enough and you can amend accordingly. Do your legal research at bar association libraries; do not invest heavily in law books; use LOIS, not Westlaw.

9. In most cases you will be representing plaintiffs, and you should therefore adopt a plaintiff's mentality – *always* meet court deadlines; *never* request adjournments. Move your cases along as quickly as possible (this will still take forever!).

Administrative Matters

1. Rent or borrow office space outside of your home, with minimum overhead, using phone answering system, fax and e-mail technologies. Keep costs down.
2. Arrange access to top-flight typists for pleadings, motions and briefs – or type them yourself.
3. Enlist your secretary, spouse or a family member to serve as office administrator and keep you current with payment of monthly bills for rent, telephones, FedEx, messengers, etc.
4. Keep complete daily time charges and records of disbursements, using one of the available computer software programs like *Time Slips* so you can

prepare fee applications on short notice that are 100% accurate and self-explanatory. Record hourly charges at current market rates for lawyers in big firms with your level of experience.

5. If and when (if ever) you receive a substantial fee award from the court or in a settlement, reward yourself and your family with a vacation trip or a new car.

6. Share any good fortune with your staff by paying generous bonuses.

Professional Pleasures

1. Contribute time and effort to your favorite bar association.
2. Find CLE teaching opportunities to interact with younger lawyers.
3. Make it a habit to work nights and weekends whenever necessary to keep on top of complex cases.
4. Take time for at least one real vacation each year.
5. Contribute work and ideas to non-profit and community organizations that can benefit from your efforts, especially those involving history and education-related programs.
6. Read history books and biographies to broaden your perspective, enrich your supply of anecdotes, and keep your mind alert.

WHITNEY NORTH SEYMOUR JR. graduated from Yale Law School in 1950 and went to Simpson Thacher & Bartlett in New York City, from which he retired in 1983. He has also served as U.S. attorney for the Southern District of New York and in other public offices, and as president of the New York State Bar Association.