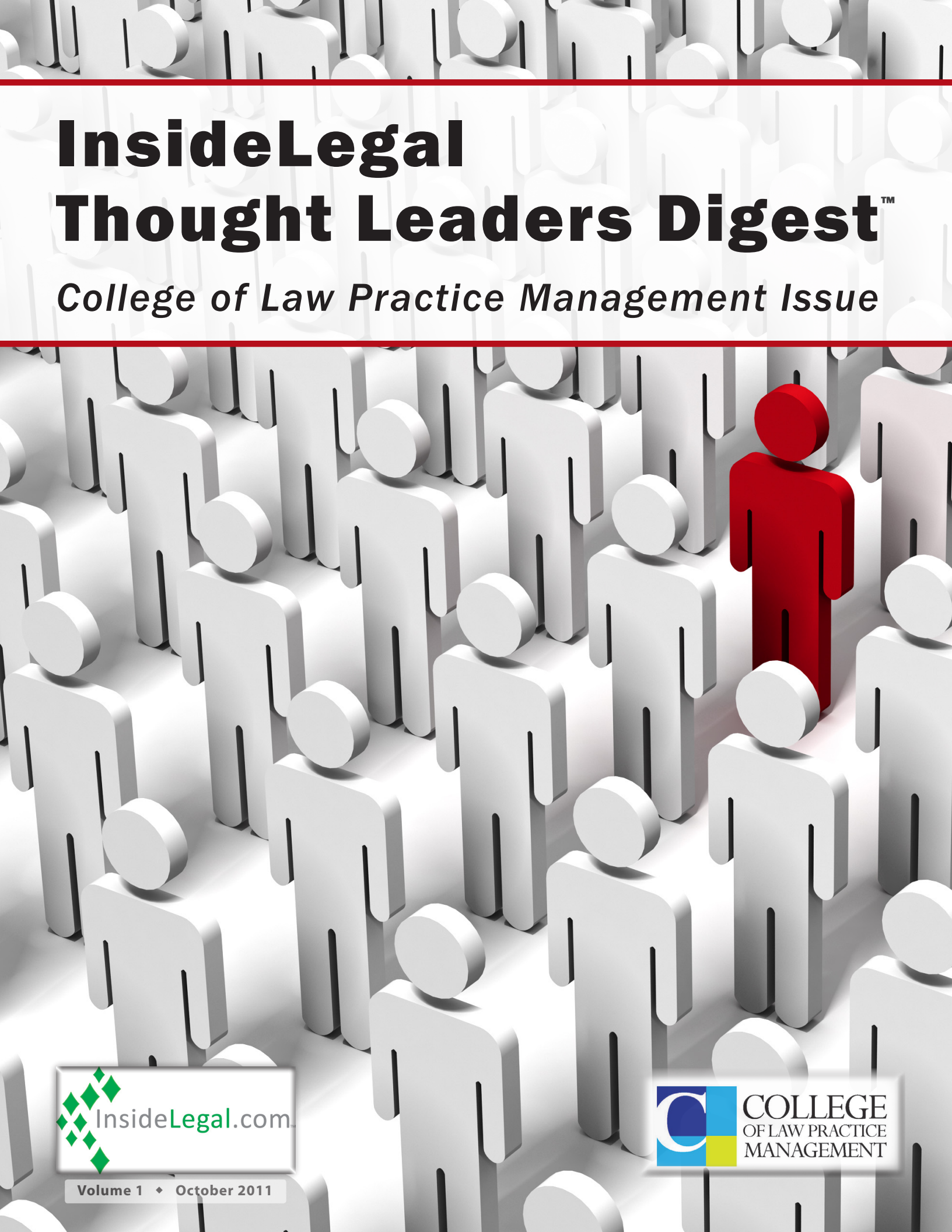
InsideLegal Thought Leaders Digest™

College of Law Practice Management Issue



InsideLegal.com

COLLEGE OF LAW PRACTICE MANAGEMENT

Volume 1 ◆ October 2011

Calling All Thought Leaders...

Looking at the legal market in the rearview over the past 13 years, (when I got my feet wet in the profession) reveals significant change and disruption to the traditional firm model … Law firms have been forced into 'run like a business' mode; hourly billables are making way to AFAs; Federal Rules of Civil Procedure have made electronically stored information (ESI) and litigation readiness expensive and consequential realities; CIOs and CMOs are now an integral part of the management committee; corporate legal is increasingly dictating the rules of engagement with outside counsel; alternative business structures and non-lawyers are shaking up the profession; software-as-a-service and cloud deployments are shrinking traditional IT (and the globe) while at the same time expanding collaboration and user mobility.

With all this change, the one constant is the brainpower, expertise and ingenuity displayed by the institutions and individuals within the profession. These are the characters and personalities you recognize for their subject matter expertise and thought leadership as well as the people you might only see or hear at the occasional legal conference. It's those that have been recognized as Ignite Law alumni, InnovAction Award winners, ABA Legal Rebels, ILTA Distinguished Peer Award recipients, James I. Keane Memorial honorees, and our Global Tech 100 Leaders that will move the legal profession into the future.

That's what InsideLegal's thought leadership focus is all about; identifying our thinkers and innovators, recognizing them for their contributions, and most importantly sharing their knowledge within the legal community. We have actively advocated thought leadership among legal vendors, an oft neglected segment, via educational programs, and are now inaugurating the InsideLegal Thought Leaders Digest to more formally document and capture this 'mental leadership'. While pockets of legal market knowledge and expertise are found across a variety of legal associations and special interest groups, one of the most impressive is the College of Law Practice Management (COLPM). Receiving my vote for 'best kept secret in legal', the COLPM Fellows are the 'who's who' of law practice management and as an organization recognize innovation and ingenuity via their InnovAction award and foster collaboration and education through its annual Futures Conference. It's time to 'share the wealth' so to speak and this COLPM-themed InsideLegal Thought Leaders Digest does just that with a series of thoughtful essays and 'Ask the Fellows' questions addressing law practice futures; legal education; workplace diversity; knowledge management; alternative business structures; legal technology; marketing; and pricing.

We want to thank everyone at the COLPM - COLPM's President Bill Gibson, the COLPM Trustees and COLPM's administrator Karen Rosen - for their willingness and assistance in tapping into the COLPM Fellow 'brain trust'. We would especially like to recognize and thank the Fellows that contributed content for the Digest.

JoAnna Forshee
CEO, InsideLegal

The College of Law Practice Management … A Rising Star

I recently wrote an article on the challenge of cutting through the clutter of social and even traditional media 'noise.' What can we do to make sure we are heard, by the right people delivering the right message (hoping nothing is taken out of context), in a timely manner? I suggested to this legal IT audience that law firms share war stories and case studies of recent deployments and mass implementations that others can benefit from while practicing responsible online persona management (ergo remove the 'stupid and drunk' photos from Facebook). The onslaught of blogs, chat rooms, LinkedIn discussion groups, and Twitter means there is no more privacy, and transparency is no longer a noble attribute but a harsh reality. While I am not advocating airing dirty laundry in public, I am suggesting you add your clothes to the communal clothesline.

The point is that collaboration is here so why not embrace it via candid dialog and sharing of lessons learned. This brings me to the value of the College of Law Practice Management and the potential power of a collaborative work product like our inaugural Thought Leaders Digest. While I agree with JoAnna's comment that the COLPM is the 'best kept secret' in legal, I also see 'rising star' potential with this group. It's funny since rising stars often refer to new entrants or less experienced ones, something that does not at all apply to the College Fellows, all of whom have a minimum of 10 years of legal experience with the average being upwards of 20+ years. I use the label rising star in the context of their exposure to the broader legal community. One of the primary goals of this Digest is to draw out the subject matter expertise and thought leadership found en masse among the 200+ member organization. A short glance at the table of contents reflects this; a cozy collection of 11 law practice management-themed essays accompanied by five distinct and provocative 'Ask the Fellow' questions posed by non-COLPM legal thinkers. Whether you are intrigued by Jordan Furlong's feature on the evolving legal landscape and the increased competition for traditional legal work by non-traditional players or are curious about Ron Friedmann's description of the new world of e-Discovery, this 24 page digest will hopefully get your wheels turning about what our collective law practice management future holds. Having been in part inspired by the provocative *3 Geeks and a Law Blog's* periodic Elephant posts, our 'Ask the Fellows' segment seeks answers to the 'not so easy' questions touching on knowledge management, law firm pricing strategies, the definition and scope of legal thought leadership, future challenges facing average lawyers, and the GC-law firm dynamic when it comes to service pricing and delivery.

With the help of the Fellows and the vast collaboration and information sharing opportunities afforded by today's social media channels, we aim to aggressively move the needle as it pertains to the existence of the COLPM and its impressive carder of legal innovators and leaders. This Digest is only the beginning and we encourage ongoing communication to keep the now public COLPM message front and center.

Jobst Elster
Head of Content
InsideLegal

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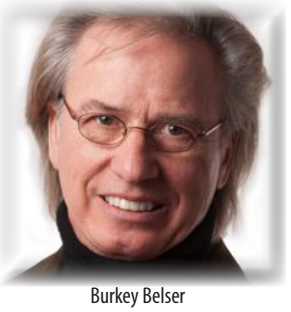
Burkey Belser


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The College of Law Practice Management

Not your traditional legal institution

by Jobst Elster

Anyone familiar with the legal community is aware of the diversity of associations, special interests groups, consortiums and other organizations advocating broader legal as well as niche legal initiatives and causes. Those interested in legal technology might seek out the International Legal Technology Association; attorneys looking to set up their law office might consult with their local bar association's practice management advisor or join the ABA's Law Practice Management section; legal administrators and operations folks will see benefit in joining their peers in the Association of Legal Administrators; while e-Discovery providers and consultants might look to the Electronic Discovery Reference Model for e-Discovery standards and guidelines. And, then there are those in the profession who apply their expertise and knowledge toward innovation and advancement in the discipline of law practice management...a perfect fit for the College of Law Practice Management (COLPM).

The back story

Commonly referred to as 'The College', the group was formed in 1994 by a small group of esteemed legal professionals intent on 'recognizing, inspiring and promoting excellence in law practice management.' The COLPM has the following distinct areas of focus: identifying and honoring extraordinary achievement; facilitating information exchange and collaboration among members; and acting as a catalyst for innovation within the legal profession.

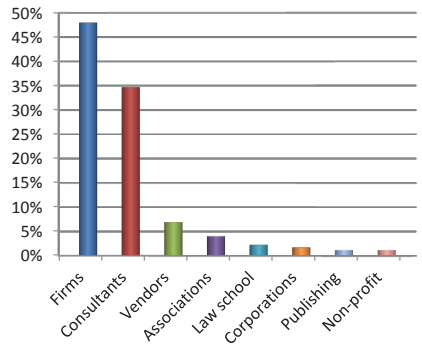
Membership

The COLPM is uniquely 'niche' and very limited in terms of membership, which is by nomination only. Members are referred to as 'Fellows' and are inducted, after nomination and approval by other Fellows, at the Annual Futures Conference each fall. The new Fellows are inducted based on individual dedication to improving the law practice management process and to enhancing the professional quality of and public respect for the practice of law. Fellows must be able to demonstrate long-term contributions (a minimum of 10 years in the profession) to the enhancement of law practice management. Specifically, the College seeks individuals with a high level of character, integrity, professional expertise, ethics, and leadership.

Today, the College is comprised of more than 200 Fellows including lawyers, administrators, professors, consultants, vendors, marketing directors, and others who have made significant contributions to the profession. They come from the U.S., Canada, and eight other countries and are active in a wide range of professional organizations.

[See the list of 2011 inductees on page 9]

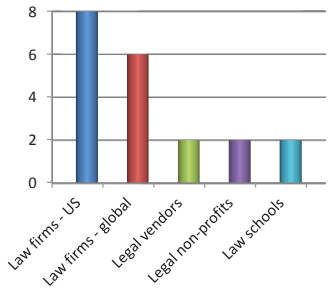
COLPM Membership Demographics



COLPM InnovAction Awards: Not just another legal award

A main program of the COLPM is the InnovAction Awards, chaired by Jordan Furlong of Edge International. True to its mission of 'identifying and honoring extraordinary achievement,' the InnovAction Awards recognize and reward law firms, legal associations, service providers and individual legal professionals who have dared to set new precedent and think creatively when it comes to the delivery of legal services worldwide. The award's intent, since its inception in 2004, is for recipients to demonstrate what can be created when passionate legal professionals, with big ideas and strong convictions, are determined to make a difference. While any legal professional or organization with a creative and innovative idea, project, or cause can apply, the COLPM Fellow judges look at distinct selection criteria including originality, disruption, value and effectiveness. The 2011 InnovAction Awards will be presented at the Futures Conference to Berwin Leighton Paisner, LLP; The University of Toronto Faculty of Law; and The University of Miami School of Law. *[Read about their award winning programs on page 15]*

InnovAction Award Winners Since 2004



COLPM's Annual Futures Conference

The Futures Conference, developed to further collaboration among College Fellows as well as create an environment for idea exchange and innovation, is produced annually for law firm leaders, managing partners, executive directors, chief marketing officers, directors of professional development and law school deans. Attendance, which originally was limited to COLPM members, is now open to all legal professionals. Based on our own experience and interactions, especially vendor CEOs and executive management who may not have regular exposure to non-technology subject matter experts and thought leaders, should consider attending and getting involved in the event.

