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

This – our 27th annual report on what's going on in the legal profession – has been the most difficult of all these reports to write because of the continuing and sometimes conflicting changes in the profession which many firms still have not recognized or accepted. As always, it is based on information we compile throughout the year, not only from clients and many other firms but also from surveys, legal departments and providers of legal services and support to law firms and their clients.

As with all of our past reports, some of our findings are not new but we include them because they continue to affect the profession. Other findings have not yet been widely recognized but we feel they are already having or will have a significant impact. The resulting picture is a montage of a legal profession that will continue to change, not just in 2016, but for years to come

PRACTICE AREAS & INDUSTRIES

Red Hot

Cybersecurity. In large firms where security is also a red hot operational issue which it should be in all firms.

Regulatory. Due to continuing increases in government regulation in many areas, not just OSHA. This is a major concern of general counsels and corporate management.

Hot

White Collar Crime. We classified it as getting hot in our midyear report. The Justice Department has since launched a program on prosecuting, not only corporations, but also individuals for corporate and financial malfeasance.

Labor & Employment. Will become red hot for many reasons including increased OSHA enforcement in the construction, oil and gas industries and teachers unions ramping up efforts to organize charter schools.

Mergers & Acquisitions. For those firms that already have a strong practice. This will continue unless the economy stumbles.

Elder Law. Although not discussed much, this area continues to grow because people need to make changes in their estate plans because they are living longer.

Health Care. But see "Industry Groups" under "Other Trends and Issues."

Technology. But see "Industry Groups" under "Other Trends and Issues".

Gay Marriage Rights. In states that ban same-sex marriage.

Immigration. In firms that already have this practice. It could get red hot even before the election.

Financial Services. But see "Industry Groups" under "Other Trends and Issues"

3D Printing/Disruption. In the firms that have this practice.

Getting Hot

Real Estate & Construction. Commercial has become hot in many parts of the country. Residential will continue to be have mixed readings even after interest rates rise.

Pro Bono. Firms want to give back to their communities and they also need work to take on more work to train younger lawyers whom clients will not pay for.

Warm

Alternate Dispute Resolution/ADR. Has been around a long time and is a cost-saving alternative to litigation.

Energy. Will become hot again as the movement against fossil fuels continues and oil prices rise.

Cold

Bankruptcy. As it always is until the economy takes a turn for the worse.

Mixed Reading

Environmental. It is surprising to us how this varies in different parts of the country
Intellectual Property. Patent Prosecution and Trademarks continue to be at least warm if not hot because of the continued growth of social media and branding. However, the picture on Patent Litigation is mixed. Some surveys of legal departments conclude that it will cool down in 2016. However, while a few IP firms and litigators expect that two SCOTUS decisions may eventually reduce the amount of patent litigation, they all report heavy case loads. In addition, patent trolls continue to file suits and the pharmaceutical industry is the source of much patent litigation.

Commercial Litigation. Except for “bet-the company” cases, many major firms have been reporting declines. There are at least four reasons for this: 1) Corporations have been increasing the size of their legal departments and are handling more cases themselves; 2) Clients are more prone to settle out of court to save cost; 3) Non-law service providers are doing more discovery and document management and some of them are also providing other services – all at less cost than firms can afford to charge. 4) Growing use of technology such as 3D Printing. *These are irreversible trends but many firms still have not recognized them.*

New practice areas. See “New Sub-specialties” under “Other Trends & Issues.”

HOT GEOGRAPHIC MARKET

Washington D.C. A number of firms have opened offices there and others are expanding existing offices due to continued increases in government regulations and enforcement as well as in public affairs and lobbying work.

MARKETING & BUSINESS DEVELOPMENT

Pricing Directors. Usually based in the Marketing/BD department, they continue to be hot in AmLaw 200 firms. In addition to being involved in developing responses to RFPs, the PD is often involved in project management. In the mid-size firms that have addressed the issue, the COO usually fills the role of PD.

Marketing Technology Specialists. They are also getting hot in AmLaw 200 firms.

Responsive Web Design (RWD). Currently a hot issue among marketers but may cool down as firms recognize that effective web sites are more about content and delivery than they are about design.

