

The Future of the Legal Profession

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The Future of the Legal Profession

Selected Posts from [Strategic Legal Technology Blog](#) on Large Law Firm Trends

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7/9/2013

Law Factory Re-Visited and Staying Ahead of the Law Robots

If hotels can run multiple brands in a single location, can lawyers run multiple business lines in one firm?

In 2011, I explained “law factory” and “bet the farm” firms by analogy to Hilton Hotels’ multiple brands, Hampton Inn being the factory, Ritz Carlton the bet the farm (see [“Bet the Farm” Versus “Law Factory”: Which One Works?](#) (co-authored with Toby Brown)). I said that while Hilton clearly knew “how to operate properties at different price-value points”, law firms would “struggle to manage both bet-the-farm and law factory” under one roof

So I was fascinated to read [Seeing Double on Check-In at Certain Hotels](#) in the *New York Times* on Monday. It explains that Hilton and Marriott now build properties that house two brands. An industry consultant observes “The trend is intensifying as the cost of building and running hotels is becoming more expensive and growing as developers seek creative ways of building out real estate” and the article cites hotel executives who say that “the model allows them to provide more amenities than at individual hotels.” Each brand has a separate entrance and room configurations differ but the two brands share many services, which reduces costs and offers guests more amenities.

Perhaps law firms can learn even more from hotels than I thought. Maybe it is, after all, possible for law firms to run both types of business. So, just reserve that fancy entrance for clients with high stakes matters, the one with marble floors and free coffee, and usher in others via the service entrance and charge them for coffee.

Of course, one of the many limitations of BigLaw management is the belief that other industries offer few applicable lessons. Why look to successful companies in other industries when it is so easy to ask - and answer - what other law firms are doing?

If you, like me, believe that law factories have a bright future, whether housed in large law firms or, more likely, in new entities, then you need to think about what this means for lawyers. To help your thinking, I recommend you read [A Strategy for Keeping the Robots at Bay](#) (*Wall Street Journal*, 6 July 2013, subs. required). The article states “Computers and robots will almost certainly make big inroads in professions like **law**, medicine, engineering and accountancy” (emphasis added). Note that it just assumes this will happen in law; I agree. It offers strategies to stay ahead of the robots.

Other industries evolve in new, interesting, and visible ways. Authors and commentators offer advice on how to stay ahead of the constant march of technology that replaces labor. Meanwhile, the big changes in BigLaw are lay-offs, mergers, and lateral hires. You tell me which approach is more likely to yield a bright future.

6/30/2013

[ACC 2013 Value Champions Suggest Bright Future for Law Firm Alternatives](#)

The ACC recently announced the winners of its 2013 [Value Challenge](#) in its article [More Corporate Law Departments Turn to Legal Support Services to Reduce Excessive Fees](#).

Winners have several common elements:

- Move more work inhouse
- Reduce the number of outside law firms ("convergence")
- Deploy technology to manage internal and external legal work
- Increase the amount of outside work done under alternative fee arrangements, especially fixed fees
- Work with alternative service providers for efficiencies and analytics firms typically lack

One-quarter of the winners were supported by legal service providers that are not traditional large law firms. I summarize these below and close with some thoughts:

[NetApp, Inc.](#)

NetApp won for a

"focus on analytics and metrics, and a shift to managed services outsourcing.... It developed "a four-point plan:

- Developing a technology roadmap;
- Integrating dashboards and analytics;
- Developing a managed service provider; and
- Implementing value-based fee arrangements with outside firms."

"NetApp's partnerships with a new managed service provider ([Elevate](#)) and a new technology provider ([Sky Analytics](#)) have been a game changer. As willing beta testers, NetApp Legal is on weekly strategy calls with these cutting-edge professionals, developing new, real-time reports to track and analyze everything from what a 'right rate' should be for a particular lawyer in a particular field, to what the 'right' number of resources should be on a matter, to billing accuracy.... The data allows NetApp to modify the way it does business based on objective criteria; outside counsel use the data to apply process improvements across their entire client base."

One win was in contract management and administration. With e-signing, the company "decreased cycle times by 350 percent, returning to the company more than 500 days of productivity in the first year." Also, "the department has already adopted a contract management platform and identified and decommissioned redundant or underutilized tools."

An [Elevate press release](#) indicates that "Elevate also provided managed support services in the areas of contract management, e-billing, and administrative support."

[British Telecommunications PLC](#)

"BT's value initiative aimed to optimize legal value by implementing 'best-sourcing' initiatives to track what legal services are requested and deliver the right blend (and cost) of off-shore, in-house, and

external resources appropriate to the task... “a detailed time-motion study that revealed that a significant proportion of the team’s work was low-level and repeatable”

To do that work,

“BT took a captive organization in India and flipped it into a legal process outsourcing partner, [United Lex](#), to implement the value initiative... Now, all requests for legal work .. come in through a web-based system and go directly to UnitedLex, which evaluates the request based on complexity; more complex tasks are passed to the in-house legal team in the UK while low-value, high-volume, repeatable tasks stay with UnitedLex.”

The wins include doubling the number of tasks to about 75 handled offshore.

“In 2012, approximately 30 percent of all work requests were handled exclusively by the LPO.... The outsourcing arrangement allowed the team to manage a consistent workload with fewer people, resulting in a decrease in headcount from 78 to 40.”

[Mondelez International, Inc. & Axiom](#)

When Kraft spun-off part of its business to Mondelez, it affected 20k patents; 40k contract documents; and 80k trademarks. Mondelez partnered with [Axiom](#), which

“conducted a time and motion study on a sample of the agreements to create a resourcing plan and a precise budget” to manage changes to those agreements.

An “Axiom team of more than 60 attorneys and five project managers [assessed the agreements] in fewer than 35 days [and then] drafted a 90-page project playbook that detailed the roles and responsibilities of all of the professionals involved; provided guidelines for negotiating with counterparties; and included processes and templates for eight separate workflows. A team of more than 50 Axiom attorneys drafted and delivered the consents and duplicate agreements to counterparties.”

[Nike, Inc. & Seyfarth Shaw LLP](#)

Nike sought to “develop a solution for the high-volume, largely routine transactional work that previously absorbed a significant amount of their time.” Working with [SeyfarthLean Consulting, Inc.](#), the company developed Transaction Solutions Center,

“a process model that reallocates legal services across a shared services platform for cost efficiency, while centralized oversight and management ensures consistent quality. It combines that shared-services aspect with a proprietary web-based workflow platform into an innovative whole.”

Seyfarth lawyers assess

“the overall risk profile of the request, sources the right provider, and quickly moves the request to the next stage of the workflow—all usually in less than five minutes”. Then, based on jointly developed risk matrix, Seyfarth assigns work to itself or to “or one of its trusted third-party providers, who include a solo practitioner in Washington State, a boutique firm in suburban Georgia, and a legal process outsourcer in India.”

“Nike has seen turnaround time drop [on contracts] from more than two weeks to 2.6 days, an increase in efficiency of 83 percent. In year one, 34 percent of projects were completed within 24 hours, and 90 percent of low- and mid-level projects came in at under \$1,000 in legal spend.”

Concluding Thoughts

One conclusion is that winners turned to alternative service providers do a better job of improving value than their law firm competitors. (I place SeyfarthLean in that category because it is a subsidiary of a law firm and because Seyfarth Lean is virtually in its own category.) The articles about other winner, situations where law firms were involved, do not, however, explore if and *how* those firms changed their processes and operations to service the winners.

It would be interesting to learn if some of the firms fundamentally changed how they operate or practice, at least with respect to the winner. Perhaps not today but certainly long term, without fundamental change, BigLaw will lose share to the alternatives. That is the message I take away.

6/24/2013

Contradictory BigLaw Trends - The Mixed News of the Day

Normally I don't just dash off a blog post and list articles. The news today, however, calls some quick links and comments.

The *New York Times* Dealbook reported this morning [Big Law Firm to Cut Lawyers and Some Partner Pay](#). Weil Gotshal is set to cut 60 associates, 110 staff, and the compensation of 30 partners.

Had I not read that breaking news, I might have thought BigLaw faced a brighter future: today the *Wall Street Journal* reports that [Law Firms Regain Some Pricing Power](#) while *The National Law Journal* reports [Large Firms in a Hiring Mood Again](#).

My view is that the New Normal for BigLaw is not as bad as many commentators suggest but not nearly as good as many BigLaw partners think. Most now agree we have transitioned from a growth legal market from 2000 to 2007 to a shrinking / flat / low-growth market now. Prospering in a flat market means competitive differentiation and - gasp - changing.

To understand the types of changes we need here in the US, look at the news from the UK. Today *The Lawyer* published a series of articles on how BigLaw is changing in the UK:

- [When change is inevitable...](#)
- [Addleshaws' process-mapping divides opinion](#)
- [Barclays calls lawyers in for cost-cutting summit](#)
- [The art of the possible](#) (a re-think of BigLaw IT by By Nathan Hayes, IT director, and Mark Webber, partner and head of technology, Osborne Clarke.)

Also consider the types of changes outlined in the ACC blog post from last week, [More Corporate Law Departments Turn to Legal Support Services to Reduce Excessive Fees](#), which lists all the winners of the ACC Value Challenge. The lesson here is that clients have plenty of alternatives to large law firms. Not all general counsels are taking full advantage of those alternatives - at least not yet. So this report may be much more a leading than lagging indicator.

This is not a good day for Weil Gotshal. The [Above the Law post on Weil](#) concludes with "Alas, we predict more layoff news to come; as early as this afternoon, in fact." So it may not be a good day for BigLaw more generally. The good news is that few US-based firms have taken steps to differentiate their offerings and to embrace the client demand for value. So BigLaw still has plenty of opportunities to do well. For many firms, however, this will mean working in new ways.

Update (430pm EDT) Jones Day lays off 65 IT staff; CIO Michael Fick to depart. All floaters in NY office laid off says ATL. [Above the Law](#) and [Cleveland Plain Dealer](#). Above the Law separately reports

that [17 partners are leaving Patton Boggs and notes "We expect there's a lot going on at Patton Boggs that we haven't yet covered."](#)

6/16/2013

[Recent News, an LPO Article, and 4 Video Interviews](#)

I am writing a round-up post to highlight recent news, a recent article I wrote about LPO, and four video interviews I conducted.

The State of Legal Process Outsourcing (LPO). I wrote an article on the state of LPO, [Client market power means continuing cost-cutting](#), arguing that while LPO is growing, so too are many other alternatives to large law firms. It appeared in a [legal efficiency supplement](#) to the *The Times* of London on 11 June 2013.

Another Low Cost Service Center. Ashurst, the now global UK law firm, announced that it will open a low-cost service center in Glasgow, Scotland with 150 positions to start, 30 of which are fee earners. ([Ashurst press release](#).) It will be the second UK firm to have a Glasgow center. By my count, over two dozen large US and UK firms now have low cost service centers.

Taxonomy of Law Firm Strategies. Bruce MacEwen, aka Adam Smith, Esq., is publishing a great series of posts on "a law firm taxonomy", in which he categorizes large firms based on their business model. In each post, he discusses the model and its merits. See <http://www.adamsmithesq.com/>

Can We Do Less Law? Clients seek more value from law departments and law firms. To date, they have focused on shifting the balance between outsourcing and insourcing and, for outsourcing (aka law firms), changing compensation arrangements. I keep waiting for general counsels to talk more about ways "to do less law". A couple of weeks ago, the *Wall Street Journal* published [How America Lost Its Way](#), a commentary that argues too much law stifles the US economy. More recently, the WSJ published [Your New Secretary: An Algorithm](#), which, contrary to its title, is really about using advanced data collection and algorithms to help workers do a better job. Consider how such data, properly analyzed, might help companies detect illegal activities before it goes very far.

Video Interviews. At Legal Tech NY last January, I conducted several video interviews. Two I did on behalf of [Project Counsel Media](#) on e-discovery and two I did on my own about the current and future state of the legal market....

[Lifting the Lid on New-Model Law Firm](#) with Andy Daws of [Riverview Law](#). Riverview Law is a new model law firm in the UK; Andy is the representative in N. America,

[The Dealmaker's Perspective on the Legal Market](#) with Nick Baughan of [Marks Baughan](#), an investment bank with deep legal technology expertise.

[Putting the e-discovery ecosystem in perspective: an interview with David Horrigan of 451 Research.](#) David [is a lawyer-turned-analyst with the 451 Research](#).

[Johannes Scholtes](#) and [ZyLAB](#) talk about key e-discovery market and technology trends in [Part 1](#) and [Part 2](#).

6/5/2013

Legal Outsourcing Widely Accepted but Not All that Popular

In a forthcoming article on legal process outsourcing, I conclude that LPO "is just one of many alternatives to large law firms... just a small part of a new legal landscape." Since I submitted it for publication, Altman Weil released its [2013 Law Firms in Transition](#), which provides insight into legal outsourcing in the US market.

Altman Weil sent surveys to 791 US managing partners and chairs in March and April 2013, receiving responses from 238 firms (30%), including 37% of the 250 largest US law firms.

