Implications of the
Future of the Legal Profession

By:

Moderator:
Patrick A. Nester
State Bar of Texas
Austin, Texas

Panelist:
Sandra A. Geller
Practising Law Institute
New York, New York

Nancy Mulloy-Bonn
ALI-CLE
Philadelphia, Pennsylvania

Presented at:
ACLEA 49th Annual Meeting
August 3-6, 2013
Baltimore, Maryland
Patrick A. Nester  
State Bar of Texas  
Austin, TX

Pat Nester began his CLE career as a legal editor in 1978 and two years later moved to the seminar side, eventually becoming the director of the professional development division of the State Bar of Texas, succeeding Gene Cavin, one of the founding members of ACLEA. Pat has served on ACLEA’s executive committee and as its president. In addition to his CLE duties, Pat serves as executive director of the College of the State Bar of Texas, an honor society chartered by the supreme court of Texas for lawyers who make an extraordinary commitment to lifelong learning. Pat served as executive planning chair of the ALI‐ABA/ACLEA Critical Issues Summit, held in October 2009.

Sandra R. Geller  
Practising Law Institute  
New York, NY

Sandy Geller is an Executive Vice President of the Practising Law Institute, the nation's oldest and largest not-for-profit continuing legal education organization. Ms. Geller joined PLI as a Program Attorney in 1978, was appointed Director of Programs in 1989, became Associate Director in 1992, and assumed her current duties on September 1, 2006. She has developed hundreds of continuing legal education programs in nearly every area of the law and has been responsible for managing the research, development and execution of PLI's curriculum, as well as program logistics and CLE accreditation.

Ms. Geller is a frequent speaker for the Association for Continuing Legal Education (ACLEA) and has served as a member of the American Law Institute - American Bar Association (ALI-ABA) Committee on Continuing Professional Education. A graduate of Dowling College and the Hofstra University School of Law, she practiced law in New York City before joining PLI.

Nancy Mulloy-Bonn  
ALI-CLE  
Philadelphia, PA

Nancy was appointed in 2012 as the first Director of ALI CLE. Prior to that, she developed ALI-ABA’s substantive law distance learning curriculum. Her background is a hybrid of administration, production, government affairs and law practice. Before joining ALI-ABA, Nancy practiced law in the Business & Corporations Department of Hamburg Rubin, a regional firm in South East Pennsylvania. Prior to that, she served for twelve years as Executive Director of the Pennsylvania Trial Lawyers Association, which operates one of the nation’s strongest government affairs and CLE programs, and a vibrant amicus curiae program. Earlier, she was the Senior Associate Director of the Pennsylvania Bar Institute. She is a former Secretary to the Pa. Minor Courts Rules Committee, and is a certified lawyer‐mediator. She earned a Masters of Administration degree from The Johns Hopkins University. A former president of the ACLEA, Nancy is a prolific writer and lecturer. For years, Nancy studied voice at Philadelphia’s Settlement Music School, and spends her free time singing, gardening and supporting community projects at Rodeph Sholom Congregation, the Penn Charter Quaker Community and the Swedish Council of America.
Change:
*It’s Happening, So Get Over It!*

By Sandra A. Geller, Practising Law Institute; Nancy Mulloy-Bonn, American Law Institute CLE; Patrick A. Nester, State Bar of Texas

Change is a word that scares most of us because it is easier to cling to what we know. Most of us tend to avoid the unknown, and with change, well, you just never know what it will bring.

Change is nothing new. The Big Bang was a change. Today’s weather was a change. The change that interests us as CLE professionals is change in how lawyers work and act. The Magna Carta changed things for us. More recently, the internet changed things. There are more mind-blowing, job-altering changes to come—count on it!

Essentially, every CLE professional has two options:

A. **You can fret over it, hate it, avoid it.** But that won’t stop change. Those reactions merely cause you to waste time, forego opportunity, and eliminate your chance to control your situation to the degree possible. Or,

B. **You can welcome change, take charge, and examine the possibilities that change may bring.**

**So, what’s it going to be for you?**

**PART ONE: The Nature of Change, and Your Own Reaction to It**

1. **Change is already on the horizon: it’s happening, just look around.**
Siri is already looking at long term care policies…

We heard at our plenary session, “The Future of the Legal Profession,” that change is afoot:

- law schools are not preparing students for law practice
- lawyer hiring is down
- clients are now assertive about what they will pay, who they will pay, and how they will pay
- potential clients are using non-lawyers to solve their problems
- lawyers off-shore are getting more business
- lawyer firms are being run like businesses
- ownership and control of the law firm today is different from thirty years ago

Some other changes afoot:
composition of law firms in terms of diversity
- globalization of everything, including law firms and business firms
- greater orientation towards bottom line of most law firms
- control of finance and management and training within law firms
- law firms’ use of in-house CLE
- changing American economy (that drives law firm business)
- changing EU and BRIC and other economies (that impacts American law firm business)
- increasing demand for training in American law by non-American licensees and related professionals
- delivery formats: mobile apps are not yet in adult stage: legal ramifications as well as tech ramifications
- boomers will be replaced on boards and panels by millennial
- Learning styles are changing courtesy of MOOCs, social media, the internet, etc.
- size, length, duration of items presented has changed: we are careening towards nano-particles of info, one at a time
- Interactivity while learning has changed: e-communities, social media, etc.
- pricing: free is what people are getting used to in many ways
- payment: Bitcoin, pay-pal, payment apps, etc,
- reaching target audiences: email is a historical artifact to late generations
- shift to just-in-time learning

These are just a few things mentioned at the plenary session. These things are not as provocative as the changes that cannot be mentioned because our minds in 2013 cannot even fathom them! The changes that we heard about are actually already underway, so count on them to one degree or another.

