

Technology in Practice

The “End of Lawyers” – or Start of a New Legal Dynamic?

BY ED POLL

Few recent books about the legal profession have had a more provocative title than that published in 2008 by British technology consultant Richard Susskind: *The End of Lawyers?* As early as the mid-1990s, when the Internet was still a rumor to most people in the legal world, Susskind was writing that information technology would transform the practice of law. In his 2008 book, Susskind claims that the legal profession will be driven by two forces in the coming decade: a market pull towards the commoditization of legal services and by the ongoing development of new legal technologies. Lawyers who do not adapt to this trend, the author claims, will find their roles eroded – or even displaced. In his words, Susskind sees:

“a future in which conventional legal advisers will be much less prominent in society than today and, in some walks of life, will have no visibility at all. ...Commoditisation and IT will shape and characterise 21st century legal service. ...I predict that lawyers who are unwilling to change their working practices and extend their range of services will, in the coming decade, struggle to survive. Meanwhile, those who embrace new technologies and novel ways of sourcing legal work are likely to trade successfully for many years yet, even if they are not occupied with the law jobs that most law schools currently anticipate for their graduates.”

In my view, such an analysis goes too far. Computers will not replace lawyers; they have, in fact, made our jobs much easier. The time savings, efficiency and commoditization of routine tasks and services afforded by computers and other electronic technology have freed most lawyers to focus on the creative, problem-solving aspects of their law practices. Those, like Susskind, who believe that technology will transform our profession need to remember that such innovations are just another turn of the wheel in the law’s evolution from profession to business, albeit a speedier evolution than in previous decades. Technology is merely a tool to allow us to do more and do it faster, but it is still the human who makes the decisions and provides the value.

TECHNOLOGY MALPRACTICE

Of course, some lawyers have decided – at their peril, consciously or otherwise – to opt out of the technological revolution. Too many small firms and solo practices are behind the technology curve, even to the point of not using e-mail or not keeping electronic files of client records. Those that do use technology often do not spend enough or maintain upgrades to keep it current.



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Such firms are in danger of malpractice accusations. One of the Rules of Professional Conduct requires that a lawyer be competent to handle a given matter, measured as the standard of care in the local community. When some lawyers are significantly more sophisticated in the use of technology, it defines the standard of care against which all are measured. Those who do not use technology effectively for trial support, case management and the like may be perceived as willfully less competent than their competitors. And that is malpractice.

The ABA's Model Rule of Professional Conduct 1.1, which deals with lawyer competency, does not include technology as an element in the required standard of care either in the rule itself or in the commentary on it. Neither do many state rules. In Canada, however, the Canadian Bar Association Code of Professional Conduct, Chapter II (also dealing with competency) states in commentary: "The lawyer should also develop and maintain a facility with advances in technology in areas in which the lawyer practises [sic], to maintain a level of competence that meets the standard reasonably expected of lawyers in similar practice circumstances." Lawyers in any jurisdiction would do well to keep that injunction in mind – for the sake of their clients and of their own practices.

THE CARRIAGE BUILDER

Some lawyers might contend that this is beside the point – legal skill, not flashy technology, is what matters. I recently heard a law firm staff member describe a senior partner as "a carriage builder in an automobile world." The phrase connoted a craftsman who puts time and effort into creating a quality product, but who is unwilling or unable to work at a pace and in a manner that would make a quality product available to a wider audience. That lawyer undoubtedly believes he is entitled to receive the same level of business – and compensation – as he has for years. He doesn't understand that in a rapidly changing world, a deliberate and controlled pace of work is inadequate in the legal services marketplace.

Technology has made information about carriage-building aspect of the practice of law – court cases, professional journal articles and the like – widely available on the Internet. Clients are thus becoming more sophisticated and demanding and less accepting of lawyers who tell clients what

they must do rather than consult with clients on what they want to do. The more widely available a service, the more of a commodity it becomes. When hand-built horseless carriages gave way to the Model T, millions bought cars, and lots of skilled carriage builders went out of business.