The 2011 Futures Conference takes place October 28-29 at the Chicago-Kent College of Law in Chicago and features an interactive program presented by COLPM Fellows and other law firm leaders spanning a wide array of law firm 'futures' topics. The 2011 edition, co-chaired by College Fellows Ron Staudt, Professor of Law and Associate Vice President for Law, Business and Technology, Chicago-Kent College of Law and David Hambourger, Chief Information Officer, Seyfarth Shaw LLP, is themed "Challenging the Law Practice Management Model." The multi-day event features a number of sessions including:

- What is the Future of Price: Defining Value in Value Billing
- Law Factories vs. "Bet the Farm" Firms *(exploring alternative business structures in U.K. & elsewhere)*
- Disruptive Technologies/Innovative Thinking *(discussing how advanced new technologies are accelerating the delivery of legal services)*
- Law Practice Without Borders *(exploring the latest trends in key legal markets worldwide, including the UK, India and China)*
- Future View: Do You See What I See? *(offering provocative prognostications on the law practice management landscape from various perspectives and market segments)*
- Innovation, With Velocity *(exploring the barriers to innovation in law firms & how they can be overcome)*

Speakers include:

- Raymond Bayley - Novus Law
- Toby Brown - Vinson & Elkins
- Simon Chester - Heenan Blaikie, LLP
- Tom Clay - Altman Weil, Inc.
- Tim Corcoran - Hubbard One
- Lisa Damon - Seyfarth Shaw LLP
- Ross Fishman - Ross Fishman Marketing
- Ron Friedmann-Strategic Legal Technology blog
- Jordan Furlong - Edge International
- Bill Gibson - COLPM President
- Richard Granat - DirectLaw, Inc.
- Maura Grossman-Wachtell, Lipton, Rosen & Katz
- Janet Taylor Hall - Integreon
- Dave Hambourger - Seyfarth Shaw LLP
- Sally Fiona King - SNR Denton
- Marc Lauritsen - Capstone Practice Systems
- Paul Lippe - Legal OnRamp
- Kingsley Martin - KIIAC LLC
- Chris Murray - Jones Lang LaSalle Americas
- Mark Ohringer - Jones Lang LaSalle Americas
- Chris Petrini-Poli - HBR Consulting
- Mary Beth Pratt - MBPratt Consulting
- BieBie Que - Leximetrics, LLC
- Mark Robertson - Robertson & Williams
- Ellen Rosenthal - Pfizer
- Jim Sandman - Legal Services Corporation
- Ronald Staudt - Chicago-Kent College of Law
- Pamela Woldow - Edge International

Ask the COLPM Fellow

Q "Thought leadership is the core theme of our Digest, but the term is often misused and/or overused. In your opinion, what makes someone a thought leader?"

Question provided by
JoAnna Forshee
CEO, InsideLegal
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"I think a thought leader is someone whose stature or the respect with which they are held is such that they are regarded as an authority, pathfinder or even futurist. The most important thing about whether one is or is not a thought leader is that it is determined by what others think not what one thinks oneself. The key is 'have they led your thoughts?' If so they will be regarded as a thought leader. It seems a universal characteristic that thought leaders share their views and ideas – by writing, speaking, or doing. Most become thought leaders because they become to be regarded as such by others because of what they do i.e., almost while they are doing 'other things'. However, I think one can work to build thought leadership credentials by developing what one offers to others and then making sure they actually experience that in practice. In this respect thought leadership can be a key component of building a personal brand."

Sean Larkan
Partner, Edge International
Legal Leaders Blog

"Thought leadership implies thinking ahead of the market or industry – that is, presenting a new way of viewing or doing things; challenging conventions; and being a provocateur. This leads to innovation, experimentation, and positive change. Besides the 'thinking' aspect, a thought leader should also incorporate a 'doing' aspect. If the thought leader not only presents a new perspective, but also prescribes specific new or interesting ways of implementing their thoughts, that is powerful."

Terri Pepper Gavulic
Director of Legal Support
Fisher & Phillips LLP

"Being a 'thought leader' refers to being an active public participant within the ongoing discourse that surrounds a topic or area of expertise. The concept is traditionally rooted in academia, but because of potential commercial benefits is being entertained by some business leaders, including lawyers. Thought leadership is about tangibly demonstrating expertise, predominantly (but not always) written, and creating a layer of complexity to one's professional reputation. The most popular methods to engage in this discourse are, understandably, digitally based. Lawyers create personal publishing vehicles to disseminate their views - for example, blogging. They also engage in substantive discussion and exchange ideas with like-minded colleagues, collaboration which is frequently conducted within one (or many) of the commercial social network platforms - e.g., LinkedIn, Twitter and Facebook. And finally, thought leaders actively seek 'the authority' associated with being published in the outlets most respected by their peers."

Steve Matthews
President and Founder
Stem Legal Web Enterprises Inc.

"Being a thought leader tends to produce intellectual capital that is turned into intellectual property that can be implemented by others. They share their ideas with others in many different forms including writing, speaking, seminars and the like. They are looked to for practical guides to run their businesses or their lives. By their actions and writings, they teach others. They become sought after and quoted in the media and in social networks. Thought leaders tend to focus on their own path, doing what they think is right irrespective of what the 'market' suggests it wants."

Ed Poll
Principal, LawBiz Management

"The term 'thought leader' is indeed often misused. Over the years, the term has become used more as a verb than a noun. Increasingly, the marketing industry has used the term to describe the activities behind thought leadership (i.e., getting quoted or writing articles) as much as they have focused on truly achieving the status of 'thought leader' itself. It's important to remember, against that background, that being a 'thought leader' involves more than simply being quoted in the media. The fact that an attorney has amassed a large set of media clips is an indication of thought leadership, but an imperfect one. At its core, the term refers to one whose views are respected in a particular field. Any number of indicia suggest that one has achieved that status, such as achieving superior results, performing well in the marketplace, winning awards, gaining credibility among peers, and maintaining relationships that credential one as a respected authority (with a prestigious firm, for example, or with blue-chip clients). In each case, the attorney's work has been vetted by a third party whose approval enhances the attorney's reputation. The 'vetting' or 'filtering' function of media outlets can be an unusually strong one, given that their work is broadcast to all. But in seeking out the status of 'thought leader,' one should consider all of the various ways that they can become credentialed as an expert."

John Hellerman
Co-Founder
Hellerman Baretz Communications

FEATURE

Welcome to the Crucible

How traditional law firms can compete to survive the new legal marketplace

by Jordan Furlong

Lawyers used to have the Midas Touch: whatever we did, however we did it, we were profitable, because no one else could do it (and no one else was allowed to try). From now on, lawyers' and law firms' profitability hinges completely on what we choose to do and how we choose to do it.

The rise of the online disruptors

When Rocket Lawyer received $18.5 million in venture capital this summer, heads began spinning throughout the legal profession. Rocket Lawyer provides legal forms that online users can fill out, store and share on the Web; for $20 a month, customers can also have their documents reviewed by a real lawyer and get legal advice at no additional cost. Rocket Lawyer boasts $10 million in annual revenue and 70,000 visitors a day.

The $18.5 million came courtesy of a group of investors that included Google Ventures, which accounted for much of the fuss. It was instructive to read the press release and note the terms used by Google Ventures in describing their interest in Rocket Lawyer: 'ease,' 'accessibility,' 'affordability,' 'user-driven,' 'user experience.' These terms have nothing to do with lawyer intelligence or product quality and everything to do with the manner in which clients find and access legal services. Convenience is the new battleground, a fight for which law firms still haven't even shown up.

Google Ventures' first foray into the legal sphere actually came in January, when it invested in Law Pivot, a legal Q&A website that allows companies (especially startups) to receive low-priced, crowdsourced legal answers from a roster of private lawyers. Similar to Rocket Lawyer, LawPivot gives lawyers a platform to market their legal services by sharing advice and engaging in discussions. Once again, look at the press release: 'inefficiencies' and 'disruption' were the key terms used.

Now, here's the thing: Rocket Lawyer and Law Pivot are doing nothing that even an average law firm couldn't have done already. The former has created a client-facing document assembly system that provides channels to licensed lawyers who can review the completed documents and answer more complex questions. The latter offers lawyers the opportunity to engage directly with potential clients and demonstrate their expertise through the dissemination of their real-world knowledge. Law firms have had the capacity to create these services for years, but they've been unwilling or unable to risk changing the nature of their business.

These companies (and others like them) have recognized that the production of legal documents and the provision of legal insight have become so systematized that their market value has fallen below law firms' profitability thresholds. So they have converted the legal advice process and legal document assembly system into marketing and business development opportunities for lawyers. They're becoming platforms through which lawyers market their expertise, reach clients, and deliver products and services to them. And when you think about it, that's all a law firm really is - a reliable, high-profile platform upon which lawyers and clients find each other and through which they conduct their business.

But there's one key difference. While law firms were built along old legal market value lines - authority, status, strength, power - these emerging companies are built along new legal market lines: speed, affordability, timeliness, ease of use. 'Expertise' and 'knowledge' and 'authority' are now so widely diffused in the legal marketplace that they're no longer differentiators. Clients are coming to feel (correctly, in my view) that they don't need to choose between a provider who's accessible and a provider who's authoritative.

The legal marketplace is finally recognizing and responding to the inefficiencies lawyers have created in the delivery of legal services. Interestingly, so are some law firms.

The rise of the super-boutique

The figure below contains a rough approximation of what the market for legal services now looks like. 'Mission-critical,' bet-the-company work is at the top, 'ordinary course of business' legal tasks are in the middle, and low-value standardized 'commodity' work sits at the bottom. I'd estimate that the top tier is shrinking to about 10% of the total market, while the bottom layer is growing to encompass more than half of what clients need. Clients would like some indication that lawyers recognize this reality, but most still find their firms frustratingly amorphous and undifferentiated in their offerings.

A rough depiction of the market for legal services.

London-based global firm CMS Cameron McKenna looks to be a rare exception. Late this summer, the firm announced that it was essentially outsourcing its entire immigration law department to an equally global but fully specialized immigration law firm, Fragomen, Del Rey, Bernsen and Loewy. It's important to understand: Camerons isn't sending some low-value aspects of immigration work to Fragomen. They're sending everything, lawyers and all. Camerons will no longer provide immigration law services within its offices - but it will still provide those services to its clients, using Fragomen as its preferred supplier.

This is a major mutation in the evolution of the full-service law firm. Camerons hasn't abandoned immigration law altogether; it has simply recognized that this work was neither strategically nor financially significant enough to remain a core activity of the firm, yet was still important to the firm's key clients. But Fragomen might be even more interesting. It looks like an example of a fascinating new development: the rise of the super-boutique.

Fixed-fee work constitutes ninety-five percent of Fragomen's business. That is a staggering number for a firm with 250 lawyers that handles 50,000 immigration transactions annually. You can charge fixed fees when you only practice one type of law and come to know the area intimately; you have to charge fixed fees when your margins are so thin that you need to know exactly how much it costs you to carry out a given task. That's the world Fragomen lives in, and it has adapted itself accordingly. It's a world foreign to most law firms, which like to do everything and charge it all at cost-plus. But it's a world that's growing.

Take a look at insurance defence mega-firms in the U.K. The planned merger between Clyde & Co. and Barlow Lyde & Gilbert will produce a firm with 280 partners and revenue just south of half a billion dollars. Think about that for a moment: $500 million a year largely from insurance defence work, possibly the least remunerative and most demanding corporate legal practice area in existence. And that merger simply lets the new firm tackle rivals that are about to grow in a hurry: Irwin Mitchell (soon to convert to an ABS), Parabis Law and Minster Law (both with aspirations in that area).

This is a change in how legal services are being delivered, a change driven by the volume markets squeezing profit margins and forcing participants to play a different game. Consolidation can only continue in this sector for a limited time before it starts to seep into other key legal areas. Littler Mendelson, for example, has 750 lawyers in 50 offices across the U.S. and annual revenue of $381 million, and the only thing it does is labour and employment law. Like other super-boutiques, Littler is a sharp, savvy, streamlined and systematized firm that knows how to maximize the value of its resources.

Firms like Littler, Clydes and Fragomen are responding to the realities of a legal marketplace that demands better and more cost-effective ways of producing legal work. That's why Camerons' move is so significant: it has created a structured relationship with a super-boutique, increasing its effective reach and capacity while simultaneously reducing its size and spend. That's a pretty neat trick, one that other firms might find hard to duplicate. As standardized work grows in volume, more law firms are stepping up to take that work and profit from it through a relentless focus on volume, specialization and systematization.

Continued >

Go back to the pyramid: these firms are eventually going to dominate that third tier of client work (or at least, that percentage of the work that doesn't leave the legal profession altogether). The first tier, mission-critical work, is shrinking, and the very top law firms have already locked in on it. What's left for the vast majority of non-specialist law firms? What do they get? In my opinion, they get an existential crisis.

Goodbye to all that

I spent three days this fall at the annual meeting of the International Legal Technology Association (ILTA). What I saw and heard there about document assembly, contract standardization, reverse auctions, KM advances, outsourcing services and a host of other developments is that the storm we've been warning about for the past few years is finally breaking. Tired of waiting for law firms to lead change, the market has itself developed tools and processes to provide the certainty, efficiency, transparency and cost-effectiveness that legal services have long needed.

Clients love these innovations and are telling law firms to use them, even (and especially) where they conflict with firms' traditional ways of working and making money. And firms are obeying, with the vague but dawning realization that they're now being told by their clients how to do their jobs. Law firms are losing control of the legal marketplace.

Law firms used to dictate the terms upon which legal services were performed — work assignment, work flow, scheduling, timeliness, format, delivery, billing, pricing, and many others — because buyers had no other options. Those options have now emerged, powered by technology and driven forward by market demand.

They promise legal documents not just faster and cheaper but also, incredibly, better, in terms of quality and reliability.

They promise greater efficiency and transparency in the previously laborious RFP-driven process of choosing and pricing law firms.

They promise real-time integration of world-class legal knowledge into the legal work production process.

They promise alignment of a legal task's value with its performer's skills, qualification and location.

And at ILTA, they demonstrated delivery on all these promises and more.

Law firms could have led the way in developing these innovations, but failed to do so. Now, they're drifting to the periphery of the marketplace, trading places with technology-driven outsiders whose own importance increases daily. Law firms, whether they realize it or not, are settling into a new role: sources of valued specialists called upon to perform certain tasks within a larger legal system that they did not create and that they do not control.

