

The Future of the Legal Profession

By **Stephen M. (Pete) Peterson**

The future has already happened. During the past five years, the legal industry has been going through a dramatic transformation that is driven by a number of changes. These changes include widespread access to legal information, the standardization of many legal tasks, demands by clients for more control of legal service delivery, and the emergence of an increasingly competitive marketplace. As we will see, some of these new competitors are both innovative and unconventional. This restructuring in the way legal services are delivered affects all law firms — regardless of size, geographic location, or practice area. Clients, by necessity, are now much more selective as to which law firm will be used for which type of work — if they use law firms at all for their needs. As a result, developments that law firms did not expect are impacting the industry. Firms are entering dif-

ferent market segments. Non law firms are gaining momentum and are eroding law firm revenues and profits. Greater numbers of firms are going out of business. Layoffs are now considered to be part of the ordinary course of business.

All this is causing a fundamental shift in thinking about how law firms can compete.

LAW OF SUPPLY AND DEMAND

The law of supply and demand is not an actual law (as we know) but it is well-confirmed and understood realization that if you have a lot of one item, the price for that item should go down.

We have a problem of overcapacity in the legal industry. We have too many lawyers (and law schools for that matter) in relationship to the demand for legal services. The National Association for Law Placement (NALP) Employment Report and Salary Survey for the Class of 2012 revealed that just 50.7% of law school graduates in 2012 had obtained jobs in law firms, and only 64.4% landed jobs that require bar passage — the lowest number the NALP has ever measured. A summary of the 2012 report is available at www.nalp.org/classof2012_selected_pr. A detailed report on the Class of 2012 is expected to be released this month.

Have we always experienced a surplus of lawyers? Consider this

story about one of our country's early leaders and lawyer — Daniel Webster. After attaining his first degree from Dartmouth College in 1797, Daniel Webster's father arranged for his son to be hired as the Clerk of the Courts at salary of \$1,500. Quite a sum of money for this period. Daniel refused, stating that he intended to become a lawyer and “not to spend my life jotting down other men's doings.” His father argued against this stating “there are already more lawyers than there was any need of, and not half enough work for them.” Daniel sturdily replied: “There is always room at the top.” Yes there is room at the top and many lawyers and firms have been vying for that position since time immemorial.

This imbalance between the supply of lawyers, the rising cost of tuition and the likely inability of those lawyers to get jobs means that fewer people are willing to sign up to pay tuition. This means law schools will need to shrink or close. This is a good thing for the profession as too many students enter law school misguided about the nature of the legal business and the availability of legal jobs. Law school deans offer little or no candor of the realities of the marketplace — assuming they even know.

Some correction is already taking place. According to a *New York Times* article, “Law Schools' Applications Fall as Costs Rise and Jobs

Stephen M. (Pete) Peterson is the CEO of the accounting and business advisory firm, Maxfield Peterson and a member of this newsletter's Board of Editors. For more than 20 years, Peterson has advised law firms on strategic planning, M&A, compensation and financial management. He can be reached at pete@maxfieldpeterson.com.

Are Cut," Jan. 30, 2013 (<http://nyti.ms/11zgmnh>), the decline in the number of students heading to law schools is profound. As the article reported, 30,000 people applied to law school for this coming fall; a 20% decline from January 2012 and 38% fewer than in 2010. In 2004, 100,000 people applied to law school and in 2013 the number is anticipated to be 54,000 or almost half as much.

The demand for legal services received a discouraging note from the recent report from Peer Monitor, a division of Thomson Reuters. Peer Monitor's *2013 1st Quarter Report*, issued on April 30, 2013 (<http://bit.ly/13ztcDf>), revealed that demand (billable hours) for legal services fell for the third time in the last four quarters. According to the report, nearly every major practice area was down in the first quarter. Litigation fell 3.7% — the second consecutive quarterly decline. IP litigation was off 6.8%. Weakness in litigation was a significant contributor to the overall decline in demand, as litigation practices make up nearly 40% of total billings according to Peer Monitor.

