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WHAT'S HOT AND WHAT'S NOT IN THE LEGAL PROFESSION

This is our 26th annual report on what's going on in the legal profession, not only in the United States but also in other parts of the world. Like all our previous reports, it is based on information we compile throughout the year from many sources – not only from clients but also from many other firms as well as general counsels, and other leaders in the profession.

As always, some of our findings are widely recognized – and have been previously noted by us – but we report them here because they continue to affect the profession. Other of our findings have not yet been widely recognized but we feel they are, or will be, significant. The resulting picture is a montage of a profession that will continue to change, not just in 2015, but for years to come

PRACTICE AREAS & INDUSTRIES

This is the total picture but it will vary by firm depending on its size, client base, nature of practice and geographic focus.

Red Hot

- **Intellectual Property.** Trademarks and Patent Prosecution have become Red Hot due to the rise of social media and the increase in branding. Patent Litigation continues to be Red Hot due to Congress's failure to address patent reform and patent trolls' continued licensing and suits. However, the most litigious troll in 2013, Acacia Research Corporation, lost a major case in July that was one of the first to apply new Supreme Court guidance about when ideas are too "abstract" to be patented. Also see Patent Reform under "Other Trends & Issues."
- **Federal False Claims.** According to one expert who has handled whistleblower cases for many years, "There has been an explosion and the number of cases grows every year. There has not been an industry that has not been affected."
- **Labor & Employment.** President Obama's August executive order regarding contractors and subcontractors who receive more than \$500,000 in federal money will further fuel an area, internationally as well as nationally, that was already Hot due to union campaigns and wage-and-hour class action suits.
- **Technology.** Will become Red Red Hot if patent reform finally occurs next year,

Hot

- **Anti-corruption.** Larger U.S. firms continue to increase enforcement of the Foreign Corrupt Practices Act, leading to more prosecutions. The U.K., China, Brazil and Canada have all enacted anti-bribery laws in the last few years and are now increasing investigations.
- **Litigation.** Most bet-the-company cases are still going to the big firms but many of the other cases are going to mid-size and boutique firms. Much of the work is still on an hourly basis although there appear to be more contingency arrangements. Also see Alternate Fee Arrangements under "Other Trends & Issues".
- **Inversion.** This will continue to be Hot unless the Administration and Congress agree on significant changes in corporate tax laws.
- **Environmental.** On the companies' side, fracking continues to be a major issue. Tom Wolf, the Governor-Elect of Pennsylvania, wants impact fees levied. On the land-owners' side, lease negotiations continue to be active.
- **Energy.** All forms including "clean."

- **White Collar Crime.** Involves many areas including government, health care, tax and intellectual property.
- **Health Care.** Adding to the heat are billing investigations and complaints from patients on HIPAA compliance along with self-reports related to privacy and security breaches.
- **IPOs.** However, this could cool off next year if the financial market stumbles again.

Getting Hot

- **Elder Law.** Although not much discussed, this area continues to grow because people need to make changes in their estate plans since they are living longer. Some firms now have paralegals who research life care facilities and retirement homes to help clients select one they can afford and that can provide the care they currently or eventually will need.
- **Gay Marriage Rights.** At least 30 of the largest firms are representing challenges to state laws banning same-sex marriage.

Will Get Hot

- **Immigration.** Now that the President has announced executive action.

HOT GEOGRAPHIC MARKETS

- **London.** U.S. firms continue to enter the market in several ways: U.S./U.K. mergers such as Sutherland and U.K. energy boutique Asbil; U.S. mergers such as Squire Sanders and Patton Boggs; and office openings by mid-size U.S. firms including Butler Snow.
- **Mexico.** Economic reforms intended to spur foreign investment continue to attract major global firms such as Hogan Lowells which has merged with a prominent Mexican firm with offices in Mexico City and Monterey.
- **Houston.** It's not just energy that is attracting new firms but also a booming deal market. Wilkie Farr & Gallagher is one of the most recent to open an office there.
- **California/Asia.** Some of the larger California firms continue to open offices in Asia, as we have been reporting, or send lawyers to various Asian countries.
- **Cleveland.** In its current 700 report, *Of Counsel* states that "The overall growth of its mid-sized firms represents a trend that emerged from the recession and continues today."

MARKETING & BUSINESS DEVELOPMENT

- **Pricing Directors.** Probably over 50% of the AmLaw 200 have created this position. In addition to being involved in developing responses to RFPs, the PD is often involved in project management. In mid-size firms, the COO may fill the role of PD.
- **Client Interviews.** Their importance is acknowledged by a slowly growing number of firms but even in some of these firms there is debate on who should conduct them: Managing Partner? Member of the client service team? Member of the Marketing department? Third Party? Our experience is that it depends on the firm's objective. To further cement client relationships, the MP is best if properly prepared. To obtain feedback on quality of work and client service, the Relationship or Responsible Partner is best. To achieve, not only the above but also obtain and evaluate meaningful information for market analysis and strategic planning, an experienced third party is best (Note: We introduced client surveys to the legal profession 33 years ago).
- **Content Marketing.** Some firms are hiring content specialists to provide material that is relevant to clients' industries and to ensure that it is reaching the correct audiences,
- **Marketing Department Recruiting.** Firms are having difficulty finding CMOs as well as senior managers and directors because many are changing firms or even leaving the profession. The reason? \$\$\$.
- **Budgets.** They are increasing, particularly in mid-size and large firms. But the challenges still remain: How to develop one and how to measure the . . .
- **ROI** of each expenditure and determine which are really working? These questions are not new. They arise – or should arise – in any professional services firm. Furthermore, it is almost impossible to definitively measure the results of certain expenditures such as advertising, community outreach programs and even coaching.

