

A NEW MODEL OF PRACTICING LAW

Nina Schuyler

The old model of practicing law is dead.

That was the message Ralph Baxter, chair and CEO of Orrick, Herrington & Sutcliffe delivered to participants at a recent conference.



Ralph Baxter

Baxter told the hundred plus people gathered for the 2010 Legal Marketing Association Twelfth Annual Technology Program in San Francisco, “Big changes in big law are coming. About the only thing that will be the same is that we are a profession serving clients.” Baxter confined his remarks to big law, firms with a hundred plus lawyers who cater to corporate clients, most of whom have global reach.

Given the risk-averse nature of most lawyers, this news isn’t going down easily. “This is a time of unprecedented uncertainty and anxiety among lawyers,” says Baxter. While the financial crisis is not the cause of the changes, it is quickening the rate in which these changes are being implemented.

To a riveted audience gathered at the Meridian Hotel, Baxter outlined the macro factors that are driving change.

◆ **Consolidation:** In the last twenty years, law firm consolidation has resulted in dramatically fewer big firms. Economic power is now concentrated in the hands of a few: the Am Law 200 controls about half the market share of all commercial law practiced in the world, says Baxter. That means big law will determine the rate of change—the more aggressive the approach to implementing changes, the faster the change. In addition, these big firms have taken on “enormous financial responsibilities, such as becoming landlords, which adds pressure to the dynamics of change,” says Baxter.

◆ **Segmentation:** In an effort to cut costs, the market is segmenting legal work, hiring Firm A for high

stakes, bet-the-company matters that demand more skill and resources, and Firm B for simpler work that can be commodified. Firms such as De Novo Legal and Axiom Law are competing in this area, providing document review, due diligence, e-discovery projects, as well as straight-up legal representation, and they are nipping at the edges of big law.

◆ **Globalization:** The majority of big law's clients are engaged in global commerce. As a result, clients want more comprehensive services. This adds complexity to the management of the firm. In particular, how can a firm be all things to a client?

In response to these factors, big law is rethinking the way it practices law, turning to a myriad of tools and processes to realign how business is done.

Technology is playing a role, and in the future will play an even bigger one. Big law currently relies on technology to increase efficiencies and reliability, primarily using software and online services to communicate, sort, and file.

Increasingly technology will be used for collaboration not only internally, but with a firm's clients and attorneys at other firms. A good example of what the future holds is Paul Lippe's site, www.legalonramp.com, where lawyers, both in-house and outside counsel, exchange ideas about the legal profession, share expertise, and collaborate on projects.

James Carroll, general counsel of Goldin Factoring, Inc., who spoke on a panel later in the day, said that, as an in-house lawyer, technology has helped him reduce costs. When he worked at a patent-intensive consumer electronics company, outside counsel set up servers so whenever he wanted, he could access documents pertaining to matters. "I had easy access to information and it saved me money because I didn't have to call up the attorney to get the documents," said Carroll.

Thuy Thi Nguyen, general counsel for Peralta Community College District, said that given people's busy schedules, she relies on the website www.wizard.com, which allows a person to schedule a meeting easily.

At Genentech, the company's Litigation Resource Center is constantly evaluating technology, looking for ways to increase efficiencies, says Timur Engin, senior technology and litigation counsel. "It would be great to have law firms offer their suggestions for good technology," says Engin. "Because of their client base, they get to see a lot of different technology in the marketplace."

Another factor driving change in big law is the newly graduated law school student. "What people want from a career has changed," says Baxter, who cited Daniel Pink's book, *A Whole New Mind*. "The mindset of the twenty-first century is different from the mindset of those who created the law firm." Today, people assume they'll change jobs several times or more. And more people want a balanced life, time for family and other pursuits. That means the resources available to firms are changing.

Clients are a significant factor of change. "Clients are under pressure to deliver more for less," says Baxter. But more than that, clients have become increasingly frustrated with and critical of the way big law runs itself. They point to the expensive real estate, the high salaries, and the inefficiencies.

"The fact is firms spend more money than they need on people, space, and technology," says Baxter. "We don't have the same financial discipline as our clients. We are not as economically efficient, and that's a dynamic for change."

