

December, 2008

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

This is our 20th annual report on what's going on in the legal profession in the United States and globally, based on information we compile throughout the year from many sources. Obviously it has been a challenging year for many firms. With the global economic situation plus a new Administration, next year will be even more so. As always, some of our findings are obvious but others are not. Nevertheless, this is the picture at the beginning of 2009.

PRACTICE AREAS

Hot

- Financial/Economic Crisis groups. Cross-functional teams, mostly in large firms that have had major banking and financing practices.
- Energy/Alternative Energy. Licensing of new or expanded nuclear power plants will be hot but only for firms that already have the expertise and client base.
- Labor & Employment. Littler Mendelson reported "workplace bullying" is becoming a new trend. And things could get Red Hot if Congress passes the Employee Free Choice Act (EFCA).
- Environmental. Was Hot even before the elections.
- Immigration. May cool down if the recession delays reform.
- Foreign Corrupt Practices. According to Levick Strategic Communications, prosecutions under the FCPA doubled last year and will show comparable increases this year.
- Anti-Trust. Companies are suing each other. Will be Red Hot with the new Administration.
- Regulatory on the federal level, due to the change in the Administration. But only for firms that already have a strong practice and reputation.
- Commercial Litigation. When the economy is bad, more people litigate.
- Healthcare. Will get even hotter when reform gains momentum.
- Intellectual Property. Chinese and German companies in particular are looking to U.S. markets because of the continuing trend to weaken patent owner/plaintiff positions, which will further increase patent litigation.
- Bankruptcy. Was Getting Hot in our Midyear Update. Firms are now staffing up even though filings have not increased dramatically because troubled businesses are trying out-of-court workout and pre-packaged agreements.
- Elder Law. As it has been for several years.
- Estate Planning. Retirement plans and portfolios need to be reviewed due to the economic situation. And changes are almost definitely coming in the tax laws.

Getting Hot

- Covered Bonds. A financing tool popular in Europe. See Steve Taylor's column in the October *Of Counsel* – "a possible alternative method of on-balance financing of residential mortgage loans."

Will Get Hot

- White Collar Crime. Federal prosecutors will be investigating mortgage brokers and financial institutions.
- Class Actions. Against financial institutions.

Cold

- Structured Finance & Securitization. Of course.
- Mergers & Acquisitions. But may get Warm as companies in trouble look for shelter.
- Real Estate. But could begin to warm up by late summer.

GEOGRAPHIC MARKETS

Foreign

- Asia. Tokyo, Beijing and Seoul
- The Emirates
- Brazil. The economy is strong.

U.S.

- North Carolina. Especially Charlotte and the Research Triangle.
- Nevada. Both Las Vegas and Reno. May cool down until real estate recovers.
- Chicago. Regional and national firms without offices here continue to scour the market.

MARKETING & BUSINESS DEVELOPMENT

- Many firms and lawyers do not understand the difference. Our definitions: “Marketing: Strategies and activities used to establish and increase awareness and positive recognition.” “Business Development: Strategies and activities employed to translate awareness and recognition into delighted clients and increased business i.e., Sales.”
- BD Coaching. More firms are accepting the fact that lawyers need training in developing new business. But it's far more than just sales training. The good coaches also have an understanding of psychology and human behavior.
- Videos. As reported in our Midyear Update. DLA Piper, Foley & Lardner and now Benesch are increasing use of them to communicate both internally and externally.
- Snail mail. Although many firms have switched to e-mail distribution of their marketing materials, marketing consultant Bob Weiss reports U.S. mail is more productive.
- Marketing departments. A year ago we reported firms were increasing both the staffs and the budgets. Now a few firms have started to reduce them. But competition is increasing dramatically as the economy worsens, firms dissolve and clients become even more demanding. This means Marketing & BD programs should be increased.
- Full-Time Client Interviewers. As reported in our Midyear Update. Several more firms have hired them. But for strategic planning, other firms continue to use outside consultants for both client and market surveys.
- Social Networking (Web 2.0). LinkedIn, FaceBook, Legal OnRamp, Twitter, *et al.* Like any new development, it raises many questions: Does it lead to worthwhile relationship building? Is it really effective in developing business or is it a matter of personal vanity? What are the ethical issues and risks? Should firms have social media policies or guidelines as some corporations have adopted – and as Jayne Navarre urges in her recent postings on the LMA Listserv?
- Relationship Management. New technology such as ERM now enables firms to identify many more contacts. In the words of Jennifer Smuts, Director of Marketing at Connolly Bove Lodge & Hutz, “This knowledge transfers data into a firm asset.”
- “Best Lawyer” lists etc. continue to proliferate and attempt to recruit more lawyers. Many – or most? – accomplish little more than feeding the lawyers' egos. Evaluating them in response to lawyers' inquiries has become a time-consuming chore for many law firm marketers.
- Humor on websites. Marque, a start-up firm in Sydney, Australia, continues to add to its “World's Worst Website” which it says is “temporary”. Apparently effective because the firm is growing (www.marquelawyers.com). In the U.S. The Van Winkle Law Firm adds humorous, personal touches to the attorney bios (www.vwlawfirm.com). Not a strategy for most firms but effective for some small and mid-size firms to distinguish them from their competition.

