NABRICO conference

September 28-30, 2011 | Asheville, NC

2011

NABRICO Conference

Asheville, NC

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AGENDA

Wednesday September 28, 2011

Pub Crawl and Tour of Downtown Asheville
Vanderbilt Wing Bus Parking
(Ticketed event)

Welcome Reception
Sammons Balcony

Claims Dinner
Grovewood Café – pay on your own

Thursday, September 29, 2011

Breakfast & Lunch
Heritage B Ballroom

Conference
Heritage A Ballroom

frameWorks Owners Meeting
Laurel Suite

Biltmore Estate Tour & Dinner on the Grounds
Vanderbilt Wing Bus Parking
(Ticketed event)

Friday, September 30, 2011

Breakfast & Lunch
Heritage B Ballroom

Conference
Heritage A Ballroom

CEO Luncheon/Board Meeting
Dogwood Suite

Round Table Discussions
Claims – Heritage A
Underwriting – Laurel FG
Loss Prevention/Risk Management – Laurel HJ
Finance – Dogwood DE

Farewell to Friends
Sammons Balcony

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Grove Park Inn

Wednesday September 28, 2011

4:00 – 7:00 PM **Registration** – *Sammons Front Desk*

4:00 – 6:00 PM **Pub Crawl & Tour of Downtown Asheville** – *Vanderbilt Wing Bus Parking*

Pub Crawl & Tour of Downtown Asheville Transportation Schedule	
3:45 PM	Meet at Vanderbilt Wing Bus Parking
4:00 PM	Depart Grove Park Inn for the Thirsty Monk
5:45 PM	Pickup at Lexington Avenue Brewery for return to Grove Park Inn

6:00 – 7:30 PM **Cocktail Reception** – *Sammons Balcony*

7:45 – 10:00 PM **Claims Dinner** – Grovewood Café

Thursday, September 29, 2011

8:00 – 8:45 AM Breakfast – *Heritage B Ballroom*

8:45 – 9:00 AM **Welcome to North Carolina –** *Heritage A Ballroom*
Daniel M. Zureich, President & CEO, Lawyers Mutual NC

9:00 – 10:15 AM **Uncertainties in the Legal Profession: Law Firms in Transition –** *Heritage A Ballroom*
Thomas S. Clay, Altman Weil, Inc.

Altman Weil, Inc. is well known for providing management consulting services exclusively to legal organizations. Tom Clay, a principal with 30 years of experience, will identify the most important dynamics that will impact law firms during the next decade.

10:15 – 10:30 AM Break

10:30 – 12:00 PM **Social Media: Why and How? –** *Heritage A Ballroom*
Becky Graebe, Internal Communications Manager, World Wide Marketing, SAS; Erik Mazzone, Director of Center for Practice Management, NC Bar Association; and Lee Rosen, Rosen Law Firm

Are you using social media to communicate with your insureds? Are your insureds using social media? This session will discuss how a business can benefit from using social media along with the risks and ethics concerns that arise.

12:00 – 1:00 PM Lunch – *Heritage B Ballroom*

1:00 – 2:15 PM **Legal Trends: Impact on Our Insureds and Companies –** *Heritage A Ballroom*
Stephanie L. Kimbro, Kimbro Legal Services; Erik Mazzone, Director of Center for Practice Management, NC Bar Association; and Thomas C. Grella, McGuire, Wood & Bissette, P.A.

The panel will discuss risks and ethics of such trends as cloud computing, virtual law practice, and unbundled legal services.

2:15 – 2:30 PM Break

2:30 – 3:30 PM **Economic Outlook –** *Heritage A Ballroom*
Mark Vitner, Managing Director, Senior Economist, Wells Fargo Securities, LLC

Mark is responsible for tracking U.S. economic trends and his commentary has been featured in the New York Times, Wall Street Journal, Bloomberg, and many other publications. He was named one of North Carolina's 50 most powerful people in *Business Leader* magazine.

3:30 – 4:30 PM **Owners Meeting –** *Laurel Suite*

5:00 PM **Buses Leave GPI for the Biltmore Estate**

5:30 – 7:00 PM **Tour of Biltmore Estate**

The French Renaissance château, built by George W. Vanderbilt between 1889 and 1895, has 250 rooms and expansive gardens. This is one of the largest and most impressive privately owned historic estates in the world.

7:00 – 9:30 PM **Dinner with Keynote Speaker, Deerpark Restaurant, Biltmore Estate Property**
John S. Stevens, Roberts & Stevens. P.A.

Jack Stevens, former Lawyers Mutual board member, has represented the Cecil family (Vanderbilt descendants) for over 30 years. Jack will provide an inside look at the business of managing the largest home in America.

BILTMORE EVENT TRANSPORTATION SCHEDULE

4:45 PM	**Meet at Vanderbilt Wing Bus Parking**
5:00 PM	**Depart Grove Park Inn for Biltmore Estate**
5:30 PM	**Arrive at Biltmore Estate**
9:30 PM	**Departure for the Grove Park Inn**
10:00 PM	**Arrive at the Grove Park Inn**

Friday, September 30, 2011

8:15 – 8:45 AM	Breakfast – *Heritage B Ballroom*
8:45 – 9:45 AM	**ERM From a Small Company Perspective –** *Heritage A Ballroom* R. Jason Cook FCAS, ASA, MAAA, Managing Director, Aon Benfield This session will explore Enterprise Risk Management considerations for smaller companies, including capital management and rating agency considerations.
9:45 – 10:00 AM	Break
10:00 – 11:30 PM	**Anatomy of a Legal Malpractice Case –** *Heritage A Ballroom* E. Fitzgerald Parnell, T. Richard Kane and Cynthia L. Van Horne, Poyner Spruill LLP and Barbara B. Weyher and Dan J. McLamb, Yates, McLamb & Weyher, LLP Lawyers Mutual defense counsel will discuss claims and underwriting issues, ethical problems and potential red flags that presented during two recent cases.
11:30 – 12:30 PM	F**inancial Issues Impacting Mutual Companies –** *Heritage A Ballroom* Deborah Lambert, CPA, CPU, Managing Partner, Johnson Lambert & Co. LLP Johnson Lambert & Co. LLP, a multi-office CPA firm, is the U.S.'s largest insurance-focused audit firm. Debbie Lambert will discuss financial issues impacting mutual companies.
12:30 – 1:30 PM	**Lunch** – *Heritage B Ballroom* **CEO LUNCHEON/BOARD MEETING** – *Dogwood Suite*
1:30 – 3:00 PM	**The Duke Lacrosse Case from the Rear View Mirror –** *Heritage A Ballroom* Douglas J. Brocker, Brocker Law Firm Doug was a former N.C. State Bar (NCSB) staff attorney who was privately retained by the NCSB as a special prosecutor in the disciplinary case against the Durham County District Attorney, Michael B. Nifong, who pursued the Duke Lacrosse case. Mr. Nifong was disbarred after a nationally-televised disciplinary trial. Doug's closing argument was covered live on CNN, Court TV and other media outlets.
3:00 – 3:15 PM	Break
3:15 – 4:30 PM	**Roundtables** A. Claims **–** *Heritage A Ballroom* B. Underwriting – *Laurel FG* *C.* Loss Prevention/Risk Mgmt – *Laurel HJ* D. Finance **–** *Dogwood DE*
6:30 – 9:30 PM	Dinner On Your Own
9:30 – until	**Farewell to Friends –** *Sammons Balcony* Sammons Balcony

Special thanks to

AON BENFIELD

for sponsoring the Biltmore Estate Reception and dinner.

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Special thanks to

p.s.
Poyner Spruill LLP
ATTORNEYS AT LAW

for sponsoring the Thursday lunch.

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Special thanks to

NORTH CAROLINA
BAR ASSOCIATION
SEEKING LIBERTY & JUSTICE

for sponsoring the Thursday afternoon break.

NABRICO conference
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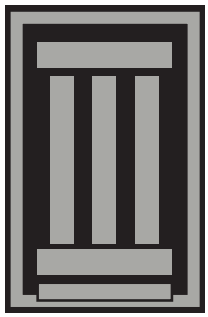
Special thanks to



Yates, McLamb & Weyher, L.L.P.

Attorneys At Law

Excellence & Integrity

for sponsoring the Friday breakfast.

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Special thanks to

JOHNSON LAMBERT

CPAs AND CONSULTANTS

for sponsoring the Friday lunch.

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2011
Law Firms in Transition
An Altman Weil Flash Survey

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Contributing Authors

Thomas S. Clay

Eric A. Seeger

Altman Weil, Inc.
The leader in legal consulting.

Law Firms in Transition 2011

The Altman Weil **Law Firms in Transition Survey 2011** finds confidence high among US law firm leaders in firms of all sizes. Overall economic performance is rebounding, with two thirds of all firms surveyed reporting increases in gross revenue in 2010 and nearly three quarters reporting increases in revenue per lawyer and profits per equity partner. Standard hourly billing rates are up significantly this year, with firms reporting or planning a median 4% increase in billing rates for 2011. Continued reductions in overhead costs and the strategic shrinking of firms' ownership ranks are contributing to profitability.

However, if firms are finding their feet again post-recession, it is on new ground with a number of new factors in play. And although large majorities of law firm leaders seem to recognize those changes, it's not yet clear whether they will be able to manage them effectively.

Conducted in April and May 2011, the survey polled managing partners and chairs at 805 US law firms with 50 or more lawyers. Completed surveys were received from 240 firms including 38% of the 250 largest US law firms.

Economic Performance and Pricing

When asked about 2010 economic performance, 66.5% of firms reported an increase in gross revenue in 2010 compared to 46% that experienced revenue growth in 2009. Revenue per lawyer was up in 73% of firms, compared to 47% of firms in 2009, and profits per equity partner were up in 73% of participating law firms compared to 56% in the prior year. Rounding out the positive economic picture, 53% of firms reported overhead cost reductions in 2010 – a majority of firms but less than the 69% that reduced expenses in 2009.

Ninety-five percent of firms surveyed have increased or plan to increase their billing rates in 2011. The median increase will be 4% – a number that holds across all firm size categories. Additionally, 97% of firms expect their effective realized rate to increase or remain the same in 2011.

Although annual rate increases are rising again – from a median 3% reported in the 2010 survey – most firms recognize that rates alone can no longer be relied on to drive profitability. Pressure from clients to control costs and more price-based

competition will make achieving efficiency and productivity gains key to growing law firm profitability at a pace significantly higher than inflation.

Alternative Fee Arrangements

Alternative fee arrangements (AFAs) are used by 95% of all law firms, and by 100% of firms with 250 or more lawyers. The amount of non-hourly billing in 2010, measured as a percentage of revenue, increased in 58% of all firms, and in 81% of firms with 250 or more lawyers.

Despite the prevalence and growth of alternative fees, only 12% of firms reported that non-hourly projects are more profitable than hourly billing. An additional 37% reported them to be about as profitable as projects billed on an hourly basis.

Two thirds of law firms reported that their use of AFAs is primarily reactive in response to client requests, while only a third offer AFAs proactively as a means of creating competitive advantage. Firms that are proactive in their pursuit of non-hourly business were more than twice as likely to report higher profitability on non-hourly projects compared to firms that are reactive.

Clients are not monolithic in their desire for alternative fees. But firms that preemptively think through issues of internal efficiency, including project management, knowledge management, new technology resources, and staffing and outsourcing options, will be prepared to deliver projects more profitably under client-initiated AFAs or to offer such arrangements to clients and prospects.

A majority of firm leaders expect current pricing trends to be permanent. Fifty-seven percent expect smaller annual billing rate increases going forward; 75% of all respondents believe there will be more non-hourly billing in the future; and 90% think more price competition is a permanent market change.

However, taking all of that into consideration, only 16% of firm leaders expect permanently lower profits per partner.

Partners and Partnership

Cuts of equity and non-equity partners will continue in 2011, but at a reduced pace from 2010. Overall, about one third of all law firms reported removing non-equity

partners in 2010 and more than a third removed equity partners. In 2011, 17% of firms plan to cut equity partners and 21% expect to cut non-equity partners.

Large firms were much more likely than smaller firms to reduce their partnership ranks in 2010 and are more likely to do so again this year. In firms with 250 or more lawyers, 56% cut equity partners and 61% cut non-equity partners in 2010. Twenty-seven percent plan to make cuts to their equity partner ranks in 2011 and 48% will reduce their non-ownership tiers this year.

Firms are taking additional steps to control the number of owners. Twenty-seven percent of firms de-equitized partners in 2010 and 16% will do so in 2011. Thirty-two percent of firms made fewer partnership offers in 2010 and 18% will do so in 2011. Larger firms are more likely to take these actions than smaller firms.

In 2009 and 2010, law firms cut personnel from the bottom up, with non-lawyer staff and associates taking the brunt of reductions. This year, cuts will be fewer and more evenly distributed. Many firms will take a hard look at unproductive and under-productive partners and make strategic cuts to improve firmwide productivity and profitability.

Fifty-seven percent of firms expect to have more owners in their law firms five years from now; 27% predict that their total number of owners will remain unchanged; and 15% expect to have fewer equity partners in 2016. For non-equity partners, the five-year outlook is similar: 51% of firms predict growth in their non-equity tier, 30% believe their number of non-equity partners will remain about the same, and 10% of firms expect to employ fewer lawyers in this category in 2016.

Sixty-eight percent of all firm leaders believe that fewer equity partners will be a permanent trend in the profession, up 5 points from 63% last year.

Although the majority of leaders still anticipate growth in their own firms, these numbers seem to indicate an attitudinal shift in a profession that has long been wedded to the ‘growth imperative.’ The idea that getting bigger will always equate to getting better is no longer as prevalent. Firms realize that any move to get bigger must be paired with a strategy to improve the firm’s competitive position and performance.

Law Firm Growth

Law firms are combining cuts of underproductive partners with selective growth, according to the survey. Again this year, the top two growth options firms will pursue are the acquisition of laterals and the acquisition of groups. Ninety-two percent of all law firms, and large majorities in every firm size category, plan to acquire laterals in 2011. Sixty-seven percent will also work to acquire groups of lawyers.

When asked whether lateral partners hired over the last five years were still with their firms, law firm leaders reported a median retention rate of 90%. The retention rate varied inversely with law firm size, with smaller firms reporting greater retention. Firms with 1,000 or more lawyers had the lowest median retention rate (78%), while firms with 50-99 lawyers reported the highest median retention rate (98%).

Firm leaders also estimated what percentage of lateral partners were contributing at the level the firms had anticipated when the laterals were hired. About a quarter of law firms reported that more than 80% of their laterals are meeting expectations. Another forty percent say that 61%-80% of their laterals are contributing at a satisfactory level. The balance of firms had success with 60% or less of their lateral partner hires.

Clearly many law firms can improve their return on lateral hires. Considering the time and money firms invest in the process, a baseline benchmark for lateral success should be at least 80%. In the future, we expect firms to devote more attention to the specifics of lateral portfolios, including detailed profitability analyses, and to manage their recruitment, integration and cross-selling efforts more rigorously.

After a two-year slowdown in the law firm merger and acquisition market, 23% of firm leaders indicated that they will try to acquire a law firm in 2011. An additional 19% are considering an acquisition. In firms with 250 or more lawyers, 42% will pursue a suitable acquisition in 2011 and 19% more might do so. When asked about a merger of equals, 6% of all firms and 9% of firms with 250 or more lawyers indicated they would pursue that growth option. As with the addition of laterals and groups, the key to successful mergers and acquisitions going forward will be the sophisticated analysis of potential productivity and profitability in the newly combined firm.

Associates

Things are looking up for associates in 2011, with 87% of law firms planning to add associates to their ranks in 2011. Overall, only 18% of firms plan to remove associates this year, down from 42% in 2010. In firms with 250 or more lawyers, 36% plan to remove associates in 2011, compared to 61% that did so in 2010.

Looking at a five year horizon, 78% of firms expect to have more associates in 2016; 14% think they will have the same number; and, only 4% predict that they will have fewer associates in 2016 than in 2011.

Associate programs are still under some pressure. Last year 45% of firms reduced or discontinued hiring first-year associates; this year 22% plan to do so. Sixty-two percent of firms shrunk summer programs in 2010 and 33% will shrink summer programs this year.

Forty percent of law firm leaders expect that reduced first-year classes will be a permanent change in the marketplace. Forty-five percent expect leverage to be permanently reduced in US law firms.

However, those associates who are hired and retained should expect to see their salaries bounce back. Only 18% of law firms surveyed think reduced associate salaries will be a permanent trend, down from 32% that thought so last year.

The future of law firm associates is far from resolved. Most firms would like to continue the traditional (and profitable) associate leverage they enjoyed in the past. The challenge will be to find the right balance of work volume, billing rates, training, development, evaluation, and compensation – all in the context of a longer, narrower partnership track.

Non-traditional Resources

Use of contract and part-time lawyers is on the rise in law firms. In 2010, 31% of all firms added contract lawyers and 28% added part-time lawyers. This year 21% of firms plan to add contract lawyers and 19% will add part-time lawyers. The survey found staffing trends varying with firm size, with larger firms much more likely to add lawyers in these categories.

Overall, 44% of firms used contract lawyers in 2010; 59% will do so in 2011 or are considering it. Sixty percent of firm leaders expect that the increased use of contract lawyers will be a permanent trend, up from 52% last year.

Outsourcing of legal work is very slowly gaining traction in the legal profession, particularly in larger law firms. Only 4% of all firms outsourced legal work in 2010 and 5% plan to do so in 2011. In firms with 250 or more lawyers, 8% outsourced legal work in 2010 and 11% will do so in 2011.

Despite limited adoption to date, 41% of all firms believe that outsourcing legal work will be a permanent part of the new legal market. Seventy percent think that competition from non-traditional (including non-lawyer) service providers is also a permanent trend.

Law Firms in Transition

As the economy stabilizes, the imperative for change in the profession may seem less urgent to some law firms. We asked firm leaders to assess the pace and permanency of recent legal market trends as well as their level of confidence in meeting the challenges presented by change.

Twenty-two percent of firm leaders believe that the recent recession was a game changer from which there's no going back. An additional 44% see it as a permanent accelerator of trends and expect the heightened pace of change to continue. But a third of respondents are not convinced: 28% feel that the recession was only a temporary accelerator of existing trends; and 6% (all in firms under 250 lawyers) think it was simply a disruption.

Leaders expressed considerable confidence in their firms' ability to keep pace with change. On a scale of zero (not at all confident) to ten (completely confident), firms indicated a median confidence rating of eight, consistent across all firm sizes.

Firms were asked to identify areas where they were most concerned about their preparedness to deal with change. The top issue, identified by 47% of all firms, was the retirement and succession of Baby Boom lawyers in their law firms. The second, third and fourth areas named were all economic issues: continuing growth in profitability (44%), erosion of demand (35%), and pricing pressures (35%).

Systematic improvement in practice efficiency was fifth on the list of concerns, identified by 27% of responding firms.

The focus on practice efficiency was identified by 94% of all law firms as a permanent change in the profession, topping the list. Other top trends include more price competition (90%), fewer support staff (88%), more commoditized legal work (81%), and more non-hourly billing (75%).

Perhaps even more interesting than the trends at the top of the list is the one at the bottom. Despite their acknowledgement of numerous economic and competitive trends that are exerting pressure on the traditional law firm business model, only 16% of law firm leaders believe that lower profits per partner will be a permanent change in the profession.

How do firms plan to continue to increase their profitability year after year? The survey yields some answers: Firms intend to improve efficiency, do more work with fewer lawyers, and manage the number of owners to control the denominator of the PPP equation. Additionally, they plan to invest in new lateral partners (and their books of business) while removing underperformers. Firms will also pursue the traditional avenues of business development and client relationships as investments that they expect to yield significant returns. Will these strategies be sufficient to restore profitability trends to pre-recession levels? Time will tell.

Conclusion

Is law firm confidence merited in 2011? A lot will ride on how quickly the marketplace changes going forward. The large majority of firm leaders are banking on a manageable pace of change, and they may very well be correct.

Undeniably, however, some significant changes are gaining momentum.

The traditional law firm profit model is under siege. Firms that relied on ever-increasing volumes of work and unchallenged annual billing rate increases must learn new ways to work more productively and deliver high value to clients at lower overall cost. There will be more scrutiny and accountability for lawyers at all levels. Client work and books of business will be assessed and valued based on their contribution to firm profitability.

Growth will no longer be a magic bullet. Firms that streamlined their ranks in the last few years will begin to grow again – but strategically.

There are a variety of non-traditional lawyer staffing options that can be utilized creatively to improve a law firm's bottom line. More firms are experimenting with contract lawyers and part-time lawyers, and there are many talented candidates available to fill these roles. Outsourcing legal work is another option for firms to consider as more routine work is commoditized and even complex matters are disaggregated into high- and low-end parts.

Practice efficiency and process improvement are simple ideas – but are not easy to execute effectively. Firms must begin the long process of implementing organization-wide changes in how lawyers practice. Legal project management, knowledge management, flexible staffing, alternative delivery models, new technology and a willingness to look beyond the status quo will all be required.

Law firms that plan and act strategically and proactively to deal with change, and that creatively co-opt prevailing market forces, will be well positioned to compete in the new legal economy – no matter how it plays out.

Survey Methodology

Conducted in April and May of 2011, the survey polled Managing Partners and Chairs at 805 US law firms with 50 or more lawyers. Completed surveys were received from 240 firms (30%), including 38% of the 250 largest US law firms. The full survey is available online to download at: www.altmanweil.com/LFiT2011. Special reports based on law firm size ranges are available exclusively to survey participants.

May 2011
Altman Weil, Inc.

About the Authors

Thomas S. Clay is a principal of Altman Weil, Inc. With 30 years experience consulting to the legal profession, he is an acknowledged expert on law firm management principles and is a trusted advisor to law firms throughout the United States. Mr. Clay heads complex consulting assignments in strategic planning, law firm management and organization and law firm mergers and acquisitions. He is a thought-leader on the key issue of law firm practice group strategy and leadership.

He is Fellow of the College of Law Practice Management (COLPM) and has served as a Judge for the College's InnovAction Awards which recognize outstanding innovation in the delivery of legal services worldwide. He is a member of the COLPM Futures Committee. In 2008, Mr Clay was named as one of the "100 Legal Consultants You Need to Know."

Eric A. Seeger is a principal of Altman Weil, Inc. He works with large and small law firms in the areas of strategy formulation, practice group planning, merger search, merger assessment and organizational audit. Mr. Seeger directs Altman Weil's market research department. Over the years he has managed hundreds of strategic research projects for law firms and legal vendors.

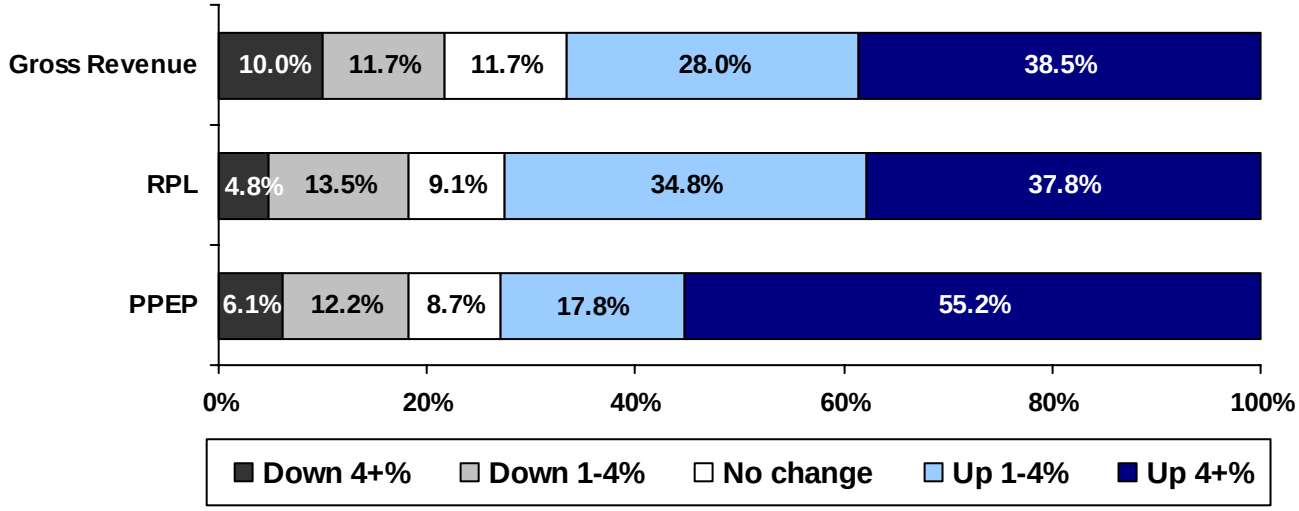
Prior to joining Altman Weil, Mr. Seeger was an independent consultant to law firm and corporate executives. He served as strategic planning officer of an AmLaw 200 law firm for four years. Previously, he performed market analysis for a global manufacturer, holding leadership positions in the industry's trade association, and served in budgeting and planning capacities for a major university.

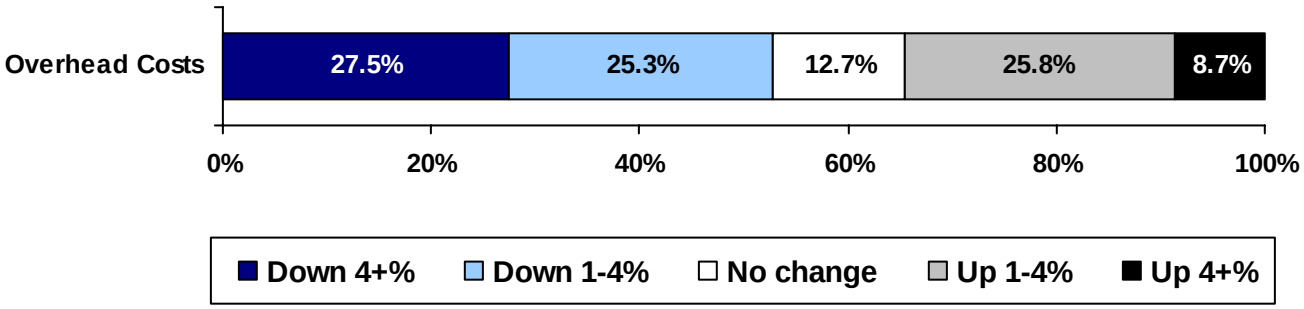
About Altman Weil, Inc.

Founded in 1970, Altman Weil, Inc. is dedicated exclusively to the legal profession. It provides management consulting services to law firms, law departments and legal vendors worldwide. The firm is independently owned by its professional consultants, who have backgrounds in law, industry, finance, marketing, administration and government. More information on Altman Weil can be found at www.altmanweil.com.