Just under 50% of firm leaders believe that outsourcing legal work is now a "permanent trend", up from just over 10% in 2009. That seems a huge shift until we see what firms are actually doing. When asked "Is your firm currently pursuing any of the following alternative staffing strategies?", only 7.7% of leaders listed legal outsourcing.

The 7.7% answer, however, conceals a big difference between large and small firms. In firms of 250+ lawyers, almost 20% are "currently pursuing" legal outsourcing (up from about 6% in 2010). The increase for legal process outsourcing (LPO) does not seem that big when we consider other alternatives to associates and partners. Specifically, in large firms, the jump in pursuing the use of contract lawyers is even higher. In 2010, 57% of firms were "currently pursuing" the use of contract lawyers; now, 87% are, a jump of 30 points. The survey does not ask about staff attorneys but anecdotal evidence suggests significant growth in that category among large law firms.

In thinking about the role of LPO, we also must consider the client side, which this survey does not cover. Many law and compliance departments use a broad range of alternatives to BigLaw such as staffing companies, managed review services, and substitutes for law firms such as the Big 4.

From the LPO provider perspective, the good news is that the market increasingly accepts LPO as a permanent trend. The bad news is that LPO faces competition from numerous other alternatives.

5/27/2013

Closing the Gaps in BigLaw Performance - Can We Do It?

From the macro to the micro, from strategic direction to execution details, law firms face challenges. Several news items and blog posts last week take us through these pressing legal market questions.

The Strategic Overview. Bruce McEwen in [A law firm taxonomy: Introduction](#) (21 May 2013) offers an intriguing framework to think about how to classify law firms by strategic and market position:

- Truly global players spanning three or more continents
- Capital-markets-centric specialty firms headquartered in a global financial center—often historically tethered to a major I-bank
- Corporate-centric firms headquartered in non-global cities catering to sophisticated upper/-middle market, mostly non-financial services
- "Category killer" specialists targeting one broad but not necessarily high-intrinsic-value practice
- Traditional boutiques
- "The Hollow Middle:" One-size-fits-all, not a special destination, generic law firms

- Emerging “synergistic super-boutiques”

You can quibble with the taxonomy but the key point is that law firms compete in different segments. Firms need leaders who can identify the right segment, develop a strategy for it, and then lead execution of that strategy. Whether firms and their leaders can do so remains doubtful...

The Gap between Market Changes and Responses. A May 21st *AmLawDaily* blog post [Survey: Firm Leaders Admit Downturn's Permanent Impact](#) reports on Altman Weil's survey, [Law Firms in Transition 2013: An Altman Weil Flash Survey](#). The survey finds a big gap between law firm's belief about the future of the market and actions they are taking to respond to those changes. For example, 80% see a shift to fixed fee pricing but only 29% have made significant changes in their pricing; 96% see the new importance of practice efficiency but only 45% have taken steps to improve efficiency.

If firms are not grappling with known problems, I don't see how they can address the bigger strategic questions that MacEwen's post implicitly raise. Perhaps the fundamental challenge of leading law firms explains the gap between recognizing problems and taking actions to solve them.

The Gap between Leading and Following. Two blog posts over the long weekend suggest that law firm partners often reject attempts at leading and managing. Patrick McKenna writes today at Slaw [Do You Know What It Takes to Be a Firm Leader?](#), lists 30 challenges new law firm leaders face. Pam Woldow writes in her blog today [Loneliness at the Top: Managing Partners' Scary Balancing Act](#) that managing partners face a tough challenge giving up law practice to manage because returning to practice is hard. I believe these challenges have existed for decades; today, however, the failure to resolve them has more dire consequences.

The Gap between Expected and Actual Skills. Turning from the macro to micro.... gaps exist even in the day-to-day of *how* lawyers work. D. Casey Flaherty, in-house counsel at Kia Motors, pointed that out last week at his Legal Tech West Coast keynote speech, covered in [Big Law Whipped for Poor Tech Training: At LegalTech, Kia Motors' Casey Flaherty chastises firms for poor tech competency](#). (Legal Tech News, 22 May 2013). Flaherty

“recently launched his technology audit program, where firms bidding for Kia's business must bring a top associate for a live test of their skills using basic, generic business tech tools such as Microsoft Word and Excel, for simple, rudimentary tasks. So far, the track record is zero. Nine firms have taken the test, and all failed. One firm flunked twice.”

As best as I can tell, he tests for fairly basic proficiency in the most widely used software.

In a Twitter conversation about Flaherty's article, I asked “do we need a reference model for core lawyer competency skills beyond research + writing?” Picking up on both the Altman Weill survey and my question, Larry Bridgesmith writes in [Coloring Between the Lines: No Way to Resolve Crisis](#) (May 25th in the ERM Legal Solutions blog) that “[m]any more skills and needed competencies can be articulated and developed for lawyers and law firm leaders.”

Closing the Gaps. The articles and blog posts over the last week point out major gaps in large law firm performance. Bridgesmith concludes that “if we don't stop worshiping the status quo, there will be no growth, only decline.” I agree.

I see two ways to close the gap of responses and the gap of leadership. One is that a few firms will figure it out; they will do very well indeed. The other is to allow outside ownership.

To close the technology skills gap, firm leadership must first recognize the gap exists. More clients like Flaherty would certainly accelerate recognition. The superficial answer to closing the tech skill gap is easy: more training. The real - and much harder - question, is how will firms motivate lawyers to obtain that training. The floor is open for suggestions.

4/30/2013

Lawyer Productivity in Alternative Fee Arrangement (AFA) World

One reason that clients of large law firms want alternative fee arrangements (AFA) is to drive efficiency. The right AFA structure motivates firms to maximize productivity. In AFA World, what does productivity mean and can firms improve it?

In Billable Hour World, "productivity" means annual hours billed per attorney. Elsewhere, it means "output per hour." In a firm, think of output as briefs per hour, documents reviewed per hour, transaction documents written per hour, and so forth. In AFA World, firms that keep lawyer headcount steady but finish more matters per week or month make more money.

One driver of lawyer output per hour is support staff. The more "non core legal work" lawyers delegate to staff, the higher their output. Many firms, however, have cut support, at least in the form of secretaries. Until about 20 years ago, the typical lawyer to secretary ratio was 2:1. Today, 3:1 is the new 2:1. Many firms now drive it as high 5:1 or 6:1. In AFA World, that trend may have to reverse.

Consider an April 4th *Business Week* article that asks [Where Have All the Secretaries Gone?](#) It reports that companies have cut too many assistants. Now, highly compensated professionals spend too much time on low value tasks such as copying and booking travel. More assistants would improve overall productivity and pay for the extra cost.

The profit-maximizing amount of lawyer support in AFA World will be an empirical question. The answer lies in field work, data collection, and analysis. It lies in determining when lawyers should type and edit and when they should delegate that to assistants. It lies in figuring out who should do quantitative analysis, create presentation, conduct research, and format documents.

My guess is that higher secretarial ratios will still prevail in AFA World *but* firms will add other types of assistants, for example, business analysts and presentation specialists. Even for core legal work, firms might find that shifting some work, for example, "heavy" legal research" to specialists makes sense.

Smart firms will also ensure that their attorneys get really good at using core technology properly. That means training them to type and/or dictate and to use Microsoft Word, Excel, Adobe, and PowerPoint effectively. If you think lawyers are already good at this, look around and then read a series of articles in *Law Technology News* by D. Casey Flaherty, corporate counsel for Kia Motors America: [Tech Drive - As part of beauty contests, Kia Motors' corporate counsel tests associates to assess technology skills](#) (Dec 1, 2012); [Kia Motors Tests Outside Counsel Tech Skills](#) (Jan 24, 2013), [Kia Motors Tests Outside Counsel Tech Skills, Part II](#) (Jan 25, 2013); [Monica Bay Interviews D. Casey Flaherty at Legal Tech NY](#) (video, Jan 30, 2013).

BigLaw today still seems to manage support for Billable Hour World. Firms have cut and re-jiggered staff but from what I see, they have not fundamentally analyzed or re-thought support. If AFA World arrives, law firms will have to re-visit their staff arrangements yet again.

4/21/2013

Will Unbundling Undo Biglaw?

A *New York Times* article last Monday, [More Cracks Undermine the Citadel of TV Profits](#), offers the legal market lessons on how unbundling can shake-up established players.

With the growth of media delivery options, consumers no longer must buy bundles of channels from cable companies. They can watch what they want, when they want, on the screen they want, without buying more than they want. Incumbents fight this trend but the bundle likely will not survive:

"[T]he concept of the bundle has been foundational. Ads go with editorial content in print, commercials go with programming on television and the channels you desire are paired with ones you did not in your cable package. People were free to shop for what they wanted, as long as they were willing to buy a bunch of other stuff they did not [sic].... though bundles may be a handy way of protecting things, they also tend to obscure the weaknesses within. Those flaws are becoming more apparent as the practice of bundling comes under attack.... once the consumer decides, it doesn't matter what stakeholders want. They can't stop what's coming.... The advent of the Internet presented an existential challenge to bundles. Once consumers got their hands on the mouse and a programmable remote, they began to attack the inefficiencies of the system.... Change often comes very slowly, but then happens all at once."

Substitute a few words and this could describe the market for corporate legal services. BigLaw still dominates but the unbundlers have arrived:

- **Alternatives to law firm** such as legal process outsourcing (LPO) providers, document review companies, and Axiom Law and its competitors. (For an excellent discussion on Axiom, see Richard Granat's April 8th post, [Is Axiom Law a Law Firm?](#))
- **New types types of law firms** such as boutiques (BigLaw expertise without its overhead) and new model law firms such as Clearspire (US) and Riverview Law (UK), which offer fixed fees and lower overhead.
- **Law firms that offer unbundled services:** Several US firms offer document review service from low-cost service centers. Multiple UK firms run their own alternates, with document review and paralegal support from low cost centers in Belfast, Scotland, or the north of England.
- **The Big 4.** At The Georgetown Law "Shrinking Pyramid" conference on April 12th, I tweeted "[@PaulLippe](#) reports each Big 4 does \$2-4B of 'legal systems' work adjacent to what law firms do. BigLaw lost out. [#LawShrink](#)". (Note: that revenue likely dwarfs all the the alternatives combined.)

In the media market, consumers eagerly lap up unbundling. In the legal market, general counsels say they want lower cost so one might guess they too lap up the alternatives. But their appetite seems not nearly as voracious as media consumers. An April 19th *Legal Week* article (subs. req'd), [Feeling the squeeze – GCs under pressure to cut costs are pushing for more value from their external lawyers](#), explains that, in spite of the drive for value, GC are surprisingly conservative about exercising the unbundling choice. It notes

"bringing more work in-house is the most preferable option to help cut legal spend... most GCs feel the easiest way of reducing legal spend is for law firms to cut their charge-out rates and offer alternative billing.... When it comes to outsourcing, in-house lawyers are still sceptical... [and] equally reticent about a new legal services venture set up by Carillion [an innovative ABS]"

So, will unbundling undo BigLaw? Partner profits in BigLaw remain healthy but under pressure. Firms have imposed cost controls and staff hiring freezes. Moreover, BigLaw continues to face an overcapacity problem, which drives a long-term issue of smaller new associate classes and the more immediate issue of "Suicide Pricing" (see *Above the Law*, [Buying In: Suicide Pricing](#) (16 Apr 2013)) and Bruce MacEwen (Adam Smith, Esq.) in a Bloomberg Law interview, ["Suicide Pricing" on Bloomberg Law](#) (12 October 2012).)

As the *Times* notes, "change often comes very slowly, but then happens all at once." Only time will tell if BigLaw will face the same challenges as Big Media. Even if it does, it's worth noting that much of Big Media remains profitable. But the media players and industry structure keeps changing in unexpected and sometimes - for the players - terrifying ways.

4/2/2013

[Explaining the Dearth of Large Law Firm Client Facing Systems](#)

I've been disappointed not to see more client-facing systems in the legal market. I recently wrote an article suggesting potential explanations.

That article was published in the premier issue (March 2013) of Legal It Today, available for [download and subscription here](#). You can also read it on this website, [here](#).

It elicited little feedback so I am posting a short summary here. Any confirmation or rejection of the theories I propose is welcome.

THE EVIDENCE

Two recent surveys found that few firms use technology to achieve substantial client impact. In May 2012, I surveyed large firms to update a list of client-facing systems that I compiled six years ago. I was surprised by how few new online services I found. In November 2012, the FT issued its US Innovative Lawyers 2012 report, based on survey research and interviews. Legal tech barely features in it.

THE POTENTIAL EXPLANATIONS

- Firms lack interest
- The CIO has no time
- Individual partner and institutional firm interests diverge
- Lawyers are too risk averse
- Firms lack investment capital
- Firm management has no time
- Law and legal advice are too complex
- Clients lack interest

WHAT THE FUTURE MAY HOLD

- Alternatives to BigLaw gain share, in part with client-facing technology
- Some large law Firms Innovate to build systems, they gain share
- Clients act on their own to build systems
- No change

Is your factual assessment different? Or do you have other theories, or predictions? You can e-mail here: info at prismlegal dot com.