- **Welcome Booklet.** As part of its Client First In Service program, Benesch sends new clients a letter from COO John Banks along with a welcome booklet, a list of contacts for various operations areas and a questionnaire to learn the client's preferences from billing to communications to technology. An excellent start to building a strong client relationship.
- **Google, websites and LinkedIn.** According to a recent survey by Kredible, these are the three major ways in-house counsel searches for attorneys.

OTHER TRENDS & ISSUES – New, Old, Hot or Cold

- **Cybersecurity is becoming the #1 concern of law firms – as it should be.** Secrecy was one of the break-out presentations at the October Futures Conference of the College of Law Practice Management and hacking was the subject of a major *Wall Street Journal* article in late October. Then in November KPMG issued a report on its survey of 300 senior IT and HR professionals in organizations employing 300-plus staff in the U.K. Over half of these firms said they would hire hackers – and even ex-convicts! – to work with their security teams. Global banks such as J.P. Morgan Chase and UBS, in addition to recruiting cybersecurity staff, are subjecting their law firms, small as well as large, to greater scrutiny about security risks.
- **Project Management.** Red Hot because it produces efficiency, fee transparency, client value and profits. However, although it should be the #2 concern of most law firms, many have not acknowledged this yet or are having difficulty implementing it.
- **Patent Reform.** If this is passed next year – and it is *almost* a certainty – it would curb suits brought by patent trolls and therefore reduce the amount of litigation.
- **Alternate Fee Arrangements.** The abandonment of hourly billing has not yet reached the levels that have been predicted – and we believe it never will. In addition to “Value” what clients, GCs and purchasing departments really want is clarity and transparency, regardless of how the fees are structured.
- **Big firms.** A number of them are growing in size and revenue, often as the result of mergers and by obtaining more of the remaining amount of premium-priced work. As a result, profits per partner in these firms are growing. But other firms are having more trouble than they admit. Some will have to merge or be acquired. Latest example: Bingham McCutchen.
- **Mid-size and smaller firms.** Our report last year still holds; They are receiving more work that used to go to big name firms. The reasons? 1) Many smaller firms have partners and associates who were trained at the country's biggest firms: 2) Their rates are lower - often 30-40% less; 3) For the most part, lawyers at these firms pay more attention to their clients' needs and desires than those at the large firms.
- **Legal Services Providers.** Although employers have added about two million jobs this year, the total number of paralegals, legal consultants, processors and patent agents has declined 2,000 since January and 45,000 since the pre-Recession record level set in May, 2007. This picture seems inconsistent with the dramatic increase in work now being performed by non-lawyers.
- **Contract and Temporary Lawyers.** Their number continues to increase in firms of all sizes.
- **Leverage.** The traditional ratio of associates to partners – the pyramid – continues to decline in many large and some mid-size firms. But if *all* timekeepers, including not only associates but also paralegals, contract and temporary lawyers are included – as they should be – the pyramid may actually be larger and more significant than ever because, in most matters, it is not the partners but other timekeepers who produce profitability.
- **Measuring profitability.** The traditional measures such as Realization (fees billed or collected), PPP (profits per equity partner) and RPL (revenues per lawyer) are now being questioned. Some experts favor a form of cost accounting which is really P&L accounting. This can work for the firm as a whole but is problematic when applied to individual offices, practice groups, matters and a lawyer 's “book of business” because of differences in how to allocate indirect costs and whether to use cash or accrual accounting.
- **Succession Planning.** The importance is widely recognized, particularly for Managing Partners and client responsibility. Implementation is the challenge for many firms.