OTHER TRENDS & ISSUES

- Litigation financing for companies bringing suit in B-to-B contingency cases. Has taken off in the UK. \$4 billion already invested by external sources in the U.S., \$3 billion of which is mostly in patent and trademark cases. Investors have figured out how to avoid ethical restrictions although Ohio still bans this.
- Outsourcing. More firms are using companies outside the U.S. for specialized assistance in such areas as litigation support, legal research and knowledge management. But the market is now starting up in the U.S. Indian firm Bodhi Global has opened a New York office and a new U.S. firm, LegalCorps, is targeting work too sophisticated for current sources.
- Lateral entries. The free agent market isn't limited to major league baseball. Firms that are growing continue to recruit lawyers and groups from firms that aren't – or are dissolving.

- Globalization. U.S. firms are lagging far behind Magic Circle firms in international growth because most of their fee producers practice domestic law and are based in the U.S. Requires more than just opening foreign offices and hiring foreign laterals. Firms that want to be truly global must hire more lawyers and staff who have lived in more than one country, speak several languages and can work in multi-cultural teams. Even globalized American companies now have many non-Americans on their boards and in decision-making positions.
- Social responsibility. More firms are committing to sustainability, green initiatives, diversity and significant community involvement. But will the economy make them cut back on this?
- Staying the course. While some large firms are making significant staff cuts, a few mid-size firms such as Primmer Piper Eggleston & Cramer are thinking strategically by committing to not reducing lawyers or staff and to shifting people from cool to hot practice areas.
- Summer clerk programs are being cut back for next year, mostly in large firms, some as much as 50%. Also, as reported in our Midyear Update, more small and mid-size firms are discontinuing their summer programs altogether.
- Management & leadership training. As we have been reporting and writing about for three years, more firms are providing programs for partners and, in some cases, senior associates. Just as in corporations, this training is essential for developing future managers and leaders.
- Write-downs and write-offs have been increasing in most firms. Some of them are due to the economy but many are the result of weak billing and collection policies.
- Strategic Plans. Some firms that have developed them are reviewing their assumptions and objectives, adjusting them where necessary. These are firms that realize a strategic plan is a “living document” and not set in stone.
- Strategic Planning. Many firms still have not developed plans. While the economic situation makes planning more difficult, it also makes it more critical than ever for all firms, regardless of size, to think strategically so they are not blindsided by unforeseen events that could threaten their survival. One important strategic issue is balancing counter-cyclical practices.
- Work-life balance. Slowly but gradually more firms are addressing this issue as Gen X and Y lawyers start to play a significant role in these firms.
- Non-lawyer executives – COOs, CFOs, CMOs, CIOs, HR, Diversity and Sustainability Directors. Their numbers are growing and their levels of responsibility and authority are increasing as more firms recognize that, while the practice of law is a profession, a law firm is a business. This is a lesson learned from the medical profession where hospitals and group medical practices now even have a non-doctor as CEO.
- Commoditization. Firms are starting to take a hard look at some of their services and practice areas which have really become commodities because quality is not distinguishable and price is the only differential. If processes can be standardized and most work delegated to lower-levels, some of these areas can be profitable on a fixed-fee basis. Some firms are keeping this high-volume, lower-profit work. Others are shifting their resources, human and financial, into other practice areas where clients recognize quality work and profits are significantly higher.
- Boutique firms. Although legal pundits have been predicting their demise, many are doing quite well. Companies are increasingly using them because of the depth and quality of their expertise in specific areas such as Intellectual Property, Employment Law and Immigration.
- Faster decision-making has become a characteristic of firms that have continued to grow and increase profits in this difficult environment. Having streamlined and accelerated the due diligence process, they make timely decisions on practice and business opportunities that they otherwise might miss. They also adjust their counter-cyclical practices, as noted above.
- Family friendly policies. Four law firms made *Working Mother* magazine's list of the 100 best companies for working moms: Arnold & Porter, Covington & Burling, Katten Muchin and Pillsbury. Benefits include on-site childcare open evenings and weekends, 18-week maternity and adoption leave, 24-week leave to care for ailing family members and private nursing rooms for breast-feeding. These continue a trend we have been reporting since 2006.
- Sustainability/Going Green. According to John Kirk, Director of Administration at Manko Gold Katcher & Fox, over 100 firms are now participating in the ABA's Law Office Climate Change Challenge. He also reports that there are considerable marketing benefits. Meanwhile, the Managing Partners Forum has initiated a Carbon Footprint Campaign
- Borrowing. Firms have often tapped the banks for major projects such as buying a new computer. Now some are borrowing to meet operating expenses.