2010 Economic Performance

How did your law firm perform in 2010 compared to 2009?





Economic Trends

Comparison of 2010 and 2011 survey results for economic performance. Figures indicate the percentage of responses in each category (not the percentage change in performance).

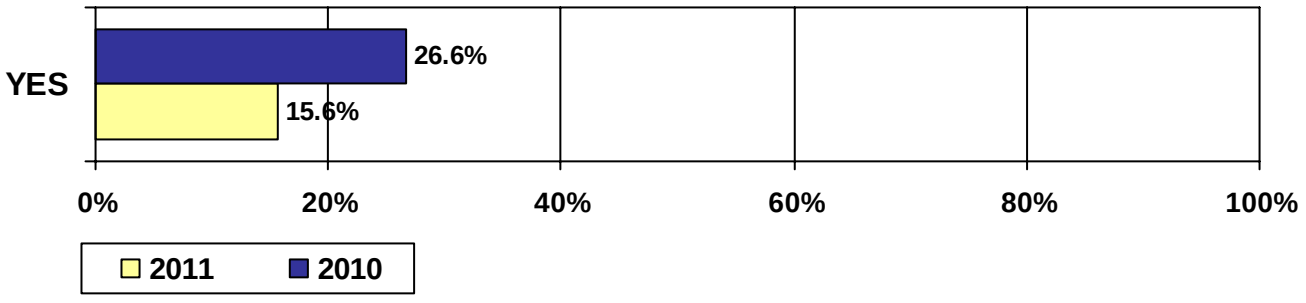
Gross revenue	Down	No change	Up
2010	21.7%	11.7%	66.5%
2009	44.2%	9.8%	46.1%

PPEP	Down	No change	Up
2010	18.3%	8.7%	73.0%
2009	37.4%	6.6%	56.1%

RPL	Down	No change	Up
2010	18.3%	9.1%	72.6%
2009	41.0%	12.5%	46.5%

Overhead	Down	No change	Up
2010	52.8%	12.7%	34.5%
2009	69.0%	11.5%	19.5%

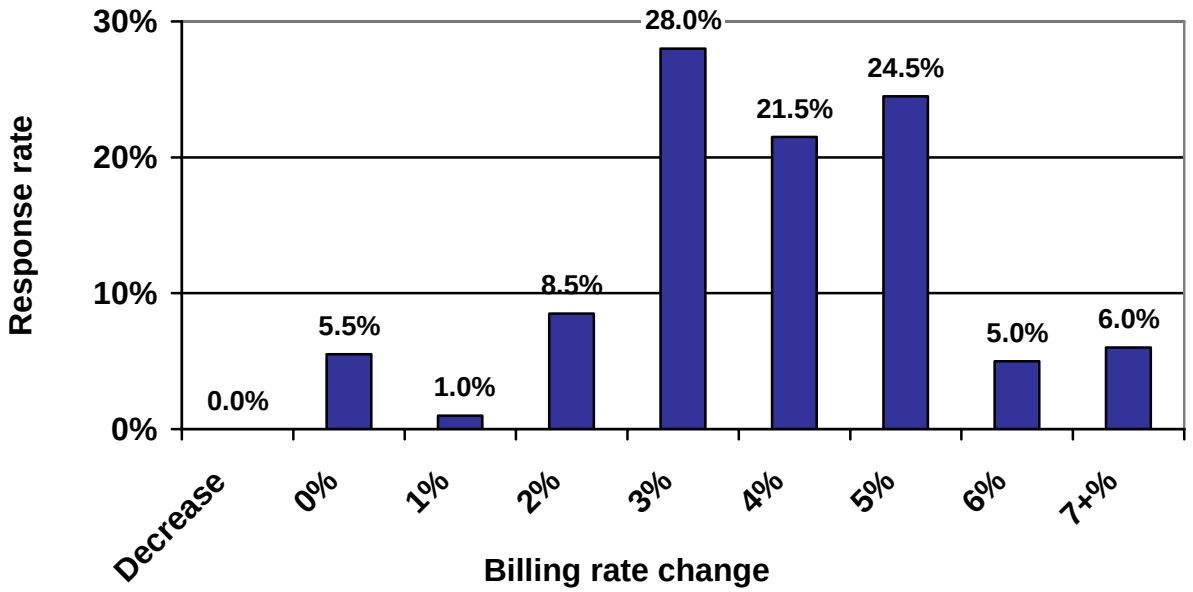
Do you think lower profits per partner will be a permanent trend going forward?



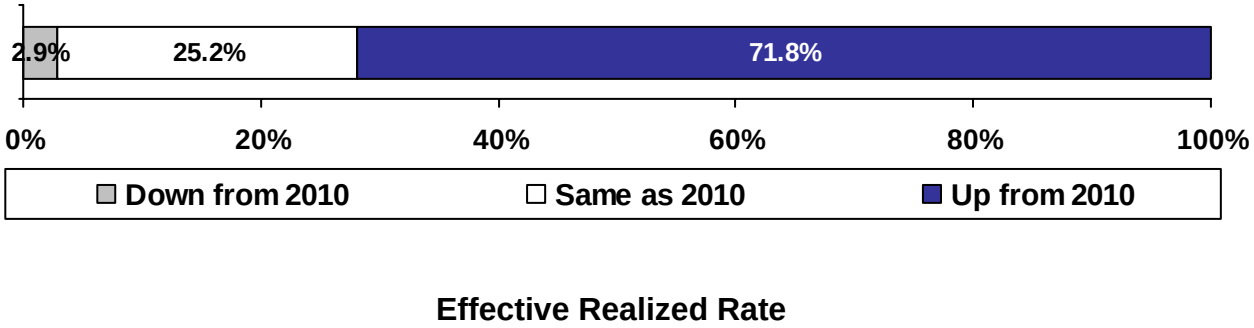
2011 Billing Rates and Realization

What is your firm's actual or estimated change in standard hourly billing rates for 2011?

(*Responses were rounded to the nearest percent*.)



Overall, do you expect your firm's effective (realized) rates for 2011 to be up or down?



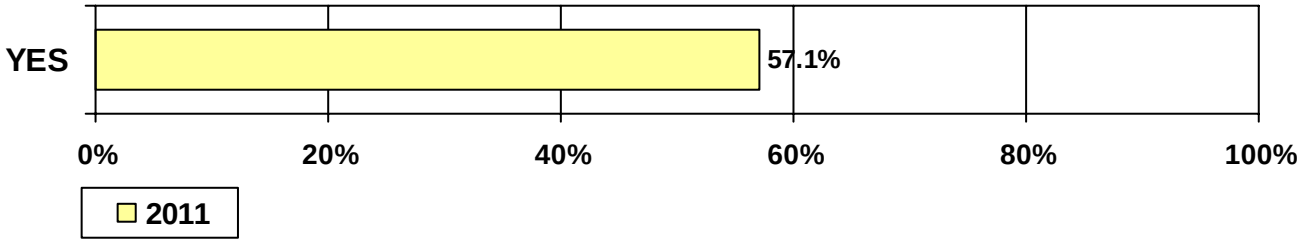
Billing Rate Trends

Comparison of 2010 and 2011 survey results for billing rates and realization:

Rate increase	Average	Median
2011	4.1%	4.0%
2010	3.1%	3.0%

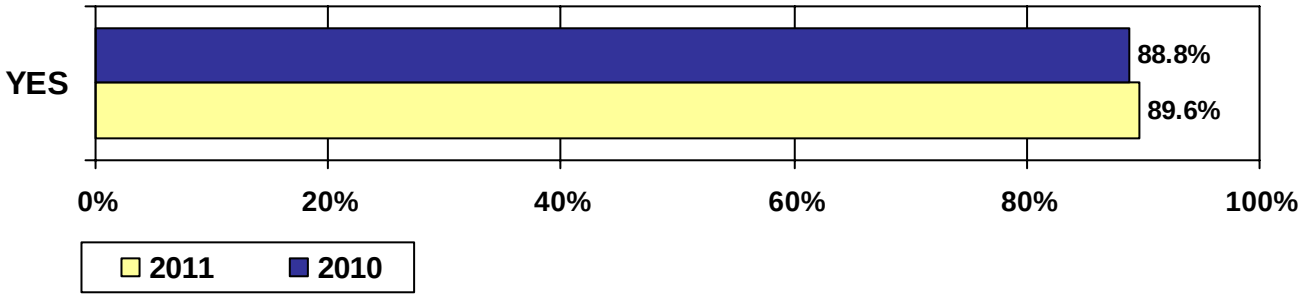
Realized Rate	Down	No change	Up
2011	2.9%	25.2%	71.8%
2010	6.0%	34.6%	59.4%

Do you think smaller annual billing rate increases will be a permanent trend going forward?



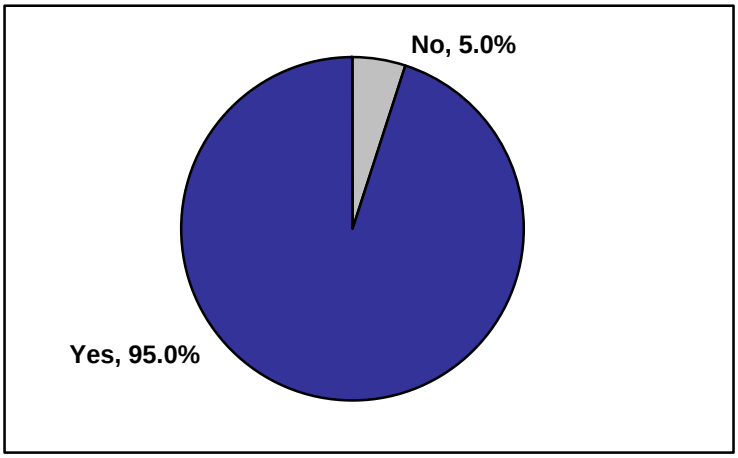
New question, no 2010 data

Do you think more price competition will be a permanent trend going forward?

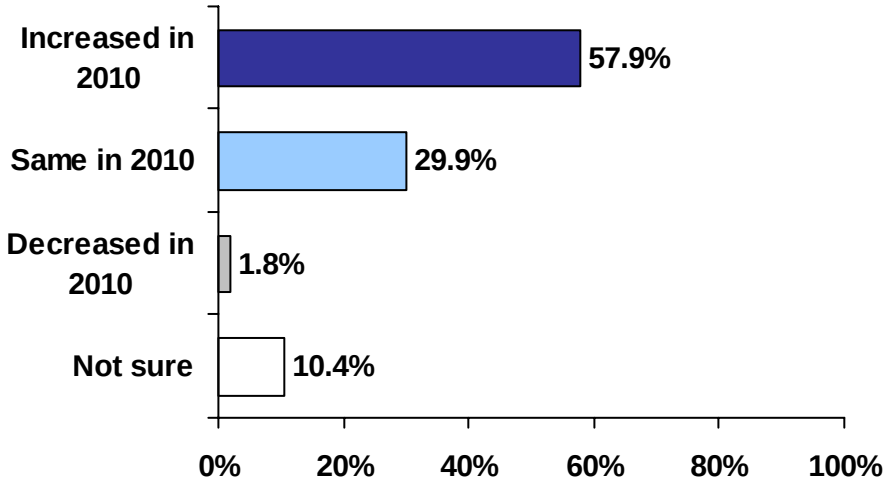


Alternative Fees

Does your firm use any non-hourly based billing?

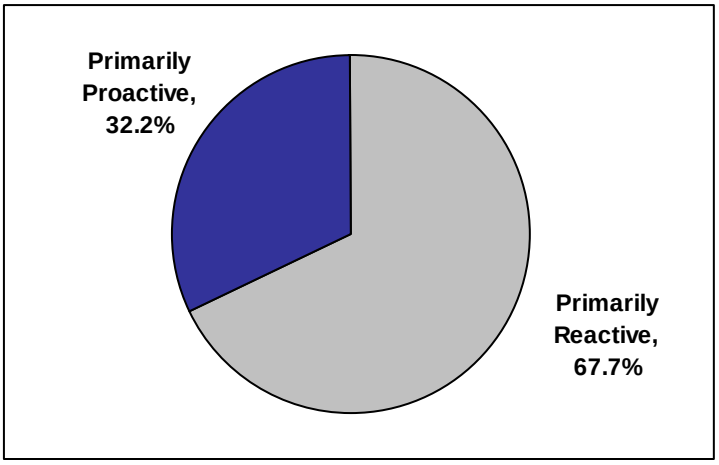


In 2010, did your firm increase its amount of non-hourly based billing (measured as a percentage of revenue)?

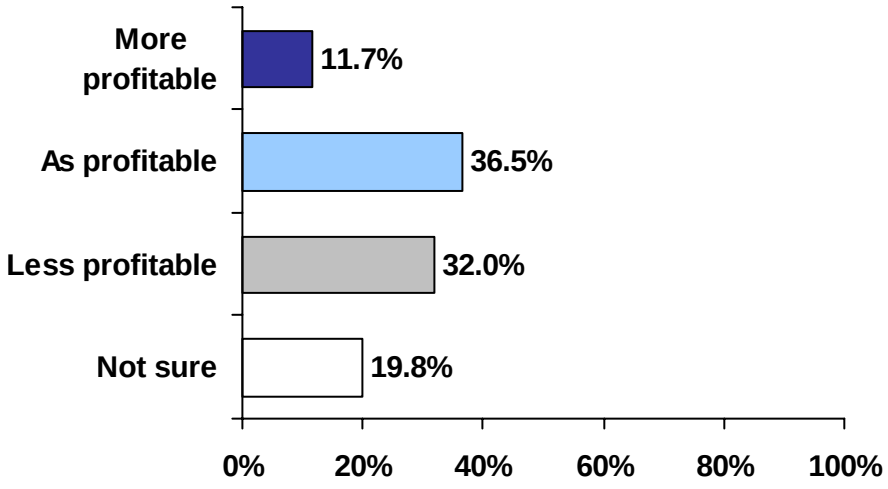


Alternative Fees

If you use any non-hourly based billing, is your firm's use of alternative fee arrangements primarily reactive (in response to client requests) or primarily proactive (arising from your belief in the competitive advantage of alternative fees)?

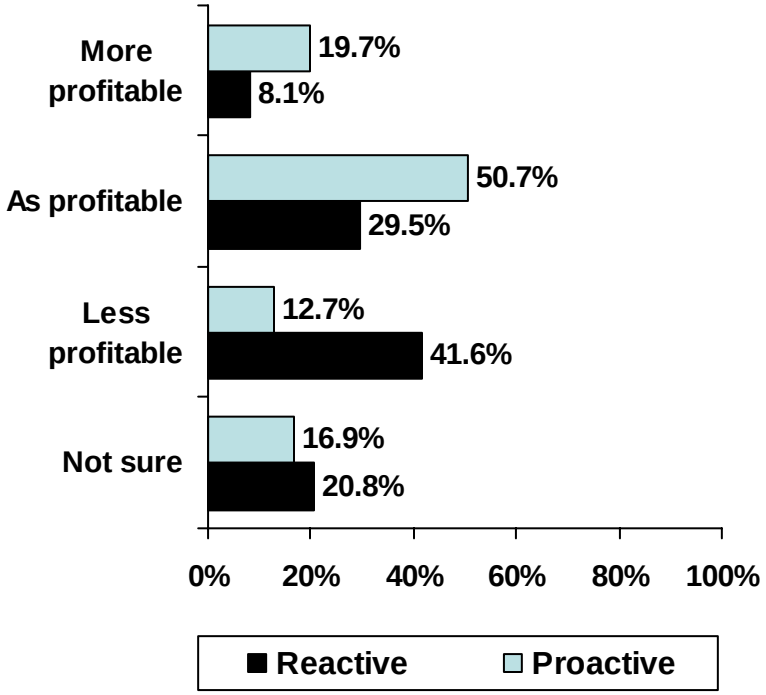


Overall, compared to projects billed at an hourly rate, are your firm's non-hourly projects more profitable or less profitable?



Alternative Fees

A comparison of the reported profitability of alternative fee arrangements in those firms that report they are proactive in their use of non-hourly billing versus those that are reactive.



Alternative Fee Trends

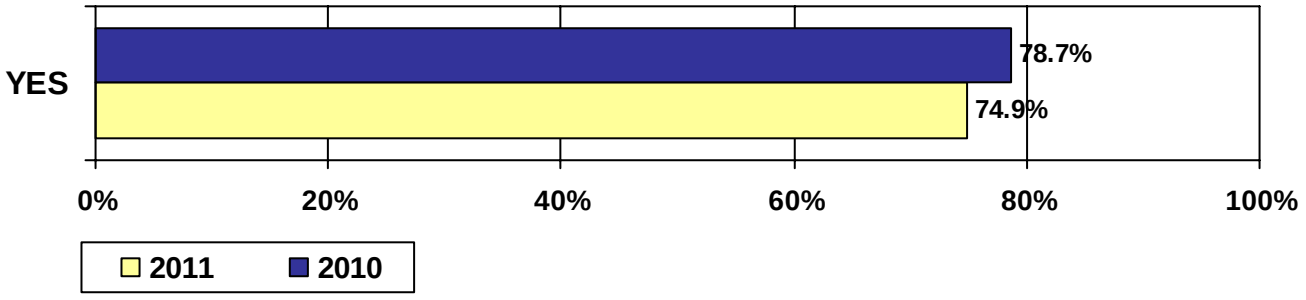
A comparison of 2010 and 2011 survey results for use of alternative fee arrangements:

AFAs	Yes	No
2011	95.0%	5.0%
2010	94.5%	5.5%

A breakdown of 2011 AFA use by firm size:

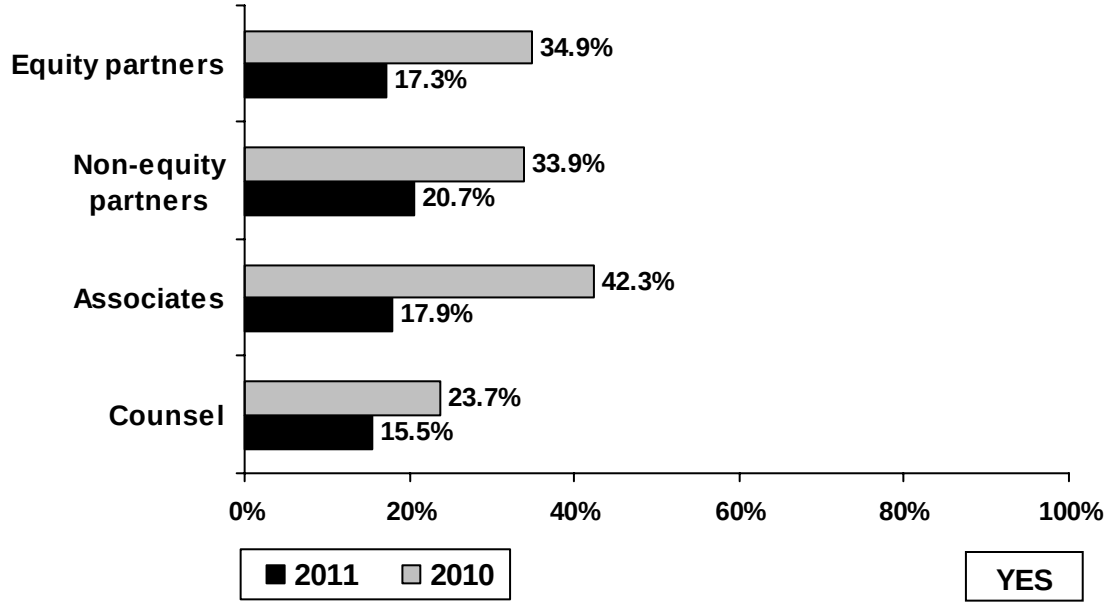
2011 by firm size	Yes	No
1,000+	100%	0%
500-999	100%	0%
250-499	100%	0%
100-249	94.0%	6.0%
50-99	92.1%	7.9%

Do you think more non-hourly billing will be a permanent trend going forward?

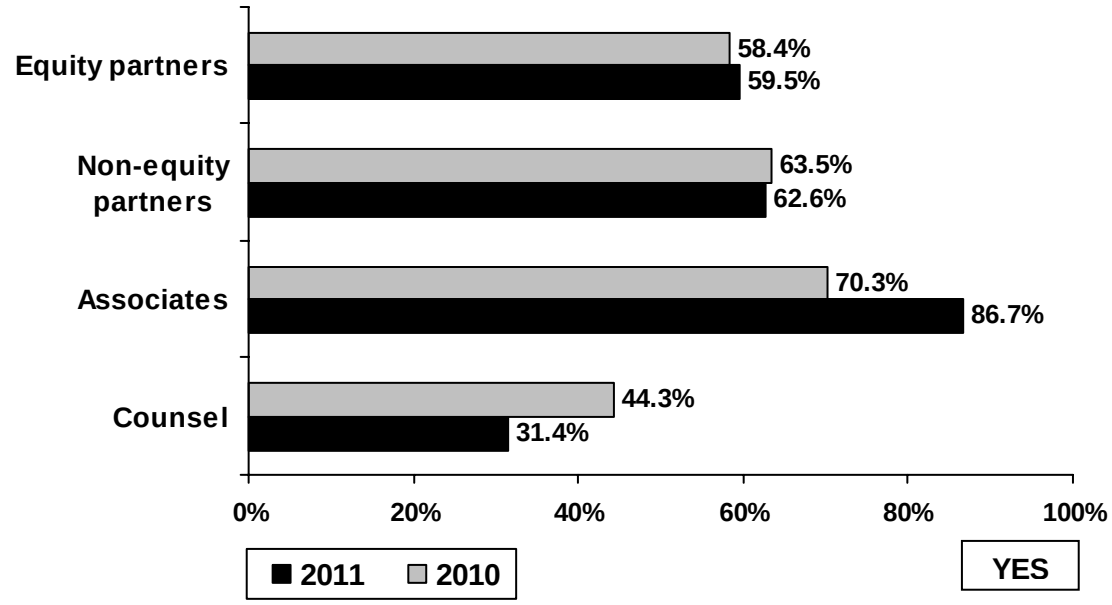


Lawyer Staffing

Did your law firm <u>remove</u> people from the firm in 2010? Will you in 2011?

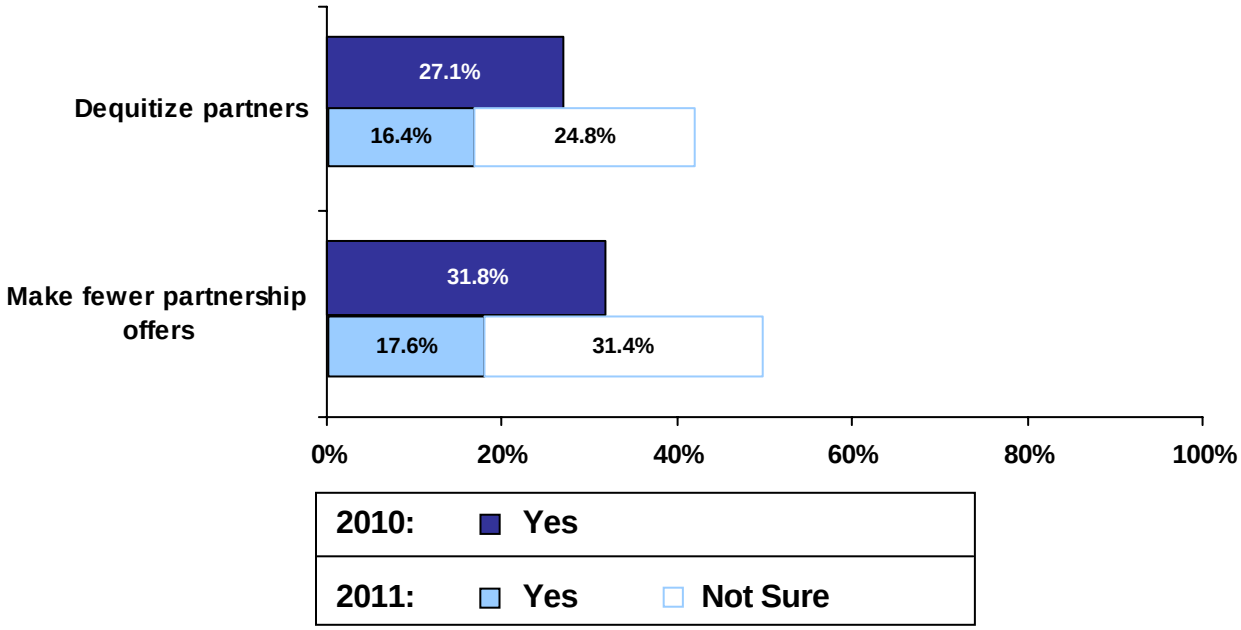


Did your law firm <u>add</u> people to the firm in 2010? Will you in 2011?

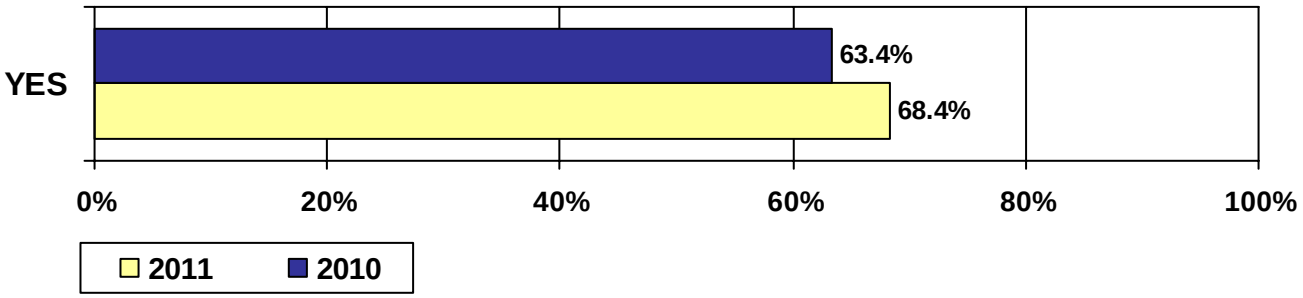


Partnership Structure

Did your law firm do any of the following in 2010? Will you in 2011?

