

Playing to win in the industry's new legal normal

By Paul Lippe and Ed Reeser

For some time, we've been talking about a "New Normal" for the legal profession, where the factors that have transformed other fields from medicine to photography — technology, buyer sophistication, global competition and the drive for efficiency — come to law.

The recent legal headlines have been dominated by the rolling collapse of Dewey LeBeouf, a very large New York based firm.

While there were clearly management problems at Dewey, we don't think Dewey's travails are an isolated event — rather, they are the tip of a larger iceberg of structural change. To understand what's happening below the surface, the best place to look is sophisticated general counsels like Jeffrey Carr, the General Counsel of FMC Technologies, and a purchaser of private law firm services. According to Jeff, lawyers do four things:

Advocacy: representing client interests in relationship to external parties (litigation, complex transaction negotiation.) Demand for and pricing of advocacy work will continue to grow at a healthy pace, but clients will expect clearly superior performance according to New Normal metrics, not just lawyer effort and credentials.

Counseling: advising the client on actions that favor long-term over short-term interests. Counseling requires deep understanding of the client and its people and has largely moved in-house for bigger clients. Smaller clients will also value counselors, and for big clients there will always be some occasions when a firm lawyer is better at counseling because they have a more independent perspective, a broader set of experiences, or greater reputational value in delivering unwanted news. But the pricing and demand will likely be flat.

Content: providing information about legal issues. Content revenues will be "Google-ized," made essentially free.

Process: moving information from one place to another to create legal work product, typically generating or analyzing contracts, or working through discovery-based work in litigation or investigation. Process work will continue to grow, but it will be managed like other process work in the enterprise, with a combination of lower-cost people, process and technology. Much of the process work has moved in-house over the last decade, but now cost pressures are forcing further change. While demand for process work will outpace other areas of legal work, the price of process work will be around \$60 per hour. To use a rough analogy, law firms don't mill their own paper or generate their own electricity, even though those inputs are essential to legal work, and they won't do nearly as much of their own process work.

Here is some simple math:

- Large and small law firms charge from \$100 per hour (paralegal) to \$400 per hour (mid-level associate) for process work.
- In-house teams can execute process work for \$100-\$200 per hour, much less if they organize for it as Cisco has. (See <http://www.legalexecutiveleadership.com/wp-content/uploads/LEL-Cisco-Global-Center-of-Excellence-Practices-February-2012-FINAL.pdf>.)
- Non-traditional providers like Axiom charge perhaps \$125-250 per hour for process work, but are still often advantageous for clients, because they

represent a "no overhead" variable cost, available on demand as needed and don't require supervision.

• Legal process outsourcers like Integreon deliver process work (including onshore lawyers, technology and process) for around \$60 per hour with predictable quality, integrated with legal departments and embracing formal methods for delivering and ensuring quality.

• Law firms have started to create their own 'captive' LPOs, like Orrick in Wheeling, W.Va., Wilmer in Dayton, Ohio, Allen & Overy in Belfast and Baker McKenzie in Manila.

Law firms believe their competitive advantage in advocacy and counseling work gives them long-term immunity to efficiency pressures in content and process work. For a generation, every time a legal department said it could do work more efficiently than a law firm it was able to do so. Now every time one of the "new providers" says it can do content or process work more efficiently than a firm, it has been able to do so. In fact, as we see greater focus on outcome measures, the more efficient providers will also be able to demonstrate better quality in the pieces of work that they do.

Whether you are 500 attorneys or five, you can improve your efficiencies, concentrate what you are best at, which not coincidentally is often what you like to do the most anyway and operate more profitably.

So what should lawyers do? Here are four suggestions:

Start with a blank sheet of paper. Everything that made your firm successful arose in one context. As that context changes, some of those ideas — perhaps fancy offices or lots of associates — may make less sense. No one can know the future, and no one can jettison the past. But just do the basic exercise of asking yourself "if we were starting fresh today, how would we do things?" Many of your competitors are doing that — companies who have struggled of late — like Kodak or Sony — didn't.

Ask your clients what they want. They'll tell you. And it may turn out they don't value the things you thought they did.

Assume you will make no money from content and process work. How much revenue could you lose? How much cost do you have to take out? How can you be better at Advocacy and Counseling so you can make that up?

Create alliances that give you an advantage. Partner with more efficient content providers like LRC and process handlers like Integreon so you can be the general contractor to deliver that work efficiently and create a value and cost advantage.

