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Interview With Former Bankruptcy Judge David E. Nims, Jr.—Part II

Patrick Mears conducted this interview on November 17, 1999. This is the second portion of that interview.

INTERVIEWER: After you were discharged from the Army, what did you do?

JUDGE NIMS: I returned to Kalamazoo after I came back from Europe in October, 1945, and rejoined my old firm, Jackson, Fitzgerald, Dalhm, Nims, Safe & Wheeler. Bob Woodhams, a patent lawyer, was also a partner in the firm before the war but didn't return to the firm after the end of the war. I worked closely with Francis Sage, who taught me much about the practice of law when I returned. I practiced law with my firm until 1955, when I was appointed as Bankruptcy Judge here in the Western District of Michigan.

INTERVIEWER: Could you describe the circumstances of your appointment to the position of Bankruptcy Judge here in the Western District of Michigan?

JUDGE NIMS: At the time, I was a United States Commissioner in this judicial district. This was an appointed position and, as a Commissioner, I handled criminal matters and not many high profile ones. I had no jurisdiction to conduct a trial, but could handle preliminary hearings in criminal cases. The problem was that, back then, the United States Attorney preferred to use the grand jury system in most of these cases, so I had no role in them. I did have jurisdiction over petty offenses and would dispose of them after conducting a hearing. For example, I presided over some "Peeping Tom" violations that occurred at the Percy Jones

VA Hospital in Battle Creek. I also would try traffic violations that took place on the grounds of the Fort Custer Army Base. In this role, I became acquainted with Federal District Judge Raymond W. Starr.

Judge Starr and Judge Kent were the only two federal judges in this district back in 1955. Judge Starr was a Democrat and Judge Kent was a Republican. They had the power to appoint bankruptcy referees, the precursor of bankruptcy judges. Since there were two referees here at the time, Judge Starr would appoint one of them and Judge Kent the other.

In 1955, I received a telephone call from Judge Starr and can still remember the exact words he used in that conversation. He said, "Dave, this is Judge Starr. Judge Kent is in my office; and we want you to be the referee to serve along with Chester Woolridge. If you have any hesitancy about accepting this position, then don't talk about it with anyone. We don't want a lot of people calling for the job." I told Judge Starr that I wanted to talk about this with my wife, family and law partners. He said, "OK, and when you make your mind up in a couple of days, call me back."

I was very reluctant to accept this position because I had a very thriving practice back then. I had been President of the Kalamazoo Bar Association and was serving on the Board of Education for the Kalamazoo School District. I was really integrated into the community. But, my

family really wanted me to take the job and move to Grand Rapids, which surprised me. My law partners tried to convince me to stay. I was the only lawyer in the firm doing trial work and we were handling a large volume of cases for AAA of Michigan.

INTERVIEWER: What were your first reactions to this change in your life?

JUDGE NIMS: Well, I wasn't really keen about it at first. I had my own friends. If I walked down the street in Kalamazoo, I would always run into a few of them. Since my wife had been a school teacher, I was very interested and involved with the Kalamazoo city schools. Also, the job didn't pay that well. I had to take a cut in salary when I became a referee. Judge Starr promised me, however, that within one year, my salary would be increased to \$10,000. He came through on

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that promise and, every year after that, I received a raise.

Before 1944, when referees began to be paid a regular salary, they were paid based upon the amount of monies that were brought into each bankruptcy estate. From that sum, you had to pay your staff and the costs of running your courtroom. Before World War II, that was a pretty lucrative job because of the number of bankruptcies but the war brought prosperity and the number of filings decreased. Chester Woolridge at one time had a plush courtroom in the Michigan Trust Building but, by the time I was appointed, we had our courtrooms on the Fourth Floor of the old Federal Building, which is now the Grand Rapids Art Museum.

INTERVIEWER: How were your offices in the old Federal Building?

JUDGE NIMS: Well, the seats in my courtroom were noisy theater seats. But my office had a heavenly view, looking over all of downtown Grand Rapids. There was black paint over my transom and the space was divided between in two;

one section for my secretary and one for me. There was no air conditioning and they told me that I couldn't get any installed. It was a good thing that I had been brought up in the South because the summer heat didn't bother me.

INTERVIEWER: When did you move to the new Federal Building?

JUDGE NIMS: I moved there in 1972 to my offices on the Seventh Floor. Judge Benson was the other bankruptcy judge at the time and he, like me, had an understanding of architecture. So, both of us worked with the architects in designing our offices there.

INTERVIEWER: What did you enjoy most about being a bankruptcy judge?

JUDGE NIMS: I thought that I could do some good as a bankruptcy judge. I remember advising individual Chapter 7 debtors at their discharge hearings. I took these people under my wing. They would listen to you and hopefully not come back, that they learned their lesson. When I first came on the bench, there was little that I

could do to help them since creditors could harass debtors after their discharge. In 1973, with the adoption of the Federal Rules of Bankruptcy Procedure, the automatic stay came into being, which gave them additional protection.

INTERVIEWER: What advice would you have for young bankruptcy attorneys?

JUDGE NIMS: I would tell them that, unless they understand the purpose and history of bankruptcy, they won't be able to represent their clients as effective as they could. They also must advise their clients of all of their rights as a debtor under the Bankruptcy Code. The lawyer has to be a combination of priest, social worker, detective, psychiatrist, and economist as well as being a lawyer. You will need to relieve your client from fears and anxieties as much as possible but also make it clear to the client that there are certain duties that the client must fulfill as a debtor. You also shouldn't oversell the relief bankruptcy affords. ■

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Strategic Planning For Midsized Law Firms—Part 1

By Professor Carol Sánchez
Grand Valley State University

This article is based on a presentation given to the Grand Rapids Association of Legal Administrators on November 16, 1999.