THE INDUSTRIAL MODEL

The Industrial Revolution demonstrated that the more equipment used to make a product, less labor was required, and the lower the price. With a lower price, volume increased, and profits likewise could rise. Then, we moved into automation, with the same result, but with a different name. The more product or service a machine could produce, the less expensive it might be. The result would be a lower price with higher volume, all of which tended to produce higher profits. Today, we have moved to electronic technology. The principles are the same as in the industrial world; only the pace has changed. Increased machine power reduces labor, which tends to reduce cost, which tends to reduce price, which increases volume – and profits.

The key to higher volume for lawyers is partnering with clients – understanding what they need, listening to what they want and bridging the gap between the two by providing value. Value is defined as listening to clients to understand what they want and showing them how the law firm provides value by addressing that want and delivering what they need to meet their challenges. Or, said another way, *the difference between want and need is value*. Law firms that partner with their clients can show their clients how they can reduce their legal costs (without reducing the lawyers' per-unit fees) and can develop strategic plans for meeting legal challenges.

ALTERNATIVE APPROACHES

Consider this example. I recently talked with a solicitor from London who said that her firm, like most in the United Kingdom, uses only the fixed-fee billing model; there is no focus on the billable hour. The solicitor is studying the use of knowledge management databases as a means to improve law firm efficiency and thereby improve profitability. Her firm employs a group of lawyers whose primary function is to improve its knowledge base, organize it and make it more searchable, all with the view to reduce the time needed to create documents for a



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new transaction and increase the margins of profit. These lawyers do not engage with clients; their focus is on the infrastructure of the firm and its improvement. Because much of the firm's work is based on fixed fees, any improvement in efficiency will go directly to the bottom line.

Increased profit by increased efficiency under a fixed fee engagement agreement is a definite contrast to the U.S. law firm model, where profit is increased by raising the hourly billing rate. As clients begin to revolt at annual price increases, U.S. law firms will need to look at alternative fee arrangements to keep clients. Then the focus might turn to efficiencies in the delivery of those services.

The fixed fee approach is not necessarily a panacea for profitability. With a fixed fee, there is the inevitable pressure to reduce that fee and squeeze the firm's profit margins. But the knowledge management focus of the solicitor's firm indicates where the secret weapon lies: the efficiencies enabled by technology. Online database management has the potential to turn a lawyer's or law firm's knowledge into a high-volume commodity. With a lower price through fixed fees, client demand could increase volume, and profits likewise could rise

ARE CLIENTS READY?

The question then becomes: Are clients ready for true value billing that would allow the lawyer to make more money while being more efficient? The Association of Corporate Counsel's ACC Value Challenge, a concerted effort to better integrate law firm billings with corporate clients' perceptions of value, suggests that at least on some level they are. Undeniably there is an emerging trend among corporate clients to view certain legal services as a commodity, and to apply standardized rates or flat

fees where appropriate. However, most law firm clients recognize the importance of and are willing to pay a fair fee for value. What they do *not* want is to pay too much – to pay for inefficiencies, duplications, or unnecessary services. And this is where the leverage from technology is the lawyer's advantage.

Ultimately, the client, not the attorney, defines value. But it's the attorney who must educate the client about "value." Otherwise, clients may find it difficult to appreciate how value is provided and measured in a transactional matter or in litigation. Lawyers must bring creativity, judgment and experience to the table to maintain their positions in the affairs of business and the community. Being a commodity, or being "run of the mill," just isn't enough. Collaboration in the context of providing greater value in legal services produces more effective representation at a lower cost to the client without discounting either the lawyer's value or per-hour fee.

Law firms that can partner with their clients – and can show their clients how they can reduce their legal costs (without reducing the lawyers' per unit fees) – will have a strategic advantage in the marketplace as true value-added service providers. This is not "the end of lawyers" – it's the beginning of a new dynamic that will benefit lawyers and clients. ✨

about the author

Ed Poll is the Principal of LawBiz Management and a renowned law firm management consultant who recently launched www.LawBizForum.com, an online venue for legal professionals to network and to share best practices. He also recently published a new book, *Growing Your Law Practice in Tough Times*. His LawBiz Coach® column appears regularly in *Legal Management*. Contact him at edpoll@lawbiz.com or 800.837.5880.