Whether you are 500 attorneys or five, you can improve your efficiencies, concentrate what you are best at, which not coincidentally is often what you

like to do the most anyway, and operate more profitably than before with a focus on advocacy and counseling. When somebody else can do it cheaper, faster and as well, hire them to do it. While it doesn't work for everyone, there are attorneys out there who have discovered that on leaving large firms they could keep the clients they wanted, still do the same work, cut their rates by 1/3, bill 1400 hours a year and net the same take home compensation as they were taking home in a top 200 firm. Were the clients happy? Same lawyer, same work, less cost. Were the lawyers happy? Same clients, same work, same pay. Entire law firms can do it, if they have the collective will and energy to take that sheet of paper and just do it. What will happen to those who don't versus those who do?

For a variety of cultural reasons, big firms will find it very difficult to shift. Which means that there will be more than enough room for every smaller firm that wants to successfully evolve to find an appropriate strategy.

The leverage and skills model for the legal profession is changing, and lawyers aren't driving the evolution of the model; the client market is. As Bruce Springsteen might have sung, the content and process jobs "are going boys, and it ain't coming back." You don't have to be Steve Jobs to manage this transition — you just have to "beat the bear" — outrun the other campers who'll have an even harder time changing than you will.



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California court crisis continues to worsen

By Dave Rosenberg

California courts are in crisis. Visit any courthouse in the state to view the effect of last year's \$350 million cut in state funding for our court system. Since 2008, operating funds for the courts have been slashed by an unprecedented \$653 million.

Hundreds of layoffs in the court system have adversely affected the service the public deserves. In San Francisco, 67 employees were laid off and the court now has 11,000 cases awaiting trial in its traffic courts. In Los Angeles, 329 court employees got pink slips; Sacramento laid off 285 over two years. Statewide, 23 courts have shut down courtrooms.

Court users — self-represented litigants, jurors, attorneys, and others — wait in long lines before court each morning to get their day in court or just to try to process simple paperwork in civil cases. Self-represented litigants may lose a day's pay; those fortunate enough to hire attorneys must pay their attorneys to wait in line.

Yes, the judicial branch is not

alone in facing budget cuts. The difference is that the judicial branch has had its infrastructure funds depleted — \$310 million last year — to help the rest of state government. Without those funds — paid for by court fines and fees — it will take longer to provide citizens with courthouses that are safe and accessible. If repeated on the same scale in the coming budget year, critically

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needed courthouse projects (which, by the way, create many jobs in local communities) would have to be canceled altogether.

As we struggle to keep courts open, it's important to remember that we in the court system can't control our caseloads. Judges and

administrators have no control over the number of cases that are filed. And that number keeps increasing every year — while our financial, staff and judicial resources decrease every year. It's an equation that simply can't be sustained. With the economic downturn we have seen a spike in landlord-tenant and family law cases. I agree with Chief Justice Tani G. Cantil-Sakauye that "the promise of equal justice should not be illusory."

Fortunately, attorneys across the state in all practice areas have become alarmed about how the cutbacks in court services have impacted their clients. They have or-

ganized themselves into something called the "Open Courts Coalition," held hearings and organized a rally in downtown Los Angeles last month and held another in San Francisco on April 18. They recognize that now is the time to say "no more" and protect the birthright of Californians to access to justice. Once, California had the best court system in the USA — the envy of other states. We simply can't stand by and watch our judicial system diminish.

(For more information on the impact of budget cuts, here are two brief videos produced by the Open Courts Coalition and the Judicial Council of California.)



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Funding for startups fell in first quarter

By Barbara Ortutay
Associated Press

Funding for startups fell 19 percent in the first three months of the year, as cautious venture capitalists funneled less money into fewer deals.

According to a study out Friday, startup investments fell to \$5.8 billion in the January-March quarter from \$7.1 billion in the same period in 2011. The companies receiving deals were mainly in the Internet, energy and medical device sectors in the later stages of development. There were 758 deals completed during the quarter, 15 percent fewer than the 889 a year earlier.

The MoneyTree study was conducted by PricewaterhouseCoopers and the National Venture Capital Association based on data from Thomson Reuters.

SquareTrade Inc., a provider of extended warranty services for electronics, had the largest funding deal in the quarter with \$238 million.

At No. 2 was Sapphire Energy Inc., a developer of algae-based crude oil, which received \$139 million in early-stage funding. Fisker Automotive Inc. was in third place. The electronic vehicle company got \$130 million in later-stage funding.

The decline was seen for investments at all stages:

— Fifty-three seed-stage companies received \$141 million in funding, down from 86 companies and \$211 million a year earlier.

— Venture investors poured \$1.61 billion into 290 early-stage startups, down from \$1.81 billion and 320 companies.

— A total of 207 expansion-stage companies received \$1.71 billion, down from 221 companies and \$2.26 billion.

— For later-stage startups, 208 companies grabbed \$2.28 billion. That's down from 234 companies and \$2.41 billion.

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