3/8/2013

[Building the Law Factory](#)

This is a live post from the Reinvent Law Silicon Valley conference in Mountain View, CA. Please forgive any typos or errors in conveying what speakers say. Now up, in a six minute Ignite-style talk, is Kevin Colangelo, managing partner of [Youson & Irvine](#) on Building the Law Factory.

Prior to current law firm, was an executive at legal process outsourcing provider Pangea3. Will give insight into what it took to build a law factory.

Getting work done and efficiently can be accomplished in any location; does not have to be done in India, where Pangea3 (PS) started. In 2013, the template for efficient legal services is better known. In 2005, when P3 started, there was no model, no template for practicing law more efficiently, for leveraging process and technology.

It's imperative to change the operating model. Law + Tech + Design + Delivery is Reinvent Law approach. P3 focused on People, Process, and Technology. The technology was the easiest part. We were able to log all calls, e-mail, attachments. So all workers could track all client matters.

Process discipline is not that hard. It requires defining, measuring, analyzing, training, testing, and continuous improvement. We shared with our clients the processes we used. Transparency is good. Helped show defensibility of work.

People is always the biggest challenge. Lawyer are similar everywhere, resistant to change. Uses analogy of Henry Ford building the first-ever assembly line. Ford needed to add culture to make the assembly line work. P3 made sure that everyone was engaged, irrespective of role in organization. Says that this culture is very much lacking in BigLaw today.

The Law Factory is a great place to be - if you maintain the culture.

[Making Fat Law Firms Flat through Operational Redesign for the Age of the Internet \(Live from #ReInventLaw\)](#)

This is a live post from the Reinvent Law Silicon Valley conference in Mountain View, CA. Please forgive any typos or errors in conveying what speakers say. Now up is Raj Abhyaker, CEO of LegalForce, on "Making Fat Law Firms Flat through Operational Redesign for the age of the Internet".

[RF note: LegalForce hosted a reception last night at their retail store in the heart of downtown Palo Alto. It's a very cool space.]

Background: Raj was a an IP lawyer. When he raised ideas to be more efficient, lawyers with whom he worked were not interested. So he started as a solo in 2005 and, at same time, created a start-up company. In 2008, started a company to collect government trademark data and make it accessible on the web, which Google was not indexing. Trademark site gets a lot of web hits; one of biggest on web. His firm has become the world's largest trademark filing law firm. Now has 24k clients, adding 500 clients per month. To make law even more accessible, started a retail outlet. Most interesting to Raj is that AmLaw 100 firms are asking him about his technology and methods.

Nine ways to redesign large law firms into a modern force:

1. Globalize Operations, without sacrificing quality. Move repetitive, detail oriented, recurring tasks to global workforce in lower cost locations. "Redesign the supply chain."
2. Rethink Associate Compensation. Move from tenure to contribution-based compensation. Reward responsiveness within minutes or hours (implicitly: not at end of year at review time!). ID and reward fiscal and business talent, even in new associates. Firms should develop client service metrics and then evaluate associates based on how well they service clients.
3. Hire JD/MBAs for Management Functions: Partners should elect a president with real power to act; he or she should be JD/MBA, no billing responsibility, and ability to bind direction of firm on own w/o partnership vote.
4. Broadcast Goodwill via the Web: Spread any public event over the web. Use more video. Broadcast educational video widely. Hire a full-time video producer. Let the community use conference space for beneficial events.
5. Invest in Retail Access to Law, Not Lobbies: Create destination retail experiences that enable firm to operate on Main Street. Be accessible retail hours, including nights and weekends. Change the paradigm of what the firm is and how clients access it. Open kiosks at your clients. Large firms have big opportunity here.
6. Make Lawyer Calendar Visible to Clients: Web based access to lawyers; web-based appointment making
7. Legal Dream Teams May Span Firms: Let corporate clients build their own 'dream team' across firms
8. Preventive Care at Subscription Rates:
9. Predictive Intelligence. Get smarter about the future and decision making

The Last Days of the American Lawyer

Thomas D. Morgan¹

A. Introduction – The Golden Age is Over

In the legal world's game of musical chairs, 2009 was the year the music stopped. For a number of years, the greatest single complaint heard from lawyers was that they had to work too hard. In 2009, however, lawyers who had been chasing more and more work at an ever faster pace found themselves suddenly looking for a secure place – almost any place – to survive the declining demand for their services. Over 4,000 lawyers – some of them equity partners – lost positions in major firms. Students all over the country have found promised jobs “deferred” until some often-undefined future date, and many in the graduating classes of 2010 and beyond wonder if they will get any employment offers at all.

Lawyers hope the music will begin again, and it probably will, but if the predictions of this lecture are correct, the melody lawyers hear will be quite different. As has always been true, those who practice law face a world in which the demand for lawyers is determined by what clients need lawyers to do. The premise of this lecture and the book on which it is based is that lawyers are facing fundamental changes in both what they will be asked to do and how much work that lawyers once did will continue to be done by them. The world that lawyers face today, in short, may be much like the world in which they are destined to live.

When we talk about the American lawyer, the world many still imagine is that of the 1950s

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and 1960s, a period now sometimes called the “golden age” of the American bar. I can remember that time. Lawyers’ lives were relatively stable. An associate who worked hard could expect to have senior lawyers act as mentors. The young associate would likely become a partner and would likely retire from the firm in which he began his practice. Along the way, he would have earned an above-average income, worked on a variety of cases, and been a leader in community organizations. Most lawyers did not get rich in the golden age, but Professor Mitt Regan summarizes the prevailing ethos as “nobody starves.”

Lawyers are properly worried that the new world will be different. Legal regulation is not vanishing. Indeed, as society becomes more complex, the place of law in regulating conduct is likely to increase. Instead, what I predict is that the interaction of law with increasingly complex economic and social issues will make distinctively legal questions less common and make many of the skills that we stress in law schools less relevant. Rather than needing professionals whose understanding of law dwarfs their understanding of the substantive issues faced by clients, the world will require legally-trained persons to be more fully integrated into the substantive challenges tomorrow’s clients face. That reality may require that more persons, not fewer, have some legal training, but the training of most people will almost certainly not be today’s three year graduate program designed to produce an all-purpose legal generalist.

Today’s lawyers, in turn, will not be unemployable, but for at least significant parts of their careers, they will be required to develop specialized expertise both in an area of substantive law and in the non-legal aspects of their potential clients’ problems. If they fail to develop both kinds of expertise, they will find at almost every turn that clients will take their problems to those prepared to deliver what the clients need at a higher level of quality, a lower cost, or both.

B. Changes That Have Brought Us to Where We Are

What has happened since the golden age to bring lawyers to this state of affairs? I think that the transformation of lawyers' work reality has been the result of eight important trends over the last 40 years.

First, we used to think of the legal profession as "self-regulating." Lawyers wrote the rules by which lawyers lived, and not surprisingly, we tended to write them in a way that favored ourselves. That all changed in the mid-1970s. Some of the case names are familiar. In *Goldfarb v. Virginia State Bar*, the United States Supreme Court in 1975 struck down a bar association's minimum fee schedule as a violation of the antitrust laws. In 1977, the Supreme Court held in *Bates v. State Bar of Arizona* that even a state supreme court's prohibition of lawyer advertising was a violation of the United States Constitution. Quite apart from the substance of those cases, the reality that external law governed lawyers themselves unsettled the quiet life most lawyers had enjoyed.

Second, growth in the number of lawyers over the last 40 years has greatly increased the competitive pressure on each of them. In 1970, at the end of the "golden age," there were about 300,000 lawyers in the entire country. That same year, however, about 100,000 students had enrolled in law school, and law schools have produced 40,000 or more new lawyers each year ever since. Today, the nation has about 1.2 million licensed lawyers, about 1 million of whom are in practice. With that kind of competition, it is no wonder the ability to attract business is a primary determinant for a lawyer's success.

If you want a simple picture of why today's law students are having a hard time finding jobs, you need to know that the nation's demand for new lawyers most closely tracks the rate of increase in the nation's gross domestic product. Every time the economy slows but law schools keep churning out the same number of new lawyers, we produce a lawyer surplus that does not go away.

We had roughly 20% more lawyers than the country could fully employ before 2008-09, but in those years we produced 4% more lawyers at the same time economic activity shrank about 6%. Thus, in a single year, we added roughly another 10% surplus of lawyers nationally. If our graduates want to practice law – and many will – competition for the available work is only going to be even more intense than before. Yet the business model of most law schools makes cutting back enrollments almost unthinkable.

Third, the impact of globalization has transformed the reality of many lawyers' practices. In the 1950s and 60s, most Omaha lawyers thought of Des Moines and St. Paul as the significant "foreign" capitals. Today, an Omaha lawyer is as likely to help a client do business in Dubai or Shanghai. Instead of sometimes conflicting state laws, lawyers must deal with conflicts in whole legal systems. For a real estate lawyer, Blackacre could as easily be in London as Lincoln. Even a will drafter or family lawyer may have to protect the interests of children who are in Sydney or Sao Paulo. The complexity created by that reality of today's law practice has made it nearly impossible to be the kind of generalist we once thought of when we called someone a lawyer.

Further, in today's globalized environment, American lawyers find themselves in competition with legal service providers all over the world who operate under different rules. As a result of the Legal Services Act of 2007, for example, British lawyers now can operate in firms with non-lawyers and the attorney-client privilege extends to communication with the non-lawyers. Australian lawyers are now permitted to practice in corporate entities that sell stock to the general public, and the European Union is considering similar changes in lawyer regulation. If American lawyers ignore the fact their direct competitors play by different rules, they will have only themselves to blame when clients seek the same or better services at lower cost elsewhere.

A fourth major factor contributing to today's lawyer reality is the revolution in computer storage and communications technology that has occurred over roughly the same 40-year period since the lawyers' golden age. We all know the changes in legal research and in document discovery that technological developments have created. We also know technology has made lawyers' lives more hectic. Somewhere in the world, it is always daylight, and clients want lawyers always to be on call.

Most important, information technology promises to transform lawyer work that used to be seen as complex, unique and worthy of substantial fees into a set of "commodities" – simple, repetitive operations that will be provided to clients by the lowest bidder. Technology available on the simplest personal computer today can allow a lawyer to copy a 500-page document used in one transaction and change the names and terms for use in the next. Obviously, the result will be a disaster if the document is not equally relevant to the new situation, so the malpractice risk created by the ease of copying can be enormous. Knowing what changes are needed to fit a new situation will always be a big part of the professional's service, but the benefits of standardizing forms in transactions promises to transform what we used to see as creative work.

Further, and in some ways most frustrating for lawyers, is the fact that much of the information lawyers have traditionally sold is now freely available on the Internet. Books about law have been around for years, but technology now makes the information ubiquitous. Insights may be provided free at websites ranging from Wikipedia to blogs, and the effect is to render a great deal of formerly exotic legal information broadly accessible. Prepared by thousands of authors, these alternative information sources threaten the monopoly on which lawyers have depended for a steady client base. Clearly, lawyers will tend to be able to assimilate and apply such information more quickly and accurately than many clients can, but the breakthrough is that a lawyer's knowledge is

no longer a black box incapable of client penetration. Whether the client is a corporation or an individual, clients can be expected to seek assistance from multiple sources ready to provide them using publicly-available information rather than buying assistance in a proprietary form created and sold by lawyers alone.

Fifth, and clearly related to the developments we've described, has been the growth of the size of organizations in which lawyers now practice. When I was in law school during the golden age, my dad was in the largest firm in Illinois outside Chicago. It had eleven lawyers. In 1960, less than 20 U.S. law firms had more than 50 lawyers each, and even by 1968, only 20 firms in the entire country had over 100 lawyers. I don't need to tell an Omaha audience that one of the first people to see that larger firms would win the day was Bob Kutak, who with Harold Rock opened offices in Denver, Atlanta, and Washington so as to build the first "national" law firm. Now, size leadership has passed to Baker & McKenzie and DLA Piper that each has over 3500 lawyers. Indeed, at least 20 firms have now crossed the 1000-lawyer mark. I am not decrying law firm growth, but the all-purpose "lawyer" we remember in stories of Abraham Lincoln, Clarence Darrow and Atticus Finch, is disappearing – not likely to be seen again.

The sixth key development of the last 40 years has been the transformation of what scholars call the "hemispheres" of the bar. In 1960, sociologist Jerome Carlin reported that in New York, business lawyers made up 45% of the bar, while individual-oriented work such as personal injury, criminal, divorce, wills and real estate made up the other 55%. Lawyers tended to work on one side or the other of the individual/business divide; but it was "people" lawyers who represented the public face of the law.