New providers and new technologies are not going to replace lawyers. But they are going to marginalize lawyers and render law firms mostly irrelevant. Lawyers are smart, knowledgeable, creative and trustworthy professionals who, unfortunately, suffer from poor business acumen, terrible management skills, wildly disproportionate aversion to risk, outsized revenue expectations, and a business model about 25 years out of date. The market won't abandon them — they have unique and sometimes extraordinarily valuable skills and characteristics — but it will find the best use for them: expert specialists with limited influence over the larger process.

Law firms are decentralized partnerships that charge on a cost-plus basis, retain virtually no earnings from year to year, and pray every morning that their best assets will walk back through the same doors they exited the previous night. That's not good enough. The new legal market demands systematization, collaboration, transparency, alignment, efficiency and cost-effectiveness within and among its providers. A few law firms have already adapted these traits, and some more will follow. Some law firms are so powerful they won't have to change. The rest are in serious danger.

Let me conclude this article with five questions lawyers and law firms must answer in order to remain relevant in the unfolding marketplace.

What: Identify your inventory — what you sell to clients — and determine how much of it involves the application of lawyers' high-value performance or analytical skills. Assume that the price for everything else you sell will plummet, and that you'll be able to stay in these markets only if you adopt various high-efficiency systems. Absorb the reality that you will need far fewer people within your law firm to be competitive.

How: Study the means by which you accomplish the work you sell to clients and determine whether and to what extent you can adopt new technologies and processes to be more effective in terms of quality, relevance and responsiveness. Don't think in terms of adapting your current approaches; think in terms of starting from scratch. Use your creativity and ask: How should we go about doing what we do?

Who: Identify every person who receives a salary or a draw from your firm and ask: what is this person's primary contribution to the firm? Good answers will include proven business development skills, outstanding professional expertise, and amazing management abilities. These are your irreplaceables, and you're probably underpaying them. Everyone else will require a clear demonstration of why they occupy a place in your office.

Where: In association with the previous entry, determine the best physical location for the services you provide. We are past the time in which a law firm's four walls contain all or almost all of its functionality. Some services might best be performed in a suburban location, others in a home office, others in a low-cost center elsewhere in the country or in the world, and others from a server farm.

Why: This might be the most important question of all: what is the point of your law firm? I don't mean generating profits for partners; I mean your marketplace purpose. Why do you exist? What specific need for what specific audience do you meet? If you disappeared tomorrow, who would find the loss irreplaceable? Believe me when I say: The market is asking you that question right now.

We've begun crossing over from the old legal marketplace to the new one. Lawyers still have outstanding value to offer in certain quarters, but we need to concentrate our market offerings around that value, and we need better platforms for our services than traditional law firms provide. We need to understand what technology is doing to legal services and either adopt that technology, adapt to the client expectations it's creating, or leave. We need to understand our role in this new market and appreciate that it does not lie at the center of the legal universe. We've missed our chance to lead the new market, but we can still flourish inside it. It's up to us.

Welcome to the crucible. ▪

Portions of this article have previously appeared on Law21.ca.

About Jordan Furlong • Partner, Edge International • 17 years legal experience • 2006 COLPM Inductee

Jordan Furlong of Ottawa, Canada, addresses law firms and legal organizations throughout North America on how to survive and profit from the extraordinary changes underway in the legal services marketplace. He is a partner with Edge International, a senior consultant with Stem Legal, and a blogger at Law21: Dispatches from a Legal Profession on the Brink, honored three straight years by the ABA Journal as one of North America's 100 best law blogs. He edited the College of Law Practice Management's 2006 Innovation E-Zine and Chairs the College's InnovAction Awards. Jordan can be reached at jordan@law21.ca and on Twitter at @jordan_law21.

Ask the COLPM Fellow

Q "What's the greatest challenge facing the average lawyer in the next decade and how would you suggest they prepare for it?"

Question provided by

Matt Homann

CEO of LexThink

Founder of Ignite Law

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"The greatest challenge is the fact that increasing shares of the average lawyer's work can be done less expensively by more systematized practitioners and by people with little or no professional legal training. Lawyers have to learn how to harness machine intelligence, co-produce with clients and alternative providers, and excel in the arts of counseling and creative problem solving."
Marc Lauritsen
President, Capstone Practice Systems

"For many, the greatest challenge will be simply earning a decent livelihood while effectively serving clients. New York Times columnist Thomas Friedman describes our situation as a hyper-connected world. No longer must one wait for a CLE program to learn of new developments in the law as the news flies across the Internet as soon as the decision is rendered or legislation signed. As more people do more business online, a person in a small town no longer is forced to choose between the seven local lawyers or a drive to another community. Many lawyers will be accessible over the Internet as well as many who say that they are just as good as a lawyer but cheaper. Lawyers should be paying attention to their online presence now as it may become more critical in the future."
Jim Calloway, Director
Oklahoma Bar Management Assistance Program
Jim Calloway's Law Practice Tips Blog

"The greatest challenge is deciding on focus and priorities in a fast changing world with so many options and opportunities available for a good lawyer, particularly a creative and innovative one that looks at new practice areas to develop or industry sectors to service and specialties to develop around those. Reconciling 'being a lawyer', and all that this has traditionally meant in the past, and at the same time embracing and understanding and putting into practice many traditional business and quasi-business skills, for example building business and brand; the characteristics of high performing entities; how to build and run high performing teams; technology; social media and related communication channels; sharing information; people management given that your staff, existing and potential, through easy research means probably know more about you than you do; clients being more equal and sometimes calling the shots, and so on."
Sean Larkan
Partner, Edge International
Legal Leaders Blog

"The greatest challenge for the average lawyer will be coping with the growing presence of on-line legal service providers such as Legalzoom.com. A few brave souls such as Stephanie Kimbro and others who are venturing into the on-line delivery of legal services will be coming up against a very large, corporate competitor. But at least they will be online and moving into the new competitive space. The average lawyer with a bricks-and-mortar office on Main Street will be in the same position as a local store when Walmart moves into town….prepare for the onslaught."
David Bilinsky, Law Society of British Columbia
Thoughtful Legal Management

"Remaining valuable and relevant to clients for the lions share of legal work (not the 'bet-the-company' or truly high end work) is one of the most significant challenges facing lawyers in private practice. Increasingly, mid-level and lower-value work can be done cheaper and easier with other resources, whether that is an in-house resource, technology, or some alternative service provider. Lawyers must somehow clearly communicate their value to clients so they are not replaced. By mixing legal advice with tailored business counseling (e.g., legal advice that is specific and accounts for the client's business issues, tolerance for risk, resources, etc.) lawyers can be very valuable and far less fungible. To prepare, more lawyers should pursue an MBA and actual work experience in a corporation besides their law degree and law firm training. Law firm clients who have moved from private practice to in-house roles routinely say that their eyes were opened wide once they went to work in a corporation, and they have a whole new idea of what it means for an outside lawyer to be valuable."
Terri Pepper Gavulic
Director of Legal Support, Fisher & Phillips LLP

"Simply being average is the greatest challenge and career risk-in any profession. So, the first rule is: don't be average. Lawyers should focus on making their names in niche practice areas, where they can do superior work and stand out as trusted consultants to an identifiable group of clients. Additionally, social media is the future, so it is critical to at least become accustomed to it, though an even better goal is to become proficient. Indeed, attorneys at firms that discourage them from making use of social media should leave now, lest they kill their careers."
John Hellerman
Co-Founder, Hellerman Baretz Communications

"Some may think it harsh or crass but realistically the greatest challenge facing the average lawyer in the next decade is effectively learning how to keep well fed. Lawyers must develop skills to generate sufficient business to keep engaged and fully subscribed. Developing business is as important as developing excellent legal skills. Absent the ability to generate business, the average lawyer will be denied long term security and, equally important, career satisfaction. In-house counsel must generate demand from within their enterprises. For some lawyers in large and mega firms it may be sufficient to generate business from the internal clientele of their respective law firm – the rainmakers. This can be a risky path as most firms have a limited and shrinking appetite for this profile. Solo practitioners and lawyers in smaller firms live with the imperative to generate business daily and this will continue unabated. Early in their careers, lawyers must groom themselves to develop a persona that will aid them in attracting clients and business. They may choose to become an expert in a practice niche, a trusted counselor, a tireless and relentless champion, etc. They need to figure out what approach coincides with their strengths and personality. Though painful, lawyers must take personal responsibility for developing business generation skills. The lawyer of the next decade must confront the business generation challenge by being present in the rooms, both physical and virtual, frequented by potential clients and being actively engaged with their present and potential client communities."
Ken O'Brien
Principal
The Profile Search Group, LLC

Continued >

Congratulations to the 2011 College of Law Practice Management Inductees

Mark Beese - Leadership for Lawyers
Terri Pepper Gavulic - Fisher & Phillips LLP
Sean Larkan - Edge International
Jennifer Manton - Loeb & Loeb LLP
Steve Matthews - Stem Legal
Kingsley Martin - KIIAC Inc.
Lorri Salyards - Doerner, Saunders, Daniel & Anderson, LLP
Gerry Riskin - Edge International
Teddy Snyder - Ringler Associates
Pamela Woldow - Edge International

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"The average lawyers we work with are solo practitioners and lawyers in firms with fewer than five practitioners. For this group of lawyers, as well as those in larger firms, the greatest challenge will be to adapt to the reality that the platform for the delivery of legal services is changing from traditional legal service to the Internet. A new connected generation with legal problems will demand that their lawyers work with them online and have the capacity to deliver legal services securely through a client portal. With LegalZoom becoming the most well recognized legal brand in the United States, even though it is not a law firm, and projected to generate over a $100 million in revenue, the average lawyer will have to learn how to become more competitive in the world of online legal services or fear extinction. Last year, the ABA Legal Technology Center reported that only 52% of solo practitioners even had a website, the first step in delivering online legal services. It is shocking that the legal profession, particularly small law firms are lagging behind almost every other service sector in providing a secure client portal that enables clients to interact with their lawyers online. The use and adaptation of Internet technology, including applications such as web-enabled document automation, is not rocket science. The reluctance of lawyers to embrace innovative delivery models is more a function of out of date legal education models and firm culture than intelligence."

Richard S. Granat, Esq.
CEO/Founder, DirectLaw

"The 'average' lawyer is the sole or small firm lawyer, at least by numbers, that comprises more than 70% of the profession today. With law firms getting larger, there will be a concentration into fewer firms. This will create two professions, one serving corporate Global and one serving the 'average' individual. Their needs and their approaches will be different. One can look at urbanization and industrialization to see examples of the impact of this concentration; such concentration did not eliminate rural America or the small business, despite having impacts on each. The greatest challenge for the average lawyer, then, will be how to change his/her environment to meet the challenges faced by the clients 'left behind.' Using technology (as a tool, not as an end) will help the average be more efficient and keep legal costs to a level that will be affordable. The challenges will include maintaining and/or reducing legal costs, educating the public that they need lawyers to interpret (and show them how to deal with) the complex (and often poorly drafted) legislation that impacts their lives at both the federal and state levels, and earning a modest, but reasonable, income - 50% of attorneys today in one study earn less than $100,000 per year."

Ed Poll
Principal
LawBiz Management

"Potential greatest challenge can be summarized as a widening of the division between law practices at the top and bottom of the economic scale. I expect this will be manifested in several ways which will reinforce each other. Those at the top will have the financial means to keep up with technology, while those at the bottom may not be able to keep up. As technology gets cheaper, some tech-savvy lawyers who are not in the top tier will compete well in their areas, but tech-intensive complex areas such as e-discovery may present barriers to others. What's more, we are talking about the 'average lawyer,' not the tech geek. Because of the surplus of attorneys, there will be more competition in specialty areas with lower entry barriers. While all practices will be subject to price pressures, some practice areas will lose market share to non-traditional competitors, such as Legal Zoom. Off-shore outsourcing will also create market pressure for areas such as legal research and record summarization. This development will in turn decrease demand for new law school graduates, creating more surplus at the bottom. Fewer attorneys will be earning a 'silk stocking firm' salary. The salary gap we already see will become more pronounced."

Teddy Snyder, Esq.
Ringler Associates

Apps 4 Justice

by Ron Staudt & Marc Lauritsen

The profession is endangered. Law schools are in trouble. New lawyers are unprepared for economic and technological reality. There's vast unmet need for legal services. Apps 4 Justice attacks these four related problems. The basic idea is to greatly expand programs in which law students create software as part of their education.

Courses that engage students in creating 'apps for justice' - software applications that do useful legal work - can take many forms. They can focus on tools practitioners can use to 'work smarter' and assist others; they can focus on empowering self-helpers to address their own problems and opportunities. Students can build document templates, guided interviews, dynamic checklists, calculators, interactive advisers, instructional modules, games, and decision support systems. Embedded with rich intellectual contexts of doctrine, ethics, history, and theory, such courses can:

- enrich student learning, professional development, and career positioning
- help lawyers serve clients better and live more satisfying lives
- advance access to justice and the rule of law
- help law schools resuscitate their value proposition

The Project

Today, law school clinics deliver important education in the skills and values critical to lawyer competency, while also contributing significant resources to help meet the needs of low-income people for legal services. But this is a relatively recent development. The 5th Biennial Report 1977-78 from the Council on Legal Education for Professional Responsibility (CLEPR) states that in 1969 there were only a handful of law school clinics for credit. Yet by 1978 nearly every law school in the country had such a program. CLEPR in ten years with $12,000,000 triggered a sea change in law school structure: from a handful of clinical professors in 1969 to 1400 clinicians by 2000; from mere hundreds of hours of law student work on legal aid in the '60s to millions of such hours in 2000 and every year since.