- **Partner Compensation.** Due to pressure to grow, more firms are weighting origination more heavily. However, there are other responsibilities some partners, equity and even non-equity, must assume i.e., managing the firm; managing practice groups; and the training and development of younger lawyers to note just a few.
- **Growth.** Many firms, regardless of size, measure growth by the increase in the number of lawyers. But there are other, more important metrics that must be measured: Revenues. Profits. Number of new clients. Additional work for current clients. Development of new practice areas.
- **Mergers.** Will continue to be Hot but few, if any, will be close to the size and complexity of Morgan Lewis & Bockius's deal with Bingham McCutchen, which was actually a 600-lawyer acquisition. There are issues yet to be resolved but, as Jeff Blumenthal commented in the *Philadelphia Business Journal*, "It has caught the attention of peers around the world."
- **Expanded role of in-house counsel.** Not only is less work going to outside counsel but in-house counsel in many corporations have gained a major, and still growing, role in corporate governance. Sound familiar? The outside lawyer for many small and family-owned businesses is often also the "trusted business advisor" and a member of the Board. But in major corporations the GC is now faced with difficult choices and challenges to his/her independence and, in the words of Paul Hastings partner Bruno Cova, "It is a battleground which is here to stay."
- **Non-Lawyers.** This is one of the biggest changes that has been occurring in the legal profession yet many firms still refuse to recognize and adjust to it. For more than a decade, law firms have been increasingly hiring non-lawyer executives as COOs and, well before that, to run marketing, technology, finance and human resources. More recently they have been given responsibility for the cost-effective delivery of certain non-legal services such as database searches and document management. Now, in the last two years, non-lawyers are being hired to oversee knowledge management and project management.
- **Law schools.** Although the ABA's national report has not yet been released, there is indication that total enrollment increased this Fall. However, at many schools, it is still below the levels of several years ago. Meanwhile, as we reported in our Midyear Update, some schools have continued to cut tuition while others have started to introduce changes in the curricula to include courses in technology and, at Yale, a course based around French economist Thomas Piketty's work, "*Capital in the Twenty-First-Century*".
- **Entry level hiring.** Had increased roughly 4% for the class of 2013 nine months after graduation but it is still below that of pre-recession levels. Since law schools do not create the market but must respond to the level of entry level hiring, the future for the class of 2015 with private law firms is still uncertain. GCs won't pay for training new associates. Furthermore, as discussed above and in our October *Legal Communique*, they are keeping more work in-house. This could mean the future for more law school graduates may lie with corporate legal departments, not law firms or in public service.
- **Shadow Billing.** Even though an AFA has been agreed to, the client asks for a record of what the fee would be if billed by the hour. This can indicate a lack of trust on the client side and invite deception on the firm side.
- **Women in the profession.** When Jami Wintz McKeon became chair of Morgan Lewis & Bockius October 1, it became the largest U.S. law firm led by a woman. But the percentage of women leaders as well as partners in Big Law firms is still low when compared to the percentage of women in law school graduating classes. Furthermore, women still earn less than men.
- **Campus Accountability and Safety Act (CASA).** Two separate measures were proposed last July to deal with sexual assault but, unlike patent reform, passage is not guaranteed.
- **Culture.** Despite being a much-emphasized issue, there is considerable confusion as to what constitutes a firm's culture and how to go about changing it if firm leaders feel it is needed.
- **Commodity Work.** Some firms refuse it because of the low rates. Yet it is a major part of the practice in other firms that have learned how to do it efficiently and profitably.
- **Uniform Bar Exam.** The New York Court of Appeals has postponed its plan to replace the state bar exam with a national one. One of the reasons may have been because the court wanted a standard grading system whereas each of the 14 states that accept the UBA may set their own passage score.

- **Psychological testing.** There are reports that more firms are requiring it for firm leaders as a condition for their appointment.
- **Debt collection firms.** In July the Consumer Financial Protection Bureau filed its first suit against a debt collection firm in Georgia, accusing it of violating federal consumer-protection laws. Legal specialists say this indicates the Bureau's intent to target similar high-volume firms as well as banks and debt buyers,
- **Litigation Funding.** The historic restrictions on companies that invest in law suits in exchange for a cut of the proceeds if their side prevails have been relaxed or even abolished in several states such as Texas, South Carolina, Massachusetts and Florida. This follows the trend that began over ten years ago in the U.K. and Australia.
- **Partner Compensation.** Prior to the Recession, 4:1 was regarded as a healthy spread from highest to lowest. According to a recent AmLaw report it is now just under 11:1. The principal reason for this is some firms, desperate to increase business, are continuing to recruit rainmakers from troubled firms and guaranteeing them higher compensation than their current partners are making.. That can produce unintended results. One example: Dewey & LeBoeuf
- **Starting salaries.** They've been declining at many of the larger firms. The National Association of Law Placement reported that in 2009 associate salaries of \$160,000 accounted for nearly 67% of first-year salaries at firms with 700-plus lawyers. This year they accounted for only 27%. Furthermore, the amount varied with the part of the country. While it was \$160,000 in the Northeast, it was \$145,000 in the West, \$125,000 in the South and \$110,000 in the Midwest.

THE OUTLOOK?

Starting with the recession there has been an increasing malaise within the legal profession due to a number of developments – the oversupply of lawyers, increasing competition and clients who are more demanding, to mention just a few. What they all add up to is change – and uncertainty about the future.

But there is nothing new about change. In fact, there is an old adage, “The only constant is change.”

When I began my consulting practice almost 40 years ago, most of my clients for the first several years were accounting firms, including two of what was then called “The Big Eight.” At that time, public accounting was undergoing many changes and there was considerable uncertainty and concern about the future of the profession. Many of the trends and issues that accountants had to address at that time were the same as the legal profession has subsequently been facing, including the above plus services provided by “non-accountants,” client pressure on fees, and the ownership and management of firms.

The accounting profession addressed the need to change, did so and has survived, stronger and more profitable than ever. The legal profession can do the same.

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