

Looking at Lawyers' Work Through Clients' Eyes

"The Chinese use two brush strokes to write the word 'crisis.' One brush stroke stands for danger; the other for opportunity. In a crisis, be aware of the danger - but recognize the opportunity." -- John F. Kennedy

"Business as usual" is over. As Bob Dylan famously sang, the times they are a changin'. For years, law firms have enjoyed record profits in spite of their [resistance to effective management](#). Now that the boom has given way to revenue drops, suspension of partner draws, office closures, layoffs, and even law firm dissolutions, firms will have to confront the broken systems and dysfunctional practices that they should have fixed during better times. The question is no longer whether they will change but how drastically and in what directions. Law firms that embrace change will be better positioned to survive the current turmoil and come out stronger.

The key is adapting to environmental pressures. After all, as Darwin explained, it is not the strongest of the species that survives evolution, nor the most intelligent, but the one that is most adaptable to change. One area of escalating pressure to change is the way lawyers work and how they charge for the work they do. For many years, the billable hour-based economic model has been undermining the trust that is fundamental to attorney-client relationship. Law firms' emphasis on maximizing profits by continually increasing hours and rates has generated unnecessary tensions between law firms and their clients.

Increasingly, corporate clients are challenging the dominant law firm model, and [many law firm leaders agree](#) that new models are needed. Some law firms are using new approaches to work and fee arrangements that acknowledge the underlying conflict and creatively address clients' concerns. One law firm that uses a variety of billing options has gone so far as to proclaim on its web site, "[The billable hour is dead.](#)" Although the current hours-based model is unsustainable in its present form, that obituary is premature. Alternatives are becoming increasingly popular, but hourly billing is not obsolete.

In and of itself, billing by the hour is not the problem. Hourly billing often makes sense and can be cost-effective. The problem is that the incentives in the prevailing model are all in the wrong direction. To be profitable, lawyers need to do more, bill more and charge more. When a firm's profitability depends on maximizing the hours billed, then greater efficiencies (which may reduce billable hours) cut into the firm's profits. This model arouses clients' suspicion and distrust in normal times but it can be disastrous to the attorney-client relationship when the economy sinks.

Firms can - and must - restore the trust and good will that are fundamental to strong attorney-client relationships, no matter how they charge for their services. They can do it by thinking innovatively about how to provide outstanding service efficiently and be highly profitable at the same time. The critical first step is to look at the services they provide, and the costs of those services, through the client's eyes. This will require firms to transform how they think and operate by:

- Redefining productivity
- Empathizing with clients
- Restructuring what lawyers do and how they do it

Only by shifting their perspectives in this way can law firms demonstrate that they are committed to the clients' well-being, not just their own.

Redefining productivity

Let's get one point clear: Clients do not buy hours. They buy legal services that produce solutions to their problems. One of the reasons for the erosion of trust (as well as [erosion of self-respect among lawyers](#)) is that law firms operate as if they are in the business of selling hours. They are not. They sell professional services and they charge for those services by the hour.

Because of this misperception, law firms tend to measure - and reward - lawyers' productivity by the number of hours they bill. Those who bill ("produce") the most hours are deemed to be the most productive, and their bonuses reflect it. This thinking runs directly counter to the interests of clients.

Productivity is the ratio of output to input, or how much is produced per hour of work. Enhanced productivity is the ability to produce more with the same or less input and to extract the most value out of each hour of work. The most productive lawyers are not those who bill the most hours, but those who can capably produce the requisite services most efficiently - i.e., in the fewest hours. Firms that do legal work on a fixed fee or contingency basis understand this point well.

Another aspect of productivity in legal services is the quality of the work performed. All lawyers believe they provide high quality service, which they think of primarily in terms of legal knowledge and technical virtuosity. But clients measure quality in terms of the value they receive for the money they pay. To a client, value includes speed, predictability, and efficiency. With hourly billing, they frequently fail to see the correlation between fees and value.

Law practice is, of course, a business, and businesses try to maximize profits. Clients do not mind that law firms make a profit; to the contrary, they expect it. But from the client's standpoint, a law firm is not entitled to make a profit simply for doing legal work. To clients, the firm's profit is a reward for doing that work well *and being efficient*. Clients want to know that each timekeeper billing on the matter is adding value to the enterprise, and they want the firm to do only what is necessary to produce the desired result as resourcefully and inexpensively as possible.

Several new firms are developing work and billing methods that are efficient, effective and make economic sense to clients. Some are appealing directly to clients' interests in cost containment by emphasizing savings through low overhead (e.g., [Virtual Law Partners](#)) or fixed fees (e.g., [Exemplar Law Partners](#), which touts "No hourly bill. No hourly bull."). One litigation firm, [Valorem Law Group](#), offers online resources to enhance collaboration and case management, alternative fee structures, and a "Value Adjustment Line" on all invoices, enabling the client to adjust the firm's fees if they choose to do so.