THE FUTURE

Where is all this headed? While no one knows with certainty, Baxter is prepared to make some guesses and position his firm to succeed in the new landscape.

The market will pay less per unit of value forevermore. "When you combine technology, which increases efficiencies, with client frustration, the result is that clients will pay less for services in the future," says Baxter.

The evidence bears this out. In 2009, according to *The American Lawyer*, revenue per lawyer for the Global 100 was down 3 percent. In 2009, among the Am Law 100—the top-grossing firms in the nation—fifty-six firms posted a reduction in revenue, and four firms had a dou-

ble-digit decrease. This, despite the fact the hourly rate has not changed.

“What does this mean? Law firms need to be more efficient,” says Baxter.

Work will be disaggregated. Since the market will continue to segment work, firms can either disaggregate legal matters or let the client do it for them.

“You can create resources and pricing schemes that recognize that some legal work can be commodified,” he says. “If you leave it to the client, quality will suffer and the economic efficiencies are not so high.”

THE BASIC BUSINESS MODEL OF BIG LAW WILL GIVE WAY

You will see more firms rethinking the way work is done. For instance, in fall 2009, Howry introduced its apprenticeship program in which associates spend their first two years working as “apprentices” before taking on significant client work. They attend classes and seminars to learn the practical skills of lawyering. In the second year, they spend several months at the client’s work site and are billed at a reduced rate, \$150–\$200 per hour.

Howry did away with the lockstep model for associates and pay is based on measured levels of competency. A first-year associate earns \$100,000, with an additional \$25,000 to pay off student loans. Managing Partner Robert Ruyak compared the new model to “medical residency” and “accountant secondment,” in which new accountants are embedded in a business to see how it works.

Ruyak is in agreement with Baxter. “The old model is broken,” said Ruyak when he announced the new program. “You’re bringing on these extremely bright individuals and letting them waste their careers buried in documents where they aren’t really learning the practical skills it takes to be a lawyer.”

The metrics for law firms will also change. Under the old model, firms are measured by profits per equity partner. This metric will no longer be relevant in the fu-

ture. “What other business measures itself by how much it pays its people?” says Baxter. “It leads to bad decisions and internal conflict.”

Moreover, the billable hour won’t be the dominant way to bill clients. “You will see more fixed fees, discounted rates,” he says.

THE RATE OF THESE CHANGES

Overall, change will proceed unevenly and slowly, says Baxter. Lawyers aren’t business people and aren’t efficient at change. Moreover, law firms are a professional partnership, which, by definition, requires consensus. And the mindset of lawyers is governed by evaluating precedent and spotting the problems in the facts. “They are trained to find flaws in your proposal,” he says.

Other factors will also change slowly. Clients are often reluctant to move away from the traditional billing structure, unless the firm has worked to develop a relationship of trust. Students with big student loans also resist the change—a career with more humanity won’t pay as much.

WHAT ORRICK IS DOING

Given Baxter’s view of the profession, it’s no surprise that Orrick is on the fast track to revamp its business model.

In 2002, Orrick moved a significant part of its back-office operations out of San Francisco to less expensive real estate: 88,000 square feet in Wheeling, West Virginia. At first, Orrick’s Global Operations Center (GOC) had seventy-three employees; now it has two hundred, including “career associates” (more on this later) handling document review projects, conflict checks, and corporate compliance. The Wheeling rent is 10 percent of San Francisco’s, and the salary 40 percent less.

According to Baxter, in the first five years of operating, the GOC saved the firm \$26.5 million in overhead. “We couldn’t have done it ten years earlier because the technology wasn’t there yet,” says Baxter.

Since its origin, the GOC has been expanded to include the “Global Corporate Solutions,” says Baxter. “This grew out of collaboration with Cisco.” Cisco, as do many of Orrick’s clients, does business in every country. To track and manage worldwide regulations, compliance, and law is a costly undertaking for any company. In response, Orrick created a network of lawyers, not all of them Orrick attorneys, that make sure a client is in compliance around the globe.

Orrick also launched a Client Relations Program, with a designated chief client relations officer. “We found that clients viewed every conversation they had with us as a sales pitch,” says Baxter. “You had to work to be seen as sincere.” Part of that sincerity includes visiting clients and finding ways to collaborate to solve problems and reduce costs.