CLEPR had narrow and focused objectives. Its grants stimulated law schools to establish courses granting law school credit for student work in live client clinics, almost always located in or near the law school building. CLEPR's financial and programmatic support helped to create a self-sustaining process that has survived long after CLEPR closed its doors and stopped making grants. Without any continuing CLEPR stimulus, law schools now employ more than 1,400 clinical professors whose students deliver legal services to low income people. In his 2002 essay "Taking Out the Adversary: The Assault on Progressive Public-Interest Lawyers," legal ethicist David Luban calculated that students in U.S. clinical courses produced three million hours of legal services for the poor each year.

New solutions to an old problem

Recent developments provide ideal circumstances for a new law school initiative directed explicitly at delivering more extensive access to justice for low income people. Using Technology Initiative Grants, the Legal Services Corporation has established state-wide legal aid web sites in every state and a national server for distributing HotDocs automated documents and A2J Guided Interviews via all of those websites. Law students can be taught to write and deploy these advanced technologies, using statewide websites as platforms for 24/7 legal service delivery to low income people. While learning these tools, law students can contribute to legal aid as authors, programmers and editors. The best setting for this new kind of 'learning by doing' is within a law school clinic under the supervision of an experienced educator.

Skills learned by students in such 'apps for justice' clinics are critically important for a variety of careers, including fee based practices aimed at moderate income clients and emerging large firm practices triggered by fixed fee billing models now demanded by corporate clients. By constructing useful applications, students not only (1) learn about substance (doctrine, procedure) in a given area and (2) learn how technology can be used creatively to assist in legal work (and some of the policy and ethical aspects of doing so), but (3) produce tools that they or others can bring to bear to improve access to justice. Students also gain credentials for current and future employment.

The goal is to recreate the CLEPR successes of thirty years ago by establishing a permanent teaching cadre in U.S. law schools that can offer course credit for practical instruction in system building, aimed at real client problems. It is self-consciously focused on institutionalizing an organic engine for growth of new resources to support education in new skills that are now critical for lawyer competency while, at the same time, supporting legal services to the poor. The plan is to create an engine fueled by law professor and law student energy to build hundreds of A2J Guided Interviews, document templates and public education web pages that enhance access to justice.

The Bigger Context

While this initiative is focused on specific forms of student work to expand access to justice for low-income Americans that build on established academic successes and an existing national infrastructure, it should be seen as the opening phase of a larger process to exploit dramatic new opportunities to enrich legal education. Courses and clinics that engage students in creating 'apps for justice' - essentially, things that do useful legal work - can take on many forms. All of these agendas and system types can be embedded in courses that provide rich intellectual contexts of doctrine, ethics, history, and theory. And all can potentially provide a meaningful 'quadruple bottom line':

- For students: learning, professional development, career positioning
- For society: advancing justice and otherwise improving the world
- For the profession: supplying new knowledge and resources with which lawyers can serve clients better, live more satisfying and prosperous lives, and outperform new entrants, like online legal assistance services
- For schools: strengthening law schools as institutions by visibly delivering the above results (improving public relations, contacts with court and bar, student and faculty recruitment, alumni sentiment, etc.) ▪

A more detailed account of this project will be published as a chapter entitled "Apps 4 Justice: Law Schools, Technology and Access to Justice" in an upcoming book "Educating the Digital Lawyer," Oliver Goodenough and Marc Lauritsen, editors, Berkman Center at Harvard University, 2011.

About Ron Staudt • Professor of Law • 41 years legal experience • 2004 COLPM Inductee
Ron Staudt is the associate vice president of law, business and technology and professor of law at Chicago-Kent College of Law. Ron is the director of the Center for Access to Justice & Technology (CAJT)-a law school center using Internet resources to improve access to justice with special emphasis on building web tools to support legal services advocates, pro bono volunteers and pro se litigants. He is a Fellow and Vice President of the COLPM. He can be reached at rstaudt@kentlaw.edu.

About Marc Lauritsen • President, Capstone Practice Systems • 34 years legal experience • 2007 COLPM Inductee
Marc Lauritsen, author of The Lawyer's Guide to Working Smarter with Knowledge Tools, is president of Capstone Practice Systems and of Legal Systematics. Marc has served as a poverty lawyer, directed the clinical program at Harvard Law School, and done path-breaking work on document drafting and decision support systems. He's a Fellow of the College of Law Practice Management and co-chairs the American Bar Association's eLawyering Task Force. He can be reached at marc@capstonepractice.com or @marclauritsen.

Ask the COLPM Fellow

Q "Given, first, the enormous cost pressures on in-house legal departments and, second, the growing success of many new ways of pricing and sourcing legal work, why is it that General Counsel do not much more firmly demand that law firms change the way they charge for and deliver their services?"

Question provided by

Richard Susskind

Author of "The End of Lawyers"

President of Society for Computers and Law

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"Inertia sounds like a simplistic, ridiculous explanation. But most in-house counsel have a lot on their plates. The effort to make these changes in more than an exploratory mode involves new tasks for the GC and is not without risk."

Jim Calloway
Director, Oklahoma Bar Management Assistance Program, Oklahoma Bar Association
Jim Calloway's Law Practice Tips Blog

"Year after year, the lists of firms that represent corporate America emerge looking the same. I think in assuming rational market information and business realities will trump human nature, we fail to predict accurately what new behaviors will be adopted and how fast. Our mindsets are formed over a long period of time and by a range of factors. To rise to the level of in-house counsel with sufficient decision-making power to affect legal services spending in ways the market would notice, a lawyer would likely need to have been practicing for 20 years or more. For most of these lawyers, choosing outside counsel by reputation, billables, and with reasonable oversight from the in-house lawyer is the safest and most rational choice. If I am a GC responsible for ensuring the success of a major acquisition or defense of the company, will I have done my fiduciary duty to the firm if I that the final decision is primarily made on pricing? I believe that it all begins and ends with the individual lawyer's reputation and the manner in which that lawyer's firm chooses to support his or her practice. But in the end, I think we make a mistake if we believe in-house counsel will be comfortable risking that the legal services/advice they purchase is not the very best available. Firms that want to capture greater market share should devote equal time to developing their talent AND their practice management approaches."

Susan G. Manch
Principal
Shannon & Manch, LLP

"While the legal industry is rapidly changing (rapid is relative), we are in transition from one type of buyer/seller relationship to another. This transition will take some time as the current buyers enter retirement age and the 30+ year olds then take over. The new buyer/seller has never lived without a computer and communicates in ways that can be extremely effective across a broad reach of relationships. That coupled with technology and how the legal service 'product' will be built and delivered will completely change the fee structures and drive pricing down. Does that mean expensive litigation goes away completely? No one can yet guess how the human element and emotion will enter into all of this. One thing is for sure, the pioneers who are leading the way and transforming their firms (Seyfarth and Orrick come to mind) will gain significant competitive advantage as the pace of change quickens. Firms who re-engineer work product and reduce fees will make significant profits and live through the industry's transformation."

Silvia L. Coulter, MSP
Principal, LawVision Group LLC

"In part, the two premises are unsound, since many law departments feel they can cope with budget pressures through normal methods and they are not convinced that either AFAs or LPOs produce acceptable outcomes. As to the latter part of the question, the many reasons why change has not coursed through law departments include (1) reasonably high satisfaction with the work done and the charges of the firms now used, (2) perceived loss of much familiarity and institutional knowledge, (3) budgets for outside counsel that are too small to allow much leverage, (4) internal resistance to change, and (5) a sense that you get what you pay for, mostly, or stated differently, better a fair price for good work than a good price for fair work."

Rees Morrison
General Counsel Metrics, LLC
Law Department Management Blog

"Many GCs are former partners of major law firms, thus imbued with the pricing policies of old. Many GCs lack the political clout in their companies to make dramatic changes. And, going with the old patterns is politically safe, even if wrong. Getting discounts or providing caps is not new but does address some of the cost issues that sufficiently satisfy management. Further, it takes some energy, creativity and daring to develop new pricing models; with busy GCs and even more busy CEOs, they tend not to want to pay attention to an area they don't yet fully understand. And underlying all of this, the new pricing models (AFAs) and changes in delivery methods requires a level of trust between counsel and client that generally just doesn't exist. With some companies having multiple law firms working for them, there isn't time or interest to develop the trust level required to say we're 'partnering' in this matter, we'll make sure the client is treated fairly and, oh yes, we'll make sure the law firm receives 'reasonable' revenue from this representation. The client tends to still think in terms of how can I get this for the least cost … this is not partnering, this is not trust, and this is not the underpinning of AFAs."

Ed Poll
Principal
LawBiz Management

The New World of E-Discovery

Differentiation focused on Marketing, Positioning & Pricing

by Ron Friedmann

I have been doing e-discovery, nee litigation support, since 1989. In the last few years, I have seen the legal market diverging into two new worlds of electronic data and discovery (EDD). How does each look and what does it mean for its inhabitants?

Ignorance and Denial World

Many lawyers and law firms seem unfamiliar with e-discovery. I wish I could say 'uncomfortable' but discomfort suggests a degree of familiarity that in this instance is absent.

I regularly talk to EDD professionals, who report stories of lawyers who are shockingly unaware both of the legal rules and practical issues of EDD. At conferences, the handful of judges known for their grasp of and decisions on EDD say many litigants (and judges) are clueless about EDD. For example, in October, I attended the Masters Conference, an EDD event. In the session "More on E-Discovery Certification", the panelists bemoaned how many lawyers and other legal professionals lack even basic EDD know-how.

I offer two hypotheses to explain this world. One is ignorance. It's hard imagining, however, a lawyer missing the hundreds if not thousands of articles, conferences, and advertisements about EDD over the last half-dozen years. Even general legal publications and mainstream media cover it. If, in fact, more than a few lawyers have missed all this, perhaps we as a profession have an even bigger problem to fix.

Another possibility is denial. Some lawyers seem to think digital data is unimportant or that the rules of civil procedure regarding EDD somehow do not apply to them. The willing suspension of disbelief is fine when enjoying a movie, but not for professional pursuits.

Inhabitants of these worlds take a big risk, namely judicial sanctions and malpractice. And let's not forget ethics: Model Rule 1.1 requires competent representation. Failure to at least consider the role of EDD in a contentious matter arguably violates the rule.

Education is the cure. It is readily and widely available. Now, persuading this world's inhabitants that they need it...well, that goes beyond my expertise.

The Real World

Fortunately, many lawyers and law firms live in the real world where they know about and regularly engage in EDD. However, inhabitants may not yet have noticed that after a period of rapid evolution, their world is entering a new, slower phase.

EDD became a big deal around 2002 or 2003. I characterize its early days as the Wild West. Technology debates loomed large, for example: file formats (TIFF, PDF, or native); review systems (hosted or in-house); and productions (include metadata or not). Litigators and commentators alike hung on every word of the few judicial decisions. The Federal Rules were up for review and were amended in 2006. Vendors came – and they came and they came, from copy shops, Silicon Valley, and points in between. Smart law firms saw opportunity and built document review empires, generating huge profits, while others put their heads in the sand and ignored EDD. Corporate law departments struggled with information governance and retention policies.

Two events in October caused me to realize that this world has vastly slowed down. EDD today has matured; it has become a business battle. Of course, not every debate is resolved, but the areas of contention have narrowed considerably.

First, when I was at the Masters Conference, I had many private conversations with EDD experts, some leaders in the field. They confirmed my sense that the market is maturing and consolidating, even if it is still growing. The action today seems more in the realm of marketing than of solving fundamental problems. The Wild West has been tamed. Now, it's a matter of case law development and convergence on a few technologies and processes.

And second, days after the conference, thumbing through the October issue of Corporate Counsel magazine, I stumbled on a two-page ad spread for WilmerHale's Discovery Solutions offering. This site describes in some detail, including pricing, the firm's approach to e-discovery and document review. The reference to the firm's low-cost (relative to Washington, New York, or Boston) Dayton service center is via a listing of lawyers in Dayton. The site is substantively impressive; more importantly, it reflects that marketing and positioning have become primary.

WilmerHale competes for e-discovery and document review with other large firms and vendors. Case in point, an 'unaided recall' list (ones I happen to remember) of firms with dedicated e-discovery practices includes:

- Pillsbury
- King & Spalding
- Morgan Lewis
- Orrick
- Fulbright
- LeClair Ryan
- Hughes Hubbard
- Ryley Carlock & Applewhite

Yet law firms have no lock on this business. In fact, in the Wild West days, the vendors dominated. I first started seeing a change in 2007: my blog post Coming E-Discovery Battle between Vendors and Firms noted the emergence of law firms with their own EDD capabilities. I even encouraged this trend with my white paper called "4 Ways an eDiscovery Attorney Can Make Your Firm More Successful," suggesting that law firms consider hiring lawyers specializing in EDD.

Law firms listened. They built EDD capabilities. Yet they still compete, first, with growing corporate law department EDD capabilities and second, with a still-long list of vendors. So as I see the EDD market, the real action is no longer fundamentals, but a battle for market share based on pricing and feature mixes.

One of my recent Twitter exchanges helps makes the point. I asked re WilmerHale "Do other firms have dedicated #eDiscovery sites?," to which leading U.K. EDD expert Chris Dale responded "any firm not doing something similar within 2 years is dead for #ediscovery work." I think Chris is right.

Any firm that litigates will need not just understand e-discovery, but have the capability to do it. Owning is one option, outsourcing another. Either way, firms will have to position themselves as having expertise and capabilities.

Many lawyers are 'outstanding'. Clients take that for granted. They also take for granted decent technology and process. So law firms need to persuade ever-more-sophisticated clients that the firm can do the EDD work cost effectively. Go ahead, tweak your process, tune your technology, but make sure you have the right business strategy and marketing.

As EDD capabilities grow and converge toward standards, competitive differentiation is increasingly hard. Price, service, and marketing become the keys to winning. Okay, I am forward thinking. We may not be quite there yet but, to paraphrase Churchill, we are way past the end of the beginning. ▪

About Ron Friedmann • Between jobs • 25 years legal experience • 2002 COLPM Inductee

Ron has spent over two decades improving law practice and business with technology, knowledge management and outsourcing. He has worked at Integreon, Prism Legal Consulting, Mintz Levin, WilmerHale, Bain & Co., and two legal software companies. Ron has a JD from NYU School of Law ('86) and BA in Economics from Oberlin College ('79). He is a trustee of the College of Law Practice Management; member, Board of Governors, Organization of Legal Professionals; co-founded and organized the Law Practice Technology Roundtable; blogs at Strategic Legal Technology; and Tweets @ronfriedmann. He be reached at ronaldfriedmann@gmail.com.