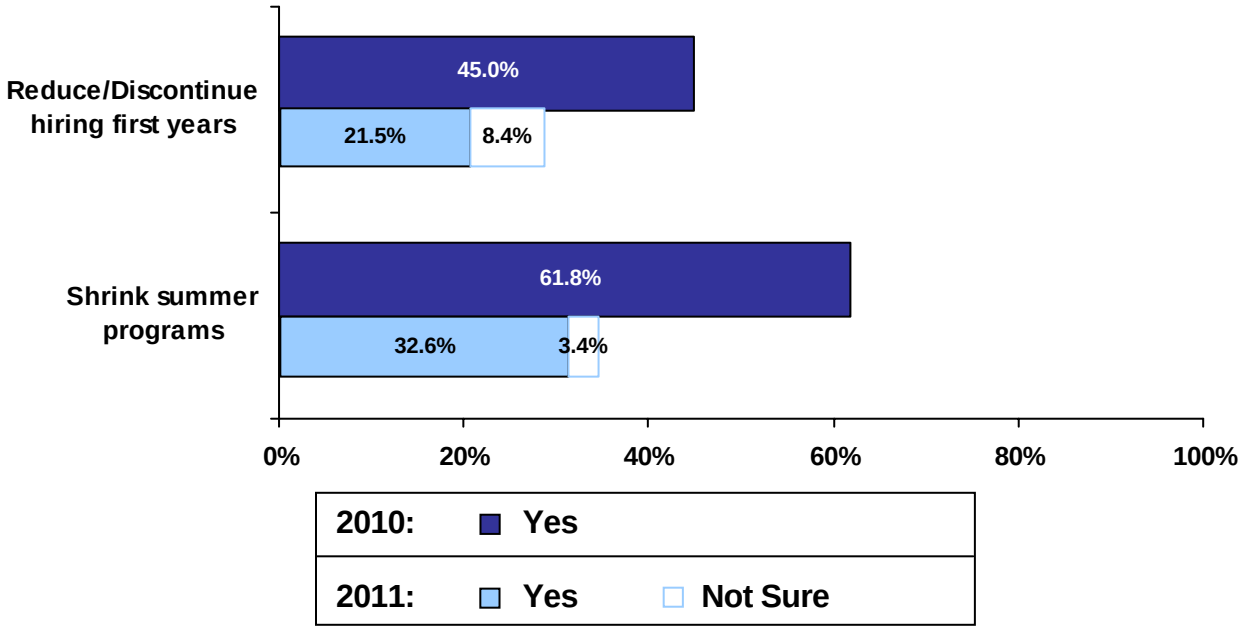


Do you think <u>fewer equity partners</u> will be a permanent trend going forward?

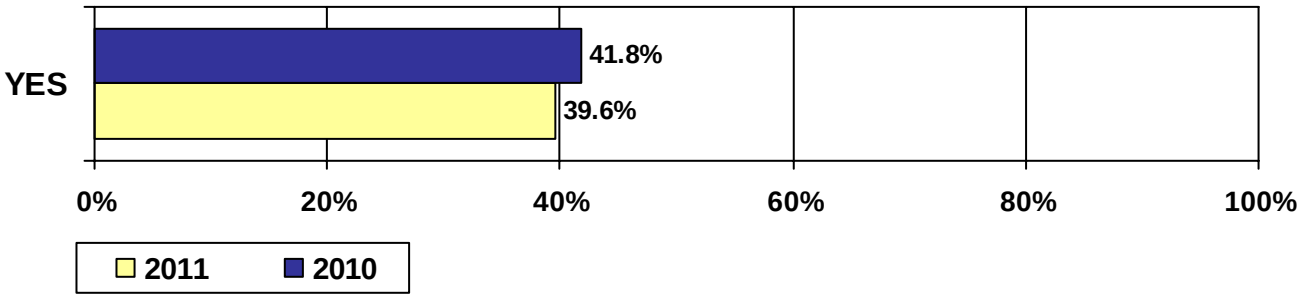


Associate Programs

Did your law firm do any of the following in 2010? Will you in 2011?

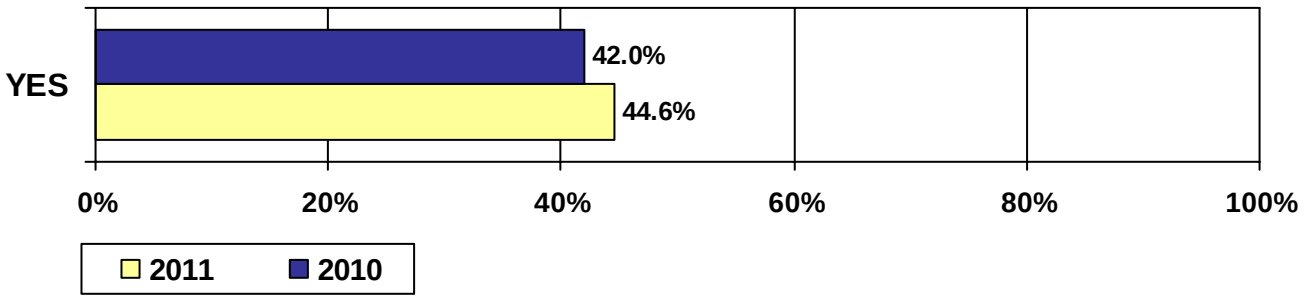


Do you think <u>reduced first-year classes</u> will be a permanent trend going forward?

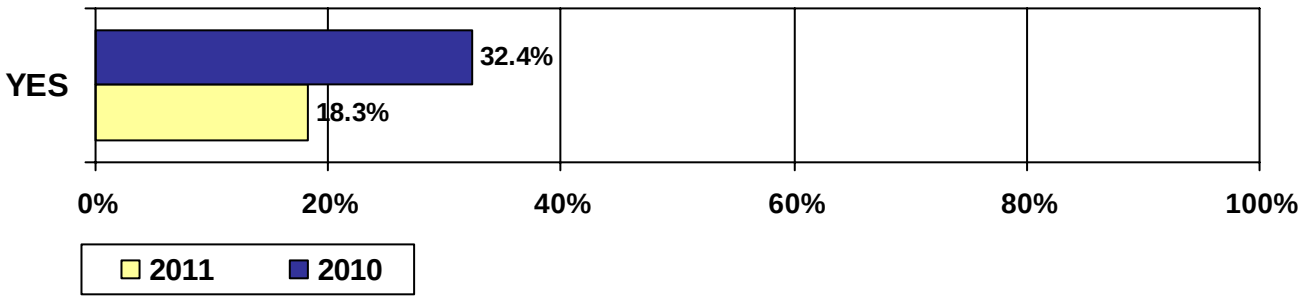


Associate Trends

Do you think <u>reduced leverage</u> will be a permanent trend going forward?

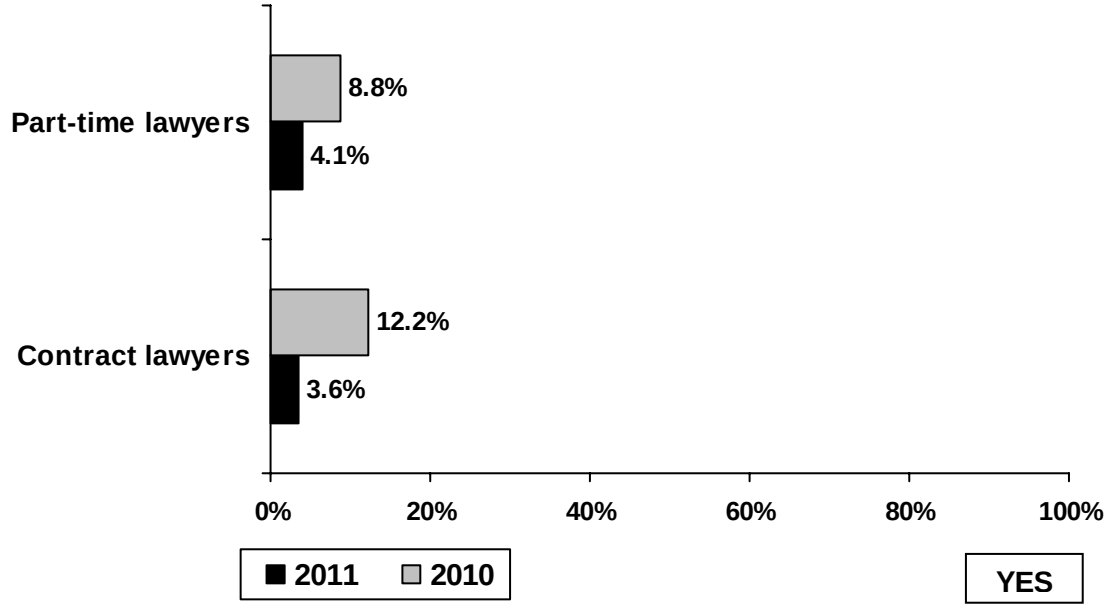


Do you think <u>reduced associate salaries</u> will be a permanent trend going forward?

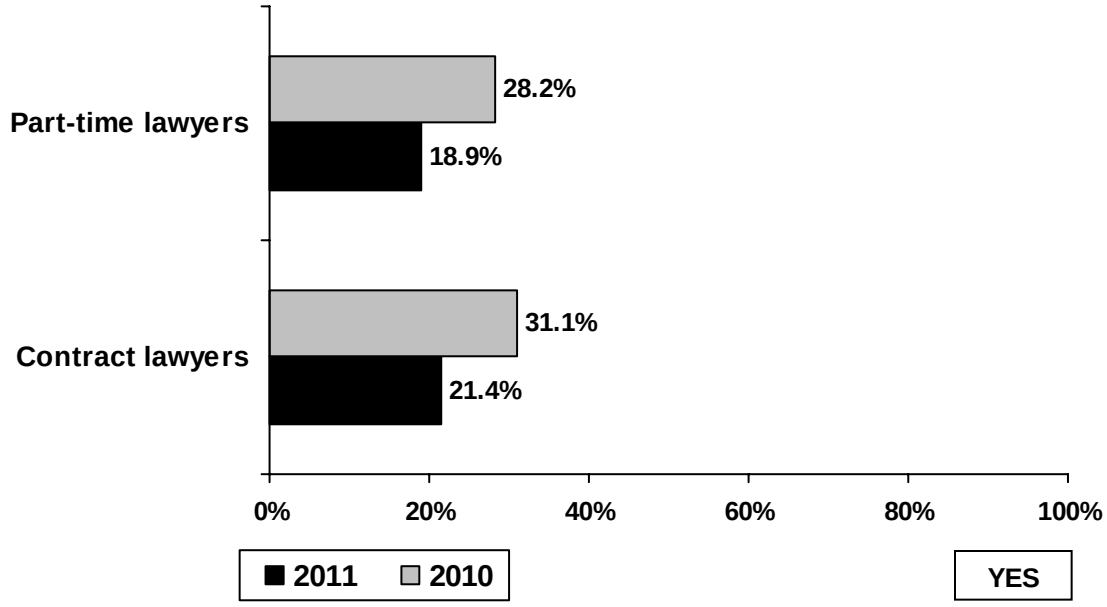


Non-Traditional Lawyers

Did your law firm <u>remove</u> people from the firm in 2010? Will you in 2011?

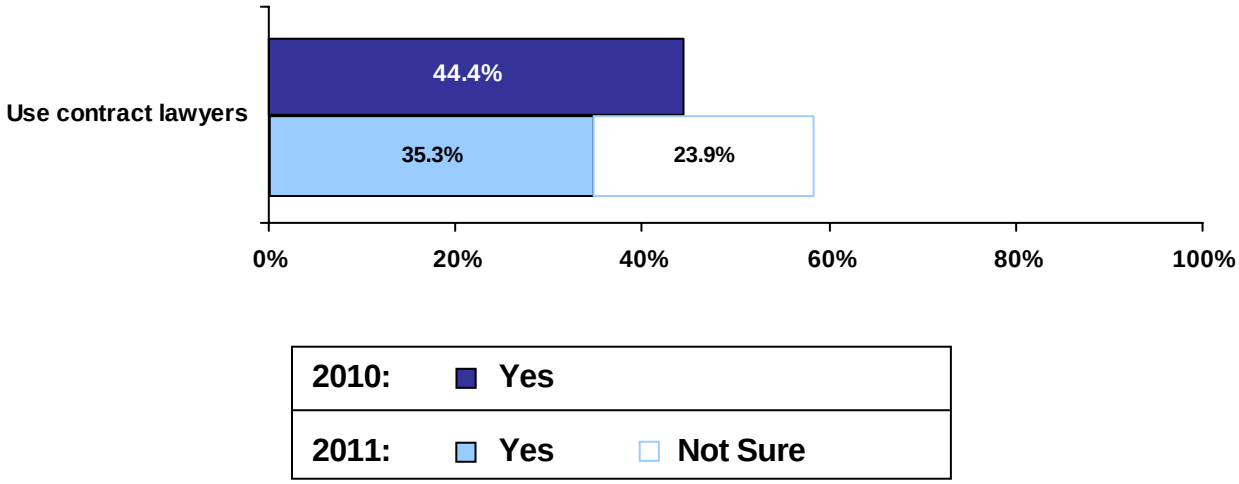


Did your law firm <u>add</u> people to the firm in 2010? Will you in 2011?

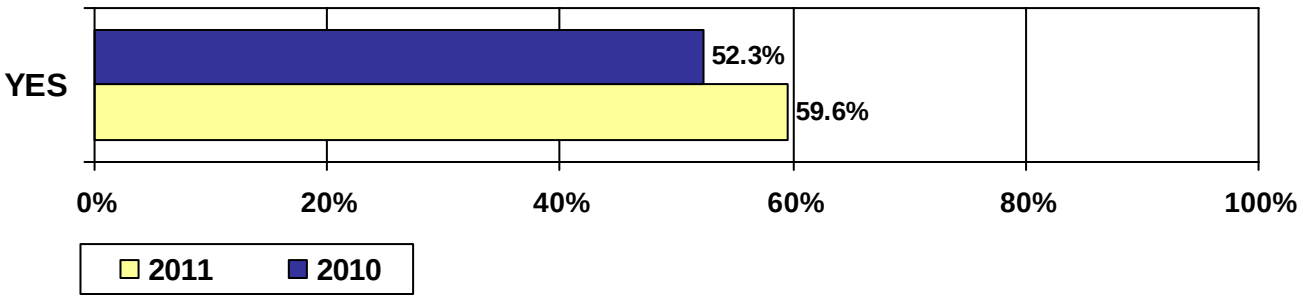


Non-Traditional Lawyers

Did your law firm do any of the following in 2010? Will you in 2011?

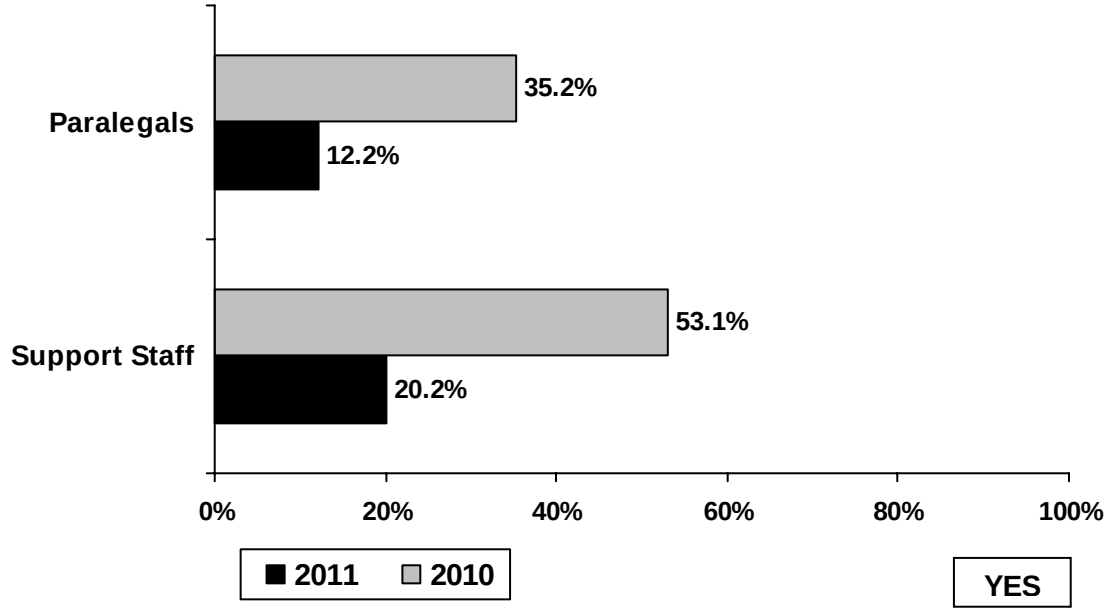


Do you think <u>more contract lawyers</u> will be a permanent trend going forward?

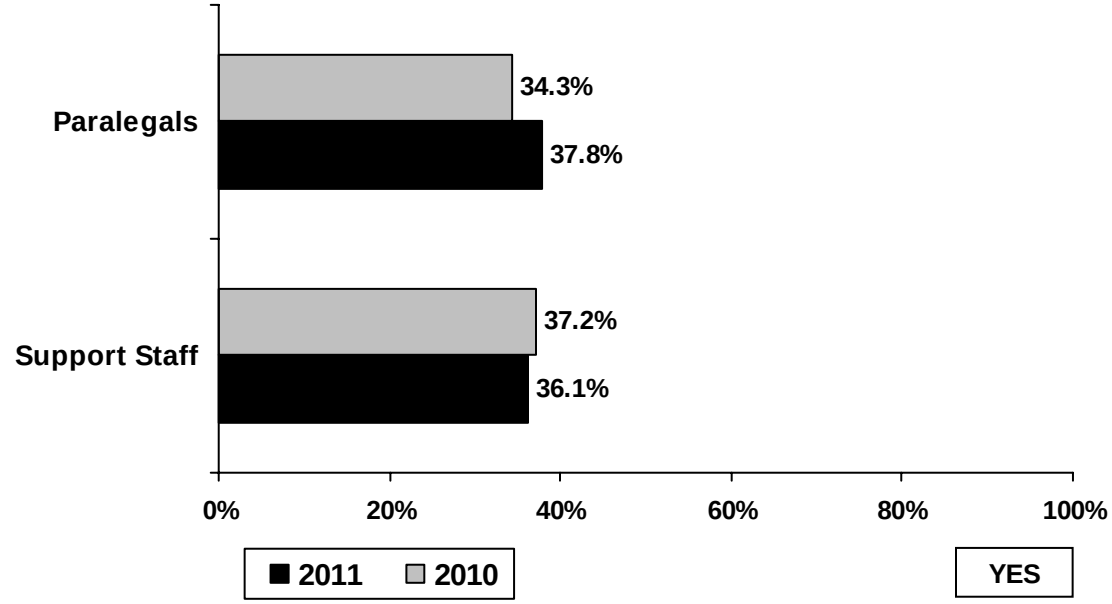


Non-Lawyer Staff

Did your law firm <u>remove</u> people from the firm in 2010? Will you in 2011?

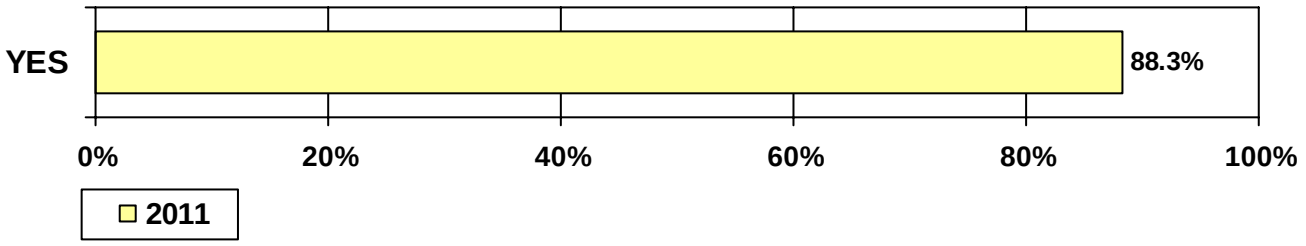


Did your law firm <u>add</u> people to the firm in 2010? Will you in 2011?



Support Staff Trends

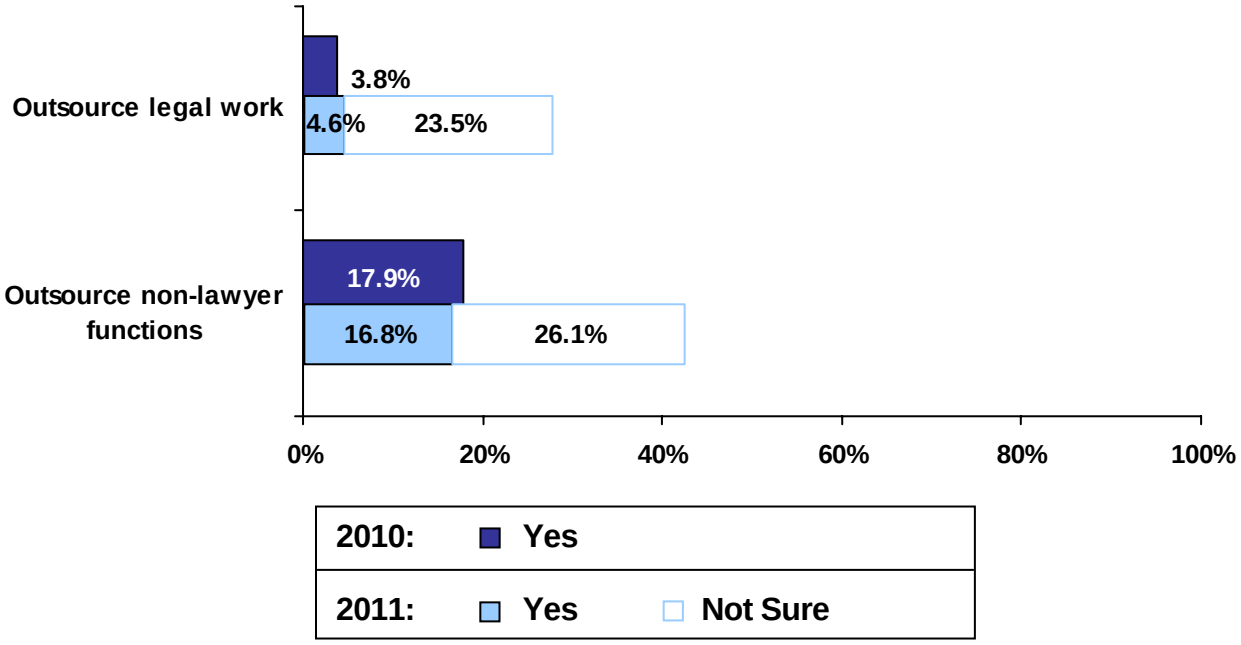
Do you think <u>fewer support staff</u> will be a permanent trend going forward?



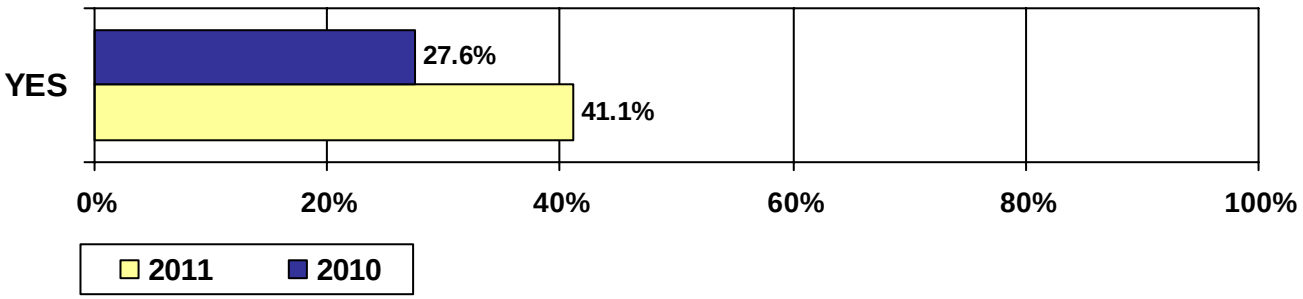
New question, no 2010 data

Outsourcing

Did your law firm do any of the following in 2010? Will you in 2011?

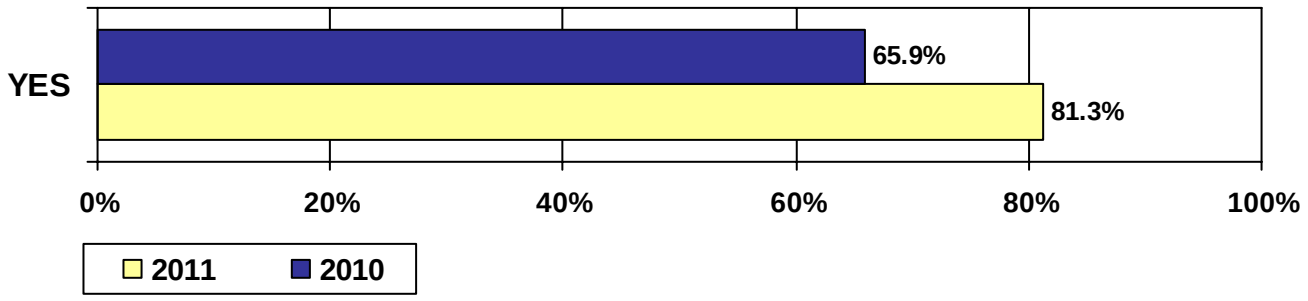


Do you think <u>outsourcing legal work</u> will be a permanent trend going forward?

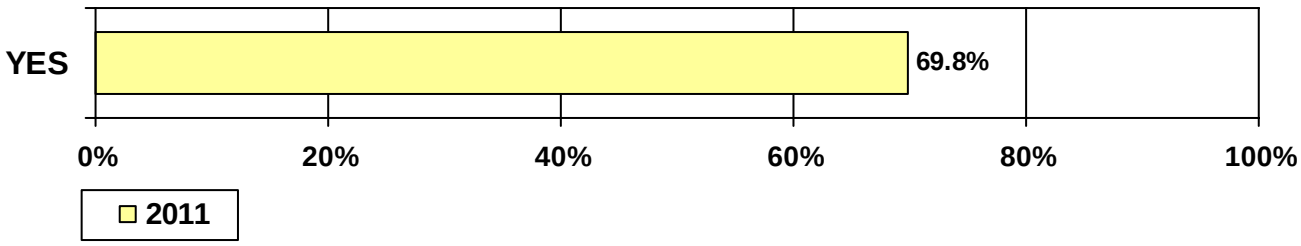


Practice Trends

Do you think <u>more commoditized legal work</u> will be a permanent trend going forward?