Recently, Chief Client Relations Officer David Fries, located in Minneapolis, has spent a lot of time advising Orrick lawyers how to negotiate fixed-fee arrangements. As a result, well over 50 percent of Orrick’s revenues will come not from the traditional revenue model of hours times billable rate, but other fee arrangements.

That sits well with the Association of Corporate Counsel (ACC), which launched its Value Challenge two years ago—an effort to get more value from firms without paying higher prices. “We’ve seen inroads,” says Goldin Factoring’s Carroll, president and chairman of the board at ACC. “Now there’s more awareness that there are different ways of billing.”

According to Engin at Genentech, in a recent beauty contest for a complex patent litigation matter, ten firms proposed a fixed-fee arrangement.

Orrick also revised its talent model. In 2009, Orrick took the significant step of abandoning lockstep pay for its associates. Instead, it unveiled a three-tiered salary structure, in which a first-year associate is paid a base salary of \$160,000 that increases as the lawyer’s value increases. Associates can advance from associate, to managing associate, then senior associate. Along the way, the new lawyer receives honest feedback if she or he is on track to partner.

And if the associate has no interest in becoming partner? The firm created another career track called “career associate.” A lawyer can sign on as an associate and choose not to be on the path to partner, in exchange for a reduced annual hour requirement. According to Baxter, this option is booming in Sacramento and Wheeling.

Orrick is also abandoning the traditional metric of measuring average profit per partner (PPP).

“We issued a press release about this to make a statement to our clients,” says Baxter. Instead, Orrick will measure (1) client penetration: an index that measures across a sample of clients how deep and broad the relationship is between the client and firm, (2) the degree of internal communication and connections, (3) profit margin, and (4) market share.

“We decided to no longer participate in the big law race to see who can post the highest numbers,” says Baxter. The PPP is “not a metric that aligns with controlling expenses and serving our clients.”

Nina Schuyler is a lawyer whose first novel, The Painting, was published in 2004. She can be reached at ninaschuyler@hotmail.com.



NEXT TO NOTHING TECHNOLOGY

In terms of technology, what can you get on a shoestring budget? Turns out quite a lot.

The Bay Area law firms' librarians, techies, and marketing coordinators are a creative, resilient sort. They've poked around on the web and found all sorts of nifty software or websites to get their jobs done quicker, cheaper, and better. At the Legal Marketing Association conference in San Francisco, they presented an array of technologies that cost less than \$500 a year.

PBWorks.com

What is it: A collaborative online workspace, where people—colleagues, clients, vendors—can work together on a project. Participants can log in to the workspace and update, revise, or delete information. You can store and link documents too.

Cost: \$20 per user/per month

CampaignMonitor.com

What is it: Email marketing software that allows you to send out a bunch of email newsletters to many subscribers. The moment you send out the email blast, you can track who opened it, who forwarded it to a friend, and which ones bounced back. You can add this link to a website, allowing someone to subscribe to the email newsletter.

Cost: \$5 per campaign; one cent per email address or \$15/month

BaseCampHQ.com

What is it: An online workplace for team collaboration and project management. You can run more than one project at a time and an unlimited number of people, including outside clients/vendors, can have access. It includes to-do lists, who is assigned to the work, whether the work has been done, and a communication section where team members can send comments to each other about the project.

Cost: \$24/month

Wordpress.org

What is it: Straightforward, easy-to-figure-out software to build a website and blogging platform.

Cost: Free

Hootsuite.com

What is it: Hootsuite integrates all your social media in one place, allowing you to go to one site and enter content on your Facebook, Twitter, blog, and so on. It also tracks who is accessing your social media by region, and allows you to choose the best time and date to send your posts.

Cost: Free

JavaScript Mailtool

<http://www.webreference.com/js/column70/3.html>

What is it: It creates an address where people can send responses to an email, such as an invitation to attend an event.

Cost: Free

Bit.ly

<http://bit.ly>

What is it: It shrinks a long URL link. Instead of a long URL address on the bottom of an online invitation, you can use this program to shorten it.

Cost: Free