

DBA MENTORING PROGRAM SPEECH

JUNE 22, 2011

Thank you for giving me the opportunity to chat with you for a few minutes this evening about mentoring – a subject I have been interested in and passionate about for some time.

The first thing I would like to do is to thank the DBA for having the foresight in the first instance to create a formal mentoring program a few years ago and, of course, all of the lawyers and judges this year and in the past who have participated in the program. Although the program is not perfect and there is always room for improvement, the mere fact that the DBA recognized the need for such an endeavor is important in and of itself and provides a good base for the entire Colorado legal community to think about and build on a sustained commitment to mentoring in the future. I also want to give a specific shout-out to Nancy Cohen, because I know how tirelessly she worked to get this program off the ground and to motivate members of the bar to participate in it.

My interest and belief in the importance of mentoring is, of course, informed in large part by my own personal experiences, first as a young associate at DGS many years ago (more about that later), in my role as a supervising lawyer at the same firm, in my role as a judge working with law clerks over the past eight years, and in my role as a mentor this past year in the DBA program. And let me digress for just a minute to thank my mentee this past year, Sarah Steinbeck (who, unfortunately, is not here this evening because she's in Frankfurt, Germany on business), for allowing me to spend time with her and try to assist her in getting more involved in the Denver community at large. I also bring to the table my involvement in the American Inns of Court movement, and the importance of mentoring in the mission of the Inns of Court, particularly with its historical beginnings in the English Inns of Court.

So, what I hope to do this evening is share with you some of my own personal experiences over the years, give you a somewhat broader concept of how I view mentoring beyond the more traditional view, and then challenge all of you, both senior and

junior lawyers, to take some personal responsibility to make mentoring an important part of your legal careers.

So, let's start with something very basic – the definition of the word “mentor.” Webster's Dictionary defines a “mentor” as “a close, trusted, and experienced counselor or guide” and secondarily as “a teacher, tutor, or coach.” And, by the way, I found it interesting that the word “mentee” doesn't even appear in Webster's. But Webster's definition of “mentor” doesn't put much meat on the bones of what we really think of as a mentor in the legal profession. In addition, it seems to restrict the mentor relationship to a one-on-one relationship, which, I submit, in the real world of the 21st Century legal profession, is far too limiting in terms of what we should expect and what we need as a broad-based mentoring program.

And let me now share with you some history on my own personal mentors as a young lawyer. I started at DGS as a brand new lawyer, right out of law school in the fall of 1971. I was never a summer associate at a firm, a law clerk to a judge, nor did I have any clinical classes in law school (not because I avoided them; they

just simply didn't have such a thing way back then). So, I showed up having a law degree and having passed the bar, but not having a clue what it really meant to be a lawyer, and certainly not one in a large business oriented law firm. I have often said that I consider my three most significant mentors at DGS to be Dale Harris, David Ebel, now a judge on the 10th Circuit, and Dick Davis, who was the Davis of DGS; he is also the person after whom the DBA's Davis Award is named, honoring each year the outstanding lawyer under 40 who most exemplifies the qualities of Dick Davis at that stage of his career. With Dale and David, I was lucky enough to be assigned to each of them over my years as an associate and learned from them as we worked on cases together and served the firm's clients. I didn't seek them out to be mentors of mine, nor did they seek me out as their mentee. I just got lucky to be assigned to them as part of the firm's associate rotation program in effect at that time. They were the ones who taught me the skills of being a litigator and trial lawyer and gave me the day to day experiences to help me be a more proficient lawyer. But, my relationship with Dick Davis is a much more interesting and compelling story. [Tell the Dick Davis story]. The wisdom that each of these three men passed on to me

(and, more importantly, the way each of them did it), had a profound impact on me and motivated me to do the same with younger lawyers over the span of my legal career. But, I've often thought what if I hadn't been so lucky to have these three guys in my life; what if, like so many young lawyers today, I couldn't even find a job and simply hung out a shingle and started practicing law on my own. Would I even be able years later to point to three people who I considered to be true mentors?

That problem shines a light, of course, on why programs like the DBA mentoring program are so necessary and important. One of the other things I do in my abundant spare time is to act as the Department Editor and solicit articles for the Judges' Corner Department of the Colorado Lawyer. In that regard, I encourage you to read a wonderful article on mentoring that is about to be published in the Judges' Corner department of the July issue of the Colorado Lawyer by U.S. Bankruptcy Judge Bruce Campbell, who actually started with me as an associate at DGS in 1971. Judge Campbell sets forth in that article one of the most forthright and

candid statements about why attention to mentoring is so critical in the legal profession of the 21st Century.