As of Dec. 31, 2012, there were 1,245,205 licensed lawyers according to the American Bar Association. The most recent reliable study, conducted in 2000 by the American Bar Foundation, found that 74% of lawyers were employed

in private practice. If this percentage proved to be the same in 2012, we would have 921,452 lawyers in private practice. Approximately one-half are sole practitioners.

According to a 2012 survey by *Accounting and Financial Planning for Law Firms'* ALM affiliate *The National Law Journal* (NLJ), 139,551 (15%) lawyers work in the nation's 350 largest law firms. The smallest firm in the NLJ survey consisted of 112 lawyers; the largest had 3,805 lawyers. The recently released AMLAW 100 (largest 100 firms in the country) revealed that the 20 largest firms each had over \$1 billion in fee revenue.

For most of us, we have little perspective (or desire) in relating to these behemoths. However, we can learn from them in terms of strategies and in some instances, their failures.

The economics of law firms are quite diverse, especially when you consider that newly minted lawyers will earn a beginning salary ranging from \$30,000 to \$165,000. Many of these new graduates will be burdened with law school debt averaging \$145,000.

The size of the legal market in the United States was estimated at nearly \$270 billion in 2011, according to the Bureau of Economic Analysis. However, the compound annual growth rate has declined since 2007. This has

caused mega-firms (aka, BigLaw) to seek opportunities in the global marketplace. There are no precise figures stating the dollar figure of the global market, but certain pundits estimate a range of from \$600 to \$800 billion.

Law firms have discovered that most revenue growth comes from expanding beyond one's normal marketplace or by taking work away from local firms. In Wyoming, for example, we have seen an influx of lawyers from larger Colorado and Montana firms to take advantage of growth in the energy and extraction industries, among others. These firms have far greater resources in terms of both human and financial capital, making it difficult for local firms to compete and perhaps even survive.

For the foreseeable future, we will have a buyer's market for legal services. Then as in now, clients will have an increasing focus on overall value. Clients will have little or no tolerance for routine hourly rate increases and will demand more alternative fee arrangements (AFAs) — in order to align the economic interests of the client. Depending on the survey data, AFAs represent 15% to 20% of the legal market. One reason AFAs do not command a larger percentage of the legal pie is the reluctance of in-house counsel to trust and embrace the system.

CHARACTERISTICS	HOW WE DO IT
Transparency	Fixed pricing is provided for all services
Certainty	Annual contracts and fixed pricing mean customers can budget confidently
Ease of Access	Customers can access their secure Myview Portal any time of the day or week, and the Adviceline has extended opening hours
Expertise	The professionals delivering the service, from the support teams to the lawyers in Riverview Chambers and Riverview Solicitors, are highly trained and customer focused
Innovation	From free content (business and legal documents, policies, forms, template letters, records and advice), through the Myview Portal and a free complimentary call, to annual contracts and our price guarantee
Low Risk	Customers can use the free complimentary call to test Riverview Law and, via the price guarantee, have a full no quibble refund of their annual contract if in the first month they decide the service is not for them
Membership	Relationships matter. We will develop long-term relationships with customers. Our membership is free and provides significant lasting value. It is part of our investment in building trust and confidence with potential customers

UNCONVENTIONAL COMPETITORS

New competitors have been arriving on the scene for over a decade. They have been referred to as innovators, disruptors, and in a few instances, bottom feeders. Who are they? Let's examine a number of examples.

Axiom Global Inc. is an 800 attorney firm without any partners. Well, it's not a law firm in the traditional sense but this fact matters little to clients. Axiom has been in business for 13 years and is largely thought of as a high-end temporary placement business. During our current recession, Axiom has taken advantage of an abundant supply of burned-out refugees from BigLaw. Many Fortune 500 companies have employed Axiom's talent pool. In 2011, Axiom's revenue was \$130 million — an increase of over 60% from 2010. This is an indication of the current recession's shrinking corporate legal budgets and the need for nontraditional suppliers of legal talent and legal services. Axiom's model proved to be attractive to outside investors attracting \$30 million in venture capital. Retaining and increasing capital in law firms is a foreign concept for far too many law firm partners. But as we have seen, law firms need more capital to invest in technologies and methodologies such as legal project management required to provide more efficient (and lower cost) legal services.