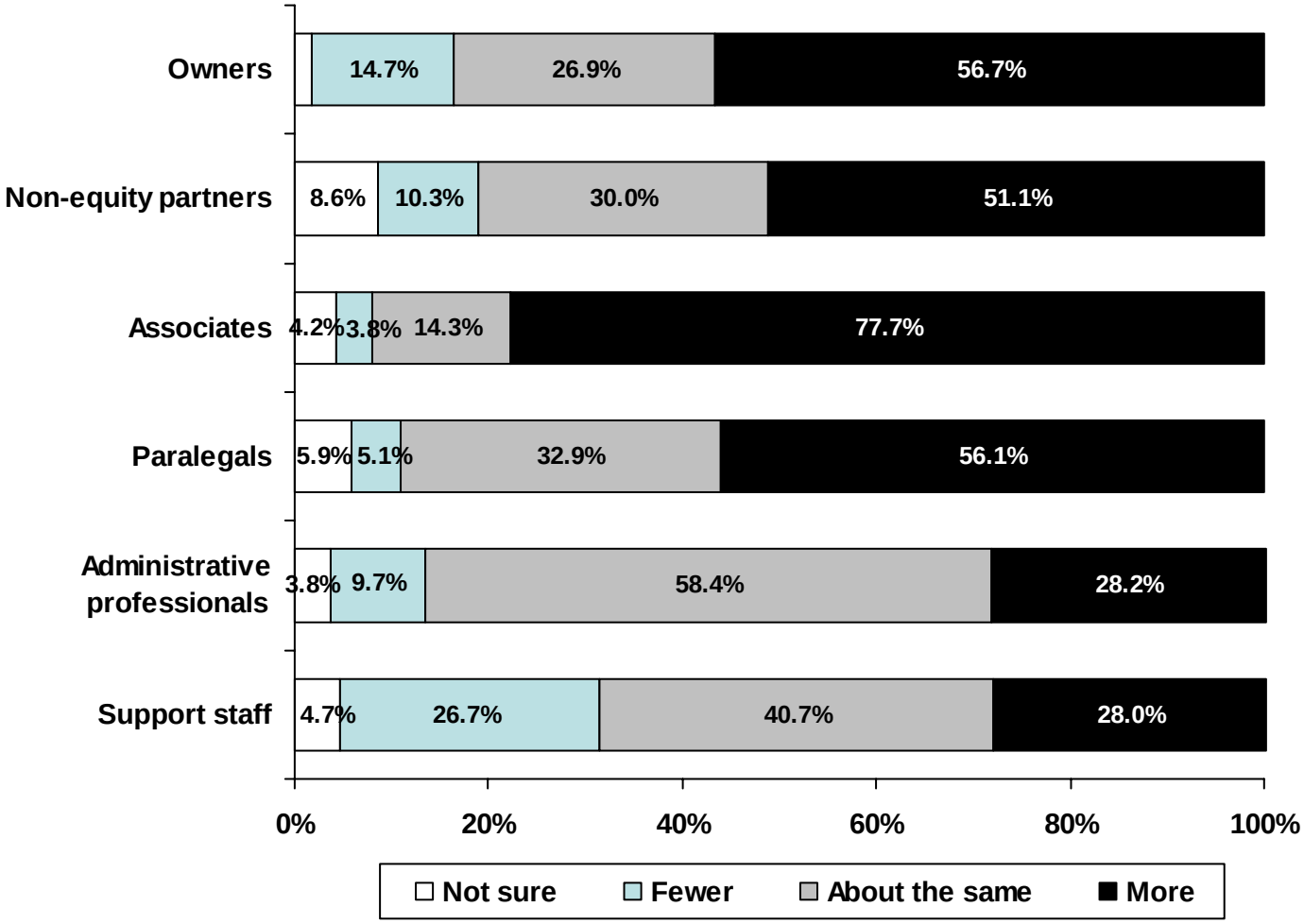
Do you think <u>competition from non-traditional (including non-lawyer) service providers</u> will be a permanent trend going forward?



New question, no 2010 data

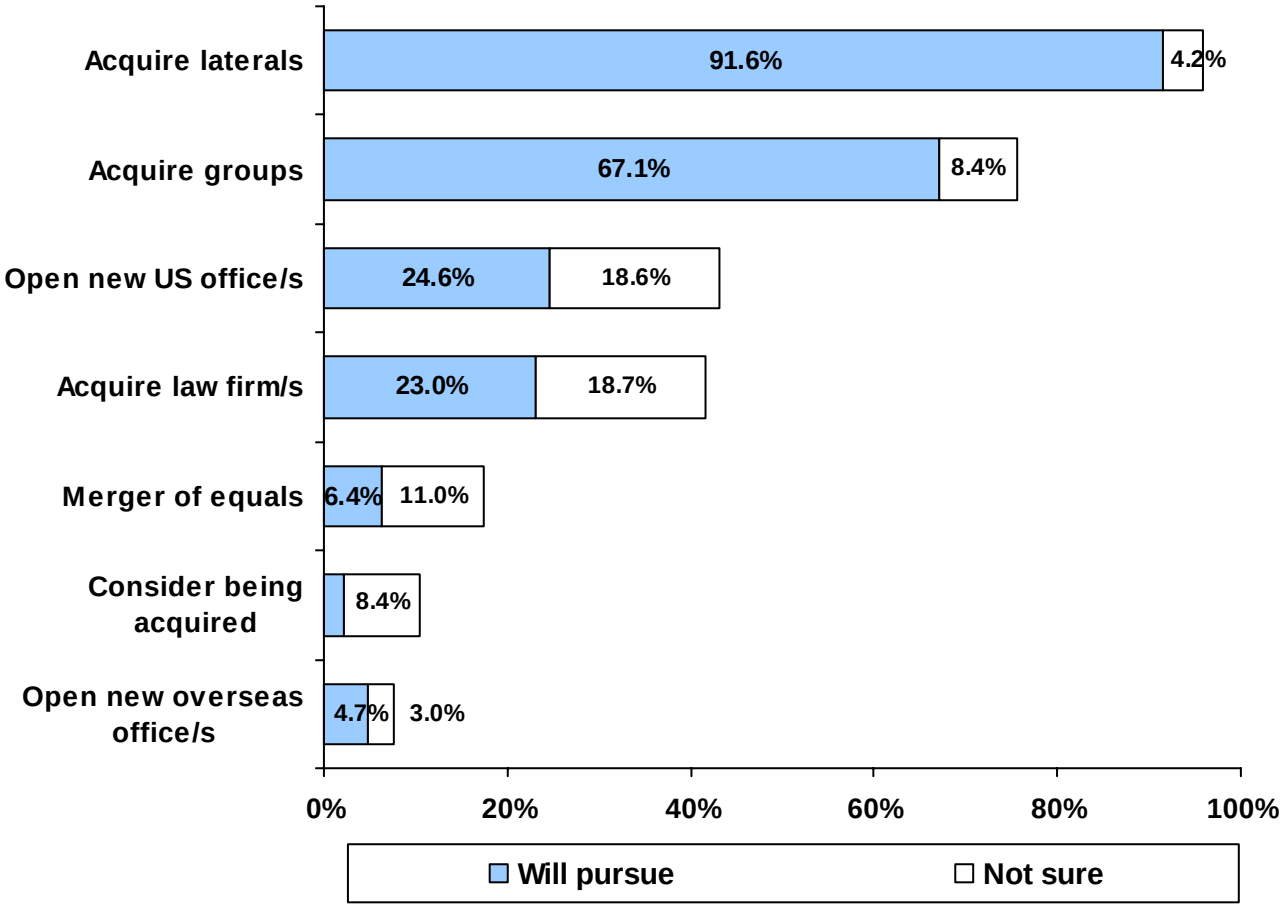
Law Firm Growth – Long Term

Five years from now, how do you think the core components of your law firm will have changed in size?



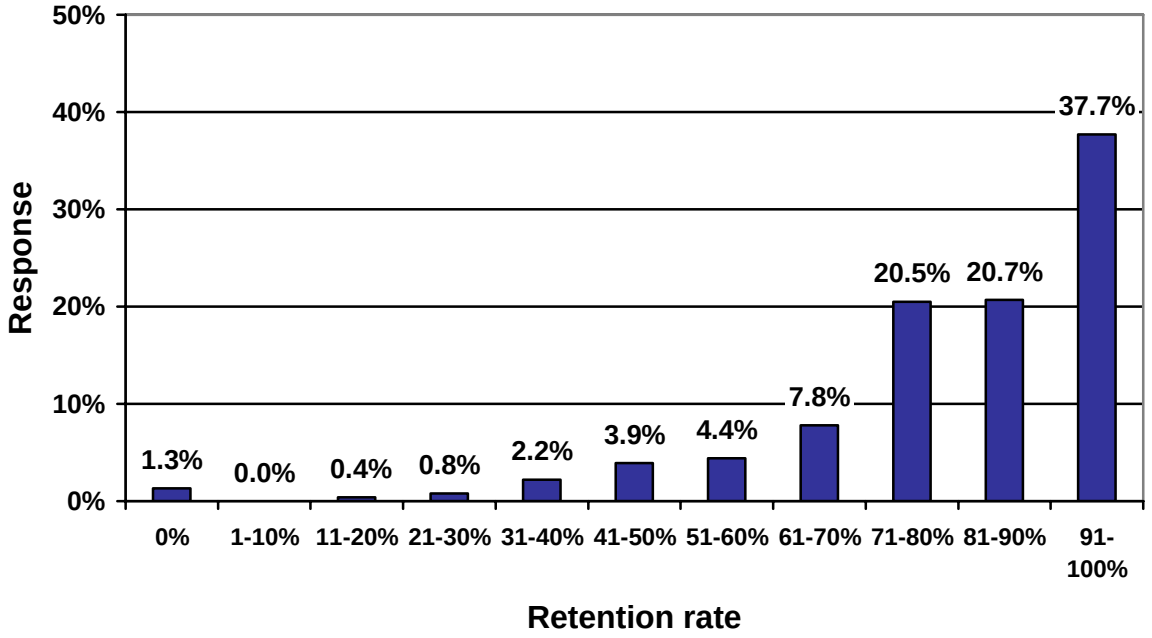
Law Firm Growth - 2011

What growth options, if any, will your law firm pursue in 2011?



Lateral Partner Retention

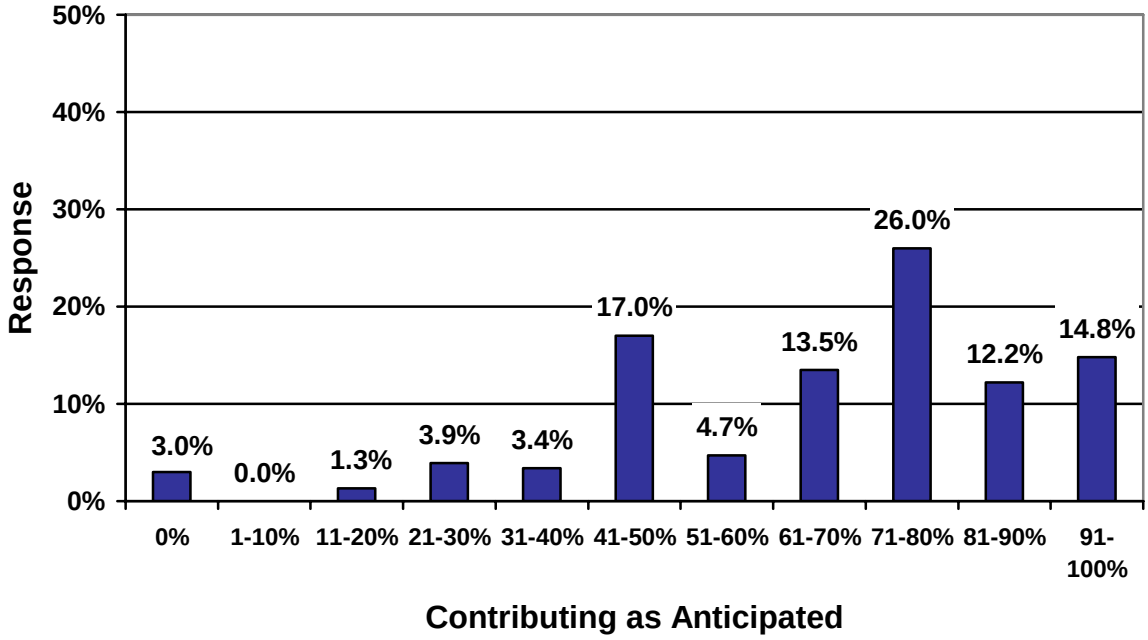
Of the lateral partners your firm has hired over the last five years, approximately what percentage would you estimate are still with the firm?



Median Retention Rate: 90%

Lateral Partner Contribution

Of the lateral partners your firm has hired over the last five years, approximately what percentage would you estimate are contributing at the level you anticipated?



Median: 75%

Growth and Retention Trends

A comparison of 2010 and 2011 survey results for top growth options law firms will pursue:

Top Growth Options	2010	2011
Acquire laterals	85.3%	91.6%
Acquire groups	54.8%	67.1%
Open new US offices/s	17.5%	24.6%
Acquire law firms	19.7%	23.0%

Top 2011 growth options by firm size:

2011 Growth Options by firm size	Under 250 lawyers	250 or more lawyers
Acquire laterals	88.1%	98.4%
Acquire groups	57.6%	89.1%
Open new US offices/s	19.1%	40.6%
Acquire law firms	15.4%	42.2%

Median retention rate of lateral partners over five years by firm size:

Lateral Retention rate by firm size	Median
1,000+	78%
500-999	80%
250-499	85%
100-249	90%
50-99	98%
ALL	90%

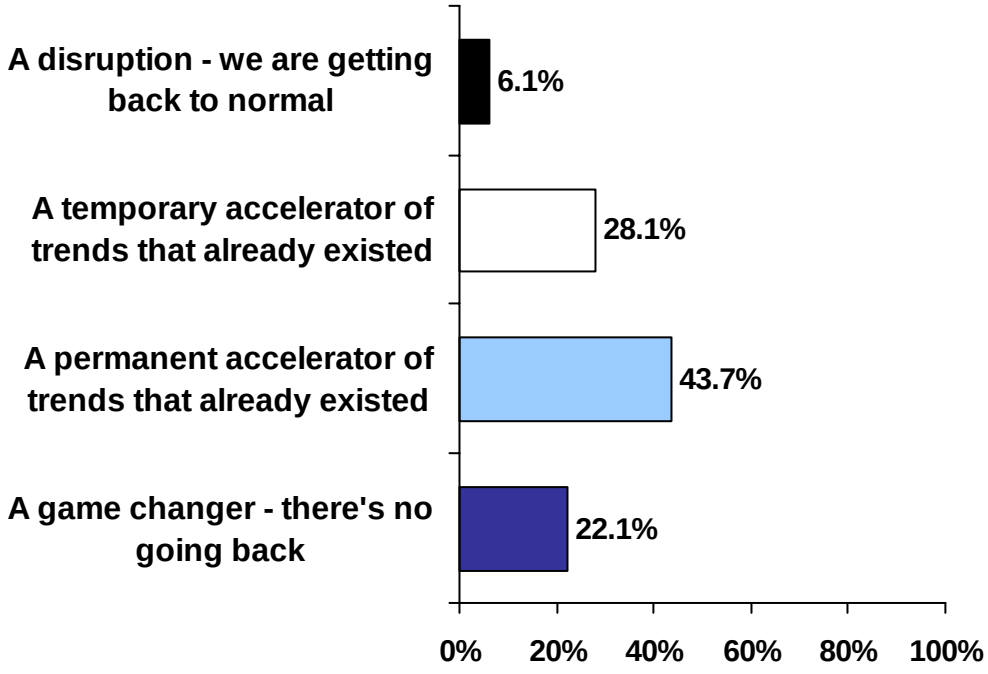
2011 Investments

In 2011, what areas will your firm invest in that you believe will yield the greatest expected returns? (select no more than three)

Top investments ranked by firm size	ALL	50-99	100-249	250-499	500-999	1,000+
Business development	1	1	1	2 (tie)	3 (tie)	3 (tie)
Adding new lawyers	2	2	2	1	1	3 (tie)
Client relationships	3	3	3	2 (tie)	2	1
Project management	4	7	4	4	3 (tie)	2

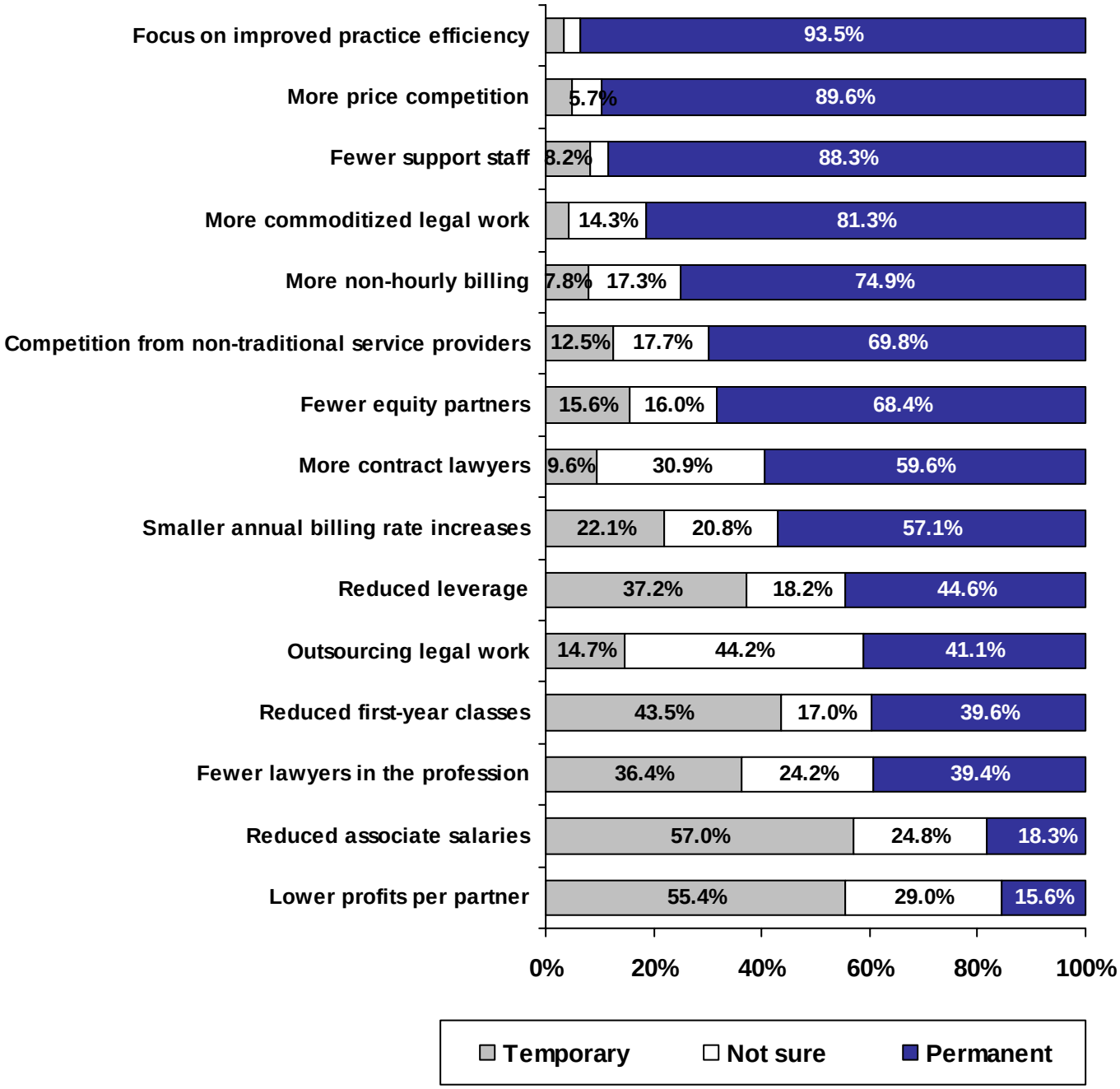
Change in the Profession

As the economy stabilizes, the imperative for change in the profession may seem less urgent to some firms. In retrospect, do you think the recent recession was:



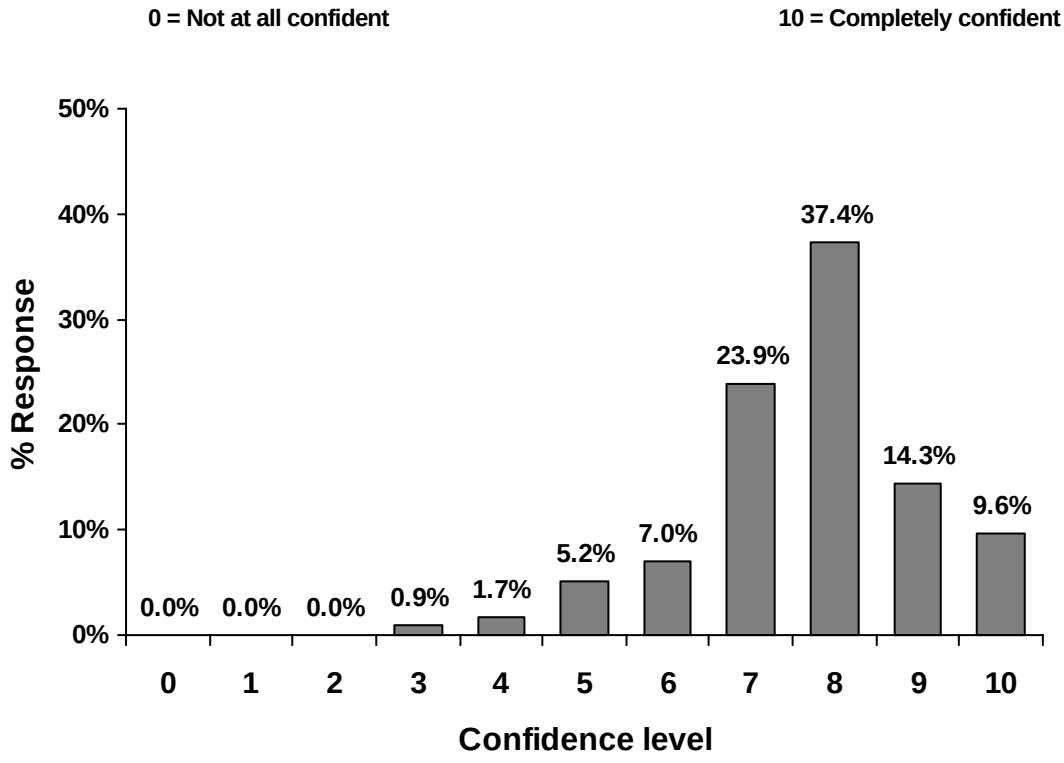
2011 Trends

Which of the following legal market trends do you think are temporary and which will be permanent?



Confidence: Keeping Pace with Change

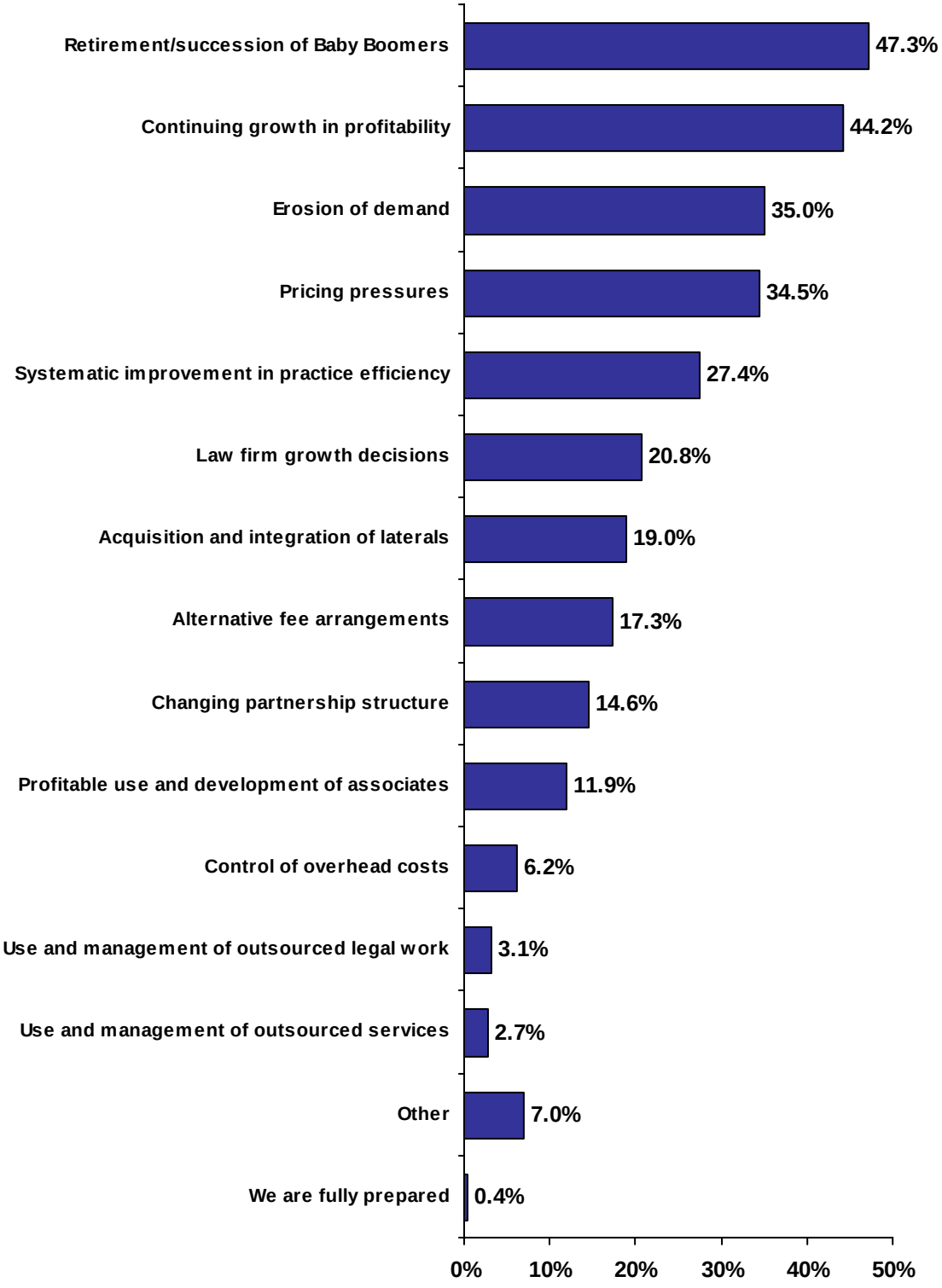
What is your overall level of confidence that your firm is fully prepared to keep pace with the changing legal marketplace?



Median rating: 8

Areas of Concern

In which of these areas are you most concerned about your law firm's preparedness to deal with change? (indicate your top three areas of concern)



2011 Survey Demographics

In April and May 2011, Altman Weil surveyed Managing Partners and Chairs of 805 US law firms with 50 or more lawyers. We received responses from 240 firms, a 30% response rate.