Diversity Trends for the Future

The Individual as the Agent for Change

by Kendal Tyre

Many in law firm management know that having the goal of a diverse workforce is 'the right thing to do' and that it is good for business. However, those same leaders often struggle to affect meaningful change when it comes to diversity, and after years of trying with little success, 'diversity fatigue' begins to take hold. This is a typical scenario in law firms across the nation. The first step to jump start a diversity initiative and avoid 'fatigue' is realizing that the responsibility of creating a diverse and inclusive workforce is the responsibility of everyone in the organization and not just that of a law firm diversity committee.

Evolving demographics

The demographics of the United States are clearly changing. The most recent census, completed in 2010, found that almost half of infants born in the U.S. belong to racial and ethnic minorities. By 2042, nearly half of the total U.S. population will consist of people of color. The Washington Post recently reported that eight cities – Memphis, Tennessee; Modesto, California; Las Vegas, Nevada; Jackson, Mississippi; San Diego, California; Washington, D.C.; Oxnard, California and the New York City region – joined a list of 22 of the largest 100 U.S. metropolitan regions that have more minority races in them than Caucasians.

Law firm clients, primarily large Fortune 500 corporations, are at the forefront of ensuring that law firm demographics reflect this new reality. These companies are using the economics of outside counsel selection decisions to drive change. The chief legal officers in these corporations are ending or limiting relationships with firms whose performance, in their opinion, consistently evidences a lack of meaningful interest and commitment to diversity.

Increasing diversity visibility

Today, the diversity track record of each law firm is requested in an overwhelming majority of requests for proposals and an increasing number of corporations are surveying firms on their respective diversity initiatives. In some instance, corporations are using electronic billing to track the time and amount of work that diverse attorneys are working on their matters and highlighting where firms can improve. For those law firms that receive a failing grade in any of these diversity indicators, their continued working relationship with these companies is at jeopardy. In short, with clients pushing the diversity agenda, diversity (or the lack of it) can have a direct impact on a law firm's bottom line financial performance. As the general population continues to diversify, the pressure on firms will only increase.

The essential question for most organizations including law firms is how to embrace this change, satisfy increasing client demands regarding diversity and ensure that they cultivate organizations that are inclusive. Of course, no one has the only answer and there is likely more than one solution to the problem, but what seems clear is that when each individual in the organization is given the tools and incentive to effect change, diversity can truly become a core value of the organization's culture and a basis for change.

One example is Nixon Peabody's Diversity Challenge, first launched in July 2010. It is based on a commitment from a broad cross-section of the firm's personnel to take specific action in the interest of promoting diversity. The program works to enhance the recruitment, development, and retention of diverse attorneys and staff and is believed to be one of the first of its kind in the nation.

Under the Diversity Challenge, each Nixon Peabody attorney is 'challenged' to devote 40 hours (3.3 hours per month) annually to a diversity initiative, activity, or event. The 40 hours are tracked through timesheets and count towards the lawyer's non-billable commitment to the firm. To help attorneys identify appropriate activities, on a periodic basis, the firm provides examples of the types of activities that qualify for Diversity Challenge credit. Examples of qualifying activities include:

- Organizing or attending a diversity-oriented event, reception, or seminar
- Mentoring a minority, LGBT or woman attorney
- Working with Human Resources in the development of professional training and partnership coaching programs for diverse attorneys
- Working with the recruiting manager to identify diverse candidates
- Reaching out to current clients with affinity groups or diversity committees to create joint projects

The Diversity Challenge was implemented to re-establish the firm as a leader in law firm diversity. While Nixon Peabody had made tremendous strides in diversity since the formation of its Diversity Action Committee (DAC) in the fall of 2004, the firm's assessment of retention efforts revealed a variety of issues. As the firm's diversity initiatives had matured, it became clear that it needed to energize the program and refocus its efforts. The firm needed to bolster its mentoring programs and look to promote minorities and women who had historically been underrepresented, especially in firm leadership roles. The Diversity Challenge provided a means to address these challenges. The promotion of diversity and inclusion is now a 'top of mind' issue for, and the responsibility of, every attorney in the firm.

Achieving diversity accountability

The issues surrounding diversity and inclusion are present on a daily basis at a typical law firm. Decisions are made every day with respect to who will receive a 'plum' assignment, who will be mentored, who will be invited to attend a pitch or client meeting or who will receive funding to attend a professional development seminar. Each morning at Nixon Peabody, when an attorney logs onto the firm's network, each attorney's Financial Dashboard illustrates their billable hours to date as well as the hours that they have billed to the Diversity Challenge. This is just one example of how the Diversity Challenge is intended to be a continual reminder that Nixon Peabody attorneys must challenge themselves to be a more inclusive firm and a firm that provides equal opportunities for everyone. It's about engraining in everyone (and in the firm culture) that diversity issues are everyone's responsibility and not just that of a chief diversity officer or a diversity committee.

Since its launch, more than 41% of the firm's attorneys have participated in the Diversity Challenge, logging over 5,000 hours of non-billable time toward the initiative. Also, many attorneys participating in the Diversity Challenge had not previously been involved in the firm's diversity initiatives. In a further effort to institutionalize diversity as a core value, each attorney was asked in their performance evaluation to describe the ways in which they support the firm's diversity and inclusion policies.

In terms of the legal industry as a whole, the Diversity Challenge is an initiative that could be launched in various cities or regions. As noted in the February 25, 2011, issue of Canada's Lawyers Weekly: "The genius of Nixon Peabody's diversity program lies in its familiarity (lawyers understand hourly measures and they respond to targeted commitments) and universality (diversity is effectively communicated to be every lawyer's responsibility). But best of all, it's an approach that any law firm of any size can adopt." ▪

About Kendal Tyre • Partner, Nixon Peabody LLP • 19 years legal experience • 2009 COLPM Inductee

Kendal is a Partner at Nixon Peabody and counsels companies on international business transactions. He represents clients in mergers and acquisitions, joint ventures and strategic alliances, licensing and franchise matters. He has extensive business law and transactional experience, advising on financings, entity formation and maintenance, corporate reorganizations and business divorces. Kendal is co-chair of the firm's Diversity Action Committee. Kendal can be reached at ktyre@nixonpeabody.com.

Ask the COLPM Fellow

Q "Is knowledge management an oxymoron in legal? Managing knowledge assumes sharing it first. How will a profession, traditionally rewarded for information hoarding and discouraged from knowledge sharing, embrace the age of collaboration and teamwork?"

Question provided by

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"I've always maintained that KM happens whether lawyers want it to or not. A personal collection of contract precedents, considered 'hoarding' by some, is a viable KM strategy -- some people would label it 'PKM,' or 'Personal Knowledge Management.' The challenge, of course, is to get lawyers to build knowledge collections and systems both openly and for the benefit of the firm collective. Technology may be part of the solution, forcing lawyers to contribute in meaningful ways within document automation or expert systems; but long term, what KM needs most is a connection to each firm's business interests. That means practice level planning must become granular, connecting KM objectives to work product. Firms will value their KM investment only if it enhances matter management, workflow, and lawyer productivity in a measurable way."

Steve Matthews
President and Founder,
Stem Legal Web Enterprises Inc.

"KM is absolutely NOT an oxymoron in the legal industry. When we say that it is, we are only looking at what is currently not shared, rather than at the enormous amount of knowledge and information that is shared on a daily basis. For example, almost every law firm now has a robust document management system and many prescribe the ways that documents are profiled in these systems so they are easily searched by anyone in the firm. The ease of forwarding emails fosters tremendous knowledge sharing, without the need for any forethought. These naturally developed knowledge management systems are now baked into our ways of doing business and within law firms we share great deals of information without even thinking or realizing it. This ease of sharing is indicative that knowledge sharing and knowledge management has crept up on us without the pain we were anticipating. What will continue to drive this forward is the management of technology by firms, the establishment of protocols within firms, the demands of clients for quick but effective answers to questions, and continued enforcement of standards of practice, especially at the staff level (it's often the secretaries and paralegals who are taking information and storing it for the lawyers, and we can mandate that they do so)."

Terri Pepper Gavulic
Director of Legal Support
Fisher & Phillips LLP

"I do not think it is an oxymoron – it depends on how you define KM. I think of KM in a broad sense in which case I'm not sure it can be said it's assumed you have to share it first. I'm not sure it's helpful to get too hung up on definitions of KM. I think KM covers a wide range of knowledge sources which may be stored electronically or physically and be made available internally and externally in different ways. How it is shared is a separate issue and may differ from knowledge source to knowledge source and in regard to particular external recipients. Undoubtedly in the new world in which we operate, so influenced by social media principles and practices, sharing information (which seems to be the fundamental basis, for instance, of blogs) and making more information available to clients is the new basis for building trust and developing relationships. This notwithstanding we can still exercise discretion as to what information we share. I think practitioners are going to be forced to share much more than they were comfortable doing in the past. What might give some comfort is the example of a consultant who writes 'the book' on a subject – in all likelihood even though people can simply 'read the book' they will often choose to consult him or her even more. I think the same will apply in the case of professionals – those who share will build trust, respect and relationships - their practices will benefit as they find their comfort zone within this paradigm."

Sean Larkan
Partner, Edge International
Legal Leaders Blog

"Of the three possible answers you suggest to this question (technology, client pressures, necessity to work smarter), all converge with technology because the latter two are forcing the first. As a former M&A and IT lawyer (now consulting), I observe a secure, external platform for deal management as an inexpensive resource, available to lawyers, clients and all advisors as a basic necessity, both for functionality and for client retention and development. So KM cannot long remain an oxymoron for lawyers, even and especially for lawyers located away from large urban centers."

Richard Potter
i-lawmarketing.ca

"People, generally speaking, do what they are paid to do at their employment. If there is no reward for knowledge sharing and cataloging, then the possible downsides of sharing often outweigh any inclination to do so. While it may not be practical to pay directly for knowledge management activities, posts to the firm's internal wiki and similar activities should be recorded and made a part of the lawyer's annual review process."

Jim Calloway
Director, Oklahoma Bar Management Assistance Program, Oklahoma Bar Association
Jim Calloway's Law Practice Tips

"Knowledge management at the individual level has been in existence from the beginning of the legal profession. We merely turned our back to reach into our file cabinet for the last deal, pleading or document and followed that as a format for our current matter. Technology makes the process more efficient and more complete with search engines making it easier to reach for the best precedent document available to us from our previous work or the work of our adversaries. At the organization level, KM becomes more difficult to achieve because of the hoarding tendency of many lawyers … a tendency, by the way, that has been justified by many examples of firms' lack of loyalty to the individual. However, in the future, for larger law firms to succeed, they will have to be more efficient … meaning they will have to produce work product more quickly … meaning they will have to use earlier work product of anyone/everyone in the firm to reach the desired end product more quickly. This will reduce legal costs for the client, a pressure that may be more severe today than before. This, then, will also raise the question, "who owns that work product?" Does the lawyer or firm that created it own it? Or does the client who commissioned and paid for it own the work product?"

Ed Poll
Principal, LawBiz Management

Continued >

Congratulations to the 2011 Recipients of

COLPM's InnovAction Awards

Berwin Leighton Paisner, LLP (BLP) was selected for their Lawyers On Demand (LOD) initiative which began in 2007 after BLP observed two important issues affecting the UK legal market: (1) legal services clients want to stretch their budgets further and (2) many lawyers are looking for greater flexibility and autonomy in their work. BLP created LOD to address these issues. LOD challenged the traditional models of legal service delivery and brought talented freelance lawyers to work directly with clients. LOD lawyers work at the client office or their home office but are nevertheless vetted and supported by BLP know-how resources, the LOD service unique in the market. LOD began as a pilot in 2007 with eight lawyers. Since then, it has increased ten-fold in size and gained a fantastic list of clients.

The **University of Toronto Faculty of Law** received an InnovAction Award for its Internationally Trained Lawyers Program (ITLP). When immigrating to Canada, one of the biggest challenges internationally-trained lawyers (ITL) face is the lack of access to opportunities to receive practical, hands-on experience in the Canadian legal environment, particularly during the lengthy accreditation and licensing process. In recognizing the limited opportunities for ITLs, the University of Toronto's Faculty of Law created a bridging program for ITLs who wish to practice in Ontario. The ITLP is a comprehensive 10-month program to help participants obtain their license and secure full-time professional employment. The program includes intensive academic, cultural fluency and career development classroom sessions, design to support international lawyers.

The **University of Miami School of Law** in partnership with five other law schools was selected for their LawWithoutWalls initiative. LawWithoutWalls is a part-virtual, collaborative academic model that unites students, faculty, practitioners, and entrepreneurs from around the world to innovate legal education and practice. It's designed to help those engaged in the education and practice of law to embrace the impact of our changing world. LawWithoutWalls exemplifies what 21st century education can be. Students are not educated on-line in the same old way. Instead, technology is utilized to create an entirely new educational experience, a platform for interdisciplinary interchange and community.

About InnovAction Awards

The InnovAction Awards is a worldwide search for lawyers, law firms, and other deliverers of legal services who are currently engaged in some extraordinary innovative efforts. The goal is to demonstrate to the legal community what can be created when passionate professionals, with big ideas and strong convictions, are determined to make a difference. Each year, the coveted InnovAction Awards are presented to those unsung heroes and rising stars within the legal profession who dare to think differently and succeed by doing so.

Continued from Page 14

"Despite 25 years of significant KM progress, why haven't law firms embraced it even more closely? One excuse is culture (as in not liking to share with others). I maintain the reason is that KM at many firms is too far removed from the client relationship and the firm's actual delivery of legal services.