2. Change will occur that you cannot possibly imagine today: don’t look around, because you cannot see it yet.

- 
- (well, you get the idea --)

3. How do you react to change?

- Know thyself. A lot factors go into your reaction and management of change. These factors themselves will be different in various situations, various times, and various settings. But most CLE professionals react to change based on these factors.

- What is your inclination? At one pole, there are those who thrive on change (think Confucious, St. Paul, Joan of Arc, Christopher Columbus, William
Shakespeare, Queen Victoria, Ludvig von Beethoven, Marie Curie, Golda Meir, Rosa Parks, The Beatles…). And there are those who don’t (They cannot be named, because they did not make the history books…)

4. Consider your own inclinations about:
   - Fear: do you assume that change will help you or hurt you?
   - Outlook: do you assume that you can handle change, or that it is a nasty intrusion into your status quo?
   - Timing: do you figure that change is something immediate, or that it is something that will happen after you’re dead?

You can see the pattern emerge. Change is a constant, so deal with it. Work on your fear. See change as a potential benefit. Recognize that it is happening even as you read this.

PART TWO: Changes in CLE & the Practice of Law

1. How to Identify Notable Trends in Legal Practice
   - Listen to your customers; develop formal and informal modes of talking to them
   - Listen to your advisors; set up formal and/or informal groups of practitioners, academics, in-house counsel and related professionals, including lobbyists and law firm management specialists
   - Listen to every lawyer and potential lawyer’s client whom you encounter
   - Listen to colleagues: join and participate, as you find beneficial; exchange information (don’t limit yourself to bar associations and CLE groups)
   - Have a special place where this information can be stored, reviewed and shared with your staff and leaders
   - Create an organizational culture in which all employees and leaders and informal advisors understand your need to spot trends and forecast change
   - Read, read, read: to the extent that time allows, read everything that could contain information about emerging change in how lawyers live and practice
   - Create routines to gather the above information, and be religious about keeping those routines
   - Use technology to help keep you ahead of the curve. Subscribe to various RSS feeds, set up Google alerts for relevant key words or subscribe to customizable media monitoring services

2. Prepare for Changes That Are Occurring in the Ways Lawyers Learn
The old paradigm of mastering the skills and knowledge needed in many areas of practice has been overwhelmed by the magnitude of relevant knowledge available. Mastery has become a myth.

Technology and mobile devices vastly expand the ability to learn important information, and possibly even skills and techniques, “just in time”

The social components of learning are effectively being mimicked by “e-mentoring” opportunities made possible by social networking. Going forward, the best learning may occur from reading responses to one’s online cry for help to a carefully selected group of practitioners who have agreed to respond to one another within hours or minutes.

Suppose MCLE authorities come to recognize the “modern” way of learning—i.e., just in time—awarding credit for such methods. What becomes of the traditional classroom model that we hold dear?

3. Watch for Your Blind spots

- Everyone has them; if someone on your board or staff makes a comment you don’t understand, explore it…maybe that person sees something you don’t.
- Talk ‘crazy’ in safe environments, occasionally. Explore the impossible.
- Stimulate creativity – some good ideas that will shape your organization’s future might profit.

4. Prepare for Constant Change

- Have a vision; have a plan; alter it as needed
- Create an organizational climate that embraces change; lead the way
- Stay nimble with staffing: nothing is forever; give yourself and your staff the notion that you are seeking results in whatever world we are living in, not yesterday’s world. Employ nimble people; seek nimble advisors and leaders. Be ready to re-train employees and hire new talent as needed
- Be prepared to compete with yourself as your competitors won’t hesitate to do so
- Stay nimble with machines and physical plant: there are advantages to locking into long contracts and owning things, but balance those gains against the long-run advantages of being able to walk away from old delivery methods, computer systems, etc. Know what business you are in! If you were in the stagecoach business in the 19th century, you have very limited options today. But if you were in the transportation business, your old stagecoach business might today be a ZipCar franchise.
- Be deliberate: do you want to be on the bleeding edge, the cutting edge, or do you want to be a follower? Each path has risks and benefits.
5. Be Prepared for Dramatic, Sudden Change (I hope none occur, but you never know...)

Remember: these undesirable things don’t necessarily have to happen in your neighborhood to impact you – there is a domino affect on you at times. Sometimes we don’t know where a supplier’s servers are until they get knocked out.

- Fire
- Terrorist attack
- Weather catastrophes
- Floods, tornadoes, hurricanes
- Strikes at suppliers (e.g., hotel)
- Utility outages

There are no doubt many more possibilities. Think about it. What do you want to prepare for? How will you prepare? How will your team work off site and still get the job done? What will the chain of command be? Do you want/need business interruption insurance for all or some of your operations and events? Develop a business recovery/continuity plan and familiarize your staff with it. Make certain that everyone knows what to do, where to go and how to maintain contact in case of an emergency.

6. Assess Your Organization Design, Your Team, Your Physical Plant

- Are your resources ready for the next wave, as you forecast it?
- Can you expand and contract necessary resources like staff?

7. Develop Funding Sources for Change, Both Short and Long Term

8. Prepare Your Markets for Change

- It is great to be ahead of the market, but not too far ahead. It is easier to sell your customers more of what they bought last week, but that plan will wear out eventually. You will need to introduce new services, new content, new delivery modes periodically, even if you deliberately choose to follow CLE leaders.