Firm Size	All US Law Firms	Survey Participants	% Response
1,000 +	22	6	27%
500 – 999	53	23	43%
250 – 499	88	35	40%
100 – 249	259	83	32%
50 – 99	383	76	20%
Unreported	--	17	
All	805	240	30%

The respondent group includes:

- **38% of 2011 NLJ 250 law firms**
- **37% of 2010 AmLaw 200 law firms**

• The exact number of lawyers in a law firm changes frequently. The universe of law firms surveyed is based on published directories and league tables available in spring 2011. Survey participants reported their own headcounts.

• Four firms invited to participate in the 50-100 lawyer category reported their size as under 50 at the time of the survey. We have included their responses in the 50-99 lawyer category.

• Seventeen firms did not provide firm size information. Their responses are included in the full report only.

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Uncertainties in the Legal Profession: Law Firms in Transition

Thomas S. Clay, Altman Weil, Inc.

Social Media: Why and How?

Becky Graebe, Internal Communications Manager, World Wide Marketing, SAS; Erik Mazzone, Director of Center for Practice Management, NC Bar Association; and Lee Rosen, Rosen Law Firm

Legal Trends: Impact on Our Insureds and Companies

Stephanie L. Kimbro, Kimbro Legal Services; Erik Mazzone, Director of Center for Practice Management, NC Bar Association; and Thomas C. Grella, McGuire, Wood & Bissette, P.A.

Economic Outlook

Mark Vitner, Managing Director, Senior Economist, Wells Fargo Securities, LLC

ERM From a Small Company Perspective

R. Jason Cook FCAS, ASA, MAAA, Managing Director, Aon Benfield

Anatomy of a Legal Malpractice Case

E. Fitzgerald Parnell, T. Richard Kane, and Cynthia L. Van Horne, Poyner Spruill LLP and Barbara B. Weyher and Dan J. McLamb, Yates, McLamb & Weyher, LLP

Financial Issues Impacting Mutual Companies

Deborah Lambert, CPA, CPU, Managing Partner, Johnson Lambert & Co. LLP

Retrospective on the Duke Lacrosse Case & State Bar v. Nifong

By Douglas J. Brocker & Deanna S. Brocker

Douglas J. Brocker served as special counsel to the North Carolina State Bar in prosecuting the disciplinary case against Michael Nifong. He is a principal in The Brocker Law Firm, P.A., and he concentrates his practice in representing professionals in disciplinary matters before their respective licensing boards, including attorneys before the State Bar, where he formerly was trial and UPL counsel. He is a past President of the 10th Judicial District in Wake County, has served for many years on the Wake County Bar Association Professionalism and Professionalism Award Committees, previously served on the WCBA Board of Directors, and speaks at CLEs and publishes articles and blogs regularly on ethics and professionalism issues.

Deanna S. Brocker is a principal in The Brocker Law Firm, P.A. and previously served as Assistant Ethics Counsel for the N.C. State Bar for more than 10 years. In that capacity, she fielded ethics inquiries from attorneys throughout the state and drafted ethics opinions for consideration by the Ethics Committee. She now provides ethics counseling and private ethics opinions to attorneys. She regularly speaks at CLEs and writes articles and blogs on ethics and professionalism issues.

Introduction

"A prosecutor has the responsibility of a minister of justice and not simply that of an advocate; the prosecutor's duty is to seek justice, not merely to convict." *Comment [1], RPC 3.8*. No other legal ethics issue resonates as deeply with the general public as when a prosecutor misuses or abuses this power and responsibility. As a result, no other issue has the potential to threaten or undermine lawyers' privilege to regulate themselves if the public perceives that such cases are not being handled properly.

The 2007 disciplinary case against Durham District Attorney, Michael B. Nifong (Nifong) involved numerous interesting issues of legal ethics and self-regulation. This matter was tried before the Disciplinary Hearing Commission (DHC), the trial body of the North Carolina State Bar. I had the privilege of being retained as special counsel to prosecute the Nifong case, along with the State Bar's counsel, Katherine Jean.

In the sections below, I explore the three main sets of important ethical issues involved in the Nifong disciplinary case: (1) the prejudicial effect of extrajudicial statements; (2) the need for full and timely disclosure by prosecutors of all evidence and information, particularly potentially exculpatory evidence; and (3) the critical importance of truthful statements by prosecutors to the court, defense counsel, and others. Mr. Nifong's systematic abuse of his prosecutorial power and discretion by violating all three of these important ethical principles resulted in his unprecedented disbarment, as a sitting District Attorney (DA).

I. Pretrial Publicity

This section focuses on the prejudicial nature of the pretrial statements made by Mr. Nifong to the media, and the constitutional bases for barring such statements. The Durham prosecutor's investigation and eventual charges against three Duke Lacrosse players (hereinafter "the Duke Lacrosse Case") was paraded on local and national television and in all forms of public media. Mike Nifong, a virtually unknown DA at the time, granted interview after interview touting his confidence that a horrendous crime had taken place on March 14, 2006 at the house rented by three Duke lacrosse players. Over a year later and after a five-day trial, a panel of the DHC concluded that Mr. Nifong's conduct violated, among other rules, Rules 3.6(a) and 3.8(f) of the Rules of Professional Conduct, which concern pretrial publicity. The DHC specifically found that his extrajudicial comments were motivated by a political reelection campaign for the District Attorney of Durham County.

A. Prohibited Pretrial Publicity and Its Constitutional Foundations

Rule 3.6(a) prohibits a lawyer from making an "extrajudicial statement that the lawyer knows, or reasonably should know, will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter." Rule 3.8(f) prohibits prosecutors from making extrajudicial statements that have a substantial likelihood of heightening public

condemnation of the accused. It is clear that both rules are designed to protect the right to a fair trial by preventing trial by media. The prohibitions in these rules are based on essential, constitutionally-guaranteed rights.

1. Right to a Fair Trial

The prohibition contained in Rule 3.6 is designed to preserve and protect the Sixth Amendment constitutional right to a fair trial by an *impartial* jury as noted in Comment [1] to the Rule. If the jury pool is tainted by one-sided media coverage that shapes the resulting public opinion, this constitutional guarantee is eroded or nullified. Exactly 100 years ago, Supreme Court Justice Oliver Wendell Holmes, addressing the right to a fair trial, wrote:

> The theory of our system is that the conclusions to be reached in a case will be induced only by evidence and argument in open court, and not by any outside influence, whether of private talk or public print.

Patterson v. Colorado, 205 U.S. 454 (1907). Justice Holmes's comments, of course, were made before the invention of the broadcast media and Internet, which pose significant additional risk to constitutional rights if the necessary prohibitions and limitations on extrajudicial comments are not strictly observed.

Comment [5] to Rule 3.6 sets forth specific but nonexclusive examples of the types of statements which are presumed to have a substantial likelihood of materially prejudicing an adjudicative proceeding. Several of these specific examples are based on other important constitutional rights and guarantees in criminal cases, such as a suspect's right to silence, right to counsel, and the presumption of innocence.

2. Rights to Silence and Counsel

For example, Mr. Nifong made repeated statements concerning Duke Lacrosse team members' silence or refusal to make statements to law enforcement authorities. Specifically, Mr. Nifong commented to the media "if it's not the way it's been reported, then why are they so unwilling to tell us what, in their words, did take place that night?" Section 2 of Comment [5] to Rule 3.6 specifically prohibits an attorney from commenting on a defendant or suspect's refusal or failure to make a statement. This prohibition is based on a criminal defendant's Fifth Amendment right to remain silent and against self-incrimination.

The basis for the rule prohibiting the use of a suspect's silence against him is that it runs counter to the presumption of innocence. This presumption, which is fundamental to the criminal justice system, prohibits any attempt by the State to infer or otherwise suggest in any way that a suspect's silence is motivated by guilt. Repeated comments made by Mr. Nifong, such as the one noted above, suggested that guilt should be presumed from the players' alleged silence.

Some of Mr. Nifong's most egregious statements were directed at the players' exercise of their Sixth Amendment right to counsel. For example, Mr. Nifong commented: "and one would wonder why one needs an attorney if one was not charged and had not done anything wrong." This extrajudicial statement suggests that the only reason someone not charged with a crime would hire an attorney is that they are guilty. Of course, another good reason to hire an attorney is to adequately defend yourself if you were unjustly accused or charged. Ironically, we now know that this is precisely what occurred in the Duke Lacrosse cases.

3. Presumption of Innocence

Section 4 of Comment [5] to Rule 3.6 specifically prohibits an attorney from making extrajudicial statements about his or her "opinion as to the guilt or innocence of a defendant or suspect in a criminal case or proceeding that could result in incarceration." Additionally, Section 6 of Comment [5] states that a prosecutor cannot even comment that a defendant has been charged with a crime, unless he or she also explicitly states that it is merely an accusation and that the defendant is presumed innocent until proven guilty. In the face of such clear prohibitions, Mr. Nifong made repeated extrajudicial statements, such as:

- "There's no doubt in my mind that she was raped and assaulted at this location."
- "The *guilty* will stand trial."
- "I am convinced there was a rape . . . "

Both sections 4 and 6 of Comment [5] are based on the essential principle of the presumption of innocence. This principle is fundamental to our entire system of justice, and mandates that the defendant be accorded procedural due process and that guilt be decided on the basis of sufficient evidence, presented only in a court of law, not in the media. Mr. Nifong's extensive extrajudicial statements effectively nullified the defendants' essential constitutional rights and guarantees to silence, counsel, and the presumption of innocence.

4. Condemnation of the Accused

Rule 3.8(f) of the Rules of Professional Conduct is the counterpart to Rule 3.6, and imposes additional obligations on criminal prosecutors. The Rule provides, "except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose," a prosecutor shall not make extrajudicial comments "that have a substantial likelihood of heightening public condemnation of the accused…."

Mr. Nifong stated to the press that the players were a "bunch of hooligans" and that the crime was "reprehensible, abhorrent" and "racially motivated," among the numerous other similar comments. These statements served no legitimate law enforcement purpose. They were not designed to request assistance from the public in obtaining evidence, to inform the public of the nature, extent and status of the investigation, or to

warn of imminent danger or substantial risk of harm to the public by a suspect at large. *See* Rules 3.8(f) and 3.6(a). By his own admission, Mr. Nifong's statements were intended to put pressure on the players to communicate with law enforcement despite advice from counsel to remain silent. In other words, Mr. Nifong intentionally increased condemnation of the players to overcome the assertion of their constitutional rights.

His comments certainly heightened public condemnation of the players. They were shunned and ostracized by the media, their own university, fellow students, and community; in short, they became pariahs. One of the players actually had specific death threats shouted at him in the courtroom during his initial appearance. It is difficult to imagine a worse example of extrajudicial comments heightening public condemnation of the accused. Mr. Nifong's interviews with the local and national media outlets would have made it difficult to find an impartial jury anywhere. At one point, Mr. Nifong commented that the case would have to be moved to China to avoid the adverse effects of pretrial publicity.

B. Applicability of the Rule to Civil Cases and Permitted Speech

Rule 3.6 applies to all kinds of cases subject to trial in a court of law or adjudicative forum. Certain cases, however, may be less sensitive to extrajudicial speech. Civil cases will be less affected than criminal cases, and bench trials, arbitrations or administrative hearings will be the least affected. While there is an old CPR opinion that states that the trial publicity rule does not apply to cases on appeal, it is doubtful this is still good law.

Notwithstanding the general prohibition against materially prejudicial statements to the media in Rule 3.6(a), Rule 3.6(b) specifically permits extrajudicial speech in a number of limited areas, including most significantly any matters of public record. In civil cases, the public record will always be a safe harbor. If the language in a press release is the same language that is used in a pleading or other court document, the rule specifically allows the public dissemination of that language. An attorney, however, should strictly adhere to public record information and be careful not to include personal opinions and the like. A good rule of *thumb*, if a case is pending (anywhere) and you are unsure whether something is contained in the public record, the better course is to remain *mum*.

C. An Exception: When can you speak?

There also is an exception for certain speech that would ordinarily raise a question under Rule 3.6. If an attorney believes that his client has been prejudiced by extrajudicial statements made publicly by another party, opposing counsel or third persons, the attorney may make public statements in response, to the extent he believes it is necessary to avoid undue prejudice to his client. Such statements must be narrowly tailored to mitigate the harm created by the prior statements, and the prior statements must have been unprovoked and solely initiated by the other party. The justification, as stated in Comment [7] to the Rule, is that "when prejudicial statements have been publicly made

by others, responsive statements may have the salutary effect of lessening any resulting adverse impact on the adjudicative proceeding."

In light of the extensive and prejudicial statements made by Mr. Nifong in the Duke Lacrosse cases, defense counsel had wide latitude in making responsive statements under this exception. Additionally, Rule 3.6 does not prohibit statements by a client directly. While an unusual and potentially risky move, one of the Duke defendants held a press conference announcing his innocence and the innocence of the other two indicted players immediately after his indictment. Even without this exception, the rule would not prohibit such comments by the defendant or any other party. Nonetheless, lawyers should not encourage their clients to make extrajudicial statements that would otherwise violate Rule 3.6.

D. Lessons Learned

The State Bar evidence in *Nifong* established that a prosecutor with more than 27 years of experience placed his prosecutorial and political career above his duty to his client, the people of the State of North Carolina. Mr. Nifong's personal interests interfered with the ability to exercise professional judgment and motivated a career prosecutor to violate his unwavering duty to seek justice, not convictions. Mr. Nifong's repeated extrajudicial statements stripped the defendants of their essential constitutionally-guaranteed rights to silence, counsel, the presumption of innocence, and the right to a fair trial. His actions effectively nullified the most important principles underlying the American system of criminal justice. Preserving this system demanded the most severe disciplinary action – disbarment.

II. A New Standard for Ethical Discovery Practices?

In 2004, the State Bar brought disciplinary proceedings against two former state prosecutors for failing to provide exculpatory evidence to defense counsel during a capital murder trial, which resulted in a death sentence (hereafter, "Hoke & Graves"). The DHC reprimanded these two lawyers for their conduct. The DHC's decision in Hoke and Graves created a firestorm of criticism.

In the wake of Hoke and Graves, the State Bar reconsidered and modified two ethics rules: Rule 3.4, dealing with discovery practices in all cases, and Rule 3.8(d), affecting the duty of prosecutors to disclose information to defense counsel. These amendments went into effect on November 16, 2006. Both revised rules became a primary focus of the State Bar's recent disciplinary case against Mike Nifong, whose misconduct occurred both before and after the adoption of these new rules. *State Bar v. Nifong, 06 DHC 35.*

A. Revisions to Rules 3.4(d) and 3.8(f)

Rule 3.4(d) requires that lawyers make a reasonably diligent effort to comply with a legally proper discovery request. The State Bar's recent amendment to this rule added the requirement that a lawyer must disclose evidence or information that the lawyer knows or reasonably should know is subject to disclosure under applicable laws, evidentiary or procedural rules, or case law. This modified language really did not create a new standard of conduct for lawyers, but merely codified an existing obligation to follow laws and rules pertaining to discovery practices. It did create, however, a new basis upon which to impose discipline for violating those existing obligations.

Although Rule 3.4 applies to all attorneys, Rule 3.8 is applicable only to criminal prosecutors. Amended Rule 3.8(d) requires that a criminal prosecutor shall, "*after reasonably diligent inquiry* make timely disclosure to the defense of all evidence or information *required to be disclosed by applicable law, rules of procedure, or court opinions* including all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense…." *Rule 3.8(d) (revisions in italics)*. This rule change was intended to clarify that prosecutors had an affirmative duty to know and disclose what is in the criminal file. A prosecutor may not merely close his eyes or fail to review information contained in his file and thereby claim no rule violation occurred by failing to turn over information he did not know existed. A comment to Rule 3.8 adds, "a prosecutor should not intentionally avoid pursuit of evidence merely because he or she believes it will damage the prosecutor's case or aid the accused." *Comment [2], Rule 3.8*

B. Discovery Violations in Nifong Case

The disciplinary proceeding against Mr. Nifong involved a particularly egregious violation of the discovery rules. The DHC found that Mr. Nifong had violated both the previous and amended Rules 3.4 and 3.8 in several respects by failing to provide defense counsel with: (1) a complete report of all DNA testing and examinations performed by its

privately retained DNA lab, and (2) memorializations of conversations he had with the head of the DNA lab discussing the results of the DNA testing. In so doing, he failed to disclose evidence or information that he knew or reasonably should have known was subject to disclosure under applicable law, rules of procedure or evidence, or court opinions, in violation of both the newly amended provisions of Rules 3.4(d)(3) and 3.8(d), and the former provisions.

The information Mr. Nifong failed to disclose in violation of Rules 3.4 and 3.8 was central to the case. It concerned the existence of DNA found on the alleged victim's intimate person and clothing from numerous unidentified males, which did not match any of the lacrosse players tested, including the three indicted defendants. The State's outside expert told Mr. Nifong about the multiple unidentified male DNA during three in-person meetings. Mr. Nifong requested the expert to prepare a written report of the matches between DNA found and evidence items, which necessarily excluded the unidentified male DNA. Thus, the written report Mr. Nifong ultimately received and provided to defense counsel excluded this crucial evidence.

Defense counsel eventually discovered this exculpatory information among the extensive underlying scientific data Mr. Nifong was eventually ordered by the presiding judge to provide them over six months later. The discovery and disclosure of this information ultimately lead to the disciplinary charges against Mr. Nifong, his recusal from the criminal case, the eventual dismissal of all charges against the three indicted players, and a declaration of their innocence by the North Carolina Attorney General. Mr. Nifong's failure to disclose this critical information also violated his quintessential duty as a prosecutor to seek justice, not convictions.

C. Scope of Ethical Discovery Rule Changes

Because the amended rules make it an ethics violation to fail to comply with discovery obligations, an important question is whether every violation of a discovery statute, rule, or order also constitutes a violation of the Rules of Professional Conduct. Neither the ethical rules or comments explicitly answer this question, but the logical answer must be no. Certainly, the State Bar does not intend to police all discovery disputes.

Rule 3.4(d) and Rule 3.8(d) include "reasonably diligent effort" and "reasonably diligent inquiry" standards. These standards are inconsistent with an interpretation of these amended rules that would make every discovery transgression a violation of the Rules of Professional Conduct. As long as an attorney makes a reasonably diligent effort or inquiry, a failure to provide information requested in discovery should not constitute a violation of the Rules of Professional Conduct.

Additionally, interpretation of discovery rules and procedure is always a matter ripe for debate. Thus, if an attorney has a good-faith basis for not providing certain information, such as an applicable evidentiary privilege, there should be no disciplinary violation, even if a court later determines the attorney's judgment was incorrect. It is unlikely that

the State Bar would impose discipline if an attorney has made a reasonable and good faith judgment and has provided the other side with enough information about the basis for withholding information.

On the other hand, the amended rules clarify that if a lawyer has reason to believe the client is withholding information, "the lawyer may not rely solely upon the client's assertion that the discovery response is truthful or complete." *Comment [5], Rule 3.4.* The lawyer must be reasonably diligent in making inquiry of every client regarding disclosure requirements arising from applicable law, and must "impress upon the client the importance of making a thorough search of the client's records and responding honestly." *Id.* Relying solely on a client's false assertions or incomplete discovery responses without appropriate inquiry, potentially could lead to disciplinary action by the State Bar.

D. Lessons Learned

What can we take away from the Nifong disciplinary matter and the recent amendments to the ethics discovery rules? The amendments to Rules 3.4 and 3.8, incorporating a duty to comply with discovery obligations, recognize an important principle. The discovery process is fundamental to the truth-seeking function of the judicial system. With these amendments, it is clear that certain discovery rule violations can be the basis for discipline. The Nifong decision establishes that where a discovery violation concerns a lawyer's intentional withholding of critically important information, such as exculpatory information in a felony criminal case, very serious disciplinary action is likely.

In contrast, a reasonable interpretation of these rule amendments suggests that not all discovery violations will lead to disciplinary investigation and action. A lawyer who makes a reasonable effort to comply with discovery requests or fails to provide information based on a good-faith legal basis for doing so will not be subject to discipline. The basis for failing to disclose information, however, should always be disclosed clearly to the requesting party or opposing counsel to preempt any question about propriety or assertion of concealment. Additionally, a lawyer must make reasonable inquiry to ensure that a client is providing complete and accurate information and disclosures. Willfully blind reliance on a client's assertions is insufficient.

III. **The Truth Set Them Free**

It's a simple enough principle: "Always tell the truth." As lawyers, honesty and integrity are central to our ethical duties. We are obligated to tell the truth -- to the courts, to each other, to our clients, to the State Bar, and in every aspect of our practice. These obligations are reflected in numerous specific Rules of Professional Conduct:

- Rule 3.3(a)(1) - requires candor toward all tribunals,
- Rule 4.1 - mandates truthfulness in statements to others,
- Rule 8.1 - governs statements in disciplinary matters and Bar admissions, and
- Rule 8.4(c) - prohibits any dishonesty, fraud, deceit, or misrepresentation.

In the Nifong disciplinary proceeding, the DHC concluded that the former DA engaged in repeated misconduct that violated each one of the above rules. *State Bar v. Nifong, 06 DHC 35*. For example, Mr. Nifong provided the defense counsel with a written DNA report that did not contain numerous results finding multiple unidentified male DNA on the alleged victim and her intimate clothing. Contemporaneously, he served and filed a written response representing to the Court and defense counsel that he was not aware of any other exculpatory information. He previously had had multiple meetings with his DNA expert in which this exculpatory information was discussed in detail.

In response to repeated requests by defense counsel, Mr. Nifong consistently represented that all the DNA results were in the written report and that he had no discussions with his experts regarding these results. At a subsequent hearing, Mr. Nifong represented, in direct response to an inquiry from the presiding judge, that his expert did not discuss any results other than what was contained in the written report. The clear, cogent and convincing evidence at the hearing demonstrated these repeated representations to be false.

After defense counsel independently discovered the existence of this evidence, Mr. Nifong falsely represented or implied to the court and defense counsel that he was not aware of the existence of this unidentified male DNA that had been excluded from the written report. He later repeated that misrepresentation, and others, to the State Bar during its investigation of his conduct. Despite evidence to the contrary, Mr. Nifong persisted with these misrepresentations through his sworn testimony at the trial before the DHC. Mr. Nifong wove this web of deception in an attempt to conceal the existence of clearly exculpatory information that he had withheld from defense counsel.

A. Representations Based on Personal Knowledge

Mr. Nifong's attempted defense against these allegations raises an interesting distinction in the rules concerning misrepresentations. Mr. Nifong contended that while his representations to the court turned out to be untrue, he did not make an intentional misrepresentation. He claimed that he never read the written report from his outside DNA expert. This report concerned critical evidence in the most important case of his career -- one that garnered unprecedented national media attention. Mr. Nifong further

contended that despite repeated and continuing requests from defense counsel for all the DNA results and tests performed and inquiries from the court, he never went back and read the DNA report before making his various misrepresentations to the court.

Even if Mr. Nifong's story had been credible, his misrepresentations would still have constituted a violation of the rules. Under the Rules of Professional Conduct, there is a difference between a lawyer's duty to the tribunal when he makes representations based upon his own personal knowledge and when he presents assertions made by the client. Ordinarily, when a lawyer files pleadings containing allegations made by the client or makes statements to the court based upon a client's representations, the lawyer is not deemed to have personal knowledge of the veracity of the information presented. A lawyer need not fully substantiate the facts presented before filing suit or making such statements. *Comment [3], Rule 3.3.*

In contrast, when an attorney makes a statement to a court based upon his own personal knowledge, he must make reasonably diligent inquiry into the accuracy of the statement before making it, if there is any doubt as to the statement's veracity. If reasonably diligent inquiry has not been made, then the attorney has the obligation to disclose this fact to the court. If an attorney does not make reasonably diligent inquiry and the statement turns out to be untrue, then the lawyer has violated Rule 3.3(a) (1), regardless of whether the attorney knew so at the time. Comment [3] to this Rule cautions: "an assertion purporting to be on the lawyer's own knowledge, as in an affidavit by the lawyer or in a statement in open court, may properly be made only when the lawyer knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry." *Id.*

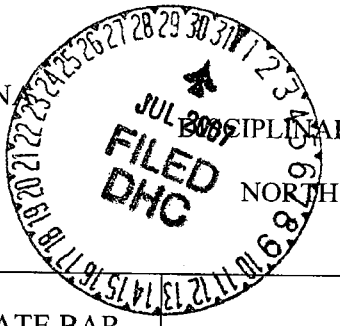
B. Lessons Learned

A knowingly false statement to a tribunal is a serious violation of the Rules of Professional Conduct. Rule 3.3(a) (4). In the context of discovery, parties and counsel must be able to rely upon representations made to each other with respect to discovery. Truthfulness in discovery practices is essential to preserving the fairness of the adversarial system. Equally as important, a court must be able to rely upon representations made to it about discovery, whether in the criminal or civil context. If courts cannot rely upon representations made to them by counsel regarding the sufficiency of the discovery proffered, our judicial system would come to a grinding halt. It is especially important that courts be able to rely upon the representations of criminal prosecutors about discovery and all other issues.

Additionally, there is no faster way for an attorney to get neck deep in quicksand than to make a false statement in a disciplinary investigation by the State Bar. Regardless of the underlying allegations, an attorney can count on more severe discipline if he is not completely forthcoming in the disciplinary process. Mr. Nifong's multiple written responses to the State Bar inquiries conflicted with accounts of multiple witnesses, his own statements to the court in the Duke Lacrosse case, and even conflicted with his other written responses to the State Bar and his deposition testimony in the disciplinary matter.

His multiple misrepresentations and intentional obfuscation likely contributed to the harsh penalty handed down by the DHC.

Fortunately, the discovery and revelation of the truth concerning the undisclosed and exculpatory DNA evidence ultimately set the criminal defendants free and resulted in the highly unusual declaration of their innocence by the North Carolina Attorney General. At the same time, Nifong's repeated lies and misrepresentations led to his unprecedented disbarment as a sitting District Attorney. This misconduct was part of his systematic abuse of prosecutorial power and discretion that was the final nail in his disciplinary coffin.