I propose that global law firms refine their client service model to include more sophisticated project management processes and tools. By this I mean the disciplined use of tools, techniques and accountability to deliver a better work product and superior responsiveness to their clients, throughout a matter and at its completion. KM will get much more traction if it's part of a greater client service model initiative.

The larger and more far-flung the law firm or the client, the more critical it is to view matters as 'projects,' rather than 'engagements.' There is a strategic relationship component, and both project management and KM will provide the matter its required structure, boundaries and definition. Multijurisdictional and multi-office matters require highly effective project management to avoid misunderstandings and communication breakdowns among the client and law firm members; scope creep; lack of clarity about progress or spend; unclear accountability for decision making and information flow; incomplete service delivery; buried problems or risks; missed deadlines; and over-delivery and work redundancy. KM is a critical component of this."

Deborah McMurray
CEO and Strategy Architect, Content Pilot LLC
Law Firm 4.0 Blog

Impact of the Legal Services Act

The Global Dimension

by Tony Williams

The Legal Services Act 2007 is finally coming to fruition. From early 2012, English law firms can take external investment and non-lawyers will be able to build their own law firms from scratch, or 'buy' existing ones. In some cases, firms may seek investment from private equity funds, and may even float on the public markets. These will be called Alternative Business Structure (ABS) law firms.

The debate over whether this will be a legal 'Big Bang' remains in play. But it is likely we will first see the High Street, or Main Street as it is in the U.S., feeling the most impact. Consumer-level legal services, from insurance claims to residential property purchases, will be the easiest to commoditize and benefit the most from large scale operations with major IT investment, new delivery models including call centres, and the development of powerful consumer brands.

Therefore, we predict that after the LSA comes fully into force we will see:

- Commoditised legal work increasingly absorbed by ABS law firms and new entrants that are better suited to handle a high volume of matters.
- Legal Process Outsourcers, perhaps with private equity investment, may build their own law firms too – again to primarily handle commoditised work – although with a focus on larger commercial matters.
- A number of medium-sized law firms will take external funding in order to grow rapidly and take market share – perhaps by taking over rivals – to become significant brands among the U.K.'s top 100 firms.

Asia Pacific leads the way

But, this is not a development confined to English firms. Australia already permits external investment and so far two ABSs have floated on the stock market, with Slater & Gordon, already having seen considerable success. Both ABS law firms are focussed on claimant litigation. In Europe, Germany is strongly opposed to external funding. France's Darrois Report in 2009 was meant to be a total review of the profession, but dodged the issue of external investors. However, Spanish rules do permit it. Asian jurisdictions remain fairly conservative and do not permit non-lawyer ownership. However, the U.S. – the world's largest legal market - is now entering the external investment debate too.

U.S. law firm Jacoby & Meyers is at the forefront of the campaign to place law on the same financial footing as any other business in America, i.e. able to take external investment to fund growth. It has launched a bid through the courts in New York, New Jersey and Connecticut to revoke local bans. The firm has a solid track record for showing what law firms can do; Jacoby & Meyers was the firm that won the landmark 1977 Supreme Court case permitting law firms to advertise.

It is interesting to consider that at the time of the advertising case, many believed that law firm advertising would undermine ethics, confuse the public and encourage unfair practices. Today, most firms have a strong presence on the web, some advertise and others engage in different promotional activities. As a result, clients are able to make more informed decisions as to the expertise and level of service they can expect from their legal advisors.

Is resistance to ABS futile?

Now, in 2011, we are at another watershed moment, filled yet again with fears over creating unethical behaviour. The key counter argument to ABS is that investors will subvert the lawyer's duty to help the client, especially if subverting that duty helps the investors. The Legal Services Act and the rules made under it seek to address these concerns. However, in a professional services business your reputation is your only asset – remember Andersen! Accordingly, not only is it good ethics, but also good business to maintain a primary duty to your client. Any firm that forgets that will lose clients and damage the value of the business – and face major litigation risk.

The American Bar Association (ABA) is currently welcoming input on the question and has commendably stated it will keep an open mind until it has studied all responses in detail. Meanwhile, State Senator, Fletcher Hartsell, has introduced a bill into the North Carolina General Assembly to allow non-lawyer ownership of law firms. The limit of non-lawyer ownership would be 49%, but this would still be a huge change. At present non-lawyer ownership is extremely limited in the U.S., with Washington, D.C. being a rare example of a jurisdiction that permits the practice. However, the take-up in the capital has not been dramatic. Major Washington-based firms have not become ABSs. The reason is a lack of a national level playing field. No major law firm wants to cut off access to the rest of the U.S. legal market.

Regulatory barricades are also a problem for the U.K. law firms that are now global, but would perhaps like to be an ABS to help fund their expansion. As it stands, an English ABS would need an elaborate legal structure to enable it to operate in jurisdictions that do not permit ABSs. However, with almost 100 U.S. law firms present in London, the U.S. firms may face stiff competition in England for high quality talent if some significant English firms take outside capital and use it as a 'war chest' for lateral recruitment.

The future for an open U.S. legal market

The U.S. is probably the most innovative legal market in the world and a large number of legal businesses that are not law firms have evolved already. From legal process outsourcers such as Pangea3 now owned by Thomson Reuters, to document production companies such as LegalZoom, the U.S. has seen major changes in the production and delivery of legal services. Companies such as Google have already made small investments in legal information and document production companies, but if ABSs are permitted in the U.S., how long will it be before Google or another major company looks for a far greater piece of the action?

At the end of the day, subject to an appropriate consumer protection regime which is rigorously enforced (and applies to both existing firms and new entrants), it should be the client who makes an informed decision as to what kind of law firm to use; a small boutique, a global giant or one with external investment. If external funding permits lawyers to do more for their clients and build the services the market wants, then as long as safeguards are in place, external investment could have a positive impact. ▪

About Tony Williams • Principal, Jomati Consultants • 33 years legal experience • 2007 COLPM Inductee

Tony Williams is the principal of Jomati Consultants LLP, a law firm consultancy that advises a wide range of primarily U.K. and U.S.-based law firms on strategic issues that include potential mergers and reorganisations. Prior to establishing Jomati Consultants, he had almost 20 years' experience at Clifford Chance as a corporate lawyer, his last role as Worldwide Managing Partner. He left in 2000 to become Worldwide Managing Partner of Andersen Legal prior to the collapse of the Andersen organisation in 2002 in the wake of Enron. He established Jomati Consultants in October 2002. Tony can be reached at tony.williams@jomati.com.

Technology as the Catalyst of a New Legal Dynamic

by Ed Poll

Pundits have talked about two major trends in the legal profession the past several years. First, lawyers increasingly must become client-centric, understanding clients better and responding to their needs more completely, even beyond what successful lawyers have always done. Second, tremendous advances in electronic and computer technology enable lawyers to do more and better work in less time, which defines the service dynamic that clients increasingly demand.

The time savings, efficiency and commoditization of routine tasks and services afforded by computers and other electronic technology have freed the great majority of lawyers to focus on the creative, problem-solving aspects of their law practice while being able to meet client needs better. At the same time, though, the increased efficiency results in lower revenue without promising greater volume of work. Will lawyers be able to overcome this phenomenon, or will more become technologically unemployed?

Efficiency Momentum

With business and individual clients alike becoming more resistant to or unable to pay for legal services charged according to standard billable hours, the billable hour may in fact be facing its last hurrah. Doing more work faster will reduce revenue when billing is done by time. But without momentum from technology, it is quite unlikely that either general counsel, individual clients or attorneys will push to change the current time-focused system.

Change, however, does not have to be a negative for the legal profession. Instead lawyers will have to alter their fee and cost structures in the new world created by changes in technology. Law firms that partner with their clients in ways that use technology to meet client needs through greater efficiencies can reduce clients' legal costs while maintaining or increasing the law firm revenue. A new fee dynamic can create an environment of sharing the efficiencies offered by technology. Both lawyer and client can benefit.

Model Application

The model for how such a dynamic can work already exists. The Industrial Revolution demonstrated that that the more equipment used to make a product, less labor was required, and the lower the price. With a lower price, volume increased, and profits likewise could rise. When the basis of production shifted to automation, it produced the same result but with a different name. The more product or service a machine could produce, the less expensive the product might be. The result would be a lower price with higher volume, all of which tended to produce higher profits.

This dynamic works the same in a law firm. Consider the example of knowledge management (KM) databases. KM systems combine the work product of all lawyers into a single unified database that can be accessed by each lawyer to the benefit of all clients. Clients no longer want their lawyer to reinvent the wheel: once the research is done or the form is created, clients do not want to pay for others in the firm or for their own lawyer to re-create it (and charge for doing so) in another matter. But the focus on shared knowledge indicates where the secret weapon lies: the efficiencies from computer technology. Online database management has the potential to turn a lawyer's or law firm's knowledge into a high volume commodity. With a lower price through fixed fees, client demand could increase volume and profits likewise could rise.

Billing Transformation

The question becomes, then, are clients ready for the kind of billing arrangements that would allow the lawyer to make more money while being more efficient? The Association of Corporate Counsel's ACC Value Challenge, a concerted effort to better integrate law firm billings with corporate clients' perceptions of value, suggests that they are. Undeniably there is somewhat of a trend among corporate clients to view certain legal services as a commodity, and to apply standardized rates or flat fees where appropriate. However, most clients recognize the importance of and are willing to pay a fair fee for value. What they do not want is to pay too much – to pay for inefficiencies, duplications, or unnecessary services. And this is where the leverage from technology is the lawyer's advantage.

Equally important, though, is the change that must occur on the law firm side. Being able to maintain billings while becoming more efficient requires changing the billing system to embrace alternative fee arrangements (AFA). Using contingent, fixed, capped, value fee approaches where time is not the relevant issue to determine the fee is essential to make the most of the leverage from technology. The premise of any such billing system is that time is not the relevant issue to determine the fee. As a result, the rules of professional conduct must be altered to permit billings without reference to time, particularly in determining appropriateness of fees where there is a dispute.

End or Beginning?

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

Several years ago British technology consultant Richard Susskind published his provocative book, 'The End of Lawyers?' In it he claimed that the ongoing development of new legal technologies and the resulting pull toward the commoditization of legal services will make irrelevant the traditional provision of legal services for which lawyers are trained. But the rise of technology does not mean 'the end of lawyers.' It is instead the beginning of a new dynamic that will benefit lawyers and clients. ▪

About Ed Poll • Principal, LawBiz Management • 25 years legal experience • 2006 COLPM Inductee

Ed Poll coaches attorneys in starting and operating law practices, strategic planning, and practice development. Quoted in the New York Times and ABA Journal, among others, he's also a prolific writer at LawBiz Blog. He's a Fellow, College of Law Practice Management; Board Certified Coach to the Legal Profession, SAC; charter member of the Million Dollar Consulting Hall of Fame; and first recipient of The California State Bar (LPMT Section) Lifetime Achievement Award. Ed can be reached at edpoll@lawbiz.com and @LawBiz.

Gender Fairness Requires Systemic Changes

by Ida Abbott

Women are essential to the future success of law firms, yet they keep leaving. Women's strategic importance is well established, but firms continue to lose them. Supportive work-life policies are vitally important and enable many women to stay in their jobs, but the fundamental problem for women is that they lack power - and work-life policies alone will not change that. The heart of the problem is that the decision-making processes that impact women's access to clients, opportunities for leadership, and equal compensation prevent women from advancing. Women lawyers have the ability and ambition they need to succeed, but these institutional processes hold them back. Until those processes change, women will not make it to the top levels of law firms. So long as women see their prospects unfairly limited, they will walk.

Overcoming historical bias

Large numbers of women have been trying to enter the corridors of law firm power for three decades, yet most remain outsiders. Women hold extremely few leadership positions, they are scarcely represented on key committees, and their compensation is lower than their male counterparts at every level of partnership. According to the 2009 National Association of Women Lawyers (NAWL) Foundation Report, men hold 85% of equity partnerships and 94% of top law firm leadership positions; they constitute 85% of highest governing committees and are 99% of the most highly compensated partners. As cited by Vivia Chen in her 2010 Am Law Daily article, "Looking into the Equity Box …" not one Am Law 100 law firm has more than 25% women equity partners, even though women have been about one-third of new lawyers for 30 years, half of all new lawyers for 20 years, and are one-third of all lawyers today. It has been estimated that at the current rate of progress, women will not achieve parity with men until 2086.

Most firms fancy themselves meritocracies, but whatever constitutes 'merit' is undefined or ignored. Instead, critical decisions are based on political maneuvers, favoritism and power plays. Decision-making tilts toward hidden and subjective factors, which disadvantage women. For instance, a recent study (Statistical Evidence on the Gender Gap in Law Partner Compensation) analyzed compensation of men and women equity and non-equity partners in Am Law 200 firms and found that men were paid more even when women were higher performers. The study cited numerous factors and attributed the disparity to discriminatory practices.

These practices exist because they are based on power; because women have little power, they are not included among decision-makers. They are not privy to the networks and inner circles where the discussions occur, so they are unable to influence decisions. When they are present, they usually number one or two among many men, and their views are frequently marginalized. It is not that men actively discriminate against women; it is that they make decisions that favor men. They overlook women for opportunities and exclude them from the side deals and political machinations that determine bonuses or origination credit. Highly qualified women partners are not invited – or even considered – to take a seat at the leaders' table. As a result, these decision-making processes perpetuate gender bias and male dominance. In most cases these inequitable outcomes are unintentional, but that does not excuse them. They create barriers that undermine women's confidence and ambition; prevent women from getting profitable work, business, and promotions; and keep women undervalued, under-compensated, and underutilized as leaders.