Just fifteen years later, Jack Heinz & Edward Laumann documented the individual/ business distinction in the Chicago bar and showed that the lawyers who populated each differed in terms of

social class, where they went to law school, how much money they made, their status as leaders of the bar, and the like. They concluded that by 1975, 53% of lawyers worked on business issues (up from 45%), while only 40% of lawyers still did work for individuals. After another two decades, in 1995, the authors concluded that the proportion of corporate lawyers had increased from 53% to 64%, while lawyers for individuals had fallen from 40% to 29%. In short, less than 1/3 of legal talent in this country now tries to meet the needs of individual clients.

That does not mean lawyers for individuals are unimportant. It does not even mean all such lawyers are poor. Successful plaintiffs' personal injury lawyers, for example, can earn incomes that make corporate lawyers jealous. Lawyers who help preserve pools of individual wealth similarly charge high fees. What the trends do mean, however, is that a realistic look at the legal profession reveals that the number of attractive opportunities available to lawyers who do not want to do corporate work is getting smaller and at a faster rate than ever before.

Seventh, even the growth of law firms and the shift of law practice toward corporate work pale by comparison to the rising power of in-house counsel. Thirty years ago, and in many cases much more recently, lawyers in private firms saw their role to be providing wise counsel to lay officers or employees of corporate clients. That is now much less true. The people most of today's lawyers have to please are other lawyers – this time lawyers acting in the role of general counsel to corporations, government agencies, and other organizations. In short, private law firms advise – and market their services to – corporate lawyers and it is that group – who number 10% of all lawyers – that tends to decide what outside services the client requires and why.

Recruiting in-house lawyers rather than depending exclusively on outside firms began as a way for companies to avoid high law firm billing rates and as a form of vertical integration that reduced the cost of searching for lawyers to do recurring tasks. But a strong internal lawyer staff

also helps assure that legal service decisions are made by people who understand the client's business, know the type of legal work that is required, and are able to help managers think about the non-legal issues inherent in important business decisions. A survey of CEOs for the Corporate Counsel Association (CCA), for example, said that 93% of senior executives believe inside counsel understand the company better and 37% even say they trust inside counsel more.

Private law firms are familiar with the practice of hiring "contract lawyers," i.e., lawyers hired to do particular tasks when the firm is especially busy on a case or regulatory filing but who the firm will not need in the long run. Today, private law firms can best be understood as inside counsel's version of contract lawyers. It hurts for lawyers in private firms to realize that their practice has come to that. The firm they spent their lives building has now become the functional equivalent of a temp agency, and it hurts even more when they are beaten out for commodity work on which they used to train associates but that can be done less expensively by firms in India. There is no escaping the reality that the practice of law has become more competitive and lawyers have become more personally insecure. It is unfortunate but true that many lawyer-client relationships have become less like life-long marriages and more like one-night stands.

Eighth and finally on our list of changes driving ways the lawyer's world is transforming, the logical outcome of the growing significance of corporate counsel managing legal needs, and the world-wide availability of help with legal matters, is the declining significance of having an American law license before providing traditional legal services. One might think traditional unauthorized practice of law prohibitions will protect American lawyers' former practice areas, but as we have seen, changes ranging from globalization to the way clients get information are likely to undercut efforts to protect American lawyers against these fundamental changes. An Executive Order signed by President Clinton requires federal agencies to allow non-lawyers to counsel and

represent clients in agency proceedings, and the effect has been both increased aid available to claimants and a decline in the number of potential claimants that rely on lawyers.

Lawyers themselves are breaking down traditional unauthorized practice barriers as they assist their clients, not only in the state in which the lawyer is licensed to practice, but in other states or nations where the client has legal needs. Law firms have long used paralegal and other support personnel nominally working under the lawyer supervision that ethical standards require. In addition, corporations now use non-lawyers to help deliver the total package of services they need done. Negotiating contracts, troubleshooting discrimination claims, even writing court documents can all be done by non-lawyers within an organization receiving a level of lawyer supervision and training to which unauthorized practice rules cannot effectively speak. Current legal ethics rules require a lawyer in a private law firm to supervise and take responsibility for the non-lawyer's work, but that requirement is easily met, and the non-lawyers are often accountants or lobbyists, economists or nurses, statisticians or business specialists who are more than capable of acting on their own.

The message that I hope comes through is that the vision of the American lawyer traditionally held out to the country by the American Bar Association is largely vanishing. Lawyers now must understand themselves in terms of the world in which they work and whose changing dynamics they cannot ignore. Ours will not become a society with no persons specially trained to deal with legal issues, but people we today call lawyers seem destined primarily to provide a form of business consulting service rather than traditional legal advice and litigation.

And lest you think this can't happen, not too many years ago, one of the most secure jobs available was that of a toll booth operator on a bridge or highway. The bridge and the road were there to stay, and cars on both had to stop at the booth and pay a toll. Lawyers were in much the

same position; no one could safely write a contract or seek legal relief without passing the issues by a lawyer. Now, toll booths are largely empty as an electronic EZ Pass collects the tolls as cars pass by at highway speed. It will be lawyer occupational suicide if we fail to try to avoid the same fate.

C. Implications for the Future American Lawyer

What then will the future American lawyer do? I think that lawyers are likely to spend their career trying to stand out among a collection of diverse service providers, each offering to add more to a client's work and life than the client must pay for their service. Even if some of the providers even still call themselves lawyers, at any given time in their careers they will likely focus their work in narrow fields in which they can be known as among the best.

In principle, it still might be possible for someone with legal training and considerable free time to prepare hard enough in a new field to handle a case without committing malpractice, but the skills required to represent a client effectively will often be so multi-dimensional that few lawyers will be likely to stray far from the kinds of work they know how to perform well. Lawyers might change areas of concentration as areas of client need become obsolete or others open up, but in a stratified, globalized world in which clients have technology available to find the kind of counselor they need, each provider will have to become among the best at doing particular kinds of work that a reasonable number of clients need done.

Many traditional lawyer services to individuals will tend to be delivered as commodities, that is, as standardized products sold primarily on the basis of price. Estate planning, real estate transactions, adoptions and uncontested divorces each can present unique negotiation and human relations problems, but the legal components of the cases tend to be repetitive. Technology will allow documents for many such cases to be sold as forms or tailored to individual needs using a few clicks of a computer mouse. If a client needs face-to-face advice for reassurance, needs help in

places to which it would be costly for the client to travel, or needs to take a matter to court, someone with legal training might become involved and provide valuable services. But for the kinds of work that many legal service providers with modest training can do quite well, competition should drive fees and lawyer incomes to levels far lower than we see today.

It is a mistake, of course, to view all cases as routine matters. Some individual clients find themselves injured and in need of compensation from persons or organizations who are not willing to pay. Others find themselves charged with crime, finding their immigration status challenged, or assessed back taxes, fines and penalties. Such clients will continue to entrust their future to legally-trained providers. Even some litigation can involve standardized templates to be sure issues are raised or defended correctly, but many who today call themselves trial lawyers will continue to find their services in demand in the years ahead.

The trend of American lawyers toward disproportionately serving organizational clients is likely to continue if only because businesses are likely to offer the most money for legal services. There, too, however, tomorrow's lawyers are likely to find themselves competing for attention against a wide range of foreign lawyers and non-lawyer consultants. Lawyers are likely to find that fewer issues will be seen as distinctively "legal" in character. Lawyers might be retained among a mix of advisors as a company formulates an environmental compliance program, for example, but the company is likely to give equal or even greater weight to the views of biologists, chemists and ecologists. Legal training may add weight to a lawyer's opinion, but lawyers who cannot provide non-legal insights as well may find their phone rings less often.

A practitioner's value to clients, in short, will have two dimensions – what she knows about a particular body of law and what she knows about a clients' industry or substantive concerns. A lawyer who tries back injury cases will need to know almost as much about backs as about tort law

and trial practice. A securities lawyer will need to know as much about the economics of financial instruments, as about SEC regulation of them. A trade lawyer will need to know the culture of the countries in which her clients do business, and all lawyers will benefit from knowledge of some of the languages in which their clients – or their clients’ suppliers and customers – work.

Some lawyers have resisted developing such non-legal expertise and even assert that professional rules urge them not to intrude into a client’s substantive decisions. Likewise, I am not suggesting here that lawyers become directors of their clients or otherwise go into business with them. The issue is not about making or profiting from a clients’ decisions; it is about having enough training and experience to understand and advise about those decisions.

Patent lawyers, for example, long have been required to be trained in a scientific or technical discipline so that they can prepare patent applications and evaluate and negotiate patent disputes. They are not expected to be inventors, but they would be less helpful to their scientist and inventor clients without the ability to speak and understand the technical language that both the clients and the patent examiners understand. Corporate mergers are similarly increasingly driven by issues of accounting and finance at least as much as by corporate and antitrust law.

Lawyers like to think they are good at lots of things, but experts in finance and accounting are equally likely to think they can look up the law themselves or hire less expensive lawyers to do it for them. Lawyers will continue to be called upon to be problem solvers, but they will be working in competition with a million fellow lawyers – as well as several million other consultants – to try to advise yet other lawyers who themselves have training relevant to a client’s needs. Non-lawyer providers will make it a point to learn enough about the law relevant to their own activity that lawyers will not be able simply to bluff them into submission by asserting an exclusive right to explain legal issues.

The lawyers who prosper will be those who can make themselves the best available go-to person in a combined law-and-substantive field and who market themselves accordingly. Blogging and use of networking sites will increasingly be attractive to lawyers who want to make themselves known to potential clients. To the extent someone else offers services of more value, clients will turn elsewhere. In any event, client needs will typically have little or no relation to subjects now traditionally tested on bar examinations.

For lawyers trained to think they are good at dealing with a wide range of legal issues, the prospect of becoming a mere consultant in a narrow specialty or mode of practice delivery may not initially be attractive. There is no inherent reason that a practitioner could not try to become competent in more than one field, but the ones in greatest demand are likely to be those who have specific, recognizable skills and who can work well with a team of lawyers and complementary professionals to meet a client's needs.

It seems to follow, then, that rather than living in an era like the golden age with a motto "nobody starves," future American lawyers are likely to face a world in which relatively few compete to be visible stars in the practice sky. Star lawyers will have big personal reputations and the demonstrated ability to manage teams of other lawyers and non-lawyers. Other practitioners – whatever their training – are likely to serve on the stars' teams or as consultants to the stars, as they all the while seek to burnish their own star qualities. One effect of all this on people now in law school – or considering going to law school – is likely to be that even fewer will see the financial rewards that top graduates have come to expect as their due.

D. The Future of the American Law Firm

On the surface, the image of today's American lawyer becoming even more an individual specialist who markets his or her talent on the Internet might seem the antithesis of being part of a

world-wide law firm. It does not follow, however, that if individual lawyers become more narrowly focused, law firms must become disappear or become small. Many specialized lawyers are likely to continue to practice in groups that resemble today's law firms, just as business consultants now practice in multi-specialty organizations, and the best law firms are likely to thrive. There are at least four reasons for that potential success.

First, law firms help lawyers manage the risk associated with being a narrow specialist. So long as a lawyer's expertise is widely needed, the lawyer may do well, but if needs of clients change, even able lawyers in a declining field will face problems. A booming economy may keep experienced corporate and commercial lawyers busy as clients seek to expand or go public. Bankruptcy lawyers get busier when the economy turns down. Deal lawyers keep the revenue flowing in good times, and to some extent pay the bankruptcy lawyers more than they deserve. Bankruptcy lawyers are expected to return the favor later.

Second, assembling lawyers into firms can also be useful to provide the sheer number of people that a large client may require for the kind of work the client needs done – closing a business deal, for example, or trying a major lawsuit. This so-called “project” work would overwhelm a solo practitioner or an in-house legal department, and while it would often be possible to form ad hoc teams of unrelated people for each new project, having groups already available from a single supplier may be significantly more convenient for a client.

Third, a firm allows lawyers to diversify the services they can provide for clients. This is another side of risk sharing. Because individual lawyers will tend to limit their practices and position themselves to be at the top of relatively small fields, it will take groups of lawyers with different areas of expertise to provide clients with the range of legal services any given matter might require. A firm that can provide what is sometimes called “one-stop-shopping” promises to be

attractive to clients who want to retain a firm that is immediately ready to deliver help.

Fourth is the matter of marketing. Most lawyers do not like the prospect of advertising on late-night television. An Internet web site seem more respectable, but by far the best way for a lawyer to get instant recognition, respectability and the kind of credibility that will become even more important as clients have many professionals from whom to choose is likely to be to join a well-regarded law firm.

The challenge for many clients—even those with inside counsel—is likewise knowing which lawyers they can count on to provide good service. In an earlier era, consumers knew their service providers personally and could make their own assessment of trustworthiness and quality. Today, when dealings are distant and often under time pressure, it is brand names that provide the level of confidence and trust necessary to let transactions proceed. For many years, law firms ignored the importance of branding. Now, most national firms have no more than one or two words in their firm name and efforts to bring firm names to the attention of business travelers in airports, on television and in other commercial settings are ubiquitous. Lawyers realize that, when a client faces a significant question, it wants its advice to come from someone with instant credibility. It hard to know how significant brand names will be in clients' choice of counsel for all cases, but the growth of modern law firms in part reflects a belief that potential clients all over the world will find those names important.