STATE OF NORTH CAROLINA WAKE COUNTY	BEFORE THE DISCIPLINARY HEARING COMMISSION OF THE NORTH CAROLINA STATE BAR 06 DHC 35
THE NORTH CAROLINA STATE BAR, Plaintiff, v. MICHAEL B. NIFONG, Attorney, Defendant.	AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER OF DISCIPLINE

The Hearing Committee on its own motion pursuant to Rule of Civil Procedure 60(a) enters the following Amended Findings of Fact, Conclusions of Law and Order of Discipline in order to correct a factual mistake in Findings of Fact Paragraph 43 of its original Order in this cause, and to add an additional Conclusion of Law (b):

A hearing in this matter was conducted on June 12 through June 16, 2007, before a Hearing Committee composed of F. Lane Williamson, Chair, and members Sharon B. Alexander and R. Mitchel Tyler. Plaintiff, the North Carolina State Bar, was represented by Katherine E. Jean, Douglas J. Brocker, and Carmen K. Hoyme. Defendant, Michael B. Nifong, was represented by attorneys David B. Freedman and Dudley A. Witt. Based upon the admissions contained in the pleadings and upon the evidence presented at the hearing, this Hearing Committee makes, by clear, cogent and convincing evidence, the following

FINDINGS OF FACT

1. Plaintiff, the North Carolina State Bar, is a body duly organized under the laws of North Carolina and is the proper party to bring this proceeding under the authority granted it in Chapter 84 of the General Statutes of North Carolina, and the Rules and Regulations of the North Carolina State Bar (Chapter 1 of Title 27 of the North Carolina Administrative Code).

2. Defendant, Michael B. Nifong, (hereinafter "Nifong"), was admitted to the North Carolina State Bar on August 19, 1978, and is, and was at all times referred to herein, an attorney at law licensed to practice in North Carolina, subject to the laws of the State of North Carolina, the Rules and Regulations of the North Carolina State Bar and the Revised Rules of Professional Conduct.

3. During all times relevant to this complaint, Nifong actively engaged in the practice of law in the State of North Carolina as District Attorney for the Fourteenth Prosecutorial District in Durham County, North Carolina.

4. Nifong was appointed District Attorney in 2005. In late March 2006, Nifong was engaged in a highly-contested political campaign to retain his office.

5. In the early morning hours of March 14, 2006, an exotic dancer named Crystal Mangum reported that she had been raped by three men during a party at 610 North Buchanan Boulevard in Durham. Ms. Mangum asserted that she had been vaginally, rectally, and orally penetrated with no condom used during the assault and with at least some of the alleged perpetrators ejaculating.

6. Various pieces of evidence were collected for later DNA testing, including evidence commonly referred to as a "rape kit," which contained cheek scrapings, oral, vaginal, and rectal swabs, a pubic hair combing, and a pair of Ms. Mangum's underwear.

7. The Durham Police Department (DPD) initiated an investigation in what would come to be known as "the Duke Lacrosse case" and executed a search warrant on the house at 610 North Buchanan Boulevard on March 16, 2006. The investigation revealed that the residents of 610 North Buchanan were captains of the Duke University lacrosse team, and that a majority of the other attendees at the March 13, 2006, party were members of the team.

8. On March 16, 2006, the three residents of 610 North Buchanan voluntarily assisted DPD in executing a search warrant at their residence. During the search, numerous pieces of evidence were seized for later testing. The three residents also provided voluntary statements and voluntarily submitted DNA samples for comparison testing purposes. One of the three residents was David Evans, who was later indicted for the alleged attack on Ms. Mangum.

9. On March 22, 2006, Nifong's office assisted a DPD investigator in obtaining a Nontestimonial Identification Order (NTO) to compel the suspects in the case to be photographed and to provide DNA samples.

10. On March 23, 2006, DNA samples from all 46 Caucasian members of the Duke University 2006 Men's Lacrosse Team were obtained pursuant to the NTO.

11. When Nifong learned of the case on March 24, 2006, he immediately recognized that the case would garner significant media attention and decided to handle the case himself, rather than having it handled by the assistant district attorney in his office who would ordinarily handle such cases.

12. On March 24, 2006, Nifong informed DPD that he was assuming primary responsibility for prosecuting any criminal charges resulting from the investigation and directed the DPD to go through him for direction as to the conduct of the factual investigation of those matters.

13. On March 27, 2006, the rape kit items and DNA samples from the lacrosse players were delivered to the State Bureau of Investigation (SBI) lab for testing and examination, including DNA testing.

14. On March 27, 2006, Nifong was briefed by Sergeant Gottlieb and Investigator Himan of the DPD about the status of the investigation to date. Gottlieb and Himan discussed with Nifong a number of weaknesses in the case, including that Ms. Mangum had made inconsistent statements to the police and had changed her story several times, that the other dancer who was present at the party during the alleged attack disputed Ms. Mangum's story of an alleged assault, that Ms. Mangum had already viewed two photo arrays and had not identified any alleged attackers, and that the three team captains had voluntarily cooperated with police and had denied that the alleged attack occurred.

15. During or within a few days of the initial briefing by Gottlieb and Himan, Nifong acknowledged to Gottlieb and Himan that the Duke Lacrosse case would be a very hard case to win in court and said "you know, we're fucked."

16. Beginning on March 27, within hours after he received the initial briefing from Gottlieb and Himan, Nifong made public comments and statements to representatives of the news media about the Duke Lacrosse case and participated in

interviews with various newspapers and television stations and other representatives of news media.

17. Between March 27 and March 31, Nifong stated to a reporter for WRAL TV news that lacrosse team members denied the rape accusations, that team members admitted that there was underage drinking at the party, and that otherwise team members were not cooperating with authorities.

18. Between March 27 and March 31, 2006, Nifong stated to a reporter for ABC 11 TV News that he might also consider charging other players for not coming forward with information, stating "[m]y guess is that some of this stonewall of silence that we have seen may tend to crumble once charges start to come out."

19. Between March 27 and March 31, 2006, Nifong stated to a reporter for the New York Times, "There are three people who went into the bathroom with the young lady, and whether the other people there knew what was going on at the time, they do now and have not come forward. I'm disappointed that no one has been enough of a man to come forward. And if they would have spoken up at the time, this may never have happened."

20. Between March 27 and March 31, 2006, Nifong stated to a reporter for NBC 17 News that the lacrosse team members were standing together and refusing to talk with investigators and that he might bring aiding-and-abetting charges against some of the players who were not cooperating with the investigation.

21. Between March 27 and March 31, 2006, Nifong stated to a reporter for the Durham Herald Sun newspaper that lacrosse players still refused to speak with investigators.

22. Between March 27 and March 31, 2006, Nifong made the following statements to Rene Syler of CBS News: "The lacrosse team, clearly, has not been fully cooperative" in the investigation; "The university, I believe, has done pretty much everything that they can under the circumstances. They, obviously, don't have a lot of control over whether or not the lacrosse team members actually speak to the police. I think that their silence is as a result of advice with counsel"; "If it's not the way it's been reported, then why are they so unwilling to tell us what, in their words, did take place that

night?"; that he believed a crime occurred; that "the guilty will stand trial"; and "There's no doubt a sexual assault took place."

23. Between March 27 and March 31, 2006, Nifong made the following statements to a reporter for NBC 17 TV News: "The information that I have does lead me to conclude that a rape did occur"; "I'm making a statement to the Durham community and, as a citizen of Durham, I am making a statement for the Durham community. This is not the kind of activity we condone, and it must be dealt with quickly and harshly"; "The circumstances of the rape indicated a deep racial motivation for some of the things that were done. It makes a crime that is by its nature one of the most offensive and invasive even more so"; and "This is not a case of people drinking and it getting out of hand from that. This is something much, much beyond that."

24. Between March 27 and March 31, 2006, Nifong stated to a reporter for ESPN, "And one would wonder why one needs an attorney if one was not charged and had not done anything wrong."

25. Between March 27 and March 31, 2006, Nifong stated to reporter for CBS News that "the investigation at that time was certainly consistent with a sexual assault having taken place, as was the victim's demeanor at the time of the examination."

26. Between March 27 and March 31, 2006, Nifong made the following statements to a reporter for MSNBC: "There is evidence of trauma in the victim's vaginal area that was noted when she was examined by a nurse at the hospital"; "her general demeanor was suggested-suggestive of the fact that she had been through a traumatic situation"; "I am convinced there was a rape, yes, sir"; and "The circumstances of the case are not suggestive of the alternate explanation that has been suggested by some of the members of the situation."

27. Between March 27 and March 31, 2006, Nifong stated to a reporter for the Raleigh News and Observer newspaper, "I am satisfied that she was sexually assaulted at this residence."

28. Between March 27 and March 31, 2006, Nifong stated to a reporter for the USA Today newspaper, "Somebody's wrong about that sexual assault. Either I'm wrong, or they're not telling the truth about it."

29. Between March 27 and March 31, 2006, Nifong made the following statements to a reporter for ABC 11 TV News: "I don't think you can classify anything about what went on as a prank that got out of hand or drinking that took place by people who are underage"; "In this case, where you have the act of rape – essentially a gang rape – is bad enough in and of itself, but when it's made with racial epithets against the victim, I mean, it's just absolutely unconscionable"; and "The contempt that was shown for the victim, based on her race was totally abhorrent. It adds another layer of reprehensibleness, to a crime that is already reprehensible."

30. Between March 27 and March 31, 2006, Nifong stated to a reporter for ABC News, "It is a case that talks about what this community stands for."

31. Between March 27 and March 31, 2006, Nifong stated to a reporter for the New York Times, "The thing that most of us found so abhorrent, and the reason I decided to take it over myself, was the combination gang-like rape activity accompanied by the racial slurs and general racial hostility."

32. Between March 27 and March 31, 2006, Nifong stated to a reporter for CBS News, "The racial slurs involved are relevant to show the mindset . . . involved in this particular attack" and "obviously, it made what is already an extremely reprehensible act even more reprehensible."

33. Between March 27 and March 31, 2006, Nifong stated to a reporter for WRAL TV News, "What happened here was one of the worst things that's happened since I have become district attorney" and "[w]hen I look at what happened, I was appalled. I think that most people in this community are appalled."

34. On or after March 27, 2006, Nifong stated to a reporter for the Charlotte Observer newspaper, "I would not be surprised if condoms were used. Probably an exotic dancer would not be your first choice for unprotected sex."

35. On or about March 29, 2006, Nifong stated during an interview with a reporter for CNN that "[i]t just seems like a shame that they are not willing to violate this seeming sacred sense of loyalty to team for loyalty to community."

36. On March 30, 2006, the SBI notified Nifong that the SBI had examined the items from the rape kit and was unable to find any semen, blood, or saliva on any of those items.

37. On March 31, 2006, Nifong stated to a reporter for MSNBC, "Somebody had an arm around her like this, which she then had to struggle with in order to be able to breathe . . . She was struggling just to be able to breathe" and "[i]f a condom were used, then we might expect that there would not be any DNA evidence recovered from say a vaginal swab."

38. In March or April, 2006, Nifong stated to a representative of the news media that a rape examination of Ms. Mangum done at Duke Medical Center the morning of the alleged attack revealed evidence of bruising consistent with a brutal sexual assault, "with the most likely place it happened at the lacrosse team party."

39. In April 2006, Nifong stated to a reporter for Newsweek Magazine that the police took Ms. Mangum to a hospital where a nurse concluded that she had suffered injuries consistent with a sexual assault.

40. In April 2006, Nifong stated to a reporter for the Raleigh News and Observer newspaper, "I would like to think that somebody [not involved in the attack] has the human decency to call up and say, 'What am I doing covering up for a bunch of hooligans?'"

41. In April 2006, Nifong stated to a reporter, "They don't want to admit to the enormity of what they have done."

42. In an April 2006 conversation with a representative of the Raleigh News and Observer newspaper, Nifong compared the alleged rape to the quadruple homicide at Alpine Road Townhouse and multiple cross burnings that outraged the city of Durham in 2005 and stated "I'm not going to let Durham's view in the minds of the world to be a bunch of lacrosse players from Duke raping a black girl in Durham."

43. On April 4, 2006, DPD conducted a photographic identification procedure in which photographs of 46 members of the Duke Lacrosse team were shown to Ms. Mangum. Ms. Mangum was told at the beginning of the procedure that DPD had reason to believe all 46 of the men depicted in the photographs she would view were present at the party at which she contended the attack had occurred. The procedure followed in this photographic identification procedure was conceived and/or approved by Nifong. During the photographic identification procedure, Ms. Mangum identified Collin Finnerty and Reade Seligman as her attackers with "100% certainty" and identified David Evans as

one of her attackers with "90% certainty." Ms. Mangum had previously viewed photographic identification procedures which included photographs of Reade Seligman and David Evans and not identified either of them in the prior procedures.

44. On April 5, 2006, Nifong's office sought and obtained an Order permitting transfer of the rape kit items from the SBI to a private company called DNA Security, Inc. ("DSI") for more sensitive DNA testing than the SBI could perform. The reference DNA specimens obtained from the lacrosse players pursuant to the NTO were also transferred to DSI for testing, as were reference specimens from several other individuals with whom Ms. Mangum acknowledged having consensual sexual relations, including her boyfriend.

45. As justification for its Order permitting transfer of the evidence to DSI, the Court noted that the additional testing Nifong's office sought in its petition was "believed to be material and relevant to this investigation, and that any male cells found among the victim's swabs from the rape kit can be evidence of an assault and may lead to the identification of the perpetrator."

46. Between April 7 and April 10, 2006, DSI performed testing and analysis of DNA found on the rape kit items. Between April 7 and April 10, DSI found DNA from up to four different males on several items of evidence from the rape kit and found that the male DNA on the rape kit items was inconsistent with the profiles of the lacrosse team members.

47. During a meeting on April 10, 2006 among Nifong, two DPD officers and Dr. Brian Meehan, lab director for DSI, Dr. Meehan discussed with Nifong the results of the analyses performed by DSI to that point and explained that DSI had found DNA from up to four different males on several items of evidence from the rape kit and that the DNA on the rape kit items was inconsistent with the profiles of all lacrosse team members.

48. The evidence and information referred to above in paragraphs 46 and 47 was evidence or information which tended to negate the guilt of the lacrosse team members identified as suspects in the NTO.

49. After the April 10, 2006 meeting with Dr. Meehan, Nifong stated to a reporter for ABC 11 TV News that DNA testing other than that performed by the SBI had

not yet come back and that there was other evidence, including the accuser being able to identify at least one of the alleged attackers.

50. While discussing DNA testing at a public forum at North Carolina Central University on April 11, 2006, in the presence of representatives of the news media, Nifong stated that if there was no DNA found "[i]t doesn't mean nothing happened. It just means nothing was left behind."

51. On April 17, 2006, Nifong sought and obtained indictments against Collin Finnerty and Reade Seligman for first-degree rape, first-degree sex offense, and kidnapping. (The indicted members of the Duke lacrosse team are referred to collectively herein as "the Duke Defendants").

52. Before April 17, 2006, Nifong refused offers from counsel for David Evans, who was eventually indicted, to consider evidence and information that they contended either provided an alibi or otherwise demonstrated that their client did not commit any crime.

53. On April 19, 2006, two days after being indicted, Duke Defendant Reade Seligman through counsel served Nifong with a request or motion for discovery material, including, *inter alia*, witness statements, the results of any tests, all DNA analysis, and any exculpatory information.

54. By April 20, 2006, DSI had performed additional DNA testing and analysis and found DNA from multiple males on at least one additional piece of evidence from the rape kit.

55. By April 20, 2006, from its testing and analysis, DSI had determined that all the lacrosse players, including the two who had already been indicted, were scientifically excluded as possible contributors of the DNA from multiple males found on several evidence items from the rape kit.

56. On April 21, 2006, Nifong again met with Dr. Meehan and the two DPD officers to discuss all of the results of the DNA testing and analyses performed by DSI to date. During this meeting, Dr. Meehan told Nifong that: (a) DNA from multiple males had been found on several items from the rape kit, and (b) all of the lacrosse players, including the two players against whom Nifong had already sought and obtained indictments, were excluded as possible contributors of this DNA because none of their

DNA profiles matched or were consistent with any of the DNA found on the rape kit items.

57. The evidence and information referred to above in paragraphs 54 through 56 was evidence or information which tended to negate the guilt of the Duke Defendants.

58. At the April 21 meeting, Dr. Meehan told Nifong that DSI's testing had revealed DNA on two fingernail specimens that were incomplete but were consistent with the DNA profiles of two un-indicted lacrosse players, including DNA on a fingernail found in David Evans' garbage can which incomplete but which was consistent with David Evans' DNA profile, and DNA from the vaginal swab that was consistent with the DNA profile of Ms. Mangum's boyfriend.

59. During the April 21, 2006 meeting, Nifong notified Dr. Meehan that he would require a written report to be produced concerning DSI's testing that reflected the matches found between DNA on evidence items and known reference specimens. Nifong told Dr. Meehan he would let Dr. Meehan know when he needed the report.

60. Sometime between April 21 and May 12, Nifong notified Dr. Meehan that he would need for him to prepare the written report for an upcoming court proceeding. As requested by Nifong, Dr. Meehan prepared a report that reflected the matches found by DSI between DNA found on evidence items and known reference specimens. This written report did not reflect that DSI had found DNA on rape kit items from multiple males who had not provided reference specimens for comparison ("multiple unidentified males") and did not reflect that all 46 members of the lacrosse team had been scientifically excluded as possible contributors of the male DNA on the rape kit items.

61. In May, 2006, Nifong made the following statements to a reporter for WRAL TV News: "My guess is that there are many questions that many people are asking that they would not be asking if they saw the results"; "They're not things that the defense releases unless they unquestionably support their positions"; and "So, the fact that they're making statements about what the reports are saying, and not actually showing the reports, should in and of itself raise some red flags."

62. On or before April 18, 2006, Nifong stated to a reporter for Newsweek Magazine that the victim's "impaired state was not necessarily voluntary . . . [I]f I had a witness who saw her right before this and she was not intoxicated, and then I had a

witness who said that she was given a drink at the party and after taking a few sips of that drink acted in a particular way, that could be evidence of something other than intoxication, or at least other than voluntary intoxication?"

63. On May 12, 2006, Nifong again met with Dr. Meehan and two DPD officers and discussed the results of DSI's testing to date. During that meeting, consistent with Nifong's prior request, Dr. Meehan provided Nifong a 10-page written report which set forth the results of DNA tests on only the three evidence specimens that contained DNA consistent with DNA profiles from several known reference specimens. The three items in DSI's written report concerned DNA profiles on two fingernail specimens that were incomplete but were consistent with the DNA profiles of two unindicted lacrosse players, including DNA on a fingernail found in David Evans' garbage can which was incomplete but was consistent with David Evans' DNA profile, and DNA from the vaginal swab that was consistent with the DNA profile of Ms. Mangum's boyfriend. DSI's written report did not disclose the existence of any of the multiple unidentified male DNA found on the rape kit items, although it did list the evidence items on which the unidentified DNA had been discovered.

64. Nifong personally received DSI's written report from Dr. Meehan on May 12, 2006, and later that day provided it to counsel for the two Duke Defendants who had been indicted and for David Evans, among others.

65. When he received DSI's written report and provided it to counsel for the Duke Defendants, Nifong was fully aware of the test results that were omitted from the written report, including the test results revealing the existence of DNA from multiple unidentified males on rape kit items.

66. Three days later, on May 15, 2006, Nifong sought and obtained an indictment against David Evans for first-degree rape, first-degree sex offense, and kidnapping.

67. On May 17, Duke Defendant Collin Finnerty served discovery requests on Nifong, which specifically asked that any expert witness "prepare, and furnish to the defendant, a report of the results of *any* (not only the ones about which the expert expects to testify) examinations or tests conducted by the expert."

68. On May 18, 2006, Nifong provided various discovery materials to all three Duke Defendants, including another copy of DSI's written report, in connection with a hearing in the case on that same day. The discovery materials Nifong provided on May 18 did not include any underlying data or information concerning DSI's testing and analysis. The materials Nifong provided also did not include any documentation or information indicating the presence of DNA from multiple unidentified males on the rape kit items. Nifong also did not provide in the discovery materials any written or recorded memorialization of the substance of Dr. Meehan's oral statements made during his meetings with Nifong in April and May 2006 concerning the results of all DSI's tests and examinations, including the existence of DNA from multiple unidentified males on the rape kit items ("memorializations of Dr. Meehan's oral statements").

69. DSI's tests and examinations revealing the existence of DNA from multiple unidentified males on rape kit items and Dr. Meehan's oral statements regarding the existence of that DNA were evidence that tended to negate the guilt of the accused; Collin Finnerty, Reade Seligman and David Evans.

70. Accompanying the discovery materials, Nifong served and filed with the Court written responses to the Duke Defendants' discovery requests. In these responses, Nifong stated: "The State is not aware of any additional material or information which may be exculpatory in nature with respect to the Defendant." In his written discovery responses, Nifong also identified Dr. Meehan and R.W. Scales, another person at DSI, as expert witnesses reasonably expected to testify at the trial of the underlying criminal cases pursuant to N.C. Gen. Stat. § 15A-903(a)(2). Nifong also gave notice in the written discovery responses of the State's intent to introduce scientific data accompanied by expert testimony. Nifong represented in the written discovery responses that all of the reports of those experts had been provided to the Duke Defendants.

71. At the time he made these representations to the Court and to the Duke Defendants in his written discovery responses, Nifong was aware of the existence of DNA from multiple unidentified males on the rape kits items, was aware that DSI's written report did not reveal the existence of this evidence, and was aware that he had not provided the Duke Defendants with memorializations of Dr. Meehan's oral statements regarding the existence of this evidence.

72. The representations contained in Nifong's May 18 written discovery responses were intentional misrepresentations and intentional false statements of material fact to opposing counsel and to the Court.

73. At the May 18, 2006 hearing, the Honorable Ronald Stephens, Superior Court Judge presiding, asked Nifong if he had provided the Duke Defendants all discovery materials.

74. In response to Judge Stephens' inquiry, Nifong stated: "I've turned over everything I have."

75. Nifong's response to Judge Stephens' question was a misrepresentation and a false statement of material fact.

76. On June 19, 2006, Nifong issued a press release to representatives of the news media stating, "None of the 'facts' I know at this time, indeed, none of the evidence I have seen from any source, has changed the opinion that I expressed initially."

77. On June 19, 2006, counsel for the Duke Defendants requested various materials from Nifong, including a report or written statement of the meeting between Nifong and Dr. Meehan to discuss the DNA test results. This request was addressed at a hearing before Judge Stephens on June 22, 2006.

78. In response to the Duke Defendants' June 19 discovery request and in response to Judge Stephens' direct inquiry, Nifong stated in open court that, other than what was contained in DSI's written report, all of his communications with Dr. Meehan were privileged "work product." Nifong represented to Judge Stephens, "That's pretty much correct, your Honor. We received the reports, which [defense counsel] has received, and we talked about how we would likely use that, and that's what we did."

79. At the time Nifong made these representations to Judge Stephens on June 22, Nifong knew that he had discussed with Dr. Meehan on three occasions the existence of DNA from multiple unidentified males on the rape kits items, which evidence was not disclosed in DSI's written report, and knew that Dr. Meehan's statements to him revealing the existence of DNA from multiple unidentified males on the rape kits items were not privileged work product.

80. Nifong's representations to Judge Stephens at the June 22 hearing were intentional misrepresentations and intentional false statements of material fact to the Court and to opposing counsel.

81. During the June 22 hearing, Judge Stephens entered an Order directing Nifong to provide Collin Finnerty and later all the Duke Defendants with, among other things, "results of tests and examinations, or any other matter or evidence obtained during the investigation of the offenses alleged to have been committed by the defendant" and statements of any witnesses taken during the investigation, with oral statements to be reduced to written or recorded form.

82. Nifong did not provide the Duke Defendants with "results of tests and examinations, or any other matter or evidence obtained during the investigation of the offenses alleged to have been committed by the defendant" and did not provide the Duke Defendants with statements of any witnesses taken during the investigation, with oral statements reduced to written or recorded form.

83. Nifong did not comply with Judge Stephens' June 22 Order.

84. On August 31, 2006, the Duke Defendants collectively filed a Joint Omnibus Motion to Compel Discovery seeking, among other things, the complete file and all underlying data regarding DSI's work and the substance of any discoverable comments made by Dr. Meehan during his meetings with Nifong and two DPD officers on April 10, April 21, and May 12, 2006. The Joint Omnibus Motion was addressed by the Honorable Osmond W. Smith III, Superior Court Judge presiding, at a hearing on September 22, 2006.

85. At the September 22 hearing, counsel for the Duke Defendants specifically stated in open court that the Duke Defendants were seeking the results of any tests finding any additional DNA on Ms. Mangum even if it did not match any of the Duke Defendants or other individuals for whom the State had provided reference DNA specimens for comparison.

86. In response to a direct question from Judge Smith, Nifong represented that DSI's written report encompassed all tests performed by DSI and everything discussed at his meetings with Dr. Meehan in April and May 2006. The following exchange occurred

immediately thereafter on the Duke Defendants' request for memorializations of Dr. Meehan's oral statements:

> Judge Smith: "So you represent there are no other statements from Dr. Meehan?"
>
> Mr. Nifong: "No other statements. No other statements made to me."

87. At the time Nifong made these representations to Judge Smith, he was aware that Dr. Meehan had told him in their meetings about the existence of DNA from multiple unidentified males on the rape kit items, was aware that he had not provided the Duke Defendants with a written or recorded memorialization of Dr. Meehan's statements and was aware that the existence of that DNA was not revealed in DSI's written report.

88. Nifong's statements and responses to Judge Smith at the September 22 hearing were intentional misrepresentations and intentional false statements of material fact to the Court and to opposing counsel.

89. On September 22, Judge Smith ordered Nifong to provide the Duke Defendants the complete files and underlying data from both the SBI and DSI by October 20, 2006.

90. On October 19, 2006 counsel for David Evans faxed to Nifong a proposed order reflecting Judge Smith's September 22 ruling. The proposed order stated, in paragraph 4, "Regarding the defendants' request for a report of statements made by Dr. Brian Meehan of DNA Security, Inc., during two separate meetings among Dr. Meehan, District Attorney Mike Nifong, Sgt. Mark Gottlieb, and Inv. Benjamin Himan in April 2006 . . . Mr. Nifong represented that those meetings involved the State's request for YSTR testing, Dr. Meehan's report of the results of those tests, and a discussion of how the State intended to use those results in the course of the trial of these matters. Mr. Nifong indicated that he did not discuss the facts of the case with Dr. Meehan and that Dr. Meehan said nothing during those meetings beyond what was encompassed in the final report of DNA Security, dated May 12, 2006. The Court accepted Mr. Nifong's representation about those meetings and held that there were no additional discoverable statements by Dr. Meehan for the State to produce."

91. On October 24, 2006, Nifong responded by letter to defense counsel's October 19, 2006 letter and proposed order. In his response, Nifong identified two

changes he believed were appropriate to two portions of the proposed order, made no mention of any changes he believed were appropriate to paragraph 4, and said "the proposed order seems satisfactory" and "it seems to reflect with acceptable accuracy the rulings of Judge Smith on September 22."