Client Interviews. As we reported at midyear, their importance continues to be recognized but there is debate on who should conduct the interviews. My associates and I introduced client surveys to the legal profession over 30 years ago. Our experience is that who should conduct the interviews depends on the firm’s objective. If it is to cement client relationships, the Managing Partner is usually the best person if he/she is properly prepared. To obtain feedback on client service and quality of work, the Relationship/Responsible Partner is usually the best. To obtain and evaluate meaningful information for market analysis and strategic planning, the CMO or qualified outside third party is best.

Social Media. Except for Facebook, it continues to be hot. Blogs and firm websites are still among the most effective online means for reaching in-house counsel and potential clients but some marketing experts say they may soon be surpassed by . . .

Content Syndicators and Aggregators such as LinkedIn, Mondaq and JDSupra to push content to other sites and services.

Advertising, Whether it’s online, print, TV, radio, billboards or bus exteriors, it is still the principal marketing strategy for personal injury lawyers as well as others.

Video News Broadcast. In October Epstein Becker & Green announced the launch of a weekly video news broadcast called “Employment Law This Week”. It will be anchored by a partner and supported by a production team that includes six other attorneys.

“**Super Lawyers**”, “**Best Lawyers**”, “**Leading Lawyers**” lists proliferate but because the firms and lawyers pay to be on many of these lists – which most of the public doesn’t know – they are really advertising. Therefore, the question for these and all other marketing expenditures is . . .

What is the ROI? “ Marketing legal services is not the same as advertising soup or cereal where sales can be compared to expenditures. Except for personal injury cases or when a firm is marketing a “packaged service” such as a simple will or uncontested divorce, most online marketing is still about building a reputation and firm brand.

Chief Marketing Officers. In many large and some mid-size firms, the position continues to become more strategic in both operations and in driving firm growth plans. But the problem is that, while CMO’s are being given increased responsibility in many firms, few give them the authority they need to be as effective as they could be.

Sales Professionals. Some firms have employed non-lawyers to make contacts and develop leads. It took accounting firms several decades to achieve worthwhile results from this strategy. Even with all the changes occurring in the legal profession, this is one strategy that has not been successful and may never be in our lifetime. However . . .

Business Development Training and Coaching can be productive, especially for younger lawyers.

Lateral Hiring continues to be one of the hottest growth strategies in mid-size and, of course, large firms. But the results, i.e., new clients and growth, are often not as expected.

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

Cybersecurity. As noted under “Practice Areas”, this is also a red hot operational issue in large firms. It should be in all firms.

New practice area sub-specialties. A number of new ones have surfaced in a small but growing number of firms. Some examples: 3D Printing, Drone Law, Brand & Digital Governance, Biometric Recognition Technology and Social Media Defamation.

Industry Groups. Two years ago we reported that a few firms were forming industry groups as opposed to practice groups. This trend has slowly gained momentum. Recently Schwabe, Williamson & Wyatt reorganized its practice structure into six industry groups: Technology, Health Care, Real Estate & Construction, Ports & Transportation, Manufacturing & Distribution and Natural Resources. However, in defining this as a “go-to-market strategy” Schwabe, like the other firms that have adopted this structure, has recognized that industries are really broad marketing groups that include *multiple* practice areas and what recognized authority Patrick McKenna calls “sub-industries”.

Some examples:

Health Care includes at least 15 areas such as finance, regulatory, labor & employment.

Financial Services will include banking, IPOs and regulatory among other.

Technology will include patents, regulatory and telecommunications.

Project Management. Continues to be Red Hot because it produces efficiency, client value, fee transparency 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.

Alternate Fee Arrangements continue to be more widely used. Some firms say they are easier to negotiate and budget but many still feel that all clients want are just lower fees. This is true to some degree but the major issue, whether hourly or alternate fees, is that *there is an overall reduction in the legal spend*. Many firms still don’t get it.

Millennials. Hiring, training and retaining them, staff as well as lawyers, will continue to be a challenge because many of them chafe against the historic law firm culture. Yet they are the future of the legal profession.

Outside/Non-Lawyer Service Providers. As noted above under Litigation, they continue to grow in number and in the breadth of services they provide. Furthermore, they are not providing services just to law firms. Legal departments are increasingly retaining them directly and bypassing law firms for work because their fees are lower.

Recruiting. According to a midyear report by Robert Half Legal, recruiting skilled lawyers is even more difficult. Half stated that the greatest need is in civil litigation, particularly insurance defense, followed by what it refers to as “general business”.

