

Where Are We and Where Do We Go From Here?



**COLPM Futures Conference 2009
Wrap Up**

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Author's Note

This presentation is a summary of the ideas presented at the conference and the author's personal views



The future isn't what it used to be!



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Risk

The real risk at the moment is in
waiting for *yesterday* to become *tomorrow*.

Things will be different!





Uncertainty

“It ain’t what you don’t know that gets you into trouble.
It's what you know for sure that just ain't so.”

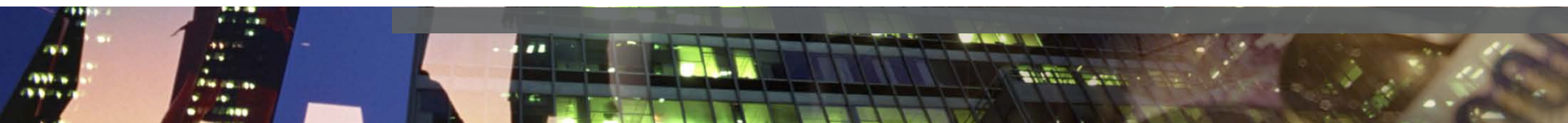
Mark Twain





The challenge is moving beyond

“I am all for progress—it is change I don’t like!”





Rate of Change

Can the profession reduce the time from— ‘that’s the dumbest idea I ever heard’ to “we always do it that way?”

This is a law firm issue and an in-house issue and a major determinant of the rate of change.



Some Examples of Past Changes that Hurt and Helped the Profession

- '33 Act, '34 Act, '40 Act
- Changes in the Federal Rules of Civil Procedure—notice pleading, discovery
- Rise and fall of anti-trust enforcement and civil suits
- Internal Revenue Code changes—'86 amendments wiped out tax shelter practices
- Rise of in-house counsel
- Consolidation of law firms

Some Examples of Past Changes that Hurt and Helped

- Outside general counsel/hiring hundreds of firms/convergence
- Photocopiers
- Word processing
- Desktops, Laptops, Blackberries
- Internet
- Recessions
- Dotcom boom and dotcom bust

Some things don't change—or not very much



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People Need Lawyers (or something like them)

- When money or property changes hands
- When dealing with the government
 - Compliance
 - Enforcement
 - When law and regulation changes
- When people fight with each other
- Which of these is going away forever?
- Demand will be there if lawyers can stay relevant and accessible

The Value Pyramid of Legal Services

- Top—Bet your company—or all your assets—smallest part of market
- Middle—Relatively higher value sophisticated work that is not rocket science—but needs a highly competent implementer—solid middle of market
- Bottom—Commodity work—relatively low value, and often repetitive work and higher volume work—largest part of market



The Market

- Market forces cannot be denied
- Key Forces to Watch
 - Demand
 - Overall Demand—the economy
 - What's hot/what's not





The Market

- Key Forces to Watch
 - Supply—Sources of Service
 - Lawyers
 - Other service providers
 - Para-professionals
 - Self-help systems
 - Consultants, etc.
 - Offshore
 - Technology







The Market

- Price Elasticity
 - Prices affect demand and supply—always
- Information is key to competitive markets
 - Market information breeds competition and lowers price





The single most important thing for lawyers to internalize is that the law is an increasingly free and very competitive market and the risks of ignoring market forces is very high.



External Forces Affecting the Practice of Law

- Technology
 - Communications
 - Information access
 - Information processing
 - Using technology to create legal solutions

External Forces

- The state of the global economy
- Demographics
 - Age
 - Population and
 - ***DIVERSITY***

External Forces Affecting the Practice of Law

- Changes in Law and Regulation
 - Some impacts
 - Change makes work for lawyers
 - Stability reduces work
- Globalization
 - Changes in demand—what services needed where
 - Supply—who can do the work

Where are we today?



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Changes in the Legal Market

- General demand is down—hopefully it will be back—most likely in somewhat different form
- More specifically—observations and some predictions—
 - Finance volume—down—and not coming all the way back up
 - Litigation volume—down or flat
 - Regulatory, enforcement, and legislative driven demand—going up
 - Cross border work—going up
 - Global work—going up

Changes in the Legal Market

- More specifically—observations and some predictions—
 - IP related work—going up—but a little flat right now
 - Aging population related work—going up
 - Work-out and restructure work—up but not as much
 - Strategic investment work—up some
 - Private Equity work—as yet unknown but likely in different form
 - Labor and employment—up—probably

Changes in the Legal Market

- Supply has not adjusted
 - There is a bubble of oversupply
 - Longer term trends suggest:
 - decreased domestic and European supply of new lawyers—
 - Temporary increased supply of older lawyers
 - Elimination of mandatory retirement
 - Need and desire to work longer
 - Outsourced supply growing—slowly for now
 - Substitutes growing