Firms like these are trying to align their interest in profitability with their clients' interest in high quality service for a lower price. To make it work, these firms need a solid understanding of the work to be done and how much time, effort and expense it will take. Then they can propose a fee structure, present a plan for achieving the client's desired outcomes, and explain the reasons for proposed courses of action or staffing decisions if their value is not readily apparent to the client. The process is a good one whether the fees are fixed or by the hour.

Empathizing with clients

Many business clients can no longer afford to pay top rates or allow outside counsel to operate without careful oversight. Their legal departments are being forced to reduce costs, and legal services from outside firms are a prime target for reduction. Some companies will do more work in-house and give less to outside counsel. Outside law firms will find themselves competing for less work, which will put a downward pressure on fees.

Recent and ongoing failures in banking, real estate, automotive, and other industries may also depress legal fees. Many investment banks and other big spenders of the past are gone or transformed. Previously well-off companies have been acquired, merged, or dissolved, or have acquired the US government as a major shareholder. In all these cases, spending for legal services may be subject to new constraints.

After years of almost automatic annual rate hikes, many law firms seem to feel entitled to a yearly fee increase regardless of the market or their clients' financial condition. They apparently think they are immune from the problems afflicting their clients. A recent [American Lawyer survey](#) of Am Law 200 managing partners found that 98% of the responding firms plan to raise billing rates in 2009. It is so extraordinary for law firms to refrain from rate hikes that firms can garner national publicity simply by [announcing a rate freeze](#).

Perhaps law firms' intended 2009 rate increase is simply a defensive tactic. Firms may be positioning themselves for anticipated client pressure to reduce rates later in the year. They may think that raising rates now will put them in a better bargaining spot when they have to start negotiating price reductions later. While this may be a legitimate maneuver, lawyers trying to fortify their clients' trust in them and loyalty to the firm might instead consider approaching fee discussions with a more empathic mindset.

It isn't hard to find out what clients are thinking: all lawyers have to do is ask. But the same AmLaw 200 survey noted above suggests that this kind of communication is not occurring. The survey found that in the past year:

- 54% of managing partners had met with *fewer than five* of their firm's top 20 billing clients to discuss the client's satisfaction with the firm's performance, and
- Only 18% of the responding managing partners had met with more than half of their top 20 clients.

No wonder clients feel that law firms' preoccupation with their own profits exceed their concern about serving their clients' interests.

Corporate clients have taken the initiative to make their concerns heard - and have invited lawyers to join them in developing new models and fee structures for legal services. The Association of Corporate Counsel has launched the "[ACC Value Challenge](#)" with the goal of "reconnecting value to the cost of legal services." The ACC Value Challenge brings together law firms, law departments and academics to formulate new law firm models, approaches to lawyer training, and methods of cost management that are better aligned with what clients want and need:

value-driven, high-quality legal services that deliver solutions for a reasonable cost and develop lawyers as counselors (not just content-providers), advocates (not just process-doers), and professional partners.

The Value Challenge provides numerous programs, discussions of best practices, electronic toolkits, and other resources that support law firms who share the ACC's goal. It is an important initiative that should lead to the development of new ways for law firms to deliver legal services that are both cost-effective and profitable.

Restructuring what lawyers do and how they do it

Although client pressure on law firms to contain costs may sound ominous, it is not a gloom-and-doom scenario. These pressures actually present many opportunities to streamline legal work, increase productivity and improve financial performance. Two areas ripe for innovation involve disaggregation of legal services and knowledge management.

Disaggregation

Disaggregation means dividing up legal services into component parts and aligning work processes and personnel for maximum effectiveness and efficiency. A significant part of disaggregation involves outsourcing certain kinds of legal work to specialized vendors.

In his new book, *The End of Lawyers?* (Oxford University Press, Dec. 2008), legal futurist Richard Susskind does not suggest that lawyers will disappear, but rather that the roles of most lawyers will change dramatically. He believes that the work lawyers do today will eventually break down along a spectrum ranging from highly customized and very expensive services (which he calls "bespoke" services), to "commoditized" services that do not even need a lawyer and will be cheap or even given away free. Commoditized work of this sort will likely appear in the UK over the next few years when the UK's Legal Services Act will no longer restrict law firm ownership to lawyers and will permit new types of legal service firms known as "alternative business structures." It is possible that some of the routine work done by lawyers today will soon be available at London supermarkets.