But however attractive the current business model has been for big American firms, there are significant signs the model cannot survive without important changes. We often hear about changes in billing for legal services; that is too big an issue to take on here, and because it requires no regulatory change, clients and lawyers are likely to find that they can make changes in billing methods by themselves.

The first change that does require regulatory action should be the recognition that few clients need only legal service. As lawyers become a species of business consultant, they will need to integrate their own services with those of other kinds of consultants. Some clients may choose to retain only one or a limited number of a firm's providers, but one of the reasons for having a firm will be to make it possible to provide each of the services a given client needs.

Several law firms already have expanded their range of services by adding law related services ranging from economic consulting to private investigation to financial management. Sometimes the services have been provided from within the firm; at other times, separate stand-alone or side-by-side entities have been created. A friend of ours who is an estate planner in Virginia, for example, has transformed himself and his firm into one giving wealth planning and give investment advice in addition to drafting wills and trusts. Lawyers in the firm have become licensed securities dealers and certified financial planners as well as lawyers in order to be able to deliver this total package. I believe other lawyers and firms are likely to take similar steps in their own areas of expertise.

A.B.A. Model Rule 5.4 currently prohibits a lawyer from sharing fees with, or forming a partnership with, a nonlawyer if any of the activities of their common work involves the practice of law. That is the provision that required our friend to himself become a financial planner instead of simply partnering with one. A decade ago, a report of the A.B.A.'s Multidisciplinary Practice Commission called for revisions in Rule 5.4, but they were defeated. The proposal had the misfortune to be considered by the A.B.A. around the time of the Enron scandal, and the concern most often expressed was that association with non-lawyers would lead lawyers into crooked behavior, never mentioning that Enron was itself advised several law firms, all operating under the current regime. The time has come to revisit the multidisciplinary practice decision. Multi-service

practice organizations are not of interest only to corporate clients. Social service agencies that want to provide legal services as part of a package of services to the poor also have a stake in changing the present rules, and D.C. has permitted non-lawyer partners for many years with no loss of lawyer independence.

Further, the limitations on such organizations are ultimately self-defeating. Although U.S. lawyers are barred from participating in multi-disciplinary firms that deliver legal services in the United States, U.S. clients can often get the services from firms operating out of Great Britain or Europe. The American Bar Association has acted as though lawyers still operate in a world in which communication and travel are difficult. Clients know better. Regulatory regimes might properly continue to require competent service, protection of privileged information and avoiding conflicts of interest not waived by clients of the firm. Blanket prohibition of multi-service firms, however, should no longer be the rule.

The second needed regulatory change arises from a new concept likely to underlie most American law firms. Such firms have traditionally seen themselves as much like department stores, that is, a series of practice groups housed within a single firm. Even clients who seek out particular lawyers become clients of the firm as a whole. Each lawyer in the firm owes each firm client – even clients the lawyer has never met – the same duties owed by any other lawyer in the firm. Further, just as a Macy’s clothing salesperson will try to get a customer to patronize Macy’s for housewares needs, today’s lawyers try to “cross-sell” clients of their own service, the services of other lawyers in the firm for their other needs.

That vision of a law firm will be under pressure. In the future, clients are likely to see professional service firms – including law firms – as less like department stores and more like shopping malls in which providers share a common location and overall name but each supplies its

own services. For many years, the top law firms have competed to hire the brightest people possible, pay them top dollar, and employ them more-or-less as generalists to be used to handle matters in which the firms had a need for help. For reasons already discussed, there is good reason to doubt that such a strategy will work as well in the future.

If the dominant model for American law firms is to be one of practice groups built around star lawyers in particular fields, law firms will become little more than collections of service providers that offer particular services someone needs, when they need it. Under this model, if they wish to do so, corporate general counsel will retain less than an entire law firm for matters. They will assemble their own teams from multiple firms for a particular matter. Firms faced with this reality are likely to find themselves offering partial or “unbundled” services as an alternative to traditional legal representation. They might only try a case, for example, leaving discovery work to others. They might incorporate contract terms into a written agreement but leave negotiation of the deal to others. Unbundling is likely to be unsettling to lawyers who used to do an entire job, but such services will take maximum advantage of the lawyer specialization that seems inevitable.

The risks of law firms becoming “shopping centers,” on the other hand, are substantial and will present serious problems for law firm managers. When a law firm does not have control over an entire matter, it may be hard to demonstrate later which provider’s acts caused a client’s loss. Even more unsettling, under such conditions, lawyers in a firm will be even more likely than today to be paid on a basis that they “eat what they kill” and try to operate independently of a central firm strategy and authority. When a lawyer knows she will get paid for fee-generating work she brings in – but that others will share the liability if the client turns out to be dishonest – the risk to firms will be enormous.

In such an environment, clients as well as lawyers will have a stake in having professional standards reinforce efforts of law firms to establish a culture of ethical conduct by each of its lawyers and non-lawyers. Firm culture can make a difference. Young lawyers learn quickly that their future in the firm depends on how well they please their elders. Clients as well as lawyers will have a stake in having firms preserve the value of the reputation that is a firm-wide asset, but the challenge for managers will be to preserve that asset as firms have a less cohesive feel.

I think one of the steps that may assist firms to operate as a unit under the conditions I am predicting would be to get rid of the rules that regulate how lawyers may raise capital to finance their practices. Under current rules, lawyers who practice together in a firm may allocate revenue among themselves according to a partnership agreement or other contract. In a small firm, the senior partner who founded the firm might get 50% of all revenue, for example, while in other firms the revenues might be divided according to a formula that acknowledges who attracted cases as well as who did work on each.

What ABA Model Rule 5.4(d) says firms may not do today, however, is allow non-lawyers either to invest in – or share in allocation of legal fees earned by – a law firm. This prohibition both denies law firms the ability to raise potentially important form of capital and reduces the incentive a firm can give its members to help build the firm as an effective, ethical institution that will be attractive to outside investors. Further, if one accepts my first proposal to permit multi-service partnerships, the sale of stock in a law firm is but a short step. Non-lawyer participation in firm operation and management will itself involve recognition of the propriety of non-lawyers investing time and sharing the benefits of a law firm’s potential success.

Others may think this proposal radical, but I do not. Nor do I propose it because law firms are capital hungry. Most firms are not capital intensive, and most will likely not want to pay

investors the financial price investors would demand for the risk they would take investing in a law firm. That said, however, permitting firms to raise capital and create liquidity for members' own investments should not be a shocking prospect. The proposal should tend to keep firms working together in an environment otherwise tending to split them apart. In this sense, incentives created by this change to Rule 5.4(d) would benefit firms, firm clients and the public.

Third, the law regulating lawyers should be changed to permit covenants designed to slow lawyer movement in and out of firms. ABA Model Rule 5.6(a) should be amended to permit covenants designed to impose reasonable restrictions on a lawyer's changing firms. In the name of not restricting lawyer mobility, Model Rule 5.6 now permits a lawyer to leave her current firm with little or no notice, while at the same time trying to persuade clients to follow the lawyer to a new firm. The Rule likewise prohibits most kinds of financial penalties that firms might try to use to discourage such departures. The traditional argument against such restrictions has been that they violate a lawyer's professional independence. That made sense in a world in which most lawyers practiced alone anyway. Today, however, relatively few lawyers are independent; most work within some kind of firm or other organization and the financial viability of such firms and organizations depends on a reasonably stable number of participants.

Today, it costs law firms competing for top talent anywhere from \$200,000 to \$500,000 to bring a recent law graduate into the firm as an associate. The sum includes recruiting costs associated with a summer program after a student's second year, the tuition for a bar prep course, often a salary while the recent graduate studies for the bar examination, and the inevitable costs associated with writing off time spent on assignments the new lawyer did not fully understand. Nevertheless, at many firms, at least 40% of new hires have voluntarily resigned by the end of their 3rd year in practice, hardly having made back the cost the firm spent to recruit them.

One need not argue that lawyers must be yoked to the same firm forever to recognize that reasonable restrictions on departure can allow firms more financial security and flexibility in establishing their partnership rules and compensation structures. Law firms must contract for space, hire associates, and create incentives to develop the firm's reputation that only a degree of institutional stability permits.

Ultimately, firms are likely to have to convince young lawyers see that they have a future at the firm that will be attractive over a multi-year career. Doing so is likely to improve a firm's bottom line. In some cases, the solution may be part time work. In other cases, associates need to be given a sense they are growing in their practice, but requiring lawyers to spend a given period at a firm after joining it could be an important part of the process. In other employment cases, the law will not enforce restrictive covenants that are excessive in breadth or duration, but there seems no good reason to subject law firm covenants to greater restriction. Some courts have implicitly acknowledged this, recognizing that persons who make up a law firm should be capable of reaching arrangements appropriate to their situation. Conforming the rules to the decisions would be a third step in helping firms deal with the oncoming realities they will face.

E. Impact of the Coming Changes on Legal Education

The changing world facing American lawyers cannot help but impact the multi-billion dollar world of American legal education. At George Washington, for example – considering tuition, books, room & board – each year is estimated to cost a student \$66,300, or a total of \$200,000 to earn the J.D. degree. That means that, each year, when our over 500 graduates pick up their diplomas, they have invested a total of \$100 million in their professional education. At other schools, the totals may be smaller, but at all of them, the sums represent real money, much of it borrowed. The question whether we are giving students what they think they are paying to receive

is important today, but will be critical in the future.

In recent years, students have lined up to pay for the privilege of a legal education because a license to practice law long seemed the key to what many students see as a high-paying career. But if we are correct that the license is losing its significance and that the demand for lawyers as we traditionally think of them is likely to decline, the impact on legal education will be inescapable. Students are likely to want only the parts of a legal education that add value, that is, add enough to their understanding and skill to justify the tuition we require them to pay.

What lawyers need to know by the time they go into practice can be expressed in four broad categories – (1) how to analyze legal issues and “think like a lawyer,” (2) enough substantive law to be able to place new knowledge into context, (3) concrete skills they can use to help improve a client’s situation, and (4) enough non-legal understanding to see a client’s problem from the client’s point of view.

The first of these – learning to “think like a lawyer” – is what most law students find life-changing. Lawyer-think involves learning how to read carefully, how to be sensitive to ambiguity, how to reason from a specific case to a general principle, how to see legal issues in a larger context of morality and social policy that will affect the long-term viability of particular principles. In addition, thinking like a lawyer involves developing the ability to narrow the focus of analysis on facts that are most immediately relevant to the matter at issue, and finally, how to keep abreast of changes in the law over the years of the lawyer’s career.

The ability to employ these skills in varied situations helps explain why lawyers are valuable to clients and why the study and practice of law are satisfying to many lawyers. The important question for the future, however, will be what beyond training in the lawyer’s version of critical thinking is required to produce people who can provide representation of the kind lawyers provide

today. In the book on which this lecture is based, I go into the need for substantive legal training, skills training and understanding of non-legal issues, but in the interest of time I will skip over them here. What I will say is that the courses we traditionally teach and the three year period we take to teach them are and will be increasingly obsolete.

Almost forty years ago, in the early 1970s, an A.A.L.S. committee made some startling proposals that could have had dramatic effects on legal education and the legal profession as we know it today. The committee recommended making “legal education more functional, more individualized, more diversified, and more accessible.” It proposed having law schools adopt a “standard curriculum” that could be begun by students after three years of college. The program could be finished in two academic years and would provide graduates with a grounding in core subjects and some “intensive instruction” in professional skills. An “advanced curriculum” would be available to students who wanted a third year of law training, but that year could also be completed in non-continuous units after leaving law school. An “open curriculum” would be available to non-professional students who simply wanted to learn more about law.

The proposal was imaginative and ambitious, but it was opposed by a number of law schools that foresaw a potentially fatal decline in their tuition revenue if they could not mandate that students stay for more than two years. For almost a century, the A.B.A. Section on Legal Education and Admission to the Bar has played the dominant role in law school accreditation, and ultimately, the at-risk schools persuaded the A.B.A. Section not to recognize a two-year program of instruction in its accreditation standards. Because students from an unaccredited program cannot be admitted to the bar in most states, no law school adopted the proposed ideas.

But the pressure to reduce the cost of legal education is likely to be even stronger in the future than it was in 1970. For at least the forty years since the A.A.L.S. report, the pressure in legal

education has been entirely the other way. Accreditation standards established by the ABA have driven law schools toward homogeneity. Some schools exceed the standards by more than others, but the required model of legal education has been largely the same at all of them. My message is that the push toward homogeneity should end. The work of the ABA Section has been useful in getting some state legislatures and university leaders to provide new buildings and to improve the quality of law schools that in years past were not very good. In the future, however, few law schools will be able to do all things well and there is no reason most should even pretend to try. Large law schools may be able to be better in more fields than smaller schools will be, but all law schools will be best advised to concentrate on cutting costs, being strong in a few fields and training lawyers who seek the school's strengths.