Examples of alternatively structured law firms include Virtual Law Partners, Potomac Law Group, Summit Law Group, Valorem Law Group, and Clearspire. Some of these firms emphasize the use of technology to manage workflow, the use of virtual lawyers (work at home), have low overhead, and fixed fee pricing. Some also work with outside LPOs (legal process outsourcers) to help clients manage litigation matters. LPOs have been claiming more of the low-end legal but profitable work that many BigLaw firms have traditionally provided.

At the other end of the spectrum, we have LegalZoom. Started in 2001, LegalZoom essentially took your firm's existing forms bank to a much higher level. Initially lawyers paid little attention to providing services via the Internet because the forms and products were not very sophisticated. But over the years LegalZoom has been improving its software and forms bank. Furthermore, LegalZoom understood that a significant market, the middle class, was underserved by lawyers. LegalZoom started to gain more market share to the dismay of small law firms and sole practitioners. In addition to forms, LegalZoom now offers a network of local lawyers to field calls from customers.

LegalZoom has attracted significant venture capital and these investors look for companies with different and disruptive models with a huge market. Late last year, LegalZoom filed an S-1 form in advance of an initial public offering. The offering has not taken place but the S-1 disclosures provide interesting information. In 2011, LegalZoom's revenues were \$156 million. It estimates its targeted legal market at \$97 billion — the amount that consumers and small businesses spent on legal services in 2011.

Furthermore, LegalZoom offers some frightening facts for lawyers; it has served two million customers during the past 10 years. Its 2011 survey of 34,000 customers stated that nine out of 10 would recommend LegalZoom to friends and family. By the way, how many law firms survey their clients? Moving on, the S-1 stated that customers placed 490,000 orders AND, *more than 20% of new California LLCs were formed using LegalZoom's online legal platform* (emphasis added). As we know, drafting LLC forms or incorporating businesses has long been a staple of the tradi-

tional legal practice, especially for smaller firms.

Many lawyers dismiss the notion that LegalZoom is a true competitor, but I worry that with its deep pockets LegalZoom will be routinely seen by prospective clients as a better alternative to using individual lawyers.

LegalZoom has become so successful that other competitors have entered the online market, most notably Rocket Lawyer, which arrived on the scene in 2008. Rocket Lawyer offers similar services to that of LegalZoom and, happily to many I'm sure, LegalZoom sued Rocket Lawyer over alleged violations of Federal Trade Commission guidelines and what it calls unfair business tactics "for the purpose of injuring LegalZoom."

Rocket Lawyer has raised considerable capital and many of us took notice when Google Ventures was part of a group that invested \$18.5 million in 2011. Google Ventures' start into legal services came earlier when it invested in Law Pivot. Basically, Law Pivot is a question and answer website that allows individuals and businesses to receive low-priced legal answers from a roster of private lawyers. Similar to Rocket Lawyer, Law Pivot gives lawyers a platform to market their legal services by sharing advice and engaging in discussions. It should come as no surprise that Rocket Lawyer acquired Law Pivot earlier this year. Perhaps we should be on the lookout for Google Law.

It is indeed unfortunate that law firms have had the capacity to create these services for years, but have been unwilling or unable to risk changing the nature of their business. This mindset needs to change.

Some law firms have not been standing idle with respect to innovation. Each year the College of Law Practice Management (COLPM; collegeoflpm.org) recognizes leaders in innovation. In 2012, the COLPM recognized Littler Mendelson and

Seyfarth Shaw for the coveted Innov Action Award. Littler launched CaseSmart, an approach that completely re-engineers the way in which matters are handled, maximizing the use of technology to anticipate attorney needs as they conduct research, prepare responsive documentation and perform legal and risk analysis in order to enhance efficiency while maintaining firm profitability.