Departures. Although, as noted above, lateral hiring continues to be a hot growth strategy for many firms, most of it is at the partner level because firms want the book of business laterals can bring with them. However, fueled to a great degree by the expansion of corporate legal departments, associates and even partners who do not have a large book of business are leaving firms to join legal departments. Why? The workload is generally more consistent without the pressure to record high billable hours and originate business – and the compensation is more consistent. Translation: The quality of life is better.

Start-up law firms. Because of the continuing tight market for new lawyers, as well as to make legal services more affordable, law schools in California and several other states are funding start-up firms.

Business Training. Skadden Arps continues to be among the firms that provide basic business training including finance, accounting and valuation to first-year associates. Harvard is among the first law schools to offer management courses.

Mindfulness Movement. There are now reportedly at least two dozen law schools that offer for-credit courses in the Zen-inspired blend of meditation, breathing exercises and focus techniques that are supported by companies such as Google and General Mills. At least one law firm and the legal department of a major corporation retain a mindfulness coach.

Debt. Historically law firms have not incurred debt to provide cash when needed but have used short-term lines-of-credit and capital contributions or buy-ins from equity partners. Now, alarmed by the collapse of Dewey & LeBoeuf almost four years ago, large U.S. firms have considerably reduced their bank debt even further and are leaning more heavily on their equity partners to provide capital. As a result, more partners are taking out bank loans to provide this capital which effectively shifts debt from the firm to them.

The accountants are coming! In the last decade, accounting firms have been quietly but steadily building their legal services divisions. According to *The Economist*, they have focused on “mid-tier, process-oriented work rather than the big deals and lawsuits that elite law firms chase.” Of course, they can’t practice law in the U.S. or in most European countries. However, as we reported two years ago, several countries – notably Britain, Australia and also Mexico – have authorized multidisciplinary practices (MDPs) which allow attorneys to share profits, without restriction, with members of other professions. Since then the Big Four – Deloitte, PwC, EY and KPMG – have been buying small law firms, hiring partners from other firms and recruiting on campuses. Rather than trying to build full-services practices, they are concentrating on areas of law that complement their existing services such as immigration which fits with expatriate tax work, labor which fits with human resources consulting and compliance, commercial contracts and due diligence.

Bar Exam Scores. The average score on the summer exams reached its lowest level since 1988. Law school deans have said the test was unfair and that a software glitch made it harder to submit test results. The President of the National Conference of Bar Examiners, which created the multiple-choice section of the test, replied that law schools have been admitting students with lower qualifications who may encounter difficulty in taking the exam. And of course applications to law schools continue to decline.

Foreign Laws. Supreme Court justice Stephen G. Breyer has written a new book in which he argues that there is a growing need for judges and lawyers in the U.S. to take foreign laws into account as they seek to resolve disputes that arise, not only in the U.S. but also abroad.

Legal Operations. A growing, multi-disciplinary field that blends technology, business skills and legal expertise. General Counsels in companies such as Cisco, Google and Oracle are giving experienced professionals the authority to improve legal department performance including the hiring and managing of outside counsel. By utilizing data, process and technology, their mission is to make lawyers more productive.

Practice Economic Group PEG. A group of attorneys at Bryan Cave that work outside the traditional partner-associate model, It developed from a cost-accounting system and IT platform to track the firm's WIP, collections and profitability. It now enables the firm to develop alternative-fee arrangements and make a reliable profit.

Mergers. They will continue although not quite at the rate of earlier this year.

Succession Planning. More discussed and more needed than ever for the future of firms and the profession. However, there appears to be a dearth of interested candidates among the younger generations in the profession.

SO "WHAT'S IT ALL ABOUT, ALFIE?"

As we were in the midst of preparing this report, one of my collaborators said to me:

"From where I sit, all I'm hearing is "change!"

"We've gotta change".

"We are experiencing a tsunami of change".

"The profession is experiencing radical change".

"And yet, as far as I'm concerned, we ain't seen nuttin yet."

Those comments sum up what we have reported here while pointing out examples – but by no means all – of the developments, trends and issues that are affecting and changing the legal profession. But the question in my mind, and in the minds of some far-sighted people – is Will the legal profession survive?"

Yes, I believe it will if the members of the profession follow the message my late father-in-law constantly repeated to his family:

"Do what you have to do, when you have to do it, whether you want to do it or not."

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