

December 2009

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

This is our 21st annual report on what's going on in the legal profession in the United States as well as in other parts of the world. It is based, as always, on information we compile throughout the year from many sources.

While the economy is starting to recover, this recession will have a far greater impact on the legal profession than any previous recession in the last 70 years. With each of the prior recessions, the profession continued pretty much unchanged. The situation is far different this time. As in all our previous reports, some of our findings are obvious. Others are not. Nevertheless, this is the picture at the beginning of 2010 – which will be a year of continued challenge and change.

PRACTICE AREAS

Hot

- ∞ **Intellectual Property.** Not only litigation. Patent prosecution is heating up again.
- ∞ **Environmental.** However, some sources expect this to cool down as the result of opposition to the cost both in the U.S. and also other countries.
- ∞ **Government Relations/Lobbying.** A number of industries i.e., insurance, health care and financial services, are more active than ever. Expect more.
- ∞ **Bankruptcy/Reorganization.** Particularly real estate and retail but also other sectors including home building and manufacturing. May cool somewhat on the East Coast but should continue to be Hot in the rest of the country.
- ∞ **Litigation.** Very Hot in many firms. At the same time, however ... (see next)
- ∞ **Alternate Dispute Resolution.** Hotter than ever due to the cost of litigation and time involved.
- ∞ **Public Finance.** More bond issues are coming from state and local governments.
- ∞ **White Collar Crime.** One of the many reasons is continuing violations of the Foreign Corrupt Practices Act (as we first reported a year ago).
- ∞ **Labor & Employment.** Becoming Red Hot. Unemployment continues to rise and legislation is still on Obama's agenda.
- ∞ **Regulatory.** Due to increased reporting, disclosure and approvals being required by government agencies, particularly in the Hot industries (see below).
- ∞ **Anti-Trust.** Had cooled a bit but now the temperature is rising.
- ∞ **Prepaid Legal Services.** However, most plans require lawyers to have three years of general practice.
- ∞ **Consumer Protection.** Particularly identity theft and credit card fraud.
- ∞ **Collections.** A large and profitable area for those firms such as Smith Debnam that can manage the volume.
- ∞ **Estates & Trusts.** Although it has cooled down in some firms.
- ∞ **Elder Law.** Includes asset protection and Medicaid planning. Baby Boomers are aging!
- ∞ **Entertainment Law.** Not just in LA and NY firms. But building the practice depends on long-term cultivation of relationships.
- ∞ **Commodity Work.** While some firms are dropping it because much is not profitable (as we reported a year ago), others are reevaluating to see if technology advances and delegation to lower levels of timekeepers can make more of it profitable.
- ∞ **Industries:**

Financial Services
Health Care

Telecommunications
Energy & Alternate Energy
Pharmaceutical

Insurance
Automobile

Cold

- ∞ **Immigration.** The weak economy and increasing anti-immigration sentiment are two reasons why applications for H1-B visas continue to decline.
- ∞ **IPOs.** But has begun to heat up in the past few weeks..
- ∞ **Tax.** But will get Red Hot whenever new tax laws are passed.
- ∞ **M & A.** Despite a few recently announced major transactions, volume has been down for eight straight quarters. However, several leading financial experts predict a sharp upturn next year.
- ∞ **Real Estate.** Commercial projects. Residential is getting Warm due to the extension of the first-time homebuyers tax credit. Although Pulte recently gave a grim forecast, they and some other developers are actively recruiting managers and sales people!

GEOGRAPHIC MARKETS

- ∞ **Dublin.** Cushman & Wakefield survey ranks it best European city in which to do business.

MARKETING & BUSINESS DEVELOPMENT

- ∞ **Online Social Networking.** Respected Marketing and BD advisor Larry Bodine states that more than 70% of lawyers are members of an online social network and corporate counsel use it to identify, evaluate and select outside counsel. He also says LinkedIn is the place to start but that “online networking is no substitute for face-to-face business development meetings.” Some firms, like Nixon and Benesch, have policies and procedures to make OSN more productive.
- ∞ **Internet Advertising.** A federal judge in Louisiana struck down two rules regulating Internet advertising, saying such restrictions violate the First Amendment. However, he also stated that “The Internet presents unique issues related to advertising which the state simply failed to consider in formulating this rule.” This could have long-range implications around the country.
- ∞ **Knowledge Management.** Up to now, and despite profit problems, it's mostly BigLaw firms that devote sufficient resources to KM. Benesch (again) is one mid-size firm that is far along the curve due to CMO Jeanne Hammerstrom's leadership.
- ∞ **Marketing Departments.** Many BigLaw firms have sharply reduced staff including, or starting with, the CMO. A huge mistake. However, other firms are trying to fill their CMO vacancies.
- ∞ **Business Development Coaches.** They continue to be in great demand despite cuts in the marketing budget in many firms.
- ∞ **Client Audits.** As discussed in our October Communique, slowly but steadily more firms are recognizing they are essential. Some managing partners can do them effectively while a growing number of firms are retaining outside consultants to conduct them. Why? Clients will speak more openly to someone who is not part of the firm or at least not the Responsible Partner.
- ∞ **Client Teams.** More firms adopting them but many are having trouble getting the teams to be productive. Some firms feel it's a compensation issue. Others are looking for a complete practice/client/knowledge management system that's much more than just CRM.
- ∞ **Surveys.** In October Fulbright published its Fifth Annual Litigation Trends Survey. For years, surveys on issues and trends have been a key marketing strategy for accounting firms. Will more law firms add this proven strategy to their marketing programs?
- ∞ **Revised N.J. Ethics Rule.** The New Jersey Supreme Court has changed the ethics rules to allow lawyers to tout their designation as “Super Lawyers” and “Best Lawyers in America.”