92. On October 27, 2006, Nifong provided 1,844 pages of underlying documents and materials from DSI to the Duke Defendants pursuant to the Court's September 22, 2006 Order but did not provide the Duke Defendants a complete written report from DSI setting forth the results of all of its tests and examinations, including the existence of DNA from multiple unidentified males on the rape kit items, and did not provide the Duke Defendants with any written or recorded memorializations of Dr. Meehan's oral statements.

93. After reviewing the underlying data provided to them on October 27 for between 60 and 100 hours, counsel for the Duke Defendants determined that DSI's written report did not include the results of all DNA tests performed by DSI and determined that DSI had found DNA from multiple unidentified males on the rape kit items and that such results were not included in DSI's written report.

94. On December 13, 2006, the Duke Defendants filed a Motion to Compel Discovery: Expert DNA Analysis, detailing their discovery of the existence of DNA from multiple unidentified males on the rape kit items and explaining that this evidence had not been included DSI's written report. The motion did not allege any attempt or agreement to conceal the potentially exculpatory DNA evidence or test results. The Motion to Compel Discovery: Expert DNA Analysis was addressed by the Honorable Osmond W. Smith III, Superior Court Judge presiding, at a hearing on December 15, 2006.

95. At the December 15 hearing, both in chambers and again in open court, Nifong stated or implied to Judge Smith that he was unaware of the existence of DNA from multiple unidentified males on the rape kit items until he received the December 13 motion and/or was unaware that the results of any DNA testing performed by DSI had been excluded from DSI's written report. Nifong stated to Judge Smith in open court: "The first I heard of this particular situation was when I was served with these reports -- this motion on Wednesday of this week."

96. Nifong's representations that he was unaware of the existence of DNA from multiple unidentified males on the rape kit items and/or that he was unaware of the exclusion of such evidence from DSI's written report, were intentional misrepresentations and intentional false statements of material fact to the Court and to opposing counsel.

97. During the December 15 hearing, Dr. Meehan testified under oath to the following statements:

a. he discussed with Nifong at the April 10, April 21, May 12 meetings the results of all tests conducted by DSI to date, including the potentially exculpatory DNA test results;
b. he and Nifong discussed and agreed that "we would only disclose or show on our report those reference specimens that matched evidence items";
c. DSI's report did not set forth the results of all tests and examinations DSI conducted in the case but was limited to only some results;
d. the limited report was the result of "an intentional limitation" arrived at between him and Nifong "not to report on the results of all examinations and tests" that DSI performed;
e. the failure to provide all test and examination results purportedly was based on privacy concerns; and
f. he would have prepared a report setting forth the results of all DSI's tests and examinations if he had been requested to do so by Nifong or other representatives of the State of North Carolina at any time after May 12.

98. Immediately after the December 15 hearing, Nifong stated to a representative of the news media: "And we were trying to, just as Dr. Meehan said, trying to avoid dragging any names through the mud but at the same time his report made it clear that all the information was available if they wanted it and they have every word of it."

99. On January 12, 2007, Nifong recused himself from the prosecution of the Duke Defendants

100. On January 13, 2007, the Attorney General of North Carolina took over the Duke Lacrosse case and began to review evidence and undertake further investigation.

101. After an intensive review of the evidence, the Attorney General concluded that Ms. Mangum's credibility was suspect, her various inconsistent allegations were incredible and were contradicted by other evidence in the case, and that credible and

verifiable evidence demonstrated that the Duke Defendants could not have participated in an attack during the time it was alleged to have occurred.

102. Based on its finding that no credible evidence supported the allegation that the crimes occurred, the Attorney General declared Reade Seligman, Collin Finnerty, and David Evans innocent of all charges in the Duke Lacrosse case. The cases against the Duke Defendants were dismissed on April 11, 2007.

103. Nifong had in his possession, no later than April 10, 2006, an oral report from Dr. Meehan of the reports of test results showing the existence of DNA from multiple unidentified males on rape kit items.

104. From at least May 12, 2006 through January 12, 2007, Nifong never provided the Duke Defendants a complete report setting forth the results of all examinations and tests conducted by DSI and never provided the Duke Defendants with memorializations of Dr. Meehan's oral statements concerning the results of all examinations and tests conducted by DSI in written, recorded or any other form.

105. On or about December 20, 2006, Nifong received a letter of notice and substance of grievance from the Grievance Committee of the North Carolina State Bar alleging that: (a) he failed to provide the Duke Defendants with evidence regarding the existence of DNA from multiple unidentified males on the rape kit items; (b) he agreed with Dr. Meehan not to provide those results; and (c) he falsely represented to the Court that he was unaware of these results or their omission from DSI's report prior to receiving the Duke Defendants' December 13 motion to compel discovery.

106. Nifong initially responded to the Grievance Committee in a letter dated December 28, 2006, and supplemented his initial response, at the request of State Bar counsel, in a letter dated January 16, 2007.

107. In his responses to the Grievance Committee, Nifong: (a) acknowledged that he had discussed with Dr. Meehan during meetings in April and May 2006 the results of all DSI's testing, including the existence of DNA from multiple unidentified males on the rape kit items; (b) denied that he had agreed with Dr. Meehan to exclude the potentially exculpatory DNA test results from DSI's report; (c) stated that he viewed the evidence of DNA from multiple unidentified males on the rape kit items as "non-inculpatory" rather than as "specifically exculpatory"; and (d) represented that the

discussion and agreement with Dr. Meehan to limit the information in DSI's report was based on privacy concerns about releasing the names and DNA profiles of the lacrosse players and others providing known reference specimens.

108. DSI's written report listed DNA profiles for Ms. Mangum, Ms. Mangum's boyfriend, and David Evans and Kevin Coleman, two lacrosse players who had not been indicted at the time the report was released, and listed the names of all 50 persons who had contributed reference DNA specimens for comparison.

109. Nifong further represented in his responses to the Grievance Committee that he did not realize that the existence of DNA from multiple unidentified males on the rape kit items was not included in DSI's report when he provided it to the Duke Defendants or thereafter, until he received defense counsel's December 13 motion to compel.

110. Nifong's representation to the Grievance Committee that he did not realize that the existence of DNA from multiple unidentified males on the rape kit items was not included in DSI's report from May 12 until he received the December 13 motion to compel was a false statement of material fact made in connection with a disciplinary matter, and was made knowingly.

111. Nifong also represented in his responses to the Grievance Committee that, by stating to the Court at the beginning of the December 15 hearing that the motion was the "first [he] heard of this particular situation," he was referring not to the existence of DNA from multiple unidentified males on the rape kit items but to the Duke Defendants' purported allegation that he had made an intentional attempt to conceal such evidence from them.

112. Counsel for the Duke Defendants did not allege any intentional attempt by Nifong to conceal the DNA evidence from them in either their December 13 motion to compel or their remarks to the Court prior to Nifong's statement.

113. Nifong's responses to the Grievance Committee set forth in paragraph 111 concerning his representations to the Court at the December 15, 2006, hearing were false statements of material fact made in connection with a disciplinary matter, and were made knowingly.

114. Nifong was required by statute and by court order to disclose to the Duke Defendants that tests had been performed which revealed the existence of DNA from multiple unidentified males on the rape kit items.

115. Nifong knew or reasonably should have known that his statements to representatives of the news media set forth in paragraphs 17-35, 37-42, 49-50, 61-62, and 76 above would be disseminated by means of public communication.

116. Nifong knew or reasonably should have known that his statements to representatives of the news media set forth in paragraphs 17-35, 37-42, 49-50, 61-62, and 76 above had a substantial likelihood of prejudicing the criminal adjudicative proceeding.

117. Nifong knew or reasonably should have known that his statements to representatives of the news media set forth in paragraphs 17-35, 37-42, 49-50, 61-62, and 76 above had a substantial likelihood of heightening public condemnation of the accused.

Based upon the preceding FINDINGS OF FACT, the Hearing Committee makes the following

CONCLUSIONS OF LAW

(a) By making statements to representatives of the news media including but not limited to those set forth in paragraphs 17-35, 37-42, 49-50, 61-62, and 76, Nifong made extrajudicial statements he knew or reasonably should have known would be disseminated by means of public communication and would have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter, in violation of Rule 3.6(a), and made extrajudicial statements that had a substantial likelihood of heightening public condemnation of the accused, in violation of Rule 3.8(f) of the Revised Rules of Professional Conduct.

(b) By instructing Dr. Meehan to prepare a report containing positive matches, Nifong knowingly disobeyed an obligation under the rules of a tribunal in violation of Rule 3.4(c) of the Revised Rules of Professional Conduct.

(c) By not providing to the Duke Defendants prior to November 16, 2006, a complete report setting forth the results of all tests and examinations conducted by DSI, including the existence of DNA from multiple unidentified males on the rape kit items and including written or recorded memorializations of Dr. Meehan's oral statements, Nifong:

i. did not make timely disclosure to the defense of all evidence or information known to him that tended to negate the guilt of the accused, in violation of former Rule 3.8(d) of the Revised Rules of Professional Conduct; and

ii. failed to make a reasonably diligent effort to comply with a legally proper discovery request, in violation of former Rule 3.4(d) of the Revised Rules of Professional Conduct;

(d) By never providing the Duke Defendants on or after November 16, 2006, and prior to his recusal on January 12, 2007, a report setting forth the results of all tests or examinations conducted by DSI, including the existence of DNA from multiple unidentified males on the rape kit items and including written or recorded memorializations of Dr. Meehan's oral statements, Nifong:

i. did not, after a reasonably diligent inquiry, make timely disclosure to the defense of all evidence or information required to be disclosed by applicable law, rules of procedure, or court opinions, including all evidence or information known to him that tended to negate the guilt of the accused, in violation of current Rule 3.8(d) of the Revised Rules of Professional Conduct; and

ii. failed to disclose evidence or information that he knew, or reasonably should have known, was subject to disclosure under applicable law, rules of procedure or evidence, or court opinions, in violation of current Rule 3.4(d)(3) of the Revised Rules of Professional Conduct.

(e) By falsely representing to the Court and to counsel for the Duke Defendants that he had provided all discoverable material in his possession and that the substance of all Dr. Meehan's oral statements to him concerning the results of all examinations and tests conducted by DSI were included in DSI's written report, Nifong made false statements of material fact or law to a tribunal in violation of Rule 3.3(a)(1), made false statements of material fact to a third person in the course of representing a client in violation of Rule 4.1, and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c) of the Revised Rules of Professional Conduct.

(f) By representing or implying to the Court that he was not aware of the existence on rape kit items of DNA from multiple unidentified males who were not members of the lacrosse team and/or that he was not aware of the exclusion of that evidence from DSI's written

report at the beginning of the December 15, 2006, hearing, Nifong made false statements of material fact or law to a tribunal in violation of Rule 3.3(a)(1) and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c) of the Revised Rules of Professional Conduct.

(g) By falsely representing to the Grievance Committee of the State Bar that: (i) he did not realize that the test results revealing the presence of DNA from multiple unidentified males on the rape kit items were not included in DSI's report when he provided it to the Duke Defendants or thereafter, and (ii) his statements to the Court at the beginning of the December 15 hearing referred not to the existence of DNA from multiple unidentified males on the rape kit items but to the Duke Defendants' purported allegation that he had engaged in an intentional attempt to conceal such evidence, Nifong made knowingly false statements of material fact in connection with a disciplinary matter in violation of Rule 8.1(a), and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of Rule 8.4(c) of the Revised Rules of Professional Conduct.

(h) Each of the violations set forth above separately, and the pattern of conduct revealed when they are viewed together, constitutes conduct prejudicial to the administration of justice in violation of Rule 8.4(d) of the Revised Rules of Professional Conduct.

Based upon the foregoing findings of fact and conclusions of law, the Hearing Committee makes by clear, cogent, and convincing evidence, the following additional

FINDINGS OF FACT REGARDING DISCIPLINE

1. Nifong's misconduct is aggravated by the following factors:

   a. dishonest or selfish motive;

   b. a pattern of misconduct;

   c. multiple offenses;

   d. refusal to acknowledge wrongful nature of conduct in connection with his handling of the DNA evidence;

   e. vulnerability of the victims, Collin Finnerty, Reade Seligman and David Evans; and

   f. substantial experience in the practice of law.

2. Nifong's misconduct is mitigated by the following factors:

   a. absence of a prior disciplinary record; and

   b. good reputation.

3. The aggravating factors outweigh the mitigating factors.

4. Nifong's misconduct resulted in significant actual harm to Reade Seligman, Collin Finnerty, and David Evans and their families. Defendant's conduct was, at least, a major contributing factor in the exceptionally intense national and local media coverage the Duke Lacrosse case received and in the public condemnation heaped upon the Duke Defendants. As a result of Nifong's misconduct, these young men experienced heightened public scorn and loss of privacy while facing very serious criminal charges of which the Attorney General of North Carolina ultimately concluded they were innocent.

5. Nifong's misconduct resulted in significant actual harm to the legal profession. Nifong's conduct has created a perception among the public within and outside North Carolina that lawyers in general and prosecutors in particular cannot be trusted and can be expected to lie to the court and to opposing counsel. Nifong's dishonesty to the court and to his opposing counsel, fellow attorneys, harmed the profession. Attorneys have a duty to communicate honestly with the court and with each other. When attorneys do not do so, they engender distrust among fellow lawyers and from the public, thereby harming the profession as a whole.

6. Nifong's misconduct resulted in prejudice to and significant actual harm to the justice system. Nifong has caused a perception among the public within and outside North Carolina that there is a systemic problem in the North Carolina justice system and that a criminal defendant can only get justice if he or she can afford to hire an expensive lawyer with unlimited resources to figure out what is being withheld by the prosecutor.

7. Nifong's false statements to the Grievance Committee of the North Carolina State Bar interfered with the State Bar's ability to regulate attorneys and therefore undermined the privilege of lawyers in this State to remain self-regulating.

8. This Hearing Committee has considered all alternatives and finds that no discipline other than disbarment will adequately protect the public, the judicial system and the profession, given the clear demonstration of dishonest conduct, multiple violations, the pattern of dishonesty established by the evidence, and Nifong's failure to recognize or acknowledge the wrongfulness of his conduct with regard to withholding of the DNA evidence and making false representations to opposing counsel and to the Court. Furthermore, entry of an order imposing discipline less than disbarment would fail to acknowledge the seriousness of the offenses committed by Nifong and would send the wrong message to attorneys regarding the conduct expected of members of the Bar in this State.

Based upon the foregoing findings of fact, conclusions of law and additional findings of fact regarding discipline, the Hearing Committee hereby enters the following

ORDER OF DISCIPLINE

1. Michael B. Nifong is hereby DISBARRED from the practice of law.

2. Nifong shall surrender his law license and membership card to the Secretary of the State Bar no later than 30 days from service of this order upon him.

3. Nifong shall pay the costs of this proceeding as assessed by the Secretary of the N.C. State Bar, including DHC costs and including costs of the transcription and depositions taken in this case as follows: court reporter costs; videographer and videotaping costs; transcription costs; shipping, handling, and transmittal costs; and witness costs. Defendant must pay the costs within 90 days of service upon him of the statement of costs by the Secretary.

4. Nifong shall comply with all provisions of 27 NCAC 1B § .0124 of the North Carolina State Bar Discipline & Disability Rules ("Discipline Rules").

Signed by the Chair with the consent of the other hearing committee members, this the 24th day of July, 2007.

F. Lane Williamson
Chair, Disciplinary Hearing Committee

The Duke Lacrosse Case from the Rear View Mirror

Douglas J. Brocker, Brocker Law Firm

Thomas S. Clay

Thomas S. Clay is a principal of Altman Weil, Inc. With 30 years experience consulting to the legal profession, he is an acknowledged expert on law firm management principles and is a trusted advisor to law firms throughout the U.S.

Mr. Clay heads complex consulting assignments in strategic planning, law firm management and organization and law firm mergers and acquisitions. He is a thought-leader on the key issue of law firm practice group strategy and leadership.

Prior to joining Altman Weil, he was vice president and general manager of a venture capital company that specialized in the provision of consulting services and financing arrangements to entrepreneurial operations.

Mr. Clay has written on law firm management issues for national and regional legal publications. His comments on law firm management, finance and related topics have appeared in The American Lawyer, National Law Journal, the Wall Street Journal, and the New York Times, among others. He is a frequent lecturer on the legal profession.

He is Fellow of the College of Law Practice Management (COLPM) and serves as a Judge for the College's InnovAction Awards which recognize outstanding innovation in the delivery of legal services worldwide. In 2008, Mr Clay was named as one of the "100 Legal Consultants You Need to Know."

Tom holds a Bachelor of Science in Business Administration from the University of North Carolina at Chapel Hill, and a MBA in Finance from Georgia State University.

Becky Graebe

Becky Graebe is a Corporate Communications Manager at SAS, the world's largest independent business analytics software company and No. 1 on the FORTUNE "2011 100 Best Places to Work" list. She oversees traditional employee communication efforts and content creation, a global intranet and enterprise social media channels to ensure the company's 12,000 employees and 400 offices around the world are well-informed and connected. With more than 20 years of corporate communications experience, nine years at SAS, she strives to create a working environment where employees feel inspired to share fresh ideas, solutions and expertise with colleagues and customers.

Becky Graebe
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www.sas.com
linkedin.com/in/beckygraebe
twitter.com/beckygraebe

Erik Mazzone

Erik Mazzone is the Director of the North Carolina Bar Association's Center for Practice Management (CPM). CPM helps lawyers improve efficiency in delivering legal services and implement systems to reduce risk and improve client relations. Erik graduated from Boston College and Boston College Law School. After practicing law and operating a law practice management consultancy for 12 years, he joined the North Carolina Bar Association in 2008.

Lee S. Rosen

Lee Rosen practices family law and has offices in Raleigh, Durham and Charlotte. Rosen is a graduate of Wake Forest University School of Law and the University of North Carolina at Asheville. Rosen serves as Chairperson of the North Carolina Bar Association Law Practice Management Section. He is the Law Practice Management editor of the A.B.A. Family Advocate. Rosen writes extensively on law practice management, marketing, technology and finance issues and is frequently published by leading legal trade publications. He writes a practice management blog at DivorceDiscourse.com. His firm website is Rosen.com.

Stephanie Kimbro

Stephanie Kimbro, Esq., MA, JD, has operated a Web-based virtual law office in North Carolina since 2006 and delivers unbundled estate planning to clients online. She is the recipient of the 2009 ABA Keane Award for Excellence in eLawyering and has won the Wilmington Parent Magazine Family Favorite Attorney Award five years in a row for her virtual law office. Her book, Virtual Law Practice: How to Deliver Legal Services Online, was published by the ABA/LPM in October, 2010. Her forthcoming book, Serving the DIY Client: Unbundling Legal Services for the Private Practitioner, will be published by the ABA/LPM in the summer of 2012. She is also the co-founder of Virtual Law Office Technology, LLC (VLOTech), which was acquired by Total Attorneys in the fall of 2009.

In addition to her virtual law practice, Kimbro is a technology consultant providing assistance to other legal professionals interested in the online delivery of legal services. Kimbro writes about the ethics and technology issues of delivering legal services online and is interested in the use of technology by legal professionals to increase access to justice in our country. She has presented continuing legal education (CLE) courses on a variety of topics for the ABA, ALI-ABA, and different state bar groups and law schools. Kimbro also teaches a course on virtual law practice as a faculty member of Solo Practice University, a Web-based legal education community.

Kimbro serves on the advisory board of the International Legal Technology Standards Organization (ILTSO), is a member of the ABA LPM Council, a member of the ABA eLawyering Task Force, Vice-Chair of the ABA LPM Task Force on Ethics and Professional Responsibility, a member of the North Carolina Bar Association (NCBA) Law Practice Management (LPM) Council, and the NCBA Tech Advisory Committee.

Thomas C. Grella

Thomas has an extensive background in business law, including: preparation of legal documents related to the private placement of securities; helping clients with the formation of multi-owner developments and communities, including condominiums, planned units, traditional subdivisions and HUD apartments; transactional representation in the purchase and sale of businesses; formation of corporations, LLCs and partnerships; commercial leasing; corporate representation of medical practices; preparation and review of business contracts; representation of planned unit and condominium associations and more. He represents several banks in western North Carolina on their larger commercial real estate lending transactions. His client list includes McKee Development, Archerd Bell Investment Group, Ironstone Investments, Crowfields Condominium Association, Eco Concepts Development, Asheville Eye, Tower Associates, JMAC Investments, Tunnel Vision, S.B. Coleman Construction, Carolina First Bank, Wachovia Bank and Whiteside Fund.

His work for S.B. Coleman includes obtaining limited air rights to ensure balcony space for residents of Twenty One Battery Park, a high-end, multi-use development in Downtown Asheville. He also organized the building's homeowners association and three subassociations. Thomas has helped with numerous other mixed use, and non-traditional condominium projects, including communities such as Canterbury Heights, Sawyer Motor Building Condominium, Sawyer Annex, Castanea Building, and Gaia Condominium.

When Windows of Childhood, LLC needed to raise capital to finance production of an independent film, Thomas provided legal counsel and documentation to ensure compliance with securities laws in the private placement of LLC membership interests. In addition, he has helped on numerous other private placements of securities in various ventures including other movies, inventions, web sites, leased commercial real estate, multi-tenant properties, real estate development projects and retirement communities.

He has worked with Archerd Bell Investment Group, Whiteside Fund, Eco Concepts Development, and other clients on the preparation of all phases of legal documents for complex real property transactions, and, in many cases ensured compliance with private placement securities requirements for admission of investors.

Thomas has worked on several occasions with clients who develop apartment complexes qualified under the HUD program, such as the Eastwood Apartments, Mosteller Mansion Apartments and Woodland Hills Apartments.

An attorney with McGuire, Wood & Bissette since 1988, and a partner since 1993, Thomas is chair of the firm's Management Committee. Thomas is a former Chair of the ABA Law Practice Management Section and is presently serving on its Executive Committee. He is serving a three-year term in the American Bar Association House of Delegates. He is also a fellow of the College of Law Practice Management, and the National Institute for Teaching Ethics and Professionalism. In 2005 he co-authored The Lawyers Guide to Strategic Planning for the Law Practice Management Section of the American Bar Association (ABA), and he has led a forum on legal technology for the Association's Young Lawyers Division. In 1990, he was honored with the Outstanding Young Lawyer Award by the North Carolina Bar Association, and he has twice been named Asheville Kiwanian of the Year.

Mark Vitner

Mark Vitner is a managing director and senior economist at Wells Fargo, responsible for tracking U.S. and regional economic trends. Based in Charlotte, N.C., he also writes for the company's Monthly Economic Outlook report, the Weekly Economic & Financial Commentary, and provides regular updates on the housing markets, commercial real estate, regional economies, and inflation.

Mark joined Wachovia (then First Union) in 1993. Before that, he spent nine years as an economist for Barnett Banks in Jacksonville, Fla.

Mark's commentary has been featured in the New York Times, Wall Street Journal, Bloomberg, and many other publications.

Originally from Atlanta, Mark earned his B.B.A. in economics from the University of Georgia, an M.B.A. from the University of North Florida, and has completed further graduate work in economics at the University of Florida. He also completed the National Association of Business Economics (NABE) Advanced Training in Economics program at Carnegie Mellon University.

Mark is a member of the National Association of Business Economists and co-founded its Charlotte chapter, The Charlotte Economics Club. He serves as a distinguished lecturer and practitioner at the University of Georgia. He is also a member of the American Economic Association, the American Real Estate and Urban Economics Association, and the Charlotte Chapter of the Association for Corporate Growth. Mark currently chairs the economic advisory committee for the Bond Dealers of America. In addition, Mark serves as the chief economist for the North Carolina CCIM (Certified Commercial Investment Member). He is a member of the Blue Chip Economic forecasting panel and was recently named one of the 2009 North Carolina Power Players, 50 most powerful people in business, by Business Leader magazine. Mark currently serves on the Joint Advisory Board of Economists for the Commonwealth of Virginia.

John S. Stevens

Jack Stevens is a founder of the firm with a distinguished legal career. Within Roberts & Stevens, Jack remains an active partner who is credited with shaping the approachable culture of the firm. His areas of focus include business law, corporate law, and higher education.

In his early career, Jack served four terms in the North Carolina General Assembly (1969–1975) and was Chairman of the House Rules Committee during the 1975 session. Over the years, he has continued to be active in the North Carolina Bar Association, including a term as President.

Jack is a seasoned attorney who has and continues to serve on numerous boards. Currently he is a member of the Board of Directors of the North Carolina Foundation for Advanced Health Programs, the North Carolina Humanities Council and the North Carolina Parks and Recreation Authority. As an Asheville native, he is proud to have had the opportunity to build a law firm and, of equal importance, raise a family in Asheville.

R. Jason Cook, FCAS, ASA, MAAA

Jason Cook has been in the insurance industry for 16 years, and has been with Aon Benfield since 2002. He is currently a Managing Director and leads the actuarial group in the Minneapolis office.

Jason's primary responsibilities include illustrating and optimizing the benefits of clients' reinsurance programs and developing and building capital models for clients. He has been heavily involved with medical and legal professional liability business since 2003. Before joining Aon Benfield, Jason most recently worked as a consulting actuary with Milliman USA.

Jason is a Fellow of the Casualty Actuarial Society, an Associate of the Society of Actuaries and is a Member of the American Academy of Actuaries. He received a Bachelor of Commerce Degree from the University of Manitoba in Canada.

E. Fitzgerald Parnell

Jerry Parnell is a partner in the Charlotte office of Poyner & Spruill. He concentrates his practice in legal malpractice defense, federal white-collar criminal defense and federal and state appellate practice. Jerry clerked for the Chief Justice of North Carolina and served as an Assistant United States Attorney before entering private practice in Charlotte. He is a past president of the North Carolina State Bar, a Fellow of the American Bar Endowment, a member of the boards of Legal Services of Southern Piedmont, of the Chief Justice's Equal Access To Justice Commission, of Federal Defenders of Western North Carolina and of the North Carolina Association of Defense Attorneys. He serves as North Carolina's State Delegate to the ABA House of Delegates.

T. Richard Kane

Rick Kane practices environmental law and the law of lawyers' professional responsibility at Poyner Spruill LLP in Charlotte and Raleigh. He served as an advisory member of the State Bar Ethics Committee 2002-2009 and as a member of the Disciplinary Hearing Commission 2003-2009. He has been recognized in Chambers USA's Leading Lawyers for Business, The Best Lawyers in America®, and Business North Carolina magazine's "Legal Elite." Prior to joining Poyner Spruill he served in the Marines as an artillery and infantry officer and judge advocate. He holds degrees from Duke University, Boston University, and Vanderbilt University.

