

The Future of the Legal Profession: Will the Practice of Law as We Know It Survive?

Introduction

“The first thing we do is kill all the lawyers...” Shakespeare’s often quoted barb, according to some, may be coming true. As the legal profession continues to contend with everything from layoffs to fee pressures, to the ever-increasing pace of new technology, have we reached a point where upheaval is the “new normal?” Certainly large law firms are changing. Will the sole and small firm practitioner survive the current and future turmoil?

If you think these questions pertain only to the legal profession, just look around you. The whole world as we know it has changed... and continues to change. Adapting to that change in order to stay competitive, to thrive in the “new normal,” is essential in 2012 and beyond. This paper assesses the nature of change transforming the practice of law, and proposes a strategy for small law firms to manage that change and make it work for them.

Our Approach will be a Three-step Analysis:

- 1 Review some of the economic factors facing all of us in the legal profession
- 2 Examine a few factors that give cause to be optimistic about the future
- 3 Suggest three strategies that will assure that you thrive in the “new normal”

1 Economic Review

By all accounts, our economy is getting healthier, though nowhere near the glory days. And by all accounts, we're not likely to reach those high plateaus again for at least a generation. I remember that during the Viet Nam war, Los Angeles, the city where I live, seemed to have a gray pallor of discontent over it. At least, that's how the city felt. It seemed as though the sun didn't shine and everyone was sad and distressed. It took us a generation to overcome the economic disaster that befell us as a result of the resources we wasted in that war. And today, we are only just beginning to come out of an economic depression. Yes, I know the economists and politicians are calling the last few years, The Great Recession. But, I call it a depression of a magnitude perhaps as serious, though different in details, as the 1930s.

The legal profession stands as one outstanding example of the economic difficulties we have been in. President Obama in his 2012 State of the Union message said some jobs have become obsolete — I call this technological unemployment. Obama then went on to talk about “re-employment,” a new term to me. Keep this in mind for a moment and think about the consequences of this concept to the legal profession.

Richard Susskind, in his book, *The End of Lawyers?*, suggests that the way we currently practice law may be coming to an end. One example of this change in the way we practice involves document review. In many cases, there is the need to review numerous documents in order to piece together the client's story for the trier of fact. In large cases, this has in the past required hundreds of lawyers to go through the documents.

But now e-discovery software can analyze documents required for litigation discovery in a fraction of the time for a fraction of the cost when compared to using lawyers for the task. Some programs designed to search electronic files not only find documents with relevant terms at high speed, they extract relevant *concepts* and deduce patterns that would have eluded lawyers examining paper copies. Inescapably, many lawyers who used to conduct document review will no longer be billable. Profitability for the firm will come from the ability to swiftly analyze the millions of equivalent paper pages that electronic documents represent. And document review lawyers will be out of a job.

Just yesterday, I spoke to a lawyer who told me the story of how he got served with 12,000 pages of documents the night before a hearing. The other side buried him with paper. But, by use of technology he was able to use optical character recognition (OCR) software and scan the documents in a matter of a couple of hours, and then find the “smoking gun” in time for the hearing — without hundreds of lawyers doing the document review. Not only has this technology impacted the number of lawyers required, it therefore impacts the cost of legal services. And perhaps more importantly, technology will impact the quality of the legal service/product delivered to the clients. Technology will reshape the way law is practiced — both by the sole practitioner and by the larger law firms.

During the Last Few Years, We've Seen Some Significant Changes in What I Call BigLaw Firms:

- **SIGNIFICANT REDUCTION IN OVERHEAD;** larger law firms today are being run as lean as possible, with little additional “fat” or overhead to trim
- **CONTRACTION IN HEADCOUNT:**
 - More than 10,000 lawyers, including partners, have been laid off or fired
 - More than 9,000 staff were laid off or fired
- **STAGNATION OR REDUCTION IN PARTNER INCOME**
- **INCREASE IN CLIENT PURCHASING POWER,** shifting the power equation about fees more toward the side of the buyer
- **DECLINING PERSONAL EARNINGS;** 50% of the lawyers in the profession earns less than \$100,000, and half of this group earns less than \$50,000 per year
- **DECLINING INTEREST IN ENTERING THE PROFESSION.** In 2011, applications to enter the country's 200-plus law schools fell more than 11% to the lowest level in a decade. For the first time in recent history, applicants to law schools are asking themselves the ROI question — is it economically worthwhile for me to go to law school... will I be better off going to another professional school or go into business and climb the corporate ladder? If I go to law school, incur substantial loans and forego economic opportunities, will I be able to get a job, earn enough money to counter the debt and lost opportunities, and earn a reasonable compensation? Increasingly the answer seems to be, “no.”

