

# RD LEGAL COMMUNIQUE...

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*Management, Strategy and Leadership*

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## MIDYEAR UPDATE

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

As in all our previous annual reports and midyear updates, this report is based on information my colleagues and I continually gather from many sources – law firms, other providers of legal services, legal departments, surveys and both the legal and general press. Some of our findings are obvious while others are not but we believe they may become significant. *What is most important to recognize is that not every item under Practice Areas and Industries will apply to every firm because of the firm's size or geographic location.*

#### **PRACTICE AREAS**

##### Red Hot

- **Health Care** and almost every other practice area involved regardless of what happens to health care reform.
- **Cybersecurity.** Will continue to be the number one issue for in-house counsel and consumers.
- **Immigration.** Obviously.

##### Hot

- **Energy.** Oil, gas, electrical and now coal while alternative energy will continue to cool down.
- **Financial Services** if the increasing wave of IPO's continues. Also the Fiduciary Rule will be applicable June 9.
- **Intellectual Property.** A recent Supreme Court ruling could significantly shift patent-infringement lawsuits out of a handful of federal districts to other jurisdictions. The Court also reaffirmed last week that patent holders can't keep their rights over a product once they sell it and the U.S. Patent and Trademark Office has expanded the Global Dossier program to include access to more patent applications worldwide.
- **Elder Law.** Not just due to demographics. The scope has increased to include many forms of advising.
- **Mergers & Acquisitions.** The number of deals will continue to be high but the total dollar value will probably continue to be relatively low because many are mid-market and smaller.

##### Warm

- **Labor & Employment.** But can get Hot due to the DOL's effort to rescind the Persuader Rule and companies' efforts to hire students and other young people may be challenged as unlawful bias against older job applicants.
- **Environmental** assuming Trump's efforts to eliminate or roll back regulations are successful.
- **Tax.** But will become Red Hot if tax reform is passed.

##### Cool

- **Commercial Litigation.** Now also in MidLaw firms as well as BigLaw.

##### Mixed Reading

- **Real Estate & Construction.** Commercial is still Hot but residential is erratic.

##### Cold

- **Bankruptcy.** Some firms have already dropped this area.

## INDUSTRIES

### Hot

- **Automotive.** Constantly changing regulatory, legal and technological developments as well as changes in consumer demand are just some of the challenges facing manufacturers.
- **Manufacturing & Distribution.** 3-D Printing and blockchain are just two of the reasons.
- **Food & Beverage** because of increased labeling, ingredient and testing requirements.

## MARKETING & BUSINESS DEVELOPMENT

**Note: In addition to long-recognized areas such as social media, blogs and client feedback, there is a proliferation of activities, old and new, proven and unproven. Since these are discussed in many other reports and other consultants' postings, we feel it would be redundant to list them here.**

## OTHER TRENDS & ISSUES

- **Third-party litigation financing** continues to increase but recent developments indicate that courts, rules committees and possibly even Congress may be leaning toward mandatory disclosure in civil litigation.
- **Digitization.** Although there are more vendors than ever providing technology solutions to increase efficiency, productivity and profits, the results have not consistently matched the investment for two main reasons: 1) Firms generally do not identify the underlying problem and 2) Even when they have, they do not implement the identified solutions – some of which are not about technology,
- **Remote Working.** Following the long-time example of many businesses and after an extensive test run, Morgan Lewis just launched a new “Remote Working Program” that gives associates who have been with the firm for at least two years the opportunity to work outside the office one or two days a week. This is a wise step to accelerate associate development.
- **Re-entry programs for women lawyers.** Davis Polk and Morgan have both recently launched programs to welcome back, and even search for, women lawyers who have taken a break from practicing law for one reason or another. A brilliant and much-needed initiative.
- **Mandatory pro bono.** California recently rejected a proposed bill that would have required new lawyers to log a minimum of 50 hours of pro bono work before being admitted to the bar. This leaves New York as the only state with this requirement even though it makes legal education and licensing more expensive. Some dreamers say it would be wonderful if all lawyers were required to do some pro bono work each year – but of course that will never happen.
- **Alternative legal service providers (ALSP's)** continue to grow in number and breadth of services. Thomson Reuters Legal Executive Institute recently reported that they are used by 51% of law firms and 60% of corporations. We have noted that they are also being used by an increasing number of individuals for certain matters that do not really require a lawyer. Also see “Non-legal subsidiaries” below.
- **Artificial Intelligence.** It's use is slowly increasing, not just in technology practice, but also to identify and develop growth opportunities.
- **Limited License Legal Technician (LLLT),** a concept based somewhat on that of the nurse practitioner in medicine. Right now it is only approved in the state of Washington for family law with three years of education and the passing of three different exams but the WSBA Board of Governors has now voted to make LLLTs members of the bar and has also designated a seat for an LLLT on the Board of Governors. This provides an opportunity for paralegals and is worth watching.
- **Non-legal subsidiaries.** 15 years ago several hundred firms, including some of the major ones, owned and managed them in a variety of industries. Then the trend died out. Will it return? Will some law firms form an ALSP as a subsidiary?

- **Law firm networks.** 20 years ago there were only a few. Managing Partner Forum recently reported that there are now more than 170 such organizations and that more are on the way,
- **Virtual law firms.** According to the 2016 ABA Legal Technology Survey report, 67% of solo-to-nine attorney firms work primarily from a home or virtual office.
- **Growth strategies.** Faced with increasing competition from ALSPs as well as legal departments, firms are increasingly turning to . . .
- **Lateral hires** although the success rate reportedly still remains less than 50% and . . .
- **Mergers & Acquisitions**, most of which are really acquisitions of smaller, and even *small*, firms by larger ones. These increase the revenues, and sometimes the profits, of the acquiring firm but not the overall size of the profession.
- **Bar Passage Requirements.** Last December we reported that, because of pressure from the Department of Education, the ABA was considering a mandate that at least 75% of accredited law schools' alumni pass the bar exams within two years of graduation. However, at its Midyear meeting in February, the House of Delegates did not approve the measure. Nevertheless, this issue is far from dead.
- **Online degree program.** The approval of a three-year program, requested by the Syracuse University College of Law, has been initially rejected by the ABA. This leaves the Mitchell Hamline School of Law in Minnesota as the still the only one to have ABA approval. But watch for this issue to continue as law schools look for ways to increase applications.
- **The Big Four.** Although, as we first reported a year ago, accounting firm Deloitte has stated it has no plans to enter into the legal market in the U.S., all of the Big Four continue to increase their legal practices and hire lawyers in other countries.
- **Practice and Industry Group Management** continues to be gaining increased emphasis as more firms recognize that these are the key to growth and that big rainmakers often do not have the skills required to be effective group leaders.
- **Generational differences** continue to be a challenge in firms but they can learn how to cope with the issue if they take lessons from certain companies and organizations.
- **The Outlook.** When all is said and done, the biggest threat to law firms is the continued growth of in-house legal departments and the increased number of services they provide. Law school graduates are also gradually recognizing this is their best opportunity for employment.

### *Bob Denney*

*Bob is a recognized authority on management, strategy and leadership. He often describes himself as a “doctor – a business doctor” – whose “patients” are law firms and corporations throughout the United States and parts of Canada. For companies he also often serves as an outside Director and has occasionally served as an Interim CEO in crisis and turnaround situations. More information and copies of prior Communiqués is available on his website [www.robertdenney.com](http://www.robertdenney.com).*