- De-equitization. Many firms with two-tier partnerships have been de-equitizing low-producing partners in order to maintain or increase profits/partner. This is a short-term solution that eventually does more harm than good. Careful trimming of those partners will produce greater short- and long-term benefits for the firm and, in many cases, for the lawyer as well.
- Not on the partnership track. Partnership has no appeal to a growing number of younger lawyers. A small number of firms are capitalizing on this trend. McDermott, Will & Emery has created a tier of staff attorneys who work full time and receive full benefits but also receive lower pay. Rapidly growing Axiom doesn't offer partnerships (or offices, secretaries or even desk space) because their lawyers work at home or at the client's location.
- Associate recruiting & retention. Continues to be a challenge but some firms are having success with different approaches. In recruiting, they have found that law school rank and GPA aren't necessarily the best predictors of success. A better indicator is to look at the characteristics of the associates who have been successful and have remained with the firm. Another worthwhile indicator is to seek candidates who have business experience or at least an affinity for business issues, as Greenberg Traurig has been doing for the last five years. As for retention, a growing number of firms are adopting new strategies. See below.
- Eliminating lockstep. In our Midyear Update, we reported that Husch Blackwell Sanders had cut out lockstep evaluations of associates seven years ago and had reduced attrition 50%. The firm also reports the attrition rate for women dropped below that of men. Now, as of January, 2009 Howrey is joining the small but growing number of firms that are eliminating lockstep pay.
- Mentoring. As we reported last year, more firms are returning to it to provide a general advisor and "sounding board" to associates. Works best when the mentor is not the partner to whom the associate reports. Some firms are appointing certain partner-track, senior associates as mentors.
- Electronic Discovery. Some corporate legal departments bringing this in-house for routine tasks.
- Advisory Boards. A few firms have created boards of business people, some with legal backgrounds, to counsel them on both strategic and operational issues.
- Alternate billing methods & business models. Susan Hackett, General Counsel of the Association of Corporate Counsel, is presenting programs on ACC's Value Challenge.
- Trusted Advisors. There is a growing demand for lawyers who can provide, not just legal counsel in their areas of expertise, but also business counsel to their clients.
- Diversity. Large firms continue to hire diversity directors or at least form diversity committees. Now certain law schools such as Villanova, Drexel and Widener have initiated programs to attract minority college students to law school. Pepper Hamilton is supporting the program at Villanova.
- Succession Planning. More firms confronting this issue for clients and management.
- Mergers & Acquisitions. They continue, although at a slightly slower pace, as part of some firms growth strategy and other firms survival strategy. But a merger won't fix a firm in trouble.
- Dissolutions. Heller Ehrman and Thelen Reid aren't the final ones. Several other large firms are struggling to survive.
- Video conferencing and webinars are increasing due to travel costs for both firms and clients.
- Look back to see ahead. Decades ago accounting firms began facing many of the same issues law firms are facing today. A look back at the changes in the accounting profession will indicate many of the changes that will – or will not – happen in the legal profession. These are discussed in Bob's article in the "Generation Next" supplement to *The Legal Intelligencer*, October 6 issue.

Note: There are other developments which we could not include. Discussions of them, as well as of some of the items in this report, are posted in the Writing and Legal Communiques sections on our website, www.robertdenney.com.

***May your Holidays be joyful and may the New Year
bring all of us peace, security and happiness.***

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