Changes in the Legal Market

- Big new supply-side question
 - Will current market forces change generational attitudes that had reduced interest in law firm associate work style and a law firm partner career?
 - Yes and no
 - Likely more willingness to put lifestyle second to life sustaining activities—i.e., a good paying job is a more valuable asset because it is harder to get
 - Perhaps less willingness to commit to capital partner levels of commitment because those requirements have risen



Changes in the Market - Impacts of Technology on the Market— Information and Communications

- More competition—easier to find the demand and supply
- Client data that can assess firm and lawyer performance
- More need to market and more ways to do it
- Fewer market anomalies—no place to hide
- Less value in most information



Impacts of Technology on the Market

- Less labor content in legal work
- Less individual expertise in legal work
- Shorter “product cycles” from expert to commodity
- Expanding supply of service sources—non-traditional working patterns enhance supply; facilitates off-shoring and tech-based solutions
- Change happens faster and more broadly

Changes in the Legal Market

- Client decision making and purchasing patterns continue to change
 - Experience and results more often come before relationships
 - Cost containment/budget restraints
 - Cost/benefit analyses
 - Insurance company approach to risk management and legal spend
 - Competition models for retaining counsel
 - Price pressure
 - Convergence
 - Alternate pricing models
 - [Trust is a constant factor]

Changes in the Legal Market

- Competitive edge/value proposition—challenge has intensified
- Differentiation is both necessary and more difficult
- Highest value to clients is in:
 - Reputation/CYA factor
 - Access to and application of scarce information
 - “Market” and “industry” information and access
 - Application of experience in business/industry context
 - Government insider information/access
 - Rocket science in applied context—innovative solutions

Changes in the Legal Market


- Mid and lower end work has become less valuable—more price pressure and competition
- “Can do that” is much less valuable than “have done that—many times”
- *Bet your company work today—commodity work in a shorter time than ever*

Changes in the Legal Market

- Supply side is changing
 - Partner Level
 - High competition for top talent
 - Less institutional loyalty on both sides
 - Sifting by line of business and economic performance

Changes in the Legal Market


- Non-partner level
 - Reduced reliance on traditional model
 - Alternative sources to U.S. law school graduates
 - Flexible supply
 - Variable commitment levels and working models
 - Reduced institutional commitment to employed lawyers
 - Training model has changed and needs to change again
- Business needs increasingly predominate over “old values”



Law Firm Marketing and Sales— What Do Firms Need from Their Marketing Depts..?

- Sales—support, participation in sales and sales management
- More professional selling strategies
- Industry knowledge
- Web-based marketing expertise—Internet, social networks, viral advertising
- Capabilities and experience information bases





Law Firm Marketing and Sales— What Do Firms Need from Their Marketing Depts..

- Assistance with relationship management
- Guiding and evolving marketing strategies
- Coaching and training
- Competitive intelligence
- Role in planning
- Measureable results



Marketing and Sales

- Bottom line is—
 - Marketing/sales competence becomes a strategic asset
 - Marketing needs to “know the business”—get close
 - Function needs to be fully integrated into firm—not a bolt-on
 - Needs a seat at the table at all levels

What Are the New Partner Paradigms?

- Human interface
- Scarce information resource—stuff you cannot get online
- Specialized skill set—expert—ability to integrate and apply market and industry information with legal knowledge and skills in client-specific context
- Sales and marketing competency
- Relationship manager

What Are the New Partner Paradigms?

- Resource manager
 - Information
 - Processes
 - Human resources
 - Project manager
 - Business unit manager
- Leadership skills

New Partner Paradigms

- Rocket scientists—limited supply and demand
- Trusted Advisor—limited demand—in-house counsel has taken that role
- Competent implementer only—less and less an equity partner role

Law Firm Market Stratification?

- Is the market becoming more stratified as it matures
- Can law firms really make break-out upward moves
 - in value of services and related profitability?

Law Firm Market Stratification?

- What creates stratification?
 - Established reputation
 - Experience base
 - Resources
 - Reduced demand growth reduces opportunities
- Market disruptions creates opportunities
- Room to move up in market niches

Law Firm Market

- Is continuing consolidation inevitable?
- Are bigger firms dinosaurs?
 - Qualified yes and no
 - What does “bigger” mean—today’s medium to small was yesterday’s big

Big Firms' Inherent Advantages

- Resources
 - Expertise
 - Depth
 - Diversification
 - Management skills/infrastructure
 - Financial resources
 - Ability to take risks and invest in new areas of law

Big Firms' Inherent Advantages

- Risk sharing and diversification
- Bigger firms match up to convergence model clients are pursuing

Law Firm Market—Continuing Consolidation?