Both the ABA's MacCrate Task Force in 1992 and the Carnegie Commission in 2007 have revisited the future of legal education and urged that law schools move in new directions. Ironically, however, the changes they proposed would take legal education in what I believe are largely the wrong directions. Originally set up to study a "gap" between law school and practice, the MacCrate Task Force report evolved into a study of the "educational continuum" over the course of a professional career. Noting that law schools had traditionally seen their role as to develop a student's analytic skills and leave other skills to be learned in practice, the Task Force said law schools should do more practical training before a student graduated. The Task Force eschewed an intention to affect law school accreditation standards or determine law school curricula, but the direction on both fronts in the years following the Task Force report has been an expansion of the number of clinical professors and clinical offerings in American law schools.

Pressure in the direction of education that mimics traditional practice has only increased with publication of the most recent Carnegie Foundation report in 2007. Its premise is that legal

education has suffered from the desire of universities to have their students assume the “detached position of the theoretical observer” with respect to legal issues instead of “the stance of engaged practice.” The practice-oriented stance has intellectual integrity, the authors assert, and from that stance, students can be trained for the task of exercising “judgment in action.”

Citing new research about learning, the authors called for a return to the heretofore-largely-abandoned system of training lawyers by “apprenticeship,” albeit this time in a university setting. “Experts” in a field based on their practice experience rather than their academic study can be assumed to have worked out systematic approaches to legal issues, the authors posit, and everyone can assume these experts know how to apply their knowledge in an academic context. The report concludes that law schools should focus on three kinds of “apprenticeship” – “cognitive or intellectual” such as that taught in traditional law school classes, “expert practice” taught by practitioners in small groups, and “identity and purpose” taught by exposing students to the community of law practitioners.

In perhaps the most extreme response to the Carnegie report, the Washington & Lee School of Law has announced that its students will devote their entire third year in law school to “professional development through simulated and actual practice experiences.” Ironically, no one seems to have observed that students could get similar exposure by working at real law firms and receiving a salary instead of being required to spend a third year paying law school tuition to pretend to do such work.

The Howrey firm and some others have proposed, by contrast, to offer an apprenticeship experience with a lower entering salary but mentoring and early client contact opportunities designed to lead to a long-term career. No one knows whether such programs will be as good as they promise, but under current A.B.A. regulations they could not be treated as an externship for

third year students because only unpaid work may receive academic credit. I believe in volunteer public interest service as much as anyone, but the idea that it provides genuinely better practice training is nonsense. The Carnegie Commission presupposes there is something inevitable about training lawyers in a three-year, six semester program, and that the only question is how to occupy students during those required years. In my opinion, such nonsense is appalling.

A call for better practice training begs the questions raised in this lecture about what the practice environment will look like in which legally-trained persons will live and work. An education that might have prepared students adequately for work in the early 20th century is not likely to be equally successful in the 21st. If this lecture is correct that yesterday's practice and ways firms operate are changing rapidly, increasing a student's exposure to old assumptions and to choices among homogeneous schools is likely to represent a waste of time and money.

I propose instead that law schools and universities again introduce legal training into the undergraduate program as they once did and as Europeans still do. Many undergraduates could profit from being able to think like a lawyer even if they never go on to get a professional degree. Then schools should make more advanced academic and skills training available to students who would leave at the end of what is now the second year and who I would allow to take a licensing exam and specialize in one of several areas of particular interest to individual clients. The third year would be offered to anyone who wanted more context or more specialized training.

F. Conclusion

One of the responses to the changes I have proposed will be that the suggestions are not "professional." There is not time now to discuss the history of and problems created by the concept of professionalism. Suffice it to say that while many of the characteristics attributed to professionals – integrity, loyalty, keeping confidences, and a commitment to serve the client effectively –

represent highly praiseworthy traits to which any moral person should aspire, those characteristics are ultimately those of individuals, not groups. It is individual lawyers – and non-lawyers acting both alongside and in competition with lawyers – that we hope will act in ways traditionally called “professional.”

Firms and law schools can – and some already have started to – make the transition to the changes world I am describing. A number of firms seem to be taking advantage of the economic slowdown to reexamine the business model on which they are based, and a number of law schools, including Harvard and Vanderbilt, are modifying their curriculum in significant ways. Firms and schools that see change and embrace its implications for them are likely to survive and prevail; as for others, I have some doubt.

We are in the last days of the American lawyer we once knew. We should pay homage to that model, but then bury it. At the end of the day, ignoring the changes lawyers face will not constitute a mark of professional courage. Failing to recognize the reality of the pressures I have tried to identify in this lecture, and needed changes like the ones I have proposed, are likely only to delay efforts to make our colleagues and graduates constructive contributors to the challenging world that lies ahead.

Robin Rolfe Resources

What the New Law Firm Looks Like: The Necessary Reinvention of a Reluctant Industry

By Ronda Muir
October 21, 2009

“Gentlemen, we have run out of money. It is time to start thinking.”
Nobel-Prize Winning Physicist Sir Ernest Rutherford

After a blistering year of record downturns in revenues and profits, law firms have been responding by battenning down expenses—eliminating summer programs, reducing compensation and bonuses, delaying the entry of new classes, and cutting their ranks, even of partners. And most law firm consultants continue the tradition of nibbling at the edges of true reform by hawking \$20,000 quick-fixes.

But the road posts of cataclysmic change are cropping up everywhere. If you are one of those law firms not averting your eyes, here is what the lay of the future land looks like.

Not Necessarily Bigger

One of the more interesting developments in the law industry over the last couple of decades is the emergence of the mega-firm. Or what might be called the strange case of the temporary triumph of inefficiency.

"Convergence," the short-hand name of the corporate model for managing outside legal fees by reducing the number of preferred firms, was developed originally in the early 1990s by DuPont and fed the ensuing merger frenzy that has driven up the average size and revenues of the biggest firms to behemoth proportions.

However, the bottom line turns out to be just what industry consultants have repeatedly shown, that there is no relationship between firm size and financial performance. “There are no obvious economies of scale or scope for law firms in a merger, where productivity is largely a result of billings by individual professionals,” an analysis of law firm mergers done by Vanderbilt Law School clearly stated back in 2005.

That conclusion is born out by the financial statistics kept by Dan DiPietro of Citibank’s Law Firm Group, who said flatly at a recent September 2009 conference that “bigger has yet to prove to be more profitable.”

So if bigger is not necessarily more profitable, law firms can start taking steps to simply get better.

Custom Fee Arrangements

The town crier has been announcing that the billable hour is dead for years now—noting its incentive to be inefficient rather than align with client objectives—but its death knell for at least a portion of legal work may have finally come. Traditionally law firms have priced their services based on a cost-plus-margin model—whatever it costs to make a profit the unexamined way, the client will have to pay. And the clients have paid—6-8% more every year for the past 10 years. At a time of escalating business demand and a limited supply of newly-minted top-tier lawyers, most firms were able to get away with that. But it is a far cry from the typical business model, which determines competitive pricing and then structures costs so that the target prices can be met.

In place of simply billing whatever hours are spent on a project, billing will be based on different types of services carefully separated out—“unbundled”—so that the cost of delivering those services and client pricing can be individually correlated. Firms will critically evaluate their specific legal service offerings based on a true profitability analysis, determining which services they are equipped to produce at the best overall cost and outcome for the client. And lawyers will develop serious project management skills that focus on evaluating and reviewing client goals (both fee-related and outcome-related) and managing matters to reach them.

While firms have flirted on the edges of these concepts for years, Kirkland and Ellis and other firms are now aggressively announcing forays into these “alternative billing” waters—variously called fixed fees, commodity pricing, outcome pricing, contingent fees, success fees—as clients demand from their lawyers what they are able to get from other service providers—reductions, not increases, in cost over time derived from the provider’s experience and business savvy.

In the litigation arena, lawyers will have an incentive to make more finely-tuned cost/benefit analyses that help clients determine how to pursue, or whether to simply drop, a matter, and a new type of legal service—dispute avoidance instead of dispute resolution, or what consultant Richard Susskind describes as “erecting fences at the top of the cliff instead of providing ambulances at the bottom”—will become highly valued.

Specialized Multi-Sourcing

As a result of careful practice analysis and pricing, some legal practitioners in more highly repetitious practices such as trademarks and those firms providing specialized services such as document discovery and review will be able to streamline their work processes so as to offer comparable or greater levels of competence at lower rates than their competitors. Some of this work firms will therefore lose to these providers, whom clients will find directly. But your firm could also maintain relationships (either as clients or owners) with a number of these specialized firms for those clients who want to take advantage of your connections and experience and/or who want to make your firm responsible for delegating and oversight, in either case giving you another source of fees.

The analyses of a firm’s best value offerings will drive not only its practice and role vis-à-vis other firms and vendors, but will impact its partner/associate mix and tiers, its definition and use of various partner and non-partner “tracks,” non-lawyer staff needs, and therefore hiring.

Variable Attorney Staffing Levels

Some consensus has recently arisen on the advisability of using fewer young associates. Savvy General Counsel have forbidden their inclusion on client teams except perhaps with a weighted average billing cap. That client avoidance coupled with the rising cost of associate salaries has driven up the period of time until associates become profitable from less than two years only a decade or so ago to over four years. Young associates have effectively become loss leaders to a firm's hopes for eventual talent dominance, in spite of bouts of raging attrition and lateral free-for-alls. Those associate expenses make it vividly apparent that even high-entry-cost technology that makes a firm less dependent on young associates can be much more cost-effective in the long run.

The advantages of higher leverage were always in question—the most profitable law firms have consistently used lower leverage than the average—and the sudden onset of low market demand has once again made the disadvantages apparent.

But those discussions of leverage are part of the past. The numbers and types of associates that work for the new law firm will vary over time and at any given time depending on the litigation and corporate caseload being managed by the firm, what specific role the firm has been hired to play in each matter—big picture strategizing vs. due-diligence review of reams of documents, for example—and how much of that work the firm performs in-house or outsources to third-party or captive providers.

Because legal work will be more unbundled, and firms hired by a client for a very narrow part of a matter, the firms will in turn hire associates for specific terms at specified hourly or project rates with negotiated notice, confidentiality and separation provisions. Firms will no doubt develop a reliable stable of these contract-type lawyers with respect to a number of types of expertise and will also maintain relationships with outside “temp” providers whom they trust. Conflict rules will be modified (similar to the recent modification of conflict rules with regard to lateral hires) to recognize this new reality. The use of paralegals and other highly trained non-lawyer staff will rise, from which clients will benefit and which law firms may be better able to leverage financially.

When it comes to firms landing and keeping long-term “keepers,” the informal free agent system that has been developing for laterals will morph into highly negotiated pay-for-play arrangements with all incoming lawyers, arrangements that firms will have to revisit frequently in order to offer clients the expertise needed to stay competitive. Depending on a firm's needs and approach, these desirables may either be freshly minted law graduates or, more likely for most firms, lawyers who are more seasoned. Associates will build their resume with an eye to what will make them most attractive to the type of practice they are ultimately gunning for. Gen Y's goal of a truly portable career will be realized.

Limited Real Estate

Bigger firms may still want to retain or have access to conference rooms and computers in several spots around the world, but the days of setting aside 150+ square feet on a year-round basis for every one of the firm's attorneys are as good as gone. The surprise to Boomers may be how okay Gen X and Y is with that: they are used to setting up shop wherever there's WiFi, and the flexibility of working when they want to—during the wee hours, while the baby sleeps or through a snowstorm—is tremendously appealing to them. Office intranets, PDAs and remotes will keep everyone virtually connected, so work product should still benefit from the same workplace input as in the old chained-to-the-desk scenario.

Heightened Practice Group Management

Achieving a firm's standard of excellence in different practice groups may well require the hiring, development, application and delivery of very different skills. Firms will decentralize aspects of management so that practice groups are managed as small businesses with unique requirements and standards rather than as a cog in a large, standardized whole.

Hiring and compensating associates differently based on which department they join is already becoming fairly well established. Requisite skills can vary widely. Some practice groups, such as banking and regulatory groups, have work that is more susceptible to routinized production than others, while M&A work, for example, continues to require more personalized and personable legal attention. Non-lawyer staffing requirements for different types of practice are also often radically different.

Merit-Based Compensation

Lock-step compensation will also be a thing of the past: being another year older makes you just that—not necessarily a better, more valuable lawyer. But “merit-based” compensation begs the question: compensation based on which merits?

For associates, merit is likely to mean achieving competencies that the firm, or more specifically the practice group, values in practice skills, such as being able to draft a complaint or conduct a deposition, and in professional skills such as mentoring or leading. Generating realized revenue—whether through origination, billable hours or success fees—will also continue to be rewarded.

For partners, fairly similar factors will likely be part of the compensation consideration, and if a firm is smart, it will also compensate partners (and associates) for involving other appropriate lawyers in a client's matters and for realizing client cost efficiencies. Involving other lawyers increases the likelihood of a client need/lawyer expertise match, reduces exposure to lawyer error or misbehavior, reduces the likelihood of a partner walking off with a client and promotes the firm's client succession goals.