Most law firms believe that the work they do tends more toward the "bespoke" than the "commoditized" end of the spectrum. Accomplished lawyers want to do work that is "cutting edge," highly specialized, or unique. Lawyers insist that their work is so complex, specialized and customized that it cannot be disaggregated, standardized or outsourced. However, while there will always be a need and a place for lawyers who do high-powered, high-prestige work at premium rates, it is clear that much of what lawyers now do can be done less expensively by other well-trained individuals and specialized companies. Many of the services that law firms now provide, such as managing documents in litigation or due diligence, are being done by new vendors like [NovusLaw](#), which markets itself as "*The Compelling Alternative for Routine Legal Work*," and promises to do that work "faster, better, cheaper" than a full-service law firm. Recent articles in *Corporate Counsel* and the *Wall Street Journal* featured the variety of legal work that is being outsourced to India. Both noted that the amount of work being outsourced is growing rapidly as is the sophistication of the work.

Rather than fret over the loss of legal jobs, firms ought to be considering how to break down what they do into systems, projects and steps that are suitable for new kinds of staffing. That might lead to new roles for lawyers who prefer staff attorney positions with more circumscribed time and work demands; some work being done internally by paraprofessionals or even advanced software systems; and some services being outsourced to lawyers in other companies and firms. When experienced lawyers delegate or outsource routine work,, they have more time to use their skills and expertise to do higher value work for clients and the firm.

Knowledge management (KM)

Knowledge management uses technology to capture, organize, distribute and access information and expertise. In the old days, lawyers maintained "form files," folders where they collected documents, research, and other resources to which they would refer repeatedly as similar issues arose. Technology now enables law firms to

keep far more extensive and sophisticated collections of resources. KM enables business processes to be simplified and standardized, and facilitates collaboration, teamwork, information sharing, and training. It allows the firm to avoid redundant work because any aspects of a case or transaction that are not novel or unique can be replicated using previously produced knowledge and work product instead of created anew. KM also makes it easier for the firm to teach, update and continually improve work methods and strategies. All of these factors increase lawyer performance and productivity, and translate into less cost to clients.

International firms like [Allen & Overy](#) are using new "social" technologies to support highly sophisticated internal KM systems. Group weblogs, wikis, social bookmarking, and RSS-based updates all foster internal communication and knowledge sharing among lawyers wherever they are located, which facilitates collaboration. In addition, rapid distribution and retrieval of information and resources increase efficiency.

KM systems are not limited to operations within a single firm. Several companies now offer an array of KM-based legal resources directly to the public by subscription. Some law firms also allow clients and other subscribers to access proprietary legal resources online.

Publicly accessible KM-based systems make data, training, forms, and other legal resources available directly to any lawyers and clients who subscribe. In the UK, for almost 20 years, the [Practical Law Company](#) has been acting as a knowledge management outsourcing company for legal departments and law firms. PLC is a provider of "legal know-how, transactional analysis and market intelligence." It offers automated documents, legal analysis, practice notes, model agreement, and teams of research and support lawyers in many different areas of substantive law.

PLC recently opened in the US, offering resources and services in two areas of law, corporate & securities and finance, and the company is planning to expand into many other fields. By subscribing to PLC, lawyers in firms (as well as their clients) have information at their fingertips that would take them far longer to acquire on their own. This frees lawyers up to do more complex legal work, seek new business, and create profit-generating product and service innovations.

Many other firms, including individual law firms, have started KM-based ancillary businesses and online subscription services. These provide added value for clients and additional revenue streams for the firm. Australian firm [Blake Dawson](#), for instance, has a comprehensive series of compliance training programs for its clients. The firm produces both industry specific and client specific training in areas such as antitrust and workplace law. This is a profitable web-based business for the firm that has been running for more than 15 years and now has 150,000 users globally.

The growing popularity of web-based, openly available KM services demonstrates that clients see considerable benefit in sharing legal knowledge and work product that does not have to be tailored just for them. This enables them to share the costs of accessing the legal thinking and standardized forms that are common to an area of law, allowing them to apply more resources and higher fees only to those problems that are unique to them or to a particular case. Law firms that understand this fundamental shift are crafting new approaches that highlight their lawyers' specialized expertise while adding value for their clients and constituting new sources of revenue.

Conclusion

The forces confronting the legal profession today are leading to fundamental changes and law practice as we know it is being transformed. Some law firms are benefiting from the present economic turmoil, picking up new business generated by the fallout from business failures of some companies and the government bailout of others. Because they are very busy, they may be lulled into believing that the pressures to change are temporary and will not seriously affect them. Those firms are fooling themselves. The shifts we are seeing today will have long-lasting and far-reaching impact. Smart firms will use the current crisis to restructure the way they make profits, streamline the way they work, manage costs, and regain their clients' loyalty.

Now is the time to start adapting to the new marketplace. Law firms face tough challenges, but solving hard problems is what lawyers do best, especially when the pressure is on.

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