Cynthia L. Van Horne

Cindy Van Horne represents clients before state and federal courts. She focuses her litigation practice on matters involving alleged legal and accounting malpractice, and other corporate, commercial, and banking litigation matters involving accounting issues and fi nancial damages claims. She also has extensive experience in representing brokers and investors in securities-related litigation and in representing plaintiffs in various personal injury matters.

Barbara B. ("Bonnie") Weyher

Barbara B. ("Bonnie") Weyher is a 1973 graduate of the University of North Carolina at Chapel Hill with a Bachelors of Art in Journalism and a 1977 honors graduate of the University of North Carolina School of Law, where she served as a staff member of the North Carolina Law Review.

After beginning her career in a New York City law firm, she returned to North Carolina in 1979 to join the firm of Young, Moore, Henderson & Alvis, P.A. in Raleigh. In 1983, she became one of the founding partners of Yates, McLamb & Weyher, L.L.P., a 28-lawyer civil litigation firm She is admitted to practice in both North Carolina and New York.

Ms. Weyher's practice is primarily in the area of insurance coverage and professional liability. She is also a certified mediator and mediates cases on a regular basis. She has mediated cases involving commercial and consumer claims, business disputes, products liability claims, medical malpractice claims, and general liability/ auto liability claims. She is a member of the North Carolina Academy of Superior Court Mediators. Ms. Weyher is listed in the Best Lawyers of America 2010 and was named one of the top 50 women lawyers in North Carolina Super Lawyers 2010.

Ms. Weyher has substantial involvement in local, state and national bar organizations. She is the immediate Past President of the North Carolina State Bar. Previously, she served as a Councilor on the North Carolina State Bar from 1998 through 2006. She chaired the Grievance Committee, Ethics Committee, and the Authorized Practice of Law Committee and also served on the Executive Committee, Issues Committee, and Publications Committee. Ms Weyher is a member of the Southern Conference of Bar Presidents and the National Conference of Bar Presidents. She served as Chair (2005-2006) of the Litigation Section of the North Carolina Bar Association. She is a past President of the Wake County Bar Association.
Ms. Weyher is married to her law partner, Dan McLamb, and they have four sons. She enjoys travel, the beach, reading, and spending time with her family.

Dan J. McLamb

Dan J. McLamb was born in Benson, North Carolina in 1949. He received his Bachelor of Arts degree from the University of North Carolina at Chapel Hill in 1971 and also attended the UNC School of Law, graduating with honors in 1974. While in law school, Mr. McLamb represented the school on its National Moot Court team at the National Final Rounds in 1973-74.

After practicing as a partner at the Raleigh-based law firms of Manning, Fulton & Skinner and Young, Moore, Henderson & Alvis, Mr. McLamb became one of the founding partners of Yates, McLamb & Weyher, L.L.P. in 1983. His practice is focused on professional liability defense and the defense of catastrophic damages cases. He represents physicians, hospitals, attorneys and corporations throughout North Carolina.

Mr. McLamb is a member of the American, North Carolina and Wake County Bar Associations, the North Carolina Association of Defense Attorneys and the American Board of Trial Advocates. He is a fellow of the American College of Trial Lawyers, the International Society of Barristers and the International Association of Trial Attorneys.

Mr. McLamb has been listed in the *Best Lawyers of America* since 1995 and in 2010, was named as Raleigh Best Lawyers Personal Injury Litigator of the Year. He has been voted as one of North Carolina's Legal Elite litigators in all annual surveys done by *North Carolina Business* magazine since 2001. In 2007, he received the magazine's top honors in the category of Litigation, and has since been included in the magazine's Litigation Hall of Fame. He has been recognized as one of North Carolina's top 10 lawyers by *North Carolina Super Lawyers* since 2007; in 2008, he was the top vote recipient of all attorneys in North Carolina in all specialties; and in 2010, he received the most points of any attorney in the state. For three consecutive years, Chambers USA, published by *Chamber & Partners*, a leader in legal guides worldwide, named Mr. McLamb one of the top three health care litigators in North Carolina and described him as "tenacious, prepared and enduring." In 2009, he was recognized by Business Leader magazine as a Triangle Mover and Shaker. He has spoken at numerous litigation and professionalism seminars, as well as to health care providers on medical/legal issues.

McLamb is married to his law partner, Barbara ("Bonnie") B. Weyher, and they have four sons. He enjoys ACC sports, the beach and spending time with his family.

Deborah D. Lambert

Deborah D. Lambert, CPA, CPCU, is Managing Partner of Johnson Lambert & Co. LLP, a CPA firm celebrating its 25th anniversary in 2011. Johnson Lambert is an entrepreneurial organization with offices in 8 states. The firm provides audit, tax and related services to a national and selectively international client base including over 400 insurance and insurance services entities. The insurance industry represents more than 80% of the firm's revenue base. With 13 partners and a total staff of approximately 140, Johnson Lambert is uniquely positioned to serve the insurance industry.

Debbie has been extremely active in professional activities throughout her career. She is the Immediate Past Chair of the North Carolina Association of CPAs. She is currently a member of AICPA Council and previously completed a three year term on the AICPA Board of Directors. Debbie also previously served as Chair of the Auditing Standards Board of the AICPA and as Chair of the Committee on Sponsoring Organizations ("COSO") Small Business Control Advisory Group Task force. She also served on the SEC Advisory Committee on Smaller Public Companies.

Debbie, a Wake Forest University graduate, is serving her fourth term as a Trustee for Wake Forest University and serves as Chair of its Finance Committee. She lives in Raleigh, North Carolina and enjoys both golf and snow skiing with her family.

Douglas J. Brocker

Douglas J. Brocker is the President of The Brocker Law Firm, P.A. in Raleigh, NC. He concentrates his practice in representing professionals in licensing, disciplinary and ethics matters before their respective licensing boards. A significant amount of his practice includes representing attorneys before the North Carolina State Bar, where he formerly was Trial and UPL counsel. In 2007, he served as Special Counsel to the State Bar in prosecuting the disciplinary case against Michael Nifong. Mr. Brocker previously served as the President of the 10th Judicial District in Wake County, the largest local bar in North Carolina with over 4,000 attorney members. Doug also has served for many years on the Wake County Bar Association Professionalism and Professionalism Award Committees and previously served on its Board of Directors. He speaks at CLEs and publishes articles regularly on ethics and professionalism issues. For more detailed biographical information or a list of published articles, see www.brockerlawfirm.com.

Notes

Roundtables

Claims, Underwriting, Loss Prevention/Risk Management, or Finance

Things to do In Asheville

NABRICO conference
September 28-30, 2011 | Asheville, NC

Restaurants

12 Bones Smokehouse
BBQ and Ribs
5 Riverside Drive
Ashville, NC 28801
828.253.4499
www.12bones.com

The Admiral
American
400 Haywood Road
Asheville, NC 28806
828.252.2541
www.theadmiralnc.com

Apollo Flame Bistro
Greek and Italian
485 Hendersonville Road
Asheville, NC 28803
828.274.3582
www.apolloflamebistro.net

Bistro 1896
American
7 Pack Square SW
Asheville, NC 28801
828.251.1300
www.bistro1896.com

The Blackbird Tavern
Southern
20 East Market Street
Black Mountain, NC 28711
828.69.5556
www.theblackbirdrestaurant.com

Bouchon
French comfort food
62 N. Lexington Avenue
Asheville, NC 28801
828.350.1140

Carmel's
Italian Bistro
1 Page Avenue
Asheville, NC 28801
828.252.8730
www.carmelsofasheville.com

Corner Kitchen
Casual cuisine
3 Boston Way
Asheville, NC 28803
828.274.2439
www.thecornerkitchen.com

Cúrate
Spanish Tapas
11 Biltmore Avenue
Asheville, NC 2801
828.239.2946
www.curatetapasbar.com

Home Grown
Southern
371 Merrimon Avenue
Asheville, NC 28801
828.232.4340
www.slowfoodrightquick.com

Market Place
Casual cuisine
20 Wall Street
Asheville, NC 28801
www.marketplace-restaurant.com

Rezaz
Mediterranean and Italian
28 Hendersonville Road
Asheville, NC 28803
828.277.1510
www.rezaz.com

Activities

Cultural

Asheville Art Museum
2 South Pack Square
Asheville, NC 28802
828.253.3227
www.ashevilleart.org
Any visit includes experiences with works of significance to Western North Carolina's cultural heritage including Studio Craft, Black Mountain College and Cherokee artists, as well as a schedule of exhibitions.

Asheville Drum Circle
Patton Avenue
Asheville, NC 28801
On Friday night, drummers gather in Prichard Park for a dance and play celebration. Bring your own drum and play along!

Asheville Food Tours
828.273.0365
www.ashevillefoodtours.com
Discover the unique flavor of Asheville on a 2.5 hour guided walking tours of the city's culinary treasures, in historic downtown or Biltmore Village.

Asheville Trolley Tours
888.667.3600
www.ashevilletrolleytours.com
Have the freedom to get on and off all day and take adavantage of Asheville's top attractions. Stops include the Grove Park Inn for convenience pickup and drop off.

Asheville Urban Trail Walking Tour
Downtown Asheville
828.259.5815
The Asheville Urban Trail, a walking tour of downtown Asheville, highlights the unique architecture, people, and historic events of the city. Map included.

Ghost and Haunt Tour of Asheville
departs from Four Points by Sheraton
22 Woodfin Street
Asheville, NC 28801
828.355.5855
www.ashevilleghostandhaunt.com
A hair-raising 90-minute tour into the spirit realm of this mountain town.

River Arts District
www.riverartsdistrict.com
Located along the French Broad River, the River Arts District is committed to creating art, supporting the artists in our neighborhood and producing successful art events.

Nature

Appalachian Trail
160-A Zillicoa St.
Asheville, NC 28801
828.254.3708
www.appalachiantrail.org
Approximately 300 miles of this Maine-to-Georgia primitive hiking trail spans North Carolina.

Chimney Rock State Bark
Highway 64/74A
Chimney Rock, NC 28720
800.277.9611
www.chimneyrockpark.com

Dupont State Forest
Directions from Asheville (via Brevard): I-26 East to exit 40 for Highway 280/Airport exit toward Brevard. Turn left on U.S. 64 as you enter Brevard past Wal-Mart. Travel east on U.S. 64 for 3.7 miles to the Texaco station in Penrose. Turn right on Crab Creek Rd and continue 4.3 miles and turn right on DuPont Rd. Ascend and descend; after 3.1 miles, find the Hooker Falls parking lot on the right just before the Little River bridge. Open during daylight hours.
www.romanticasheville.com/dupont.htm
A three mile roundtrip hike takes you to three beautiful waterfalls. Located about 40 miles southwest of Asheville.

Lake Lure Tours
2930 Memorial Hwy.
Lake Lure, NC 28746
877.386.4255
www.lakelure.com
Activities include guided cruises around the lake, boat rentals and a sandy beach for relaxing. Located 25 miles southeast of Asheville and one mile east of Chimney Rock Park on scenic Hwy. 74A.

The North Carolina Arboretum
100 Frederick Law Olmstead Way
Asheville, NC 28806
828.665.2492
www.ncarboretum.org
Natural gardens and walking trails.

Star Watch Night Vision Tours
20 Battery Park Avenue, Suite 803
Asheville, NC 28801
828.989.0015
www.starwatchtours.com
Search the skies for satellites, shooting stars, unidentified aircraft, and constellations, using night vision equipment.

Outdoor Activities

BioWheels
81 Coxe Avenue
Asheville, NC 28801
828.236.2453
asheville.biowheels.com
BioWheels is your resource for self-guided tour routes, maps and guidebooks for bicycle rides on the area forest lands, on the Blue Ridge Parkway and around downtown Asheville.

ClimbMax Climbing Center
43 Wall Street
Asheville, NC 28801
828.252.9993
www.climbmaxnc.com
From beginner to advanced, ClimbMax offers fun and challenging options for everyone.

R.O. Franks Aviation Company
One Page Avenue
Asheville, NC 28801
828.242.5275
ashevillehotairballoonrides.com
Take a private hot air balloon rides over downtown Asheville.

Saddle Up Trails
828.768.9025
saddleuptrailrides.intuitwebsites.com
At Saddle-Up we look forward to having you come and enjoy riding our horses in the Pisgah National Forest. We are located just a short drive from the Asheville Airport.

Shopping

Appalachian Craft Center
10 North Spruce Street
Asheville, NC 28801
828.253.8499
The pottery of the North Carolina folk potters awaits you at Appalachian Crafts. Y'all come!

Biltmore Antiques District
120 Swannanoa River Rd.
Asheville, NC 28805
A series of delightful antiques stores with an ever changing inventory of furniture, silver, estate jewelry, glassware, art, porcelain, architectural salvage, and fine collectibles.

Biltmore Village
www.biltmorevillage.com
Step back in time and walk the old brick sidewalks of Biltmore Village. Enjoy shopping at the many unique and charming shops that make up the village. When you are ready for a bite to eat, there are restaurants to suit everyone's taste.

The Grove Arcade
One Page Avenue
Asheville, NC 28801
828.255.3777
www.grovearcade.com
Local shops & outstanding restaurants in one of Asheville's architectural jewels.

Lexington Bazaar
58 North Lexington Ave.
Asheville, NC 28801
Soak in the sun, look fly and shop yourself happy! Enjoy local Indie Art, Craft & Design while munching on Bouchon's famous French Fries (and Crêpes) and listening to live music in the Lexington Avenue Courtyard.

Mast General Store
15 Biltmore Avenue
Asheville, NC 28801
828.232.1883
http://www.mastgeneralstore.com/communities/av/
Mast's signature items can be found in the Mercantile Department, which is just jam-packed with cast iron cookware, pottery, baskets and other crafts, old fashioned toys, and a candy section featuring over 500 old-fashioned hard-to-find candies.

Water Activities

Asheville Outdoor Center
521 Amboy Road
Asheville, NC 28806
828.232.1970
www.paddlewithus.com
Canoeing, kayaking, tubing, gem mining, and more.

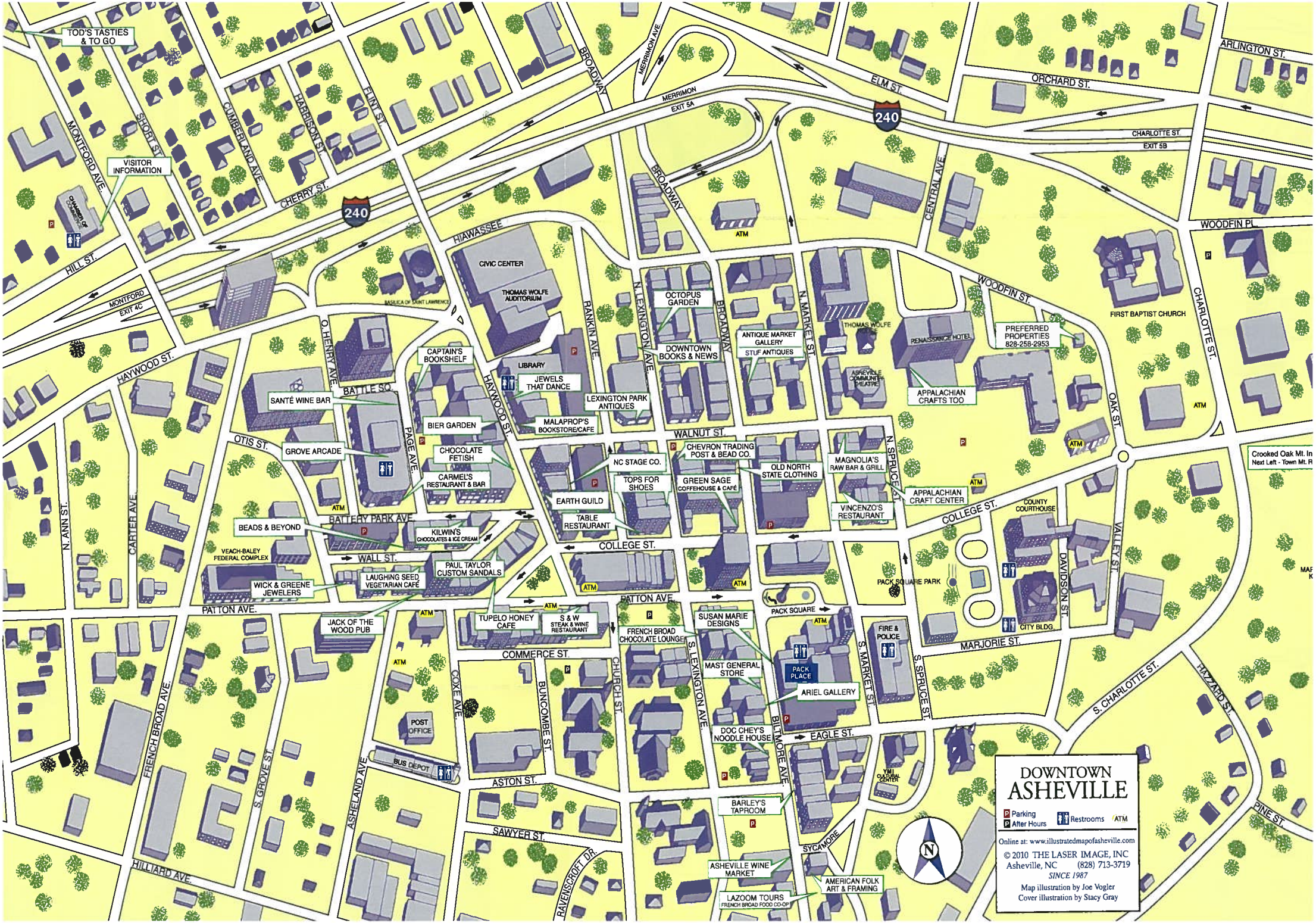
French Broad Rafting Expeditions
9800 US Hwy 25-70
Marshall, NC 28753
800.570.7238
www.frenchbroadrafting.com
Located about 25 miles northwest of Asheville.

Nantahala Outdoor Center
The Grove Park Inn Resort & Spa
800.438.5800
www.noc.com
White water river rafting trips, with all varieties of kayak and canoe instruction. Ticket booking available through the Grove Park Inn.

Zip Lines

Asheville Zipline Canopy Adventures
One Resort Drive
Asheville, NC 28806
800.841.9972
www.wildwaterrafting.com/ashevillezip.php

Navitat
242 Poverty Branch Road
Barnardsville, NC 28709
828.626.3700
www.navitat.com/asheville
Listed as one of the 10 great ziplines in the U.S. by USA Today.


TOD'S TASTIES & TO GO
VISITOR INFORMATION
CHAMBER OF
MONTFORD AVE.
SHORT ST.
CUMBERLAND AVE.
HARRISON ST.
FLINT ST.
CHERRY ST.
BROADWAY
MERRIMON AVE.
MERRIMON EXIT 5A
ELM ST.
240
ORCHARD ST.
ARLINGTON ST.
CHARLOTTE ST
EXIT 5B
CENTRAL AVE.
WOODFIN PL.
WOODFIN ST.
HILL ST.
MONTFORD
EXIT 4C
HAYWOOD ST.
HIAWASSEE
BASILICA OF SAINT LAWRENCE
CIVIC CENTER
THOMAS WOLFE AUDITORIUM
RANKIN AVE.
N. LEXINGTON AVE.
OCTOPUS GARDEN
DOWNTOWN BOOKS & NEWS
ANTIQUE MARKET GALLERY
STUF ANTIQUES
N. MARKET ST.
THOMAS WOLFE
RENAISSANCE HOTEL
PREFERRED PROPERTIES 828-258-2953
FIRST BAPTIST CHURCH
CHARLOTTE ST.
OAK ST.
ATM
O. HENRY AVE.
BATTLE SQ.
CAPTAIN'S BOOKSHELF
LIBRARY
JEWELS THAT DANCE
LEXINGTON PARK ANTIQUES
SANTÉ WINE BAR
MALAPROP'S BOOKSTORE/CAFE
BIER GARDEN
PAGE AVE.
HAYWOOD ST.
WALNUT ST.
OTIS ST.
GROVE ARCADE
CHOCOLATE FETISH
CARMEL'S RESTAURANT & BAR
CHEVRON TRADING POST & BEAD CO.
NC STAGE CO.
TOPS FOR SHOES
GREEN SAGE COFFEEHOUSE & CAFÉ
OLD NORTH STATE CLOTHING
MAGNOLIA'S RAW BAR & GRILL
N. SPRUCE ST.
APPALACHIAN CRAFT CENTER
VINCENZO'S RESTAURANT
APPALACHIAN CRAFTS TOO
EARTH GUILD
TABLE RESTAURANT
BEADS & BEYOND
KILWIN'S CHOCOLATES & ICE CREAM
BATTERY PARK AVE
N. ANN ST.
CARTER AVE.
COLLEGE ST.
COUNTY COURTHOUSE
VALLEY ST.
DAVIDSON ST.
VEACH-BALEY FEDERAL COMPLEX
WALL ST.
LAUGHING SEED VEGETARIAN CAFÉ
PAUL TAYLOR CUSTOM SANDALS
WICK & GREENE JEWELERS
PACK SQUARE PARK
CITY BLDG.
PATTON AVE.
JACK OF THE WOOD PUB
TUPELO HONEY CAFE
S & W STEAK & WINE RESTAURANT
FRENCH BROAD CHOCOLATE LOUNGE
SUSAN MARIE DESIGNS
PACK SQUARE
COMMERCE ST.
MAST GENERAL STORE
PACK PLACE
ARIEL GALLERY
FIRE & POLICE
S. MARKET ST.
S. SPRUCE ST.
MARJORIE ST.
S. CHARLOTTE ST.
HAZZARD ST.
FRENCH BROAD AVE.
COXE AVE.
BUNCOMBE ST.
CHURCH ST.
S. LEXINGTON AVE.
POST OFFICE
BUS DEPOT
S. GROVE ST.
ASHELAND AVE.
DOC CHEY'S NOODLE HOUSE
BILTMORE AVE.
EAGLE ST.
YMI CULTURAL CENTER
ASTON ST.
BARLEY'S TAPROOM
SAWYER ST.
SYCAMORE
PINE ST.
HILLIARD AVE.
RAVENSCROFT DR.
ASHEVILLE WINE MARKET
AMERICAN FOLK ART & FRAMING
LAZOOM TOURS
FRENCH BROAD FOOD CO-OP
DOWNTOWN ASHEVILLE
P Parking
P After Hours
Restrooms
ATM
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Asheville, NC (828) 713-3719
SINCE 1987
Map illustration by Joe Vogler
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NABRICO conference

September 28-30, 2011 | Asheville, NC

see you next year in...

Austin, TX
October 10-12, 2012

Location: AT&T Executive Education and Conference Center
The University of Texas at Austin
1900 University Avenue
Austin, Texas 78705
www.meetattexas.com

Guest Room Rates: $179 - Standard King
$179 - Standard Double Queen

For reservations: Toll-free (877) 744-8822 or locally (512) 404-3600

Deadline for conference room rate is September 19, 2012.

Welcome Reception: Wednesday – October 10, 2012: 5:30 – 7:30 pm
ATT Conference Center

Conference Dinner: Thursday – October 11, 2012
Blanton Museum – Rapoport Atrium
200 E. MLK
Austin, Texas 78701
www.blantonmuseum.org

See reverse for the top 10 Things to Do in Austin!

Looking forward to these future locations:

Wisconsin 2013
Missouri 2014


Lady Bird Lake

Austin CONVENTION & VISITORS BUREAU

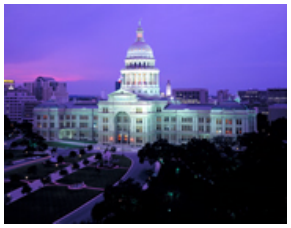
Austin, Texas Top 10 Attractions

Austin, Texas:
Top 10 Things to Do in Austin

1. Completed in 1888, the pink granite **Texas State Capitol** stands 302 feet high and is 14 feet higher than our nation's capitol. Guided tours are offered weekdays, 8:30 a.m.-4:30 p.m.; Saturdays, 9:30 a.m.-3:30 p.m.; and Sundays, 12-3:30 p.m. Free admission. 512-463-0063

2. Relive the pages of Texas history at the **Bob Bullock Texas State History Museum**. Interactive exhibits, artifacts, an IMAX Theatre and the multi-sensory Texas Spirit Theatre bring the myth, legend and fact of Texas all together under one roof. Open Monday-Saturday, 9 a.m.-6 p.m.; Sundays, 12-6 p.m.512-936-8746

3. The University of Texas is home to the **Blanton Museum of Art**, recognized for its European paintings and modern and contemporary American and Latin American art. Open Tuesday-Friday, 10 a.m.-5 p.m.; Saturdays, 11 a.m.-5 p.m.; and Sundays, 1-5 p.m. 512-471-7324


Tour the State Capitol of Texas, one of the most beloved landmarks in the Lone Star State

4. Enjoy the spectacle of the **Congress Avenue bats**, the largest urban bat colony in North America, as 1.5 million Mexican free-tailed bats depart nightly at sunset, April through October, from beneath the bridge. 512-327-9721

5. See the natural beauty of the Texas Hill Country at the **Lady Bird Johnson Wildflower Center**, where planting areas, wildflower meadows, exhibits and observation tower pay homage to Lady Bird's devotion to native landscaping and preservation. Open Tuesday-Saturday, 9 a.m.-5:30 p.m.; Sunday, 12-5:30 p.m.512-232-0100

6. Visit the **Lyndon Baines Johnson Library and Museum** to see copious volumes of presidential papers, a scale replica of the Oval Office during his presidency, and a First Lady's Gallery devoted to the work of Lady Bird Johnson. Open daily, except Christmas, 9 a.m.-5 p.m. Free admission and parking. 512-721-0200

7. Swim in the constant 68-degree waters of **Barton Springs Pool**, an artesian spring-fed swimming hole in Zilker Park. Open daily 5 a.m.-10 p.m. Closed Thursdays, 9 a.m.-7 p.m. Nominal admission charge. 512476-9044

8. Take in all the sights on **The University of Texas** campus, one of the largest public universities in the nation. Tours are available of the UT Tower by reservation only on Saturdays and Sundays, 2-6 p.m512-475-6633

9. The heart of Austin is found along the **Lady Bird Lake Hike and Bike Trail**, a 10.1-mile path bordering the lake on its flow through downtown. 512-974-6700

10. Head to **South Congress Avenue** to discover eclectic shops, trendy restaurants, unique accommodations and popular music venues. On the first Thursday of each month, merchants keep their doors open until 10 p.m., playing host to an array of events and activities.