My own personal experiences as both a mentee and a mentor have also caused me to think more broadly about what we should expect mentoring to accomplish. It seems to me that we ought to want a broad based mentoring program to be able to deliver much of what we consider to be encompassed in the definition of legal professionalism itself. There are many definitions of professionalism, but for my purposes, here are the core components that I think make up a true professional – (1) a commitment to excellence in competency, which I think includes both knowledge of the law and development of the skills necessary to be a proficient and competent lawyer; (2) knowledge of and the commitment to abide by our ethical responsibilities and the concept of client service (including such mundane things as promptly returning a client's phone calls); (3) understanding, accepting, and embracing from the very first day one decides to become a lawyer a personal "identity" as a professional, not just as a technician or a Rambo-like warrior. I'll speak more about this one later – but this concept of identity is

important in my mind, and includes things such as reputation for integrity; civility; respect for the rule of law; and the importance of respecting all members of our legal system; and (4) the larger role of the lawyer as a leader in our broader community.

Now that's a pretty full plate to expect from a one-on-one mentoring relationship. And yet, if we really expect young lawyers to develop in each of these areas, how are they to do so in this increasingly complex and competitive environment without some guidance along the way. I suggest that one way to think about the problem is to avoid using the term "mentoring" and start thinking about the issue more in terms of "education" or "professional development."

Last month, I attended my younger daughter's college graduation, and one of the featured speakers at the commencement ceremony was a distinguished educator, who works in helping to create educational systems in under developed countries. He spoke to us about some well-known research from UNESCO (an arm of the United Nations) called the Four Pillars of Education. Some of you may be familiar with this, but it was the first I had heard of it --

and it literally hit me over the head, because it was exactly what I had been thinking about in terms of the core aspects of professionalism and a structure for designing a broad based mentoring program in the legal profession.

The first Pillar is the concept of “Learning to Know.” This type of learning is concerned less with the acquisition of structured knowledge (although that’s part of it) than with the mastery of learning tools. It encourages greater intellectual curiosity, sharpens the critical thinking faculties and enables people to develop their own independent judgments on the world around them. In the context of our profession, isn’t this exactly what we have traditionally expected from our law schools? Don’t law schools often say they teach students how to think like a lawyer? And if so, isn’t this simply part of the process of becoming an excellent and competent legal professional?

The second Pillar is called “Learning to Do”, and this concept is closely associated with the issue of occupational and professional training – how do we adapt education so that it can equip people to do the types of work needed in the future? UNESCO characterizes

this key concept as one of “personal competence.” Sound familiar? In our world, this could mean anything from learning how to take a deposition or form a corporation to acquiring the kind of “people or interpersonal” skills, including communication, team building and problem-solving skills necessary to survive, let alone succeed, as a 21st Century lawyer. Do we really expect a one-on-one mentor to be the sole fountain of information on these topics? And, if so, how can we possibly make sure that every young lawyer gets the benefit of such a relationship?

The third Pillar (and, in my mind, the most important) is called “Learning to Be.” I equate this pillar with the concept I mentioned earlier in my definition of professionalism, namely, accepting and embracing one’s “identity” as a professional, with all that entails. We often decry the lack of civility in the legal profession, but do we really infuse aspiring lawyers from the outset with the concept of what it means to be a professional and why it is so important? I suggest that we do not do so on a consistent basis, but that we need to. I was lucky – I had Dick Davis and Dale Harris to guide me along the way. But, I don’t think we can rely on luck anymore.

Here is where a bit of history helps from the British Inns of Court. To be a barrister in England, you have to be accepted into and then trained by one of the four Temples or Inns of Court, which themselves, are hundreds of years old. From the very beginning, the Inns infuse aspiring barristers with an identity that emphasizes competence and civility. It's interesting to hear members of the British Inns talk about the lack of civility in our legal system; they simply don't understand it, and it is totally inconsistent with their own system and culture. As they describe it, if a barrister were to get a reputation as being "sharp" (as they call it), that would be the end of his or her career. They understand this reality from the very beginning, and thus, they never put themselves in the position of compromising their professional identity. We can learn from this. Even if we can't fully copy the British system, what we can learn is that if you develop that sense of professional identity from the very beginning, you are more likely never to lose it and more importantly, to pass it on to the next generation. In my mind, we must start emphasizing this sense of professional identity from the first day of law school and then never let up on it, so that future

generations of lawyers will view it as second nature that everything they do as a lawyer should be consistent with that identity.

Finally, the fourth Pillar is "Learning to Live Together."

UNESCO was concerned with the fact that violence all too often dominates life in the contemporary world. But, to me, as I analogized to mentoring and professionalism, this Pillar equated to the need to educate our young lawyers about the broader role of the lawyer in our communities – the need to participate in community and bar service and to be leaders in shaping our society. This, I am sure, is what Dick Davis was trying to impress on me in our many conversations, and I have tried to do the same with every young lawyer who ever worked for me, either as an associate in my firm or as my law clerk on the Court of Appeals.