Affecting change

The best way to ensure that women are evaluated, promoted and rewarded fairly is through decision-making processes that have clear, written and objective criteria, operate transparently, and are applied consistently. Such systems can curb hidden biases, preferential treatment and manipulation by influential individuals. They can also be monitored to ensure fairness in execution and to hold the firm accountable for results. When women know who makes the decisions and on what bases they decide, they can adjust their practice and career strategies and gauge their performance and progress. For the firm as a whole, greater openness can build greater trust and longer-term commitment among all lawyers.

There are many ways to increase fairness, to make sure that women are indeed on an equal footing with men in consideration for leadership positions, inclusion in client development and transition opportunities, and compensation awards. Here are a few of them:

Leadership:

- State qualifications for leadership positions and explain how selections are made.
- Ensure the firm's most important management committees have at least 30% women members.
- Require that all nominating committees have women members and nominate women candidates for elected positions.
- Survey women to elicit their interest in leadership positions.
- Have current leaders groom and sponsor women for leadership positions.
- Make gender balance a priority in succession planning.
- In succession planning, use criteria that define leadership characteristics with a view toward the future; include leadership traits that play to women's strengths (such as efficiency and collaboration).

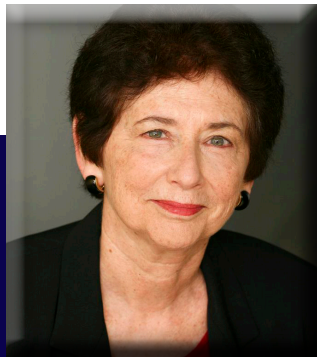
Client development and client transitions:

- Monitor all pitch teams and business development opportunities, as well as internal referrals of business, to ensure women are included.
- Require partners to justify the composition of each business development or pitch team that does not include women.
- Watch for and correct patterns of exclusion.
- Start a structured pre-retirement client transition process for all partners.
- State criteria for client transitions, including an expectation that women be considered.

Compensation:

- State specific criteria that explain the bases and processes for determining origination credit and compensation. Monitor compensation decisions to ensure the criteria are applied fairly and consistently.
- Do a gender analysis of past compensation looking for disparities.
- Ensure the firm's compensation committee has at least 30% women members.
- Link compensation to both revenue generation and contributions to the firm's long-term success.
- Make partners' efforts to increase gender balance a factor in deciding their compensation.

Taking these steps can go a long way to increasing gender fairness. ▪



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Ida helps employers manage, develop and retain legal talent, and serves as a mentor and coach to high achieving individuals seeking professional success. She has long been a leader in lawyers' professional development, leadership and advancing women. Ida is co-founder and Director of the Hastings Leadership Academy for Women; a Faculty Fellow at Hastings Law School; West Coast Co-Chair of Women in Law Empowerment Forum; and author of several books, including Women on Top: The Woman's Guide to Leadership and Power in Law Firms. Ida can be reached at IdaAbbott@aol.com.

The Re-Engineering of Law School Curricula

Law Practice Management Now

by Marcia Watson Wasserman

In law school, the educational emphasis is on substantive law generally to the exclusion of the business side of the practice. In my fantasy, all lawyers would have MBAs as well as JDs. As a long-time law practice management consultant, former law firm executive director and chief operating officer, I have witnessed first-hand the difference a business and management education makes when the firm's managing partner, practice group leader or executive committee member possesses one. They are much more eager to engage in strategic planning, leadership development, client service interviews and succession planning. They fully understand the need for revenue and expense budgets, investing in current technology, and can actually read financial statements.

Laying the groundwork for business savvy lawyers

Since my fantasy is unlikely to come to fruition, the very least that law schools should require is mandatory courses on law practice management as part of a re-engineered curriculum. Given that the great majority of attorneys who graduate law school practice as solos or in small firms of fewer than ten attorneys, it is incomprehensible to me that the first time lawyers discover they need to know how to manage an office is the day they open their doors to practice. They need the immediate ability to understand what it takes to run the business of the practice of law – everything from managing people to managing trust accounts to managing client expectations. Such advance training would benefit the individual lawyer as well as his or her clients. Attorneys who get into trouble with clients, commit malpractice and face disciplinary proceedings before their local state bar association often do so unintentionally and because they do not understand how to run their business. They commingle trust account funds with their general account funds, lack internal accounting controls, miss calendar deadlines and the like.

Teaching business basics

Many ABA accredited paralegal schools throughout the country offer "An Introduction to Law Office Administration" course providing management training to paralegals on such topics as management theory, leadership, strategic planning, human resources, marketing, finance and technology. If these are topics paralegals benefit from, their attorney superiors need the information all the more. They should be able to receive such an introductory education while in law school.

Further, state bar examinations must include mandatory law practice management questions perhaps using the multi-state exam as the vehicle. If that were the case, law schools would make law practice management courses mandatory throughout the country rather than an occasional elective. In addition, state bar associations must recognize the importance of law practice management as part of continuing education and provide MCLE credit for seminars ranging from budgeting to cash flow management, law firm economics, project management, risk management and leadership development.

Meeting client expectations

We are in the era of the client. Professional service firms are being transformed, willingly or not, due to increased client sophistication, more movement toward technological innovation, the pursuit of the paperless office, the globalization of business, outsourcing, project management and the need for talent management. Increasingly, clients are less concerned about relationships and more interested in: What can you do for me? When can you get it done? What will you save me? What will it cost me? Law firms must re-engineer their business model and business processes to respond to client demands profitably. Without the foundation of a business and management education in law school, lawyers tend to be reactive to trends rather than proactive. When the focus in law school is on substantive training alone, lawyers tend to be followers and rather conservative in their approach to business and innovation. Those firms that are too slow to react will disappear and more attorneys will find themselves without a job.

Earning respect

Even when attorneys work in mid-sized and larger firms, there is a lack of appreciation and understanding by most of the partners not involved in management of what it takes to run the business side of the practice. CEOs and Managing Partners are underappreciated and undervalued. Practice group leaders are charged with managing the partners, associates, and paralegals in their department as well as managing their own legal practice, but are inadequately compensated for their management role. Executive Committee or Management Committee members are expected to somehow fit committee meetings into their busy schedules yet bill the requisite number of hours to clients. Professional firm managers with MBAs and/or CPAs hired to help run the business are often not given the authority that goes with the responsibility, in part because the partners do not adequately understand their contributions. Partner compensation systems must evolve to value and reward professional management as well as business origination credits. This paradigm shift would be easier to accomplish if all lawyers had a strong foundation in law practice management starting in law school.

To sum it up, the practice of law is more competitive than at any time in the past. Client expectations are higher than ever before. Technology is changing the legal landscape at a rapid pace. If law firms must re-engineer their business model to quickly adapt to change, embrace technology, manage their talent and recognize and respond to opportunities, then law schools must re-engineer their curricula to provide our future attorneys with enough advance law practice management training to successfully run their law firms in the future. ▪

About Marcia Wasserman • President,Comprehensive Management Solutions • 25 yrs legal exp • 2009 COLPM Inductee
Marcia is founder and President of Comprehensive Management Solutions, Inc. which provides C.O.O. To Go™ services for small to mid-sized law firms to help them operate more efficiently, effectively and profitability. Marcia has more than 25 years' experience in general operations, administrative and financial management and human resources consulting to Managing Partners and law firms. She was previously employed as COO and Executive Director of several major local and national law firms. Her expertise includes business formations and relocations; succession planning; strategic planning; retreat facilitation; financial management; recruitment; compensation and benefits administration; development of employee handbooks and procedure manuals. She can be reached at mwasserman@ComprehensiveMgmt.com.

The Future of Law Firm Marketing

Four Reasons Why There May Be None

by Burkey Belser

Time to kick up some dust. Let's wrestle with a few threshold questions that are discussed behind closed doors but rarely in a public forum. Does legal marketing have a future? Is legal marketing possible? If not, why not? I say it does not…unless some fundamental changes take place.

Reason #1 The Rhetoric of Disrespect

The vestigial arrogance of the legal profession remains embedded in the very language that is used in offices every day. "He's a lawyer; she's a non-lawyer." No other business in the world I'm aware of treats its colleagues rhetorically in such a dismissive way. Language is important. It reflects our beliefs. Essentially, this form of locution says, "I, lawyer, exist. You, non-lawyer, do not." As long as lawyers fail to acknowledge and respect other professional disciplines, marketing will be a sidebar to the success of a firm.

It's true, in some firms, this language has become muted. And perhaps respect has grown for the marketing professional as well as the accounting and operations professionals. But wherever I see marketers in law firms struggle - and I see this a lot! - the reason is because they do not get respect. Yes, they must learn to command respect but it is unfair to imagine this can be achieved in a culture where the marketing discipline is only grudgingly tolerated and the professional must begin their climb to respect starting in a hole.

Reason #2 Modern Law Firms Are Born-Again Solo Silos

Law firms are actually gawky, awkward vehicles for business. Lawyers have been for centuries raised to perform solo. Even today, individuals are encouraged to 'build their own practice' from a young age as practice specialists. As owners of their own practice, they are in competitive conflict with the firm they work for. This 'conflict of interest' culture subtly urges the lawyer to defend his or her own interest above that of the firm. Thus, it's remarkably difficult to build a firm-wide rolodex or make an expensive contact management system functional because firms have created the uneasy, quasi-competitive practice group whose individuals are being encouraged to develop the group as well as themselves. Without getting too, too close to Darwin, the NY Times (9/18/11) suggests that the individual will win that battle, not the group; i.e., stars will too often jump to another team if the price is right, the team be damned.

That same tradition makes it unnatural for lawyers to cross-sell. I can't imagine walking into a client meeting to talk about web design with any reluctance to also talk about a brochure system or an exhibit booth. But the culture of the law firm means that partners don't really know what other partners do well. Sure, they understand a little, but ask a partner to introduce the strengths of the other; it's not pretty. The result? Money left on the table…every single day. I've only met two firms out of hundreds where the culture and compensation structure lead to seamless cross-selling.

Reason #3 Failure to Respect the Buyer

Our research, confirmed again and again over 20 years, tells us that buyers wear their industry hat when looking for legal services. In other words, buyers have no interest at all in dealing with a law firm's internal organizational battle over specialties. They want industry expertise. They want advisors who know their industry, know its vocabulary, its trends and its challenges. Accounting firms figured this out 30, 40 years ago, creating enormously successful consulting operations. In the meantime, law firms fuss around with the practice group concept and miss the boat entirely; shame on them and their 'management' advisors. What's the Solution? Organize into agile industry teams, scraping the practice group thing entirely. Lawyers care about practice groups because it is a natural extension of the solo silo.

Legal is a fragmented industry. Research shows that no single firm has more than 4-6% unaided name awareness in any category (i.e., litigation, telecom, antitrust, energy, etc.), in large part because law firms are maneuvering to win battles (practice specialties) that aren't being fought. Clients, meanwhile, are doing battle within specific industries.

All of this behavior is me-centered. Understand this: marketing focuses on the needs of the buyer; selling focuses on the needs of the seller. "Hey, Ms. Client, I've got hours to sell. Want some!" is the type of selling, ineffective as it is, generally practiced in the legal community since lawyers are so often not the best salespeople and understand client needs so poorly, they focus almost pathologically on 'building relationships.' This has real value, of course, but is the single most inefficient model of selling a law firm and its lawyers can adopt. When marketing and business development work together, it's a powerful thing to see, when one or the other is dismissed (or, in some instances, both are pushed out the door), then the firm operates at a fraction of its potential.

Reason #4 Battered Dreams

It's our own fault. We promised too much. We have sold magic bullets like marketing and business development, branding and websites. All of this is valuable ammunition to firms that know how to use it. But it seems to me, there are far too many law firms that have the bullets but not the guns.

Buy guns; having an industry focus is a gun; developing a firm-oriented compensation strategy is a gun; having respect for professionals other than lawyers is a gun. So, as my dad used to say, "Shoot'em up." ▪

About Burkey Belser • President, Greenfield/Belser • 33 years legal experience • 2003 COLPM Inductee

Burkey is the president/creative director of Greenfield/Belser, an interactive brand design agency focused on services marketing. He has won hundreds of awards in every major field of graphic design: identity, collateral, Web, periodicals. In 2005, he was awarded the first-ever Lifetime Achievement Award for the Legal Marketing Association (LMA), and in 2008, he was inducted into LMA's Hall of Fame. Burkey is highly rated as a speaker on topics from branding to information design before professional audiences nationwide. An accomplished writer, Burkey has written for the Washington Post, the Los Angeles Times, the American Lawyer and many industry magazines. Follow Burkey's blog, Brand Thinking or on Twitter @burkeybelser.

Pedigree is Not Enough

A Client-Focused Approach to Lawyer Recruiting

by Caren Ulrich Stacy

Associate salaries at most law firms have doubled since 1996. As a result, billing rates have risen significantly - dramatically outpacing inflation and other corporate expenses - causing clients to scrutinize the value associates bring to their matters. Associates now have to perform at a consistently higher level more quickly to justify their billing rates, avoid write-offs and keep clients happy. There is less room for hiring errors than there was ten years ago.

Law firms must recruit and select associates who add unmistakable value to their clients. So, what are the characteristics of valuable, high performing associates? And how does a law firm hire more of these A-players and less of their C-player counterparts?

Defining Value

For years, clients have told us exactly what they want - lawyers with the intellectual horsepower to handle complex legal issues and the business acumen to do so efficiently and effectively. This is not a simple request for law firm leaders who are tasked with hiring.

Associates are sometimes limited by their academic or intellectual approach to the law. Those that do not have a business orientated, client-focused approach often fail. Using workplace personality assessments, our research shows that most associates score high on analytical reasoning, a skill that relates to intellect. But high performing associates (and partners) also have elevated scores on innovation, decision-making, problem-solving, business awareness, and customer focus. This pragmatic approach is likely the key - above and beyond intellect - to delivering value to clients.

It is also important to find associates who match the work styles and culture of each firm. Our studies show that most law firms value about 70% of the same qualities in associates. Strong communications, for instance, is a consistent need since a lawyer's main job is to serve as an advocate for their clients. The remaining 30% often differ significantly by firm. Some firms value teamwork, while others value independent work approaches. Entrepreneurialism is a survival skill at certain firms, but does not make the short list at others. And although efficiency is a skill that most clients require, it is absent from many firms' success factors list.

