

PART III: THE CHANGING FACE OF PRIVATE LAW PRACTICE

In 1996, Richard Susskind noted in his book *The Future of Law* that changes in technology will fundamentally, irreversibly and comprehensively change legal practice, the administration of justice and the way in which non-lawyers handle their legal and quasi-legal affairs.

Private law practice is squarely in the midst of this change, as technology and numerous other factors are challenging the ingenuity and creativity of lawyers. The good news is that the legal profession is adapting quickly and innovatively, creating new patterns of practice, developing detours around regulatory rules that might stifle growth and competition, finding resourceful methods of handling the increasing costs of practice and overhead, and adopting new tools of management as competition from professional service firms increases.

Solo, small, mid-size and large firms all are transforming themselves through technology. Small firms are using technology to become more flexible and to compete on an even playing field. More practice is being conducted at home or at remote locations. Solo practitioners may be admitted and maintain virtual offices in multiple jurisdictions, both domestic and international.

Solo and small firms, which traditionally have individual clients and provide personal legal services, and thus are more vulnerable to the *pro se* movement, are finding that technology has opened up the latent legal market. Such firms are using the Internet to reach the large group of low- and middle-income consumers. Increasingly, members of the public and prospective clients are requesting unbundled services – limited services from lawyers for discrete single tasks, such as assistance in drafting a complaint or assistance in preparing a memorandum of law, instead of complete legal representation from the beginning to the end of a case. As noted in the Access portion of this report, clients are looking to lawyers to provide cross-disciplinary services as their needs for services arise out of life transitions that may include a need for advice from a team of professionals, from social workers to lawyers, rather than focusing on services from the individual provider's perspective.

Solo and smaller firms have excellent sources on the web to replace the need for libraries and research associates, including sites such as FindLaw, www.findlaw.com,

with a comprehensive index of links to resources in more than 30 practice areas and a growing library of free court opinions and statutory codes. Launched in July 2000, www.lexisone.com, a free service aimed at solos and small firms, features Supreme Court cases since 1790 and selected federal and state cases from 1996, some 6,000 legal forms, the Martindale-Hubbell Law Digest, and a broad collection of links to legal resources. Other sections focus on practice management, professional development, marketing and lifestyle. ("The 10 Best Legal Sites on the Web," Robert J. Ambrogi, Law Technology News, July 23,2001).

Proactive law firms are using some of the following techniques to maintain their relevance and to compete for business in the changing legal marketplace:

- Using the Internet and technology to become more cost effective in providing legal services;
- Becoming more consumer- oriented and client-driven;
- Affirmatively assisting clients who wish to litigate on a *pro se* basis and supplying unbundled legal services for clients who request them;
- Restructuring fee agreements to develop alternatives to the hourly billing rate; and
- Restructuring law offices to reduce overhead costs and unnecessary personnel expenses.

In the field of litigation, more firms are turning to mediation and arbitration as less expensive alternatives to full blown litigation. While some feel this portends a move toward litigation as a specialty practice, and eventual adoption of the British barrister/solicitor model, litigation continues to play a huge part in American law and top litigators are moving innovatively to enhance their offerings.

According to the *National Law Journal*, the latter half of the 20th century saw explosive growth not only in the number of lawsuits brought in the United States, but also in their scope, both as instruments for social change and as tools for battling large corporations. Because the outcome of such lawsuits can often make or break a company, they are termed "bet-the-company" litigation. A *National Law Journal* survey (7/30/01) outlined some of the new areas of litigation and how high stakes litigators continue to adopt new strategies to provide the best possible services to their clients. Survey

respondents identified such growing areas of litigation as intellectual property litigation, pharmaceutical litigation on a mass torts level, employment and environmental claims, and age, sex and race discrimination litigation. The lawyers adapt to multidistrict or multistate litigations by partnering with local firms, using a team management approach, employing technology to transfer volumes of documents and materials in seconds, constant sharing of information, employing top-notch public relations partners, and maintaining constant open communications with clients in a true partnership where both the lawyer and the clients agree on strategy.

Law Firm Growth and Cost Expansion

Increased competition from professional services firms and increased demands from clients for seamless service are also fueling law firm growth and forcing developing of new ways to manage overhead costs.

