

Celebrating 20 Years of Ethics Columns in *The Bench*

Pileggi, Ratnaswamy Still Going Strong after Two Decades

By Jennifer J. Salopek

While attending an American Inns of Court event in Washington, DC, Francis Pileggi heard an announcement that *The Bench* was looking for a new ethics columnist. He volunteered, and his first column was published in the January/February 1997 issue. John Ratnaswamy also stepped up, so it was suggested that the two men alternate the responsibilities, each authoring three columns per year. Two decades later, they are still going strong. "I did not anticipate that I would be doing this for 20 years!" Pileggi says.

Pileggi, now a partner at the law firm of Eckert Seamans in Wilmington, Delaware, had an active interest in legal ethics and in writing. An early adopter of social media, he created and maintains the Delaware Corporate and Commercial Litigation Blog, and has published widely. His approach to ethics and to the column has evolved over time, he says. "I was much more focused then on the theoretical aspects and pure principles of legal ethics. Now I tend to focus more on the applications in every practice."

Ratnaswamy is a founding partner of Rooney Rippie & Ratnaswamy in Chicago, Illinois. At the time he volunteered for the column, in early 1997, his law firm had just added an in-house ethics attorney. "I was interested in legal ethics and wanted more writing opportunities," he says. Ratnaswamy serves as an adjunct professor of legal ethics at the Northwestern University School of Law.

A look through selected columns from the Pileggi/Ratnaswamy era is a bit like a time capsule of the evolution of legal ethics in the United States.



Francis G.X. Pileggi, right, also serves on the Neumann University Board of Trustees and is pictured above at a recent graduation ceremony with Monsignor Fred A. Britto, also a trustee of Neumann University.

Together, the two have covered such diverse topics as professionalism in a high-tech legal world, prosecutorial discretion, conflicts of interest, attorney-client privilege, activities leading to bar association sanctions, and many more.

When asked where they get their topic ideas, their responses differ. "Originally, I focused on a combination of topics that interested me, and current developments," says Ratnaswamy. "Later, I also started to try covering things people might not know, and occasionally tried to find topics that tied in with the theme of *The Bench* issue."

Ratnaswamy also draws inspiration from his role as adjunct professor, writing columns in reaction to issues or comments from course participants. An experiential learning course, it features mock activities in which students participate. "There are a lot of ethics rules that aren't intuitive. I try not to give an opinion, but to set things up to lead to the correct thinking."

It's difficult to teach ethics in the abstract, he notes. "The Socratic method makes it harder to recognize things when they're on your doorstep. Practice and visualization make it easier to do the right thing."

Only once, Ratnaswamy says, did he use a personal experience as inspiration for a column. In November/December 1997, he published a column entitled, "Inadvertent Disclosure of Confidential Information in Discovery." He wrote:

In 1991, I experienced one of those moments when a lawyer suddenly confronts an exigent question of professional responsibility. While reviewing documents produced by my opposing counsel in discovery, I realized that he had provided me with "unredacted" originals of documents that had been "redacted" in order to protect his client's privileged communications. After reflection on the relevant considerations, I advised my opposing counsel of his error....

Given the unsettled and varying state of the law, a lawyer who receives inadvertently produced confidential information should carefully consider the salient ethical and evidentiary law in the relevant jurisdiction(s), as well as the underlying moral and ethical principles.

As for Pileggi, he gets his topic ideas primarily from his firm's in-house general counsel, other lawyers, his brother, who is a judge, and, less frequently, recent decisions. "Very few of my columns include court opinions," he says. "Most arise out of my research and are occasioned by bar association actions or public reprimands." In March/April 2011, however, he addressed the Rhode Island Supreme

Court ruling that law firms must be allowed to withdraw from representing clients who don't pay their bills, calling it "an opinion that should be welcomed by all lawyers who prefer not to be forced to work for free." Rarely are Pileggi's topics controversial, but he expects his most recent column to be more so, as he tackles the new American Bar Association amendment regarding verbal discrimination. "Many people think it's too amorphous, and I think there will be increased litigation over what it means," he says.

The columns highlight how much the world has changed in 20 years. For example, in Pileggi's first column, he discussed the responsibility of lawyers to respect methods of communication and allow ample time for opponents and courts to respond. In discussing whether to send legal communications via email, he noted that "email is not yet universal, and... it may very soon be as ubiquitous as the fax machine." At the time, he felt that it was inappropriate to email legal communications, because "most email... is not immediately brought to the attention of the addressee as in the case of correspondence placed on a person's desk." In this era when everyone is glued to their mobile phones 24/7, it's difficult to remember a time when a hard-copy letter would get more attention.

In May/June 2005, Pileggi returned to technology as a topic, noting that "legal ethics now requires some knowledge of software." He explained the concept of metadata that can be hidden in a word processing document and that, through revisions and various versions, could reveal client confidences.

In a column for July/August 2015, Pileggi took a totally different approach, explaining and commenting on professionalism through the example of a judge newly inducted to the U.S. District Court for the Eastern District of Pennsylvania. He wrote:

Articles about professionalism more often than not emphasize how lawyers should behave. Professionalism also must be expected of the judiciary, and it remains equally important for judges to treat lawyers and others who appear before them with the same respect, courtesy, and dignity that all lawyers should exhibit, both orally and in writing.

Looking back over their tenure as columnists, Pileggi and Ratnaswamy reflected on the continuing need for the column and how professionalism and civility in the legal profession have evolved.

"In the 1960s, people had a high opinion of lawyers. They saw them as heroes, and it attracted a lot of students to law school," says Ratnaswamy.



Ratnaswamy, pictured left, an avid Chicago Cubs fan, recently experienced his team winning the 2016 World Series.

"In the 1980s, lawyers decided that the way to get ahead was to be a jerk. I do think that has decreased, though. I don't hear people complaining as much as they used to."

Pileggi's observations are driven by his practice area in the commercial haven of Delaware, which has seen not only an increase of lawyers over the past 30 years, but an influx of law firms headquartered elsewhere, opening offices in Delaware. "The more lawyers you get, behaviors and norms of conduct change," he says. "However, things are still collegial and genteel. There is a sense of pride that is a trademark of the Delaware bar."

Both men say they've gained from their experience as columnists—but not in terms of clients. Pileggi notes that he got a new client as a result of a column, but only one. The reward actually comes, he says, from the learning that ensues from his research. "I enjoy writing the column and am happy I have done it. I have gained much better insight into the issues—it's been a learning experience." Ratnaswamy expresses a similar sentiment, saying, "I have sometimes been surprised as I have researched a rule or an issue, and I have learned by doing." ♦

—Jennifer J. Salopek is a freelance writer in McLean, Virginia. She can be reached at jjsalopek@outlook.com.