Determining which traits really matter is not as simple as firm leaders sitting in a 'what it takes to be successful' brainstorming session. There are four significant issues associated with this unsystematic approach. The first is lack of diversity. If the firm's leaders are not representative of the diverse environment that the firm wants long-term, then any bias (conscious or unconscious) that exists will be baked into the list of success factors. The second issue is lack of buy-in. The partnership as a whole may not endorse the traits if they did not play a role in formulating them. Partners must weigh-in to buy-in. The third issue is lack of self-awareness. Most high performing lawyers are not sufficiently conscious of the behaviors that contribute to their own success. The last issue is lack of perspective. To understand what a high performer does that a low performer does not, it is important to study the full spectrum of lawyers within the firm.

These issues can be resolved by taking a three-pronged, data-driven approach to determining a firm's success traits.

- Conducting a scientific-based survey of all lawyers to identify the skills - by gender, office, practice group and experience level - that are perceived as predictors of success.
- Facilitating systematic interviews with the firm's successful lawyers to dissect what they do daily to add value to clients. These interviews can also be extended to include clients to hear first-hand about the traits they value.
- Administering online workplace personality assessments, which are mapped to the firm's success traits, to a representative sampling of the firm's lawyers to measure and prioritize the key success factors of high versus low performers.

The primary purpose here is to create a concise, common vocabulary for use in the selection process.

Evidence-Based Selection Methods

Law firms that hire associates based on pedigree - grades, law school ranking, and law review - are likely fulfilling only one-half of the client's value request: intellectual horsepower. The firm also has to identify associates with 'business-minded' qualities. Law firms' favorite interviewing technique - the one-on-one interview - is not the way to do it. Previous research published by John Hunter and Frank Schmidt in the American Psychologist, reveals that this type of interview has a similar predictive power as flipping a coin when choosing whom to hire. Years of research from other industries have provided us with better options. The following three selection techniques are proven examples that corporations (and a few forward-looking law firms) have successfully used.

Moneyball Analysis - Billy Beane, General Manager of the Oakland A's, took a leap of faith when he introduced sabermetrics - more famously known as Moneyball - into the deeply-rooted traditions of baseball scouting. In a law firm context, a Moneyball analysis explores the association between lawyers' on-the-job performance and the success traits that can be found on résumés or transcripts. The success traits range from the traditional factors such as grades to the non-traditional factors that many firms overlook such as pre-law work, advanced degrees and military. This analysis allows a firm to discover the critical traits they are undervaluing, overvaluing or just plain ignoring in the screening process.

Structured Panel Interviews (SPI) - SPIs are based on the axiom that "past behavior is the best indicator of future performance." There are four main elements. First, the interview is 60 minutes to address the priority success traits as defined by the firm. Second, there are four panelists in each interview who ask questions that are behaviorally and historically based, not hypothetical or situational, to uncover what a person has done in the past to better predict how they will behave once hired. Third, the panelists score candidates using a behaviorally anchored rating scale for each success trait. This approach removes the 'we know it when we see it' subjective measure. And fourth, the panelists work together post interview, which dramatically reduces individual biases, to give the candidate an overall score. Research shows that SPIs are three times more effective at weeding out C-players than the typical one-on-one interview.

Workplace Personality Assessments - The same online assessment tools used to determine the firm's success traits are also used in the selection process. The candidate's results, which are focused on work-related traits and motivations, are compared to the firm's current high performers and provided to the hiring committee as additional data in the selection process.

The Bottom Line

The bottom line is simple: Talent management should be driven by the firm's desire to satisfy their clients. The client wants value that matches (or exceeds) the cost of the associates working on their matters. To meet this need, law firms must first define the behaviors associated with value and then identify those associates with and without those traits. With a profit difference of $100,000 to $250,000 per associate per year for every midlevel A-player hired in place of a midlevel C-player, law firms can no longer afford hiring missteps. ▪

About Caren Ulrich Stacy • President, Lawyer Metrics • 20 years legal experience • 2010 COLPM Inductee

Caren has 20 years of experience in talent management with law firms across the country. As an expert in the field of lawyer selection and development, Caren was awarded the National Association of Legal Professionals (NALP) Mark of Distinction in 2009. She is a Fellow of the College of Law Practice Management and an adjunct professor for the Denver University Sturm College of Law. As the president of Lawyer Metrics LLC, she works with a team of experts in legal labor markets, quantitative analysis and IO psychology to provide metrics-based talent management solutions to law firms and legal departments. Caren can be reached at caren@lawyermetrics.com.

Strengthening the Core

by Marc Lauritsen

Lawyers are an endangered species. Many are unemployed or underemployed. Most are feeling downward pressure on fees. Competition is sharp. Clients are demanding price concessions … we may be in for a sustained period of fee deflation. How can you survive and prosper? I suggest that technologies aimed at the core of practice are among the most important measures you can take.

Time isn't what it used to be

If you are like most lawyers, your time is worth less. At least as measured by the willingness of clients to pay.

For many the amount of well-paying work is shrinking. The legal profession is being squeezed. Both by alternative providers, such as legal process outsourcers, Rocket Lawyer, and Legal Zoom, and by lawyers with lower overhead methods, such as virtual offices. Prices drop when substitutes emerge with more efficient means of production. Online bidding and lawyer rating sites will accelerate this trend.

Alternatives to time-based billing are gaining ground, as lawyers realize they can make more per hour by not charging by the hour. But alarmingly, some lawyering work, regardless of how efficient it may be, is becoming worth less in the minds of consumers. In addition to fee deflation, we may be facing a fundamental devaluation of attorney effort. That goes beyond what may be just a temporary lawyer surplus due to a dip in aggregate demand. Legal work – done as most lawyers have been doing it – is losing appeal.

Some new entrants disparage traditional lawyer/client service models. Some in the Bar are inclined to push back by alleging ethical violations or the unauthorized practice of law. A better strategy is to emphasize our distinctive values and to outperform the competition by delivering compelling benefits at reasonable prices.

The buzz

Tough economic times have shown consumers how willing lawyers can be to discount prices. And they've shown law firms that associates will work for merely generous salaries. As a collective shudder ripples through our market, deflation is a self-fulfilling phenomenon. Pricing opaqueness is long gone.

There are also more law-related startups now than any time since the dot-com boom, many run by lawyer-entrepreneurs determined to disrupt the status quo. Smart capital is seizing opportunities to exploit weaknesses in the mainstream delivery system. That exacerbates the crisis for some, while providing salvation for others. Expect the dual hump in the lawyer income distribution curve to intensify.

Legal trade publications and the blogosphere are again abuzz with a sense of unfolding transformation in global legal services. Here I'd just like to offer a few 'up and down' recommendations regarding legal technology.

Brush up

First, brush up on how your part of the law business might be disrupted. Consider especially (1) what portion of your work can be accomplished cost-effectively with software systems, and (2) what portion of that portion presently is being so accomplished. The former is always growing, as technologies emerge, existing ones get cheaper, and people gain comfort and proficiency. The latter is mostly a matter of good management and strategic insight. Take an honest look at your 'latent systemization potential' – how much more effective you could be by deploying better systems. If that potential is high, you're not only missing opportunities, you're vulnerable to displacement.

Break down

There are no standard units of legal work, as there are for physical work (e.g., ergs and joules). But it is possible to decompose things lawyers do into more elementary pieces, and to discover parts that are amenable to delegation and systemization. Even large, complex matters contain fungible components.

You can classify what lawyers distinctively do in terms of three 'A's – analysis, advice, and advocacy. If something doesn't fit well in one of those categories (such as factual investigation, information retrieval, or form filling), there's a good chance someone or something other than a lawyer can do it more cost effectively. Of course, some lawyers earn huge fees delivering another 'A' – access to scarce information, private networks, and levers of public policy – but others can do that as well or better.

Similarly, you can classify most of the things lawyers produce in terms of three 'D's – decisions, documents, and deals (broadly understood as settled legal arrangements – such as agreements, institutions, legislation, and judgments.) Each of these kinds of artifacts can be produced more effectively with knowledge-based technology.

Tool up

Lawyers are surrounded by technology these days, but much of it can be found in almost any office setting. Specialized tools that assist at the core of law practice offer more strategic advantage. Working on that part of your tool kit can pay major dividends.

There are lots of 'substantive' legal technologies. One of my favorites is document assembly, which is both dramatically useful and dramatically underused. The industry is mature. In addition to established vendors like ContractExpress, Exari, HotDocs, Pathagoras, and Rapidocs, dynamic new players continue to enter the market, such as Brightleaf, WordFu-

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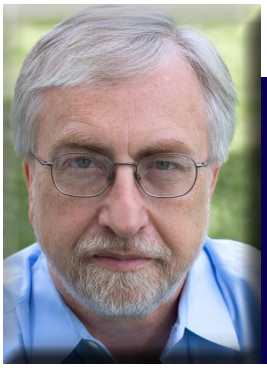

About Marc Lauritsen • President, Capstone Practice Systems • 34 yrs legal experience • 2007 COLPM Inductee

Marc Lauritsen, author of "The Lawyer's Guide to Working Smarter with Knowledge Tools", is president of Capstone Practice Systems and of Legal Systematics. Marc has served as a poverty lawyer, directed the clinical program at Harvard Law School, and done path-breaking work on document drafting and decision support systems. He's a Fellow of the College of Law Practice Management and co-chairs the American Bar Association's eLawyering Task Force. He can be reached at marc@capstonepractice.com and at @marclauritsen.

Ask the COLPM Fellow

Q "Which sorts of pricing strategies will prevail in the near and long term (e.g. Penetration vs. Price Skimming), regardless of the fee type?"

Question provided by
Toby Brown
3 Geeks and a Law Blog
Director of Pricing
Vinson and Elkins
@gnawledge

"The big news in the long term is going to be the extent to which there is not a prevailing pricing strategy. If we've learned anything, it is that doing what everyone else is doing is no longer a route to success in the business of delivering solutions to legal problems. Pricing will soon become just one tool of many that we use to compete.

Not only will fee types vary - hourly, project-based, retainer, flat, etc. - but the approaches taken to setting and modifying those fees over time will vary appropriately in relationship to the business entity, product life and marketing strategy. Strategies once impossible because we didn't actually KNOW the cost of our services will now be routine due to sophisticated methods of gathering and analyzing data. Growing sophistication about changing market attitudes and the life-cycle of products and services will allow pricing strategies that adapt and respond over time."

Merrilyn Astin Tarlton
Partner/Catalyst, Attorney at Work

If you enjoy these "Ask the Fellow" articles, you will enjoy the Elephant Posts on Toby's blog, 3 Geeks and a Law Blog.

"In the near- and long-term (the latter being 5 years or so), hourly rate pricing marked to market will be the prevalent form of pricing. Marked to market for commodity work will most often include a discount from standard published rates. Discounting will be less common and or less steep for non-commodity work. Changes in pricing strategy for most of the market will likely proceed at a relatively slow pace and be incremental, as they have been in the past. The speed and amount of change will depend on the strength of the economy. Strong economy; less and more slow change; weak economy, faster and more change. But, for leading firms, the donut is maintaining high rates and high margins, and the hole is everything else about pricing. That means focusing on winning more and more non-commodity work. The key is to keep your eye on the donut, and not on the hole."

Peter Zeughauser
Chairman, Zeughauser Group

"I think that most forms of pricing strategies, if they are known to a lawyer, and are ethical, will be used, depending on the circumstances. Business people often resort to differential pricing strategies depending on circumstances - I believe it should be no different for a professional - provided it is conducted within an ethical framework and on the basis of value delivered. I remember a story circulating when I was an Articled Clerk about a respected senior barrister who famously returned a brief with his advice which was simply "no" and a fee note for the equivalent of $10,000. He would have been horrified to hear that he was possibly guilty of 'price skimming' or 'premium billing' and he would have felt he was simply rendering a fair fee for value delivered - the briefing solicitor happened to agree!"

Sean Larkan
Partner, Edge International
Legal Leaders Blog

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sion, and XpressDox. There are also fascinating new approaches, like those of Kingsley Martin at KIIAC and Jim Hazard at CommonAccord.

Artificial intelligence is experiencing a resurgence, in part due to IBM's Watson, which can beat human contestants at Jeopardy. Its Deep Question Answering technology is being applied to medicine, law, and other fields. In the legal world, Neota Logic is fielding its own kind of expert applications.

As the process outsourcers and document preparers are showing us, advanced tools can help people with important legal work even when there are no lawyers at the controls. It's better, though, to have a trained legal professional in the loop. On a level playing field, lawyers are best suited to provide legal services by dint of their training, experience, and ethical regulations. Those with optimal tools, billing practices, and marketing techniques can thrive even in an era of general fee deflation.

Push down

The good news is that much core legal work can be done more effectively, by delegating parts to less specialized personnel, and to our increasingly intelligent machines. That includes putting systems directly in clients' hands for self-help and co-production.

However the legal marketplace may evolve, strategic advantage will flow from getting substantive work done as effectively as possible. Too little attention is yet being paid to the specialized systems that can skyrocket effectiveness. We need to stop using IT just at the periphery of lawyer activity.

Tools that resonate with the core structures of legal knowledge work perform best in the hands of lawyers who are reflective about its systemization. The future will belong to those who can choreograph optimal distributions of work across teams of humans and non-biological assistants.

Step up

Imagine a rising generation of tech savvy practitioners, aggressively wielding intelligent tools. Do you want to be among them, or watch from the sidelines?

Seek to discover how much more effectively your work can be done, because soon someone will be doing it that way. If much of what you do can just as easily be done by those who are not professionally trained, or even by machine, you're living on borrowed time. Take some of that time to better equip yourself. Legal knowledge technology is not a silver bullet. But it's an essential weapon. Step up and get with the program. ▪