- BUT bigger firms need to:
 - Show added value to clients
 - Be price and cost competitive
 - Deliver adequate competitive advantages and earnings to partners

Big Law Is Not Homogeneous

- Clear strategies are necessary
- Biggest law firms are not all in the same markets
- Do not all have the same strategies
- Are not all built on the same economic models
- S+C, Skadden, and White & Case are each very different from the other and have different strategies
- Large global, international, national, regional, or specialty firms are each doing different things in different ways

Big Law Will Survive

- Reputation
- Resources
- Diversification
- Ability to finance change
- Advantages in scale should generally outweigh disadvantages
- But it will have to change

Law Firm Market

- What will the boutique market look like?
 - Not going away
 - Bigger boutiques will be more successful
 - Space for transients—guerrilla players tied to star or at least successful partners
 - Need to be very nimble or willing to be transient

Law Firm Market

- What will the boutique market look like?
 - Small piece of the whole market
 - Boutiques are potentially big players in some segments, e.g.,
 - Business Transactions
 - Litigation
 - Labor
 - IP

Law Firm Market

- Virtual/Net-based firms
 - Continuing experimentation
 - Time to develop workable models
 - Tough to do at scale without external equity financing—which is now only available in a few jurisdictions
 - Existing firms will respond with competitive offerings
 - Marginal players for some time

Small and Mid-sized firms

- Technology and information make them more competitive
- Size allows quicker innovation
- Cost advantage
- But scale carries disadvantages
- Premium on being right and nimble

What Value Does a Law Firm Add to Client Service?

- The question is about the firm, not the individual lawyers
 - Pre-screened and trained quality lawyers
 - Pre-formed and integrated teams who know how the clients like their work done
 - Shared knowledge about the clients and their business
 - Client history
 - Knowledge base firm wide
 - Integrated support infra-structure
 - Quality assurance

What Value Does a Law Firm Add to Client Service?

- The question is about the firm, not the individual lawyers
 - The value of the firm's opinion—in the market
 - Accountability—professional liability and insurance and assets to back it up
 - Service innovations
 - Client CLE and new developments
 - Back up—lawyers, support, communications, etc.—24/7
 - Security systems

How well is *your* firm doing in these areas?

What Value Does a Firm Provide to Its Partners?

- Firm reputation and market position
- Practice support
 - Quality and cooperative partners
 - Quality associates
 - All other support
- Marketing and sales support
- Shared business development—partners who cross sell
- Resources to be cross sold

What Value Does a Firm Provide to Its Partners?

- Shared risk
- Security
- Positive working environment
- Peer support in a broad sense
- Training
- Superior business management

Alternative Billing

- Will grow
- Will not be dominant model—unless the clients force their in-house counsel to change—
 - The control issue
 - The risk issue
- The learning curve will hold back growth

Alternative Billing – Learning Curve

- Understanding how to align client and firm interests
- Contracting for and managing scope, changes, delays, unanticipated events, etc.—analogy to a construction contract, an architectural service contract, or software development contract, etc.
- Law firm estimating skills
- Work management skills
- Client comfort with changed models and the trust factor

Key Law Firm Capabilities for the New Reality

- Ability to build client trust—relationship management
- High-quality, high-value services
- Effective planning and highly effective implementation
- Resource management—the right people, in the right teams, in the right place, at the right time
- Marketing and sales—getting your story told and getting results

Key Law Firm Capabilities

- Change and learning skills—how quickly and how well can a firm adapt
- Recognizing and responding to opportunity
- Human Resource Management—finding, developing, retaining, and re-deploying the right mix of skills for the changing market

Key Law Firm Capabilities

- Knowledge management
- Process management
- Financial management and fiscal discipline
- Getting everything right—much smaller margin for error—



A Few Thoughts on Alternative Strategic Approaches

- Innovation—high risk/high reward—maybe a few winners but surely a lot of losers
- Fast followers
 - The bane of the innovators—take away the planned advantage
 - Lower risk
 - Execution is key
 - Positioned for fine tuning
 - e.g., Google—did it pioneer the search engine market?



Alternative Strategic Approaches

- Superior implementer—after the fast followers
- Low cost provider—without superior processes a loser; without superior product and staying power—vulnerable to price cutting competition

Law Firm Market

- Will the increasingly “efficient” market more consistently and severely punish poorly managed firms?
- Yes—a more perfect market means there is no place to hide
- But a more competitive market creates opportunities for all competitors

**I wonder what's going to happen next—and
if we will be prepared to deal with it!**



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Thank You

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