Yes, there is a “new normal” — the old saying that “the only thing that is constant is change” applies in these circumstances. And it is exciting and energizing to live in times of change. And with technology changing so quickly, all business, including the legal profession (normally a laggard in change) will change. The only questions are what will those changes be and who will be leading those changes...

2 Factors that Cause Us to Be Optimistic About the Future:

What does this mean for the average lawyer, the ones that serve the “99%” of our society? The possibility to thrive is right in front of us!

Why do I believe this?

I’m old enough to remember more than one cycle in our economy. Remember the 1950s and 1960s when we were on the verge of economic fascism in this country, a centralization of economic wealth in four companies: ATT, ITT, GM, and GE.

None of these companies is with us today in the same form. AT&T was broken up by the government as a monopoly; IT&T is no longer to be seen; General Motors went into bankruptcy and restructured itself; and General Electric is not the same company it was.

These companies faltered. They became too large to operate. They had to break up; the survivors had to develop new customer bases in order to start growing again.

Let’s Look at the Legal Community. It Will Suffer Similar Consequences, I Believe:

- **BIGLAW WILL FALTER.** They may serve the 1% of the corporate world. But, there will be a large group of customers underserved, a juicy target for other lawyers. As technology is accepted, sole practitioners and small break-away groups from BigLaw will cater to the 99%, mostly consumer-oriented clients, but also smaller companies that don’t fit the culture of BigLaw. There is a lot of work available for those who are flexible enough in their cost structures and use technology to be competitive.
- **NEW LAWS NEED INTERPRETATION.** Legislators have to justify their existence and continue to write new laws, providing work for lawyers to interpret these laws and advise their clients on how to stay out of trouble and enjoy the benefits offered by such laws
- **CLIENTS STILL LOOK TO LAWYERS, NOT LAW FIRMS.**
- **GLOBALIZATION IS PROVIDING MORE WORK LOCALLY.** The phrase “think global, act local” has become a common refrain of the globalization movement.

The common thread is that lawyers will need to pay close attention to the needs and wants of their clients. Large firms didn't grow without being attentive to client needs, and all lawyers will need to be more attentive in the future if they expect to attain and then retain the *loyalty* of their clients.

And technology will be more of a differentiator in the future. The firm that adopts technology to reduce the costs of its operation, and then passes those savings onto the client, will be more successful.

What we are seeing is the development of two separate worlds of law. There are the BigLaw firms, most of which are representing global clients. And then, there are the rest. These other

firms may have global clients and global issues, but their real focus is on small to mid-size businesses and individual issues. The volume and fundamental nature of these matters and issues mean they will always be there as long as people need lawyers. Whether matters are a commodity or not, creating systems to address these issues, reduce the cost of legal services and pass the savings on to the client will be the winning game plan for future survival of the great majority of the legal profession.

This trend will enable lawyers who serve the 99% of our society to survive, and thrive — provided they follow the key three essential strategies necessary for every business.

3 Strategies to Survive and Thrive in the “New Normal”

Planning for the future is the underlying principle of business success. Failing to plan is the equivalent of planning to fail. (John Wooden) Now is the time to begin planning for the firm of the future. Too many lawyers continue to resist this planning, but they do so at their peril. It ignores reality. And they should not be afraid of planning, because three fundamental strategies are feasible today for ensuring future survival. The three strategies are:

1. Focus on a Target Market and Become the Recognized Thought Leader in that Market or Industry.

A. For example, if you are charged with a criminal offense, get a lawyer; or, if you are charged with a criminal offense, get a criminal defense lawyer; or, better, if you are charged with a criminal offense, get the specific lawyer you have seen on local television news or read as the author of a column in the newspapers or a blog on the Internet. In this example, we've gone from knowing that we need a lawyer all the way to knowing that we need the thought leader and top performer in the field, by name.

B. If you need to improve your firm performance, get a consultant; or, if you need to improve your firm performance, get LawBiz Management; or, better yet, if you want to improve your firm performance and reduce your stress, get me, Ed Poll, the thought leader of law practice management.