It is always dangerous to try to speak intelligently about someone else's business, and midsized law firms are no exception. The good news is that strategic planning usually begins with people in their own organizations pulling together information that they already know, and reconfiguring it in a way that makes new sense. What I will try to do is help you understand the strategic thinking process, and convince you that strategic thinking can be important to midsized law firms.

This is certainly a timely topic. The future of the mid-sized law firm was discussed last November in Washington at a meeting of the Committee on Law Firm Management of the ABA Business Law Section. People asked, what will happen to midsized law firms? Will they merge or be merged? If they do will they lose their culture? Should large firms as well be concerned about consolidation, particularly as accounting firms encroach?

Law firms are incredibly interesting. They are very different from, say, manufacturing firms. First of all, law firms provide intangible services. Second, the production and delivery of legal services are usually difficult to separate, and the provision of legal services can sometimes be uneven. Third, law firms are quite flat organizations with partners and associates acting as independent agents, such that managing members of a law firm is likened to herding cats. Fourth, the work they do is highly information based yet very people oriented. That is very different from your average manufacturer.

Next, let's examine some trends that are affecting law firms. Here in Grand Rapids, business trends include the growth of health and life sciences industries, the consolidation of health care providers, the consolidation of banking and financial services, and the growth of E-commerce and telecommunication industries. And specifically in the legal services, globalization and competition is putting pressure on firms to grow through mergers, acquisitions, and alliances. Ernst & Young recently announced it will finance a law firm in Washington, DC to be called McKee Nelson Ernst & Young. The alliance will offer "integrated professional services" to clients of both the accounting and the law firm -and probably force a ruling from the American Bar Association on the ethics issue of multidisciplinary practice.

The key question is, are these trends opportunities or threats? Are they good news or bad news for your firm? Does your firm have what it takes to respond, survive, and most of all lead in the wake of these trends?

Here is where strategic thinking can be useful. Strategic thinking emerged in the 1950s when wartime leaders left the military to staff US companies. Strategy became de rigeur from 1960 through the mid-1980s, focusing on growth, environmental opportunities, firm strengths and weaknesses, and the

idea that a firm must take a distinct position vis a vis its industry competitors. But the economic slump of the late 1980s led to the departure of strategists, as companies downsized rather than grew. Strategy rebounded in the prosperous 1990's, as firms began to refocus on growth, global positioning, and the idea that they must develop unique and hard-to-imitate core competencies that create value for customers.

Today, competitive analysis remains an important part of strategic thinking. Competitive analysis first looks at trends in the external environment, as we did earlier in this article when we discussed regional business trends and the challenges facing law firms nationwide.

Competitive analysis then examines the internal workings of the firm. To do this, a law firm needs to look inside itself and explore its tangible and intangible resources. Who are the people? What are their skills? What are our fixed assets? Next, the firm should ask if its resources combine to give the firm any particular capabilities. For example, does the combination of our practice areas with our locations within the state give us a special ability to serve our clients? Finally, are these capabilities so unique to us, so influenced by our culture or by our style of delivery, and so impossible for other firms to imitate that we are leaders? If so, then the firm has what is called a core competency that creates a source of sustainable competitive advantage for the firm.

When the competitive analysis is complete, a firm may be able to articulate WHAT its strategy is. Here is one. "Our strategy is to target X clients in Y industries and serve them with Z services." Now, there is nothing wrong with this. But it is only the starting point, and it is the easy part. Like most everything else we do, the devil is in the details. And the details are in HOW this strategy is implemented.

Perhaps a partner or an associate will suggest that the strategy can quite easily be implemented by opening new offices, or by hiring new people in practice areas the firm is not yet serving. Indeed, these are common ways of implementing the strategy.

But these ways are not necessarily STRATEGIC. They are not likely to bring you sustainable competitive advantage, because other firms are doing these same things. And if other firms are doing them, then your firm will not be a leader. The firm that wants to lead must create competitive advantage by coming up with new actions that will make its services more valuable to clients than competitors' services. The firm that wants to lead must develop unique core competencies that translate into unique and creative ways of doing things, especially those things the firm has always done and will always do.

Next month, I will talk about how a midsized law firm might find new ways to become more valuable to its clients. ■

AMENDMENTS TO THE FEDERAL RULES OF PRACTICE AND PROCEDURE

On December 1, 1999, the amendments to the Federal Rules of Bankruptcy, Civil, and Criminal Procedure, approved by the Supreme Court on April 26, 1999, will take effect, including:

- * Bankruptcy Rules 1017, 1019, 2002, 2003, 3020, 3021, 4001, 4004, 4007, 6004, 6006, 7001, 7004, 7062, 9006, and 9014;
- * Civil Rule 6(b) and Form 2; and
- * Criminal Rules 6, 11, 24, and 54.

The amendments are contained in House Documents 106-53, 106-54, and 106-55. In accordance with 28-U.S.C. § 2074(a) and the April 26, 1999 orders of the Supreme Court, the pertinent amendments will govern all proceedings commenced on or after December 1, 1999, and "insofar as just and practicable" all proceedings then pending. The text of the amended rules can be found in various computer-assisted legal research databases.

LE MOT JUSTE

As we approach the end of this year, I would like to wish all of you a happy, healthy and safe holiday season and to welcome in the new year with you. These coming years will undoubtedly usher in new changes to our legal world, such as the possibility of multidisciplinary practices and rapid changes in technology. Even so, I hope that the spirit of professionalism and courtesy continues to thrive among the members of our legal community here in West Michigan. We work best as lawyers when we work together to solve common problems. ■

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