Our own meager experience with the DBA mentoring program shows the diversity of needs that our mentees are demanding – it covers the spectrum discussed above. For example, some of the feedback to the DBA on the program this past year shows that certain mentees were actively seeking help and advice on substantive law-related issues, whereas others were looking for help

on ethical issues and the business of practicing law. Still others, particularly women, wanted counseling on how to strike the proper work/life balance in the private legal sector.

So, where do all these musings take me? I leave you with two final points. One, I'm convinced that something like the DBA program, while laudatory and helpful, is not sufficient if we really want to get serious about mentoring, as I now think of it. It has to be just a part of a broader professional development program. I know that Mark Fogg and his group, which is part of Chief Justice Bender's Commission on the Legal Profession, is being tasked with the responsibility of coming up with a proposal for such a program on a state wide basis, and I fully support that effort. I don't pretend to be able to articulate the specifics of such a program, but what I do know is that it has got to be a fully committed partnership between the law schools, the private bar (including the universe of law firms, both big and small), and the organized bar, including various bar associations and organizations such as the local Inns of Court. This will not be easy – the costs and resources necessary to organize and sustain such a program are substantial. But it is a

worthy and necessary effort to ensure that the next generations of new lawyers in our state will think of themselves and will be thought of by others as true professionals.

And, indeed, there are efforts around the country from which we can learn and adapt to our own situation here in Colorado. We know that any law school worth its salt these days is offering more clinical opportunities for its students. But beyond that, there are a handful of creative and courageous law schools (such as Washington and Lee in Virginia), that have essentially scrapped the traditional third year of classes in law school and instead are making the third year an intensive program filled with apprenticeships, clinical work, emphasis on client service, ethics and professional responsibility. In addition, there are a growing number of law firms in the country who are totally changing the traditional way of “developing” (note I didn’t say mentoring) their new associates right out of law school. These firms are paying their new associates a lower starting salary, not requiring them to bill hours to clients and are, instead, using some period of time (anywhere from 6 months to 2 years) to infuse these new lawyers

with practical skills training, education on client service, and the like, in the hope that these lawyers will then be more effective and efficient when they are ready to start doing real client work. Indeed, on a local level, I understand that the Brownstein firm has begun to implement a very similar “apprenticeship” type program for new associates right after law school. This kind of effort is a pretty courageous thing to do, even more so in this economy, and time will tell whether any of these programs actually work. But, it shows the kind of creative thinking that will be necessary if we are really serious about tackling the issue of mentoring on a broad based scale.

Finally, and I think most importantly, no organized mentoring program, no matter how large or small, can take the place of the individual responsibility that each of us has for our own career and for those who come after us. One of the sources I consulted as I prepared this presentation is a wonderful article written by Jeff Chase of the Jacobs, Chase firm here in Denver that appeared in the Summer 2009 issue of the Journal of the ABA Section of Litigation, titled “The Not-so-Incidental Mentor.” Those of you who

know Jeff know that he doesn't pull any punches and that he has a great sense of humor, and this article reflects those aspects of his personality; I recommend it to you all as a great read on the topic of mentoring. In the article, Jeff describes an intense 10 month experience he had mentoring a young lawyer, who actually came to him and essentially demanded that he be her mentor in learning how to be a trial lawyer. She didn't wait for some lawyer to be her mentor by accident or luck; she knew what she wanted and needed and went out and asked for it. Lots of both bumps and high points along the road, but a great story, with good lessons for all of us. At the end of the article, Jeff contrasts his views of the differences between "training" on the mechanics of being a trial lawyer, with what he considers to be "mentoring." With some modest paraphrasing by me, let me leave you with the following words of wisdom from Jeff's article, which I take as a challenge to us all –

"Mentoring, if it is to be taken seriously, is different from training. It is not solely about what the rules say or how to do a disclosure statement. It is about how to win cases [remember this is in the context of learning to be a trial lawyer]. Here, [Jeff says] I thought

enough of my career, wisdom, and judgment that I believed I could genuinely make a difference to an eager mentee who could have received training anywhere. The variable here is not the mentee, who in this case was exceptional, but the mentor. For those of us who qualify (in our minds, at least) as mentors, we have to realize that we cannot take our wisdom and judgment to our graves or leave it in our wills. When we quit, it's game over, unless there are mentees to carry on. If we do our job properly, that is our legacy. Most importantly, mentoring is not limited to bright extraordinary mentees. Any young lawyer with the drive to be excellent is an appropriate heir to whatever wisdom and judgment we have to share."

So, my bottom line is that the challenge for each of us is to take these thoughts to heart and commit ourselves that part of our legacy as professionals is to do our job properly in mentoring those who carry on after us.

Thanks again for letting me share these thoughts with you.