Gross revenue among the top 100 law firms rose an average of 19.5 percent in 2000, and profits per partner grew an average of 10.2 percent. For the second 100 firms, gross revenues increased an average of 12.2 percent while average profits per equity partner increased by 11.9 percent. San Francisco's Brobeck, Phleger & Harrison's gross revenue rose more than 50 percent, and its partners' take-home pay increased by more than a third. However, the firm has had to grow rapidly to achieve this growth, expanding 60 percent since early 1999. In 2000 alone it made 272 lateral hires, in addition to a class of 65 first-year associates, and it now has offices in 11 cities and pays starting associates a salary of \$135,000, plus a discretionary bonus as high as \$35,000. (*American Lawyer*, July 3, 2001).

One of the ways firms are managing this revenue growth is through de-equitization of partners. In the *American Lawyer* survey, in firm after firm healthy growth in revenue was paired with a decline in the number of equity partners. For example, San Francisco's Heller Ehrman White & McAuliffe last year posted a 33 percent growth in revenue and added 110 lawyers to its associate ranks, while the number of equity partners fell from 144 to 138 and the number of nonequity partners more than doubled to 38. At Morgan, Lewis & Bockius, revenue rose 20 percent with a 20.7 percent decrease in the number of equity partners. New York's Shearman & Sterling froze its equity partnership

at 163 but more than doubled its number of nonequity partners to 24. (*American Lawyer*, July 3, 2001).

Merger and practice-group acquisition were other popular methods for achieving growth in 2000. In 1995 the number of Am Law 100 firms with more than 500 lawyers was 17. Last year it was 45. (*American Lawyer*, July 3, 2001).

New proxy statements filed with the Securities and Exchange Commission show that consulting by professional services firms continues to be a huge growth area – and one in which law firms have yet hardly made a dent. Tax work, employee benefits, M&A due diligence, management consulting, SEC registration statements, litigation support, compliance – these are all potentially fruitful areas for law firms, and areas in which consulting firms increasingly compete, both in the U.S. and internationally. (*American Lawyer*, June 28, 2001)

Another area where firms are expanding is in the development of ancillary services. A *New York Times* article on May 31 this year, “Competition Sprouts One-Stop Law Firms,” noted that as competition among law firms has increased, associate salaries have skyrocketed and demand for "one-stop" shopping has grown, a small but growing number of law firms are using their twin assets of reputation and client base to move into multi-faceted services, adding nonlegal businesses as a way not only to serve their clients but also to lift the bottom line. Firms engaged in such diversification may provide anything from environmental consulting to human resources outsourcing, real estate title services to money management, allowing them to surmount potential ethical concerns by ensuring that consultants and lawyers work on the same side of a transaction, and by carefully complying with rules that govern conflicts of interest and ethics.

In 2000, the legal community saw a huge increase in associate compensation spawned in Silicon Valley as a reaction to the movement of the some of the best and brightest young lawyers to the dot.coms or e-commerce companies. The salary increases in California created a ripple effect that caused law firms in other areas to raise their associate salaries even when no similar threat of associate attrition existed. As a result, large law firms around the country were increasing their annual associate compensation by between \$15,000 and \$35,000.

To handle the slow-down in the economy in 2001, law firms are keeping their first-year associate salaries at levels set in 2000 or at the beginning of 2001, putting an

end to the latest era of massive associate pay raises. (*National Law Journal*, August 2, 2001.) Managing the cost of associates in a slower economy has also created a new pattern of practice – the shifting practice group. A *Legal Times* article on August 8, “Shift in Firm Strategies,” discusses this new approach, where firms teach transactional associates to move from the corporate side to increasingly active groups such as litigation and bankruptcy. An example of this is San Francisco-based Brobeck, Phleger & Harrison, which shifted about 30 associates from its corporate department to areas such as securities litigation and bankruptcy. Additionally, 10 associates at Brobeck have moved into knowledge management, a nonbillable administrative area where associates work on internal projects. The article notes that this is much more likely to occur with the very young lawyers – the first-year through third-year range – when they are still very flexible.

To finance these changes, a number of these firms took on significantly more debt, according to a recent study conducted by Citigroup, the leading lender to U.S. law firms.

Last year, three of the 10 firms surveyed had total "approved debt facilities" of more than \$200 million. None of the firms had that much debt exposure three years earlier. Debt facilities include long-term loans for capital improvements, revolving lines of credit that many firms draw upon early in the year to cover operating expenses while collections lag, and letters of credit firms often have to provide when renting space.