OTHER TRENDS & ISSUES

- ∞ **MidLaw & SmallLaw.** The survival and recognition of mid-size and smaller firms has been the most significant development in the legal profession this year. Watch for it to continue.
- ∞ **The Lost Generation.** (The term we used in last year's report). The lay-offs of younger lawyers, combined with the hiring cutbacks at BigLaw firms, will result in a void of experience, particularly in transactional work, and in the future generation of firm leaders. This happened in the early 1990's after that recession but the layoffs and cutbacks are far more extensive now.
- ∞ **Globalization.** Economic downturns foster isolationism and opposition to foreign trade and international investment. If these trends continue and become even stronger, they could impact the international practice of U.S. firms with foreign offices *unless* those firms have strong local practices to support those offices. Also see “Outside Investors” below.
- ∞ **Educating Lawyers on Profitability.** Except for senior management, most lawyers do not understand firm finances. IOMA has just developed a 90-minute webinar to educate them.

- ∞ **Mergers.** They have slowed down but will pick up again in the New Year. For a “primer” on mergers, see Bob’s article in the Fall issue of *The Philadelphia Lawyer*, posted on our web site.
- ∞ **Corporate Legal Spending.** BTI Consulting Group projects spending on outside counsel will drop 4.3% in 2010 after a 10.8% drop this year.
- ∞ **Virtual Law Firms.** They continue to increase and most are growing. See Bob’s article in the Nov/Dec issue of *Law Practice*. Look for this trend to continue.
- ∞ **Virtual Paralegals.** Denise Annunciata, a corporate paralegal in Framingham, MA, has started Virtual Paralegal Services. Is being virtual now a virtue?
- ∞ **Different Careers.** Some laid-off lawyers are leaving the profession for good and some recent graduates are not entering it. Corporate management is one popular career choice. Others are law librarian, certified financial planner and law firm recruiting and diversity director.
- ∞ **Associate Apprenticeships.** First reported in our Midyear Update. Now more firms, including Howrey, Ford & Harrison, Frost Todd Brown and Strasburger & Price, are instituting them. They are based on the same principle as internships and residencies for newly minted doctors but not as long. This is a sound idea that more firms should adopt.
- ∞ **Lockstep.** The trend to eliminate lockstep compensation and promotion of associates continues as DLA Piper and Orrick develop new models. Orrick’s model has three tracks – partner, custom and career attorney – based on performance, not the year hired. Dropping lockstep is an excellent move but, to make it worthwhile, firms must be prepared to provide considerable time and resources to individually monitor and evaluate each associate’s development.
- ∞ **Summer Associate Programs.** A growing number of firms have eliminated them for 2010.
- ∞ **On-campus Interviewing.** Since they plan to hire fewer first-year associates, firms are sending more senior and better prepared interviewers. Also, while still weighing grade point averages heavily, they are now also asking behavior questions to learn more about students’ personalities.
- ∞ **ACC Value Challenge.** A growing number of firms realize it’s about a lot more than just alternatives to the billable hour. One firm is Drinker Biddle where national marketing partner Gregg Melinson has formed a task force to educate lawyers on the issues and develop ways to address them. But many general counsel are still focusing mainly on getting firms to reduce their fees as the way to increase “value.”
- ∞ **Alternate Fee Arrangements.** There is some increase in their use. Valorem Law Group, a litigation firm in Chicago, bases *all* its fees on clients’ evaluation of results. However, overall there’s a lot of writing and discussion but not a lot of movement. This is due as much to clients as to firms. Negotiating alternative fees is complex and difficult. Many clients still prefer the billable hour, with a cap where possible. Others prefer an overall budget or just fixed fees. Some BigLaw firms are now offering “loss leader” fee structures. Bottom line: The billable hour is not dead and will still be around – perhaps forever.
- ∞ **ACC Value Index.** At its annual meeting in October, the Association introduced a 1-to-5 point scoring system to help members “share meaningful information about the value they get from their outside counsel.” It also allows members to offer specific comments about a firm’s performance and state whether or not they would use the firm again. ACC members are required to participate in the program. Currently law firms have no ability to see the reviews about them, although the ACC says it plans to make feedback available by year-end.
- ∞ **Management & Leadership.** This is a major issue for all firms today, not only BigLaw. It was the subject of our October Communique and is discussed in more detail in Bob’s article in the November issue of *Law Firm Partnership & Benefits Report*, also posted on our web site.
- ∞ **Executive Boards.** Some firms have created boards comprised of their own partners but insurance boutique Nelson Levine de Luca & Horst has taken the concept to the next level. The firm has established an Executive Board of former C-level executives with legal or operational experience from some of the largest carriers. Firm Chair Mike Nelson says they are invaluable in identifying challenges and trends that will impact the firm’s clients and its practice.
- ∞ **Support Resources.** This is not outsourcing but a source of practical, general information for business lawyers. A British firm, Practical Law Company (PLC), may have been the first in this new field. The firm then opened a New York office last year.
- ∞ **Pay Cuts.** Cuts in salaries and bonuses for associates and, in some firms, also for partners are continuing in BigLaw firms. Meanwhile, most MidLaw and SmallLaw firms aren’t cutting salaries, therefore narrowing the gap somewhat between them and BigLaw firms.

