

Technology as the Catalyst of a New Legal Dynamic

by Ed Poll

Pundits have talked about two major trends in the legal profession the past several years. First, lawyers increasingly must become client-centric, understanding clients better and responding to their needs more completely, even beyond what successful lawyers have always done. Second, tremendous advances in electronic and computer technology enable lawyers to do more and better work in less time, which defines the service dynamic that clients increasingly demand.

The time savings, efficiency and commoditization of routine tasks and services afforded by computers and other electronic technology have freed the great majority of lawyers to focus on the creative, problem-solving aspects of their law practice while being able to meet client needs better. At the same time, though, the increased efficiency results in lower revenue without promising greater volume of work. Will lawyers be able to overcome this phenomenon, or will more become technologically unemployed?

Efficiency Momentum

With business and individual clients alike becoming more resistant to or unable to pay for legal services charged according to standard billable hours, the billable hour may in fact be facing its last hurrah. Doing more work faster will reduce revenue when billing is done by time. But without momentum from technology, it is quite unlikely that either general counsel, individual clients or attorneys will push to change the current time-focused system.

Change, however, does not have to be a negative for the legal profession. Instead lawyers will have to alter their fee and cost structures in the new world created by changes in technology. Law firms that partner with their clients in ways that use technology to meet client needs through greater efficiencies can reduce clients' legal costs while maintaining or increasing the law firm revenue. A new fee dynamic can create an environment of sharing the efficiencies offered by technology. Both lawyer and client can benefit.

Model Application

The model for how such a dynamic can work already exists. 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. When the basis of production shifted to automation, it produced the same result but with a different name. The more product or service a machine could produce, the less expensive the product might be. The result would be a lower price with higher volume, all of which tended to produce higher profits.

This dynamic works the same in a law firm. Consider the example of knowledge management (KM) databases. KM systems combine the work product of all lawyers into a single unified database that can be accessed by each lawyer to the benefit of all clients. Clients no longer want their lawyer to reinvent the wheel: once the research is done or the form is created, clients do not want to pay for others in the firm or for their own lawyer to re-create it (and charge for doing so) in another matter. But the focus on shared knowledge indicates where the secret weapon lies: the efficiencies from computer 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.

Billing Transformation

The question becomes, then, are clients ready for the kind of billing arrangements 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 they are. Undeniably there is somewhat of a trend among corporate clients to view certain legal services as a commodity, and to apply standardized rates or flat fees where appropriate. However, most 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.

Equally important, though, is the change that must occur on the law firm side. Being able to maintain billings while becoming more efficient requires changing the billing system to embrace alternative fee arrangements (AFA). Using contingent, fixed, capped, value fee approaches where time is not the relevant issue to determine the fee is essential to make the most of the leverage from technology. The premise of any such billing system is that time is not the relevant issue to determine the fee. As a result, the rules of professional conduct must be altered to permit billings without reference to time, particularly in determining appropriateness of fees where there is a dispute.

End or Beginning?

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 value or the per hour fee of the lawyer. 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.

Several years ago British technology consultant Richard Susskind published his provocative book, 'The End of Lawyers?' In it he claimed that the ongoing development of new legal technologies and the resulting pull toward the commoditization of legal services will make irrelevant the traditional provision of legal services for which lawyers are trained. But the rise of technology does not mean 'the end of lawyers.' It is instead the beginning of a new dynamic that will benefit lawyers and clients. ■

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Ed Poll coaches attorneys in starting and operating law practices, strategic planning, and practice development. Quoted in the New York Times and ABA Journal, among others, he's also a prolific writer at LawBiz Blog. He's a Fellow, College of Law Practice Management; Board Certified Coach to the Legal Profession, SAC; charter member of the Million Dollar Consulting Hall of Fame; and first recipient of The California State Bar (LPMT Section) Lifetime Achievement Award. Ed can be reached at edpoll@lawbiz.com and @LawBiz.