For all “keeper” attorneys, both associates and partners, and even staff, compensation adjustments that are triggered by changes (both up and down) in firm profitability will help focus everyone on the bottom line.

Contingent Profitability

The bad news is that profitability has probably peaked for 2/3rds or more of law firms, i.e. those who will not be creative enough to fashion a more profitable business model. Historically, the stability of the legal product and the reliably increasing demand for services produced no incentive for creative products or business models. But average Profits Per Equity Partner (PPEP) have declined over 7% for the first six months of 2009 compared to the first half of 2008, double the decline of 2008 over 2007, and expectations are that the full year 2009 numbers will be down even more. Productivity is similarly down over 7% for both 2009 and 2008 after holding steady for the prior 7 years. Those declines may gain added relevance from the fact that much more modest drops at both Heller Ehrman and Thelen presaged total collapse.

Now firms will need to develop their own R&D for new products and delivery systems, as nearly all other industries do, in order to increase revenues over time. That requires experimentation, which risks failures as well as success—a whole new arena for lawyers.

Lower Average Compensation

Sorry to say, but over the next 5-10 years average lawyer compensation will suffer a 10-25% decrease from current levels, with only those in the upper stratosphere of gray-haired advice (not necessarily given by those with gray hair) seeing a compensation increase. The average will be hit particularly hard by the impact of contract-type lawyers, working for firms and legal providers, whose compensation will be significantly lower than that of current young associates. The result will be a much greater divergence in individual lawyers' compensation.

While many firms have moved quickly during the last year to reduce fixed associate compensation, reductions in partner compensation are less visible, since they are often dependent on overall firm profits, and certainly less advertised. Yet for many years the percentage increase in starting salaries for associates, though large, has not kept up with the percentage increase in partner profits. If historically high partner income is preserved at the expense of associate salary reductions, the disparity in "sacrifice" may breed further discontent among younger lawyers.

And in the partner ranks, recent statistics from Dan DiPietro of Citibank's Law Firm Group show an already clear slowdown in the rate of making new equity partners—currently a 1.5% increase compared to a 2.5% average increase for the prior years of this decade, already considered low because of a torrent of non-equity partners made in lieu of equity partners during that time. Baby boomers staying on to try to rebuild their financial portfolios account for some degree of the calcification at the top, and uncertain, or declining, overall profitability no doubt also contributes. But the trend will not appeal to perennially younger clients and is likely to breed revolution in law firms. The result? Young turks will leave to start their own firms rather than wait out an uncertain and increasingly less profitable future.

Non-Lawyer Stakeholders

Australia's Slater & Gordon, which went public in May 2007, is the world's first publicly traded law firm and last February reported a 22.4% increase in net profits and 35% increase in revenue

over the prior year.

Meanwhile, on the other side of the Pond, a law similar to the one in Australia authorizing the investment in and management of UK law firms by non-lawyers comes into full force in 2011. In anticipation, several investment firms have already raised millions to take minority and controlling stakes in firms that would benefit from outside investment—whether to carry out a merger, develop a new practice area, or fund expanded IT systems.

US law firms, which could use the additional capital, are grappling with the arrival of outside investment in the same way as did the old guard investment banks who confronted public offerings. Also once dominated by private partnerships, the industry began the transition to public ownership 30 years ago. After Merrill Lynch listed its shares in 1971 in what became increasingly obvious as a competitive advantage, financial pressures on other banks mounted until Goldman Sachs became the last major investment bank to make the change in 1999.

Similarly, these non-lawyer investment laws in Australia and the UK will change the entire business landscape of law firms everywhere. "If the English firms can sell stakes in their law firms publicly, that will then give them an advantage," says Ralph Baxter, the chief executive officer of Orrick, Herrington & Sutcliffe.

With no quick economic rebound in sight, there will be increasing pressure from partners of U.S. law firms on management to explore, and work to legalize, the option of obtaining public investors.

And if non-lawyers are thus far precluded from investing in US law firms, they are already investing in US litigation. The share price of Juridica, a publicly traded UK fund with over \$100 million available for investment in plaintiff commercial litigation in the US, has risen 24% over the first year of trading. Juris, a Chicago firm backed by hedge funds, has realized returns in excess of 20% annually on its investment portfolio in US litigation.

Although shocking to US lawyers, the era of your firm either being in bed with a non-lawyer, or competing with a firm that is, is already a reality.

Enhanced Leadership

What little firms have been able to accomplish over the last decade in the way of motivating the troops and gaining loyalty has been achieved by using the blunt instrument of cash. While the current economic siege makes loyalists of everyone, the firm of the future, lacking the ability to simply pass on expenses to their clients, will have to master the finer art of leadership.

At the same time, building relationships, which is key to exerting leadership influence, will be more challenging: face time will be scarcer due to distant locations, less predictable office time, and more reliance on virtual connection. The largest firms will be the most challenged, particularly if the biologist Robin Dunbar's contention that stable groups are limited to 150 relationships holds true. These firms will rely even more heavily on practice group leadership. All told, it will be harder to build within a firm a shared sense of identity, values, standards and

culture at a time when disseminating those values through identity marketing will be critical for the firm's success.

Highly Developed Training

The importance of frequent and accurate evaluations of lawyers and staff and the effective use of targeted training can not be overstated. Every person will need to carry their weight in a very specific way, for which they must be exquisitely prepared. Firms will no longer be able to afford to carry talent who is not clearly useful now or will be in the fairly immediate future.

How to Get There

“When the tide goes out, it's apparent who's swimming without a bathing suit,” as Warren Buffett has famously pointed out. Many firms' weaknesses have been there for years, but were simply obscured by high revenue and the nonchalance that goes with it.

Recessions can create more opportunity, not less. Now is when you have the time and the impetus from the sense of urgency necessary to rebuild your firm's approach. But it requires an investment. Simply responding with across-the-board cuts in expenses has proved in past recessions to hurt firms in the long run. Those firms which keep spending on talent, marketing, and expanding or refining services during recessions do significantly better than those which make big cuts. They also maintain those gains well into recovery.

There are steps your firm can take to put it on the way to an enhanced future if you take seriously the necessity of change and carefully evaluate a range of options. But gone is the time when law firms can reassure themselves by just doing what other law firms are doing—that only brings the assurance of middle-of-the-pack mediocrity. Now is the time to distinguish your firm as an innovator, an admittedly challenging role for law firms because it is both very difficult and unfamiliar.

The science of paradigm shifts predicts that the last to change are the ones who were most successful at the old system, so the currently most profitable firms are unlikely to be leading the way. And many firms will not be able to transition to a new model without breaking up on the shoals of change—we are trained, after all, to find things wrong with any proposal and we are so good at that we can effectively impede our own progress with our objections. But those firms that do change will reap the rewards only available to the new law firm.

Ronda Muir, Esq., a Senior Consultant with Robin Rolfe Resources, Inc., draws from law, behavioral science and conflict resolution to offer business-savvy, psychologically sophisticated solutions to the organizational and personal dynamics issues that are unique to law firms and law departments.

2020 VISION

What will a successful law firm look like more than a decade from now? Here's a preview of what to expect and a chance for you to make the changes now and stay ahead of this inevitable curve.

By Mitch Kowalski

This is an edited transcript of a speech given by Nancy Kwan, CEO of BFC Law Professional Corporation, upon being chosen Canada's Legal CEO of the Year for the second time in 2020.

Thank you very much for this honour, which I accept on behalf of all the shareholders and stakeholders of our organization. I have been asked to say a few words tonight to help explain BFC Law Professional Corporation's remarkable run of success.

It's no secret that BFC strives to be the legal service provider of choice through the efficient, cost-effective and timely delivery of quality legal services. Indeed, while the name of our firm refers to our founders Bowen, Fong & Chandri, some of our lawyers and staff playfully yet proudly suggest that BFC actually stands for "better, faster, cheaper."

At BFC, we continually strive to provide a better customer experience, and that client-centric approach drives everything that we do. There are many things that BFC does differently from the traditional law firm, but time permits me to touch on only a few of the reasons for our success. These I have grouped under four broad headings: Structure, Overhead Costs, Knowledge Resources, and Billing Practice.

Process will be king

By 2020, the Process Revolution will be well underway in the legal industry. Law firms have long handled work by giving a file to a lawyer to: (a) identify the legal problem and work out a legal solution, (b) using a pen, a legal pad, and whatever precedents are on hand, (c) taking as long as required and docketing time spent along the way. Already, however, efficiency tools are appearing not just through technological advances, but also through business process theory and the rise of logistics.

From workflow analysis to project management, from business process outsourcing to just-in-time delivery systems, process improvement techniques are becoming ubiquitous in business. A lot of law firm work product will prove susceptible to the application of workflow and logistics tools, greatly reducing both the cost of this work and the price it can command from clients. Process efficiency gains will rewrite the rules of what lawyers can profitably sell. ■

— All sidebars by Jordan Furlong

Structure

The practice of law in Canada has not evolved much from its roots as a solitary, insular profession in which individual lawyers do all the legal work, prepare and jealously guard all documents, and of course, make all the money. Not surprisingly, this structure creates a self-absorbed and deeply mistrustful culture. Sharing work, or passing it on to someone else, no matter how low-value it might be, is not part of a traditional lawyer's DNA.

BFC wanted to change that mind-set. We wanted a structure that did away with individual ownership and rights, and moved us toward what Stephen Mayson, then-director of the Legal Services Policy Institute, called a culture of "custodianship, stewardship, responsibility, and accountability."

Simply put, our lawyers contribute for the good of BFC so as to leave it in better shape than when they first arrived — with respect to the quality of BFC's know-how, its reputation, its client base and its financial situation. The solution was to create a separate and distinct corporate legal entity of which lawyers and staff could truly feel a part. The sum has become greater than the parts.

Our corporate structure also aligned with our belief that consensus decision-making is a recipe for inertia that, more often than not, puts personal interests ahead of the collective good. Our corporate structure forces us to use a "board of director" decision-making model. And in accordance with good governance practice, all members of our board are independent of BFC and most of them are general counsel for Canadian companies.

Board members are paid not only directors' fees, but to ensure they have a stake in our success, shares in BFC itself. Like all effective corporate boards, ours charts the strategic direction of BFC for its good, independent of the personal interests of BFC's individual lawyers.

Moreover, professional managers who are members of the law society, like me, are hired as officers in order to further ensure that decisions are made in the best interests of BFC as a whole. Senior lawyers who would be partners in the traditional law firm structure are not only shareholders of BFC, they also receive Senior Vice-President titles and an annual salary with a bonus structure. They operate their practice groups in accordance with BFC's strategic plan, manage quality, and manage clients, much as they would in a partnership.

A vital component of our independent management and corporate structure is the discipline to retain portions of BFC's annual earnings to fund long-term goals or to act as a buffer in a tough economy. A partnership structure inhibits such retention, creating a disincentive for the long-term planning and expenditures necessary for sustained success.

Overhead Costs

Successful businesses minimize their overhead costs. In line with our efficiency goal, we quickly attacked our biggest expense: human resources. Our vision is to remain lean but flexible for sudden increases in workload. To do this, we outsource as much routine work as possible to low-cost legal service providers.

We have found that every legal service can be broken down into steps, each of which can be categorized along a sliding scale, from routine to what UK legal visionary Richard Susskind was the first to call "bespoke," or personalized advice. BFC seeks to outsource and perform more efficiently as many steps in a file as possible while still maintaining high quality.

We have outsourced our legal research, document preparation, due diligence and similar work to lawyers in India. As part of a new lawyer's orientation with BFC, she spends two

months in Mumbai with our local legal service provider to understand what work is being sent to the outsourcer and how that work is being done. In addition, a component of a BFC lawyer's annual evaluation deals with her efforts to find efficiencies in her practice.

We no longer have Canadian night staff: the work they once did has been outsourced to the Philippines. Our technology allows real-time connection between our lawyers and our overseas night staff at no cost. To facilitate these efficiencies, all work is done "in the cloud" (through outsourced servers running "Software as a Service"). No BFC document sits on any particular computer, and all documents

are accessible to authorized users anywhere in the world. Appropriate security and disaster recovery measures are in place for our data.

Part of the fallout from the Great Recession of 2008-12 was that more lawyers became willing to work on contract or do piece-work. Locally, we have pools of lawyers who work from their homes strictly on a project basis. Most are former associates from other firms who want more family time and are happy to be paid on a piece-work basis. They constitute our "just-in-time" capacity — they fill gaps when we have major deals and save us significant employment costs.

We do not, unless there are extenuating circumstances, hire

La firme de l'avenir

À quoi ressemblera un cabinet juridique qui a du succès dans 10 ans?

Voici la transcription d'un discours prononcé par Nancy Kwan en 2020, au moment de recevoir pour une deuxième fois le prix de la PDG juridique de l'année au Canada. M^e Kwan est PDG de BFC Corporation professionnelle légale.