- ∞ **Mandatory Retirement.** Many firms are loosening their rules and adopting a case-by-case approach. But this raises some major issues: Defining who is still productive (and who isn't) and succession planning in order to transition clients to younger lawyers.
- ∞ **Strategic Planning.** Firms have resumed developing strategic plans, replacing the survival planning they have been doing. Some are realizing they should develop a Plan B as well. But the big question is: Will they implement their plans? To paraphrase an old adage, "Hell is paved with good intentions – and strategic plans that were never implemented."
- ∞ **Firm Structure.** More firms, in Canada as well as the U.S., are adopting a non-equity partnership tier although Reed Smith will require its NEPs to contribute 15% of their base pay to maintain partnership status and become fixed share partners. Other changes are also being adopted. In addition to creating the three tracks for associates, Orrick has created "long-term career positions" such as document reviewer and assembler, legal researcher and project manager. Another trend is ...
- ∞ **Contract Lawyers.** BigLaw firms, not only in the U.S. but also in the U.K., are planning to increase their use of them to help keep legal costs under control. In some MidLaw and SmallLaw firms, contract lawyers have been part of the structure for years.
- ∞ **Partner Compensation.** In addition to its total alternate fee structure, Valorem Law Group also has a unique compensation system – equal for all partners. Partner Patrick Lamb says it promotes more cooperation and brings better results.
- ∞ **Diversity.** Law firms have taken a step back. A disproportionate number of layoffs this year have been minorities and women. The corporate sector is doing better. One example is General Mills where Rick Palmore is chief compliance & risk management officer. He evaluates law firms' diversity efforts based, not just on principle or what is politically correct, but on the ACC's 2004 Call to Action. He also shows how diversity can increase company profits.
- ∞ **How Lawyers Work.** In the Fall issue of her newsletter, *Management Solutions*, consultant Ida Abbott discusses a survey (reported in *Harvard Business Review*) that shows the value to law firms of providing down time for lawyers. Furthermore, she says firm leaders "cannot change structures and models without also changing the underlying assumptions about work expectations and processes."
- ∞ **Information Leakage.** Jeff Blumenthal reported in the *Philadelphia Business Journal* that firms have had to change, not only their public relations strategy, but also the way they disseminate news within the firm because internal documents are leaked to blogs such as Above the Law. One of the most frequent leaks is announcement of lawyer and staff layoffs.
- ∞ **Outside Investors.** Australia and the U.K. now allow law firms to take in outside investors and to be publicly traded. Have operations changed in firms where business people have invested in them and become part of their leadership? Have these firms dropped the billable hour and changed their lawyer compensation systems? And, most important, will the availability of additional capital enable these firms to expand their global footprint and surpass U.S.-based firms in size and importance? Only time will tell. But this could become an issue of great concern to BigLaw firms with major international practices.
- ∞ **Profitability Reports.** While acknowledging clients' pressure to reduce fees, most AmLaw 200 firms still report profits/partner along with revenues. Disclosing high revenues makes sense, but reporting how profitable the firm is doesn't.
- ∞ **Business Model.** Many legal pundits say the traditional business model – whatever they mean by that – is broken and that radical changes are needed. However, they ignore the fact that many changes, some of which might be considered radical, *are* occurring. The business model isn't broken. But it does need updating.

***May the Holidays bring you joy and may 2010
bring the world and all of us peace and happiness.***