Seyfarth was recognized for its SeyfarthLean program, an adaptation of Six Sigma principles. Combining time tracking with task codes, process maps and a continuous improvement mindset, *Seyfarth reduced multiple legal tasks to only the steps that matter* (emphasis added), embraced e-billing, metrics and analytics, proactively collaborated with other law firms that have existing expertise rather than reinvent the wheel and dramatically improved client satisfaction and retention in the process.

OTHER INVASIVE SPECIES

One if by land, and two if by sea. Yes, the British have landed. The UK's Legal Services Act passed in 2007 allows for outside investment in law firms. See, www.legislation.gov.uk/ukpga/2007/29/contents. Similar legislation was enacted in Australia at about the same time resulting in the world's first publicly held law firm, Slater & Gordon. On May 5, 2013, it was announced that Australia's Rockwell Olivier will become the world's second publicly held law firm.

Several UK law firms have taken advantage of this new approach to accessing capital. *The Economist*, in its article "Supermarket Sweep," April 27, 2013 (<http://econ.st/15bFf59>), stated that the first alternative business structure (ABS) license, as it is called, was issued in March 2012. Since then, 138 ABS's have been licensed. Some of the ABS's are small law firms bringing

in a non-lawyer partner as an investor. The greatest change according to the article has been the entry of the Co-operative Group (the Co-op). The Co-op hopes to employ 3,000 staff most of them lawyers, within five years. This would make the Co-op the largest law firm in the UK.

Another example is Riverview Law that has notably established a foothold in the U.S. BigLaw firm DLA Piper is an investor in Riverview Law. Is this the beginning of a DLA "Lite" law firm? The chart below describes how Riverview is conducting business, according to its website.

Note the use of fixed fee pricing, Web access, and technology. These applications and tools have been a recurring mention throughout this article.

While U.S.-based firms are unable to obtain similar capital investments, some have nonetheless adopted an approach to client service, billing and legal services delivery that will position them as solid investments with appealing multiples and significant growth potential if legislation changing the byzantine rules and law materializes on our side of the "pond."

WHAT DOES THE FUTURE HOLD?

As stated by attorney Brian Tannebaum in his recent Above the Law op-ed, "The Practice: Unverified Stats and the Future..." (<http://bit.ly/10LmqpV>): "43% of law futurists readily admit as not having spent much time in the future."

On a more serious note, law firms have demonstrated that they can abstain from hourly billing, grow profitably by focusing on efficiency, value, client satisfaction, client communication and predictability. These firms will survive and flourish. We do not see a substantial decrease in litigation from current levels, but we are witnessing abrupt changes in how cases are handled and staffed. The court system is a

great leveler of justice that we can ill afford to do without, but arbitrators and mediators have been providing alternatives for years.

There is little question that we need lawyers and law firms. One of my favorite clients is the managing partner of a four-attorney firm in a small Colorado town. When asked "how's business" his reply is routinely: "There is no shortage of people (or businesses) trying to inflict harm or damage to other people." *Res ipsa loquitur*.

We have seen new forms of legal entities. We have seen the recent failures of once mighty law firms; from a national level Dewey & LeBoeuf to small-town America such as Casper, Wyoming's Brown Drew & Massey. The practice of law is a challenging business and many lawyers are not astute business people when it comes to planning. This needs to change.

Succession planning is a subject on to itself, and a lack of it will lead to more law firm failures and conversely, opportunities for other firms.

It is also imperative that law firms and lawyers distinguish themselves from the competition. As strategist Michael Porter stated: "The essence of strategy is choosing to perform activities differently than rivals do." Whether it's LegalZoom, Axion, Virtual Law Partners, or others, we have witnessed numerous examples of innovation.

It's been said that there are three sorts of people in this world: those who make things happen; those who watch things happen, and those who don't know what is happening. Which one are you?