In 1997, four firms had more than \$100 million in total debt facilities. All 10 firms had exceeded that amount by the end of last year. (*Legal Times*, July 16, 2001)

Increased Knowledge Management

Throughout all of this change, law firms in the 21st century are finding that one of the most important aspects of the practice of law is harnessing the knowledge of the lawyers throughout its offices to develop core knowledge management systems and thus provide more efficient services and attract new clients. An example of an innovative system is the Dallas-based firm of Akin, Gump, Strauss, Hauer & Feld’s case-study site, designed as a repository for all future firm case studies. It currently holds one major case with a database of almost every important document in the case and more than a dozen

video clips of Akin Gump lawyers discussing case strategy. (American Lawyer Media, July 23, 2001)

In his *London Times* column of August 7, 2001, Richard Susskind noted the new internet-based networks of lawyers who are now competing with conventional law firms, citing models of virtual teams of specialist, independent, practitioners assembled to conduct particular pieces of work where the team is disbanded on completion. A recent example of this approach is ipath (www.ipath.com), a network of U.S. lawyers, each with impressive credentials and many with experience of working in-house. This method provides efficiencies and costs savings for clients, as well as a more flexible way of life for lawyers.

Another approach mentioned is where clients divide their own legal assignments into discrete packages and distribute some to regular law firms and others to networks of specialists who are more expert or offer better value for money, such as LRN (www.lrn.com), in business in the U.S. since 1994 and used by nearly 200 of the Fortune 500 companies. LRN deploys an international network of 1,700 legal experts who are able to deliver expert legal research from analyses and summaries to surveys.

Very sophisticated firms are now using deal rooms where clients can monitor the progress of their lawyers, review the documents, identify who is doing their work and review costs. Examples are London's Allen & Overy with newchange (www.newchange.com), Andersen Legal's Dealsight (www.andersenlegal.com), Linklaters Clients@Linklaters (www.linklaters.com/english/news) and CliffordChanceConnect (www.cliffordchance.com/connect). LawCommerce in the U.S. (www.lawcommerce.com) aims to create a worldwide standard for deal rooms, a common technology platform. (Susskind, *London Times*, July 17, 2001)

Even firms that are not as sophisticated in information technology, or as well-funded as the top world firms, are using technology systems to increase their efficiency and to meet clients expectation for faster, better, and cheaper. Document management, once a huge burden in large litigation cases and still a problem for many firms, is an area where new systems allow searchable online document depositories to manage the millions of documents firms need. An article in *The Recorder*, August 8, 2001, discusses CaseCentral Inc, a secure, searchable online document repository that had 80 million pages under management in 2000 and a customer base that grew 300 percent in 12

months to approximately 600. Of those clients, about 70 percent are law firms, including more than 60 of the AmLaw 100. In an average case, CaseCentral stores between 500,000 and 1 million documents. Some 35 lawyers and paralegals from at least five law firms or corporations have access to the password-protected Web site. (*The Recorder*, August 8, 2001)

For those firms that have been slower and more tentative in adapting to technology, new businesses are developing less dramatic products, using smaller legal utilities and desktop enhancement to move lawyers to technology use through programs they use all the time. One such utility, Deal Proof 3.0, can read a document and quickly provide summaries of certain arguments, and is designed to make it much easier to absorb long, complex documents such as lease agreements and certificates of incorporation. More than 125 medium-sized and large firms are now using Deal Proof. (American Lawyer Media, August 6, 2001.)

Whatever their technology levels, 77 percent of law firms are now online. In a survey of corporate America on the use of the web to find legal services, nearly two-thirds of those surveyed have gone online to locate outside legal counsel. More than one-third surf the Web for legal services weekly or more often. (*Legal Times*, August 15, 2001).

Hot Areas of Practice

An article in the *Legal Intelligencer*, July 10, 2001, noting trends in law practice, indicated that four practice areas that are still red-hot – intellectual property, technology, entertainment, and labor and employment. The number of lawyers registered to practice before the Patent Office rose more than 20 percent, to 24,100, between April 1998 and June 30, a spokeswoman said. The increase mirrors the growth of the broader intellectual property field, which also includes copyrights, trademarks and trade secrets. (*Chicago Tribune*, July 28, 2000) Also coming up as hot areas are bankruptcy and international arbitration.