Merci pour cet honneur, que j'accepte au nom de tous les actionnaires et personnes impliquées dans notre organisation. On m'a demandé de dire quelques mots ce soir pour expliquer le succès remarquable de BFC Corporation professionnelle légale.

BFC se targue d'être un fournisseur de services légaux de choix grâce à ses services efficaces, ponctuels et abordables. À BFC, nous prônons une approche centrée sur le service à la clientèle et cet objectif détermine tout ce que nous faisons.

Il y a plusieurs choses que nous faisons différemment des cabinets juridiques traditionnels, mais le temps limité ne me permet aujourd'hui que de parler de quatre aspects principaux : la structure, les coûts, la gestion de la connaissance et la facturation.

Structure

Simplement dit, nos juristes contribuent à l'avancement de BFC en ayant le souci de le laisser en meilleur état que celui dans lequel ils l'ont trouvé — et pas seulement au plan des connaissances, mais aussi au plan de la réputation, du développement de la clientèle et de la santé financière.

Le véhicule que nous avons favorisé pour créer ce sentiment d'appartenance a pris la forme d'une entité corporative distincte, dans laquelle, conformément aux bonnes pratiques de gouvernance, les membres de notre conseil d'administration sont indépendants de la firme.

Coûts

Les entreprises qui ont du succès minimisent leurs coûts d'opération. Pour y arriver, nous nous sommes attaqués à notre poste de dépense le plus important : les ressources humaines.

Nous externalisons le plus de tâches de routine possible à des fournisseurs de services à bas prix. Cette impartition — qui englobe la recherche, la préparation de documents, etc. — est faite en Inde.

De même, nous n'avons plus de quart de travail de nuit au Canada : ce quart de travail est maintenant fait aux Philippines, ce qui permet aux employés des deux côtés du monde de travailler en même temps.

L'espace de travail est notre deuxième poste de dépense. Là encore, nous avons abandonné les modèles traditionnels. Nous avons maintenant deux lieux de travail : un centre de réunions, où les juristes peuvent rencontrer leurs clients; et le bureau lui-même, à l'extérieur de la ville, non seulement moins cher à louer, mais aussi épargné par les bouchons de circulation, et souvent plus proche du domicile des employés.

Gérer la connaissance

La gestion des connaissances (GC) est une partie intégrante de nos activités. Un directeur de la GC siège sur l'exécutif. Et tous les avocats doivent, sur une base quotidienne, signaler les documents devant être répertoriés. Ces documents sont ensuite transférés en Malaisie,

où une équipe détermine s'il est pertinent de le faire, en regard du contenu de notre base de données.

Facturation

Le facteur le plus important expliquant le succès de BFC, finalement, est sans doute la manière dont nous fournissons des services légaux qui nous a permis de changer nos pratiques de facturation. Tout est maintenant fait sur une base forfaitaire. Même le litige fonctionne par coûts fixes.

Pendant trop longtemps, les juristes n'ont accepté aucun risque par rapport à leur inefficacité. Nos avocats ne sont pas jugés par le nombre d'heures qu'ils travaillent, mais plutôt par leur efficacité à utiliser les ressources mises à leur disposition pour fournir leurs services.

Conclusion

Il y a longtemps, en 2009, le Washington Post, qui imprimait encore son quotidien en format papier, a écrit que la fin annoncée des journaux était en large partie due au fait qu'ils avaient été « trop prudents et trop lents », survivant grâce à leur monopole, jusqu'à ce que quelqu'un change les règles du jeu. Pour plusieurs, il était alors trop tard pour s'adapter.

C'est la même chose pour la profession juridique. Pendant toute son existence, elle n'a vu aucun besoin pressant pour se transformer, se rendant vulnérable face à des groupes émergents comme BFC, qui ont changé les règles du jeu.

Si vous voulez continuer à fournir des services légaux en 2020 et après, je suggère que vous évaluez toutes les composantes de votre système de fourniture de services, de manière urgente.

Faites-le non seulement pour le bénéfice de vos clients, mais aussi pour votre propre survie. Le terrain légal a changé, et il n'y aura pas de retour en arrière.

Mitch Kowalski est rédacteur, consultant, et, en plus d'être un penseur légal innovateur. Il peut être joint au mekowalski@rogers.com ou sur son site web, www.kowalski.ca. ■

The coming end of the associate

By 2020, the law firm pyramid may well have been replaced by the law firm diamond. More efficient processes and more cost-effective service providers will inexorably erase much of the previously billable rote work of associates in their first few years. And since most associates never make it into the partnership anyway, firms will soon ask themselves exactly why they develop and maintain vast grazing herds of associates. They won't find a good answer.

The future law firm likely will have a few senior partners or stakeholders at the top, a few young future stars in development at the bottom, and a series of client-service professionals in the middle. This will have profound effects on how new lawyers are trained and on how future lawyers are educated — large law firms will no longer be willing to subsidize the new lawyer learning curve. ■

anyone straight out of law school. Many of our competitors still follow the expensive and inefficient practice of hiring large groups of students and then, over a period of three to five years, “culling the herd” to find a few good lawyers who they hope will eventually make partner. In our view, this is a tremendous waste of resources. We put little effort into attracting talent from law school — we prefer to grow by lateral hires, letting other firms make the investment of training our lawyers.

We can afford to do this because we suffer little attrition. Lawyers and staff tend to stay with us, and few of our lawyers are poached by competing firms. This is because ex-BFC lawyers experience great difficulty moving clients away from our efficient and cost-effective approach. Furthermore, after working at BFC, lawyers find it difficult to go back to working with the inefficiencies of a traditional law partnership.

Our second-largest overhead component, of course, is physical space. Here again, we threw out the old law firm belief that expensive office space in a downtown location is a necessity. Our review of clients' interaction with lawyers showed that for most practice areas, it is rare for clients to actually come to the BFC office; in fact, we encourage our lawyers to meet clients at their offices.

If clients do come to the BFC office, it is in connection with a transaction closing or document execution, events that are not constant. We also found that it was rare for a client to actually sit and meet in a lawyer's personal office. As a result, we felt that we could achieve tremendous cost savings by moving to a hub-and-spoke system:

The Hub

We maintain meeting room space downtown (the Hub), equipped with staff, computers and the like. This space also contains hoteling niches where lawyers have workspace and telephone/internet access. Remember, all our systems are cloud-based, so lawyers and staff can work anywhere.

Office management handles all boardroom and hoteling niche bookings.

The Spoke

BFC's day-to-day legal work is done at a public transit-accessible location outside the downtown core (the Spoke). Not only is rent much cheaper there, our staff and lawyers find the Spoke to be closer to their homes, which reduces their travel time and increases their quality of life. In the Spoke, we have moved away from separate offices for lawyers, which allows for the efficient use of smaller rentable space with better HVAC flow (further reducing costs). Small meeting rooms throughout the Spoke accommodate privacy as needed.

Knowledge Resources

We believe, as do many legal thought leaders, that the packaging and selling of legal knowledge is the core of our business. Accordingly, our Knowledge Management (KM) director is on the executive team and plays a vital role in our business.

Contrary to the law partnerships of old, we see KM as much more than a software solution supplemented with a KM director hounding lawyers for precedents. Our KM philosophy, which borrows heavily from the writing of longtime KM expert Matthew Parsons, is holistic; it has become an integral part of how every lawyer at BFC works.

Each BFC lawyer (no matter how junior or senior) is required to flag possible KM documents on a daily basis. Compliance with this requirement forms part of the lawyer's annual evaluation. Documents are sent every night to our KM editing team in Malaysia (run by a resident BFC lawyer), whose members review each document and determine if it adds something new to our database. All business development presentations are also templated and handled by KM to ensure consistent firm image, wording, content and messaging.

Our Professional Development (PD) director is also a member of the executive team. He works in concert with the KM director to ensure that our lawyers, particularly the younger ones, receive consistent exposure to files so as to develop the habits and skills necessary for BFC's success.

Mentoring is an important part of our PD

Price will be decoupled from costs

Lawyers and clients have long assumed that the price of legal services is somehow connected to its cost. A lawyer could figure out her cost of providing a service, build in a percentage for profit, and arrive at a price; internal costs could always be passed on to the client. Aside from unusually rote work, lawyers could control their price to a great extent.

By 2020, clients will have made substantial inroads in identifying the value they derive from legal services and will not pay more than that amount. This will oblige lawyers to control their internal costs in order to ensure a profit. “Price” will be what the market will pay; “cost” will be whatever the lawyer incurs to deliver her services; lawyers' profit will be difference. ■

program. Senior lawyers are evaluated on their mentorship of junior lawyers and how they help those lawyers reach mandated milestones (for instance, a corporate lawyer milestone might be to lead a certain type of transaction). Unlike too many of our rivals, we insist that lawyers acquire specific technical, managerial, client, and interpersonal skills, as well as the ability to manage staffing and outsourcing to budget. Advancement within BFC is based upon a lawyer's ability to get a transaction done at a profit.

Billing Practice

Perhaps the most important aspect of BFC's success, however, is that changing how we deliver legal services gave us the freedom to change how we charged for them.

All fees are fixed, agreed with the client ahead of time, and set out in our retainer letter. That letter contains our service level agreements and key performance indicators, all of which are tied to "fee at risk." In other words, if we miss our KPIs or veer from our SLAs, our fee is reduced. Conversely, we have also put in place a bonus structure, such that we can earn additional fees for superior service or for achieving other specified results.

Transaction fees are typically set as a percentage of the purchase price in question. Litigation is also done on a fixed fee basis — if you find this surprising, remember that 90% of matters settle before trial. It's a fallacy to suggest that litigation fees can't be fixed or done on a piece-work basis, in which the price of every step or procedure, such as a motion or trial, is fixed beforehand. This pricing reinforces the need for superior KM and efficient use of personnel, since failure to do so cuts into our profits.

It is the responsibility of every file's lead lawyer to manage quality control and to achieve our internal budget for that file. If a project goes over budget, we examine internally what went wrong and how it can be corrected in the future. We do not make it the client's problem.

For too long, lawyers have refused to accept any risk for their inefficiency; unlike other businesses, they have had no incentive to control client costs. BFC has turned this model on its head, and our clients approve. In that same vein, we do not charge clients for any disbursements, since these have already been factored into our retainer letter.

Moving to fixed-fee, non-disbursement billing has been a success on many fronts. It allows us to issue accounts quickly and

New forms of compensation

By 2020, billable-hour compensation — performance judged and rewarded on the basis of hours billed — could already be fading from lawyers' memory. Lawyers compensated for the number of hours invoiced to clients inevitably tend to make efficiency, timeliness, value, and service secondary to maximizing the time taken to address a client request. This serves neither lawyers nor clients well.

As billable-hour billing starts to loosen its grip, as is already happening, billable-hour compensation inevitably will follow. Firms will have to actually figure out what their lawyers are worth to them and to their clients. Multifaceted performance expectations and other sophisticated ways of assessing a lawyer's performance will become more common, especially for millennial lawyers for whom "logged time" is an irrelevant marker of value. ■

eliminate the accounting and administrative costs associated with recording hours, tracking disbursements, and correcting inevitable errors.

Lawyers waste little time on docketing and are no longer tempted to dishonest time-keeping practices. Our lawyers are judged not by how many hours they work, but rather by how efficiently they use BFC's resources to perform top-quality work. If a lawyer spends all night and weekends on a straightforward task, it suggests that he or she is managing the task poorly.

Conclusion

What all of this demonstrates, I believe, is that the delivery of legal services is never static and is certainly not condemned to ancient business models. Many of our rivals still cling to some or all outdated practices, but a small though growing cohort of competitors are adopting many

of BFC's practices as their own.

Way back in 2009, the *Washington Post*, when it was still printed on paper, wrote that the coming demise of newspapers was due in large part to the fact that they were "too cautious and too incremental," surviving on their monopolies until someone changed the rules of the game. At that point, for many papers, it was too late to adapt.

The legal profession is no different. For its entire existence, our profession has seen no pressing need to change, leaving it vulnerable to upstarts like BFC who have changed the rules of the game. If you wish to continue to provide legal services in the 2020s and beyond, I suggest you critically evaluate every component of your service delivery systems.

Do this not only for the benefit of your clients, but for your own survival. The legal terrain has shifted, and there is no turning back. ■

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Multiple income streams

By 2020, even a streamlined firm with hyper-efficient lawyers won't have achieved maximum profitability if its only source of revenue is the work product its employees churn out in real time. Packaged knowledge and process systems, side businesses and parallel projects operated by para-professionals — these self-directed non-lawyer activities will either generate income or solidify client relationships, or both, while lawyers are otherwise engaged.

Already, some firms today are "earning while they sleep," having constructed online compliance training programs for their clients that generate revenue, while the lawyers whose expertise helped create those programs are doing other billable work. Law firms will discover that greater internal efficiency can free lawyers from mundane billable tasks to focus on high-value tasks more worthy of their skills and judgment. ■