In either of these examples, the last description is a description of a thought leader, someone who has evidenced their capabilities, their knowledge of the industry involved, and the leading exponent of their expertise. Becoming a thought leader is a process. Write articles for local and national publications in your field; write a commercially published book (the gold standard of marketing success) for the equivalent of a third party endorsement (only someone important would appear in a commercial publisher's venue); speak at conferences; create teleseminars; create a video; do podcasts; refine and improve your website; send out an electronic newsletter. These are only a few of the channels of communication. The channel of idea distribution is not magic; you must be all over because you never know from whence that phone call to engage you will come.

2. Use Technology

This includes applications such as KM (knowledge management), CRM (client relations management) and other software applications too numerous to mention here. Use this technology to become more efficient. Improve the delivery of your legal service, all at the same time lowering the legal costs to your clients. It is the overall legal cost, not the hourly rate, that the client cares about. And only technology can help you reduce the cost of operations and thereby allow you to pass on to the client some or all of those savings.

The question becomes, then, are clients ready for the kind of billing arrangements that would allow the lawyer to make more money while being more efficient? Undeniably there is somewhat of a trend among clients to view certain legal services as a commodity, and to

apply standardized rates or flat fees where appropriate. However, most clients recognize the importance of and are willing to pay a fair fee for value. What they do not want is to pay too much — to pay for inefficiencies, duplications, or unnecessary services. And this is where the leverage from technology is the lawyer's advantage.

Collaboration in the context of providing greater value in legal services produces more effective representation at a lower cost to the client without discounting either the value or the per hour fee of the lawyer. Law firms that can partner with their clients, and can show their clients how they can reduce their legal costs (without reducing the lawyers' per unit fees) will have a strategic advantage in the marketplace as true value-added service providers.

3. Pay Attention to Your Realization Rate

Collections, or lack thereof, remains the number one problem for most lawyers. Failure to have a 95% realization rate means that you are holding a sieve and the sand (cash; accounts receivable) is flowing through... this means that you are not earning the 100 cents on the dollar that you are billing. While you pay expenses at 100 cents on the dollar, you are not earning the equivalent.

Too many lawyers equate financial success with work done, measured in billable hours. A lawyer's inventory is not billable hours — it is the amount of cash that is realized from the billable hours outstanding. Realization is simply the percentage of what is billed that is actually collected. When you bill clients, you are extending them credit. Low realization means you are getting paid less than you billed. The road to disaster is continuing to do work with the same clients, extending credit rather than collecting fees in the hope that these clients will give you more work. The more work you receive without getting paid, the more you are put in the *pro bono* category. Strive to get paid quickly for the work that you've done.

While you're improving how much you collect, review your billing modality. As suggested previously, a strict hourly rate does not mix well with technology efficiencies or thought leadership

notoriety. Being able to maintain billings while becoming more efficient and better known requires changing the billing system to embrace alternative fee arrangements (AFA). Using contingent, fixed, capped, value fee approaches where time is not the relevant issue to determine the fee is essential to make the most of the leverage from technology. The premise of any such billing system is that time is not the relevant issue to determine the fee — demonstrating value to the client, as the client defines it, is the key to:

- Obtaining & retaining client loyalty
- Ensuring the client pays promptly
- Converting the client to be an advocate for your referral and increased revenue

These three strategies define what I call the 3Dimensional Lawyer®. These are the three dimensions to apply for success! Get the work; do the work; get paid for the work. In other words, market for new clients, produce the work, and reap the profits. At the business schools they use the terms, marketing, production and finance. These are common themes in every business. And they lead to your success when done right.

Conclusion

Law is an honorable profession, a giving and caring profession — AND it is the only profession and/or employment mentioned in the U.S. Constitution. BUT, law must be practiced in a businesslike manner. Running a law firm in a businesslike way improves professionalism. The purpose is not simply to get more money for the lawyer; it also benefits the client. A profitable law practice is much more likely to avoid ethical problems that often arise in a firm under financial distress. Moreover, a law firm run as a business will also approach client service more efficiently — returning phone calls promptly, creating and adhering to a budget, providing sufficient details on clients' invoices, and so on. You can't truly be a professional service business that succeeds in the "new normal" until you understand The Business of Law®. The basics of that understanding are the message of this paper. Begin putting them to work today — or suffer the consequences.

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