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Not Your Parents' Profession Anymore

The changing course
of legal careers

BY PROFESSOR THOMAS D. MORGAN

American lawyers got a wake-up call in 2009 and 2010. Men and women who for many years had been chasing more and more work at an ever faster pace suddenly found themselves looking for a secure place—almost any place—to ride out the falling demand for their services. Some 5,000 lawyers—many of them equity partners—lost positions in major firms in 2009, while third-year students found promised jobs deferred until an often-undefined future date. Graduates in 2010 and beyond now wonder if they will get job offers at all.

There will always be a need for people with legal training, but lawyers ultimately face a world in which the demand for their services depends on client needs. Unfortunately, there are changes in how much traditional legal work will continue to be done by lawyers. The world we saw in 2009, in short, may be the kind of world in which lawyers are destined to live.

Longing for the Golden Age

When we talk about the American lawyer, many of us still imagine the world of the 1950s and 1960s, a time called the “golden age” of the American bar. I grew up in that period. My dad and granddad were both lawyers. Their lives were interesting and stable. They were part of what was said to be the largest firm in Illinois outside Chicago, a firm that at its largest had 11 lawyers. An associate who worked hard in the firm could expect to have the senior lawyers act as mentors. A young associate would usually become a partner and would likely retire from the firm in which he began practice. Along the way, he would have earned an above-average income, worked on a variety of cases, and been a leader in community organizations.

The experience of today’s law graduates will be much different. It is not that there will be less legal regulation; indeed, as society becomes more complex, law’s role in regulating conduct is likely to increase. The interaction of law with increasingly complex economic and social issues, however, is likely to make distinctively legal questions less common and many of the skills that we stress in law schools less relevant.

Rather than needing professionals whose legal understanding dwarfs their understanding of the substantive issues faced by clients, clients will require legally-trained persons to be more fully integrated into the challenges they face. That reality may require that more persons, not fewer, have legal training, but the training of many will likely not be today’s three-year graduate program designed to produce an all-purpose legal generalist.

Today’s lawyers, in turn, will not be unemployable, but for significant parts of their careers, they will be required to develop specialized expertise both in an area of substantive law and in the nonlegal aspects of their potential clients’ problems. If they fail to develop both kinds of expertise, they will find at almost every turn that clients will take their problems to those prepared to deliver what is needed at a higher level of quality, a lower cost, or both.

The Changing Legal Path

I believe the transformation of lawyers’ work reality has been the result of eight important trends over the past 40 years.

1st The legal profession was once self-regulating. Lawyers wrote the rules by which lawyers worked, and not surprisingly, we tended to write them in a way that favored us. That all changed in the mid-1970s. Some of the cases may be familiar. *Goldfarb v. Virginia State Bar* saw the U.S. Supreme Court declare a bar association’s minimum fee schedule to be a violation of the antitrust laws. *Bates v. State Bar of Arizona* then held that even a state supreme court’s prohibition of lawyer advertising was a violation of the U.S. Constitution. Even apart from the substance of those cases, the fact that external law governed lawyers unsettled the quiet life that self-regulation had created.

2nd Growth in the number of lawyers over the past 40 years has increased competitive pressure on each of them. At the end of the golden age in 1970, the United States had about 300,000 licensed lawyers. In 40 years, that number has quadrupled to about 1.2 million, about 1 million of whom are practicing law. With that kind of competitive reality, it is no wonder that the ability to attract clients has become a primary determinant of a lawyer’s success.

Indeed, for a simple sense of why today’s law students are having a hard time finding jobs, one need only know that the nation’s demand for new lawyers most closely tracks the rate of increase in the nation’s gross domestic product. Every time the economy slows but law schools keep churning out the same number of new lawyers, we create a lawyer surplus that does not go away. In 2008-09, for example, we produced 4 percent more lawyers at a time when economic activity contracted about 6 percent. Thus, in that single year, the nation added roughly another 10 percent to the lawyer surplus. If graduates want to practice law—and many do—competition for the available work is only going to be even more intense than before. Yet the business model of most law schools makes cutting back enrollments almost unthinkable.

3rd The impact of globalization has transformed the reality of many lawyers’ practices. Instead of just sometimes dealing with conflicting state laws, lawyers must now deal with wholly different legal systems. Even a will drafter or family lawyer may have to protect the interests of children in both Athens and Arlington. The complexity created by globalization is part of the reality that has made it nearly impossible to be the kind of generalist we once thought a lawyer was.

Further, in today’s world, American lawyers find themselves in competition with legal service providers all over the globe who operate under different rules. As a result of the Legal Services Act of 2007, for example, British lawyers now can operate in firms with nonlawyers and the attorney-client privilege extends to communication with the nonlawyers. Australian lawyers are now permitted to practice in corporate entities that sell stock to the general public, and the European Union is considering similar changes in lawyer regulation. If American lawyers ignore the fact that their direct competitors play by different rules, they will have only themselves to blame when clients seek the same or better services at lower cost elsewhere.

4th The technology revolution that has also occurred over the roughly 40-year period since the lawyers’ golden age has and will transform a lawyer’s practice. We all know the changes in legal research and document discovery that e-developments have created. We also know technology has made lawyers’ lives more hectic. But most importantly, information technology promises to transform lawyer work that used to be seen as complex, unique, and worthy of substantial fees into a series of commodities: simple, repetitive operations that will be sold to clients by the lowest bidder.

Technology available on the simplest personal computer today can allow a lawyer to copy a 500-page document used in one transaction and change the names and terms for use in the next. Obviously, the result will be a disaster if the document is not equally relevant to the new situation, so the malpractice risk created by the ease of copying can be enormous, but the benefits of standardizing forms in transactions promise to transform what lawyers used to think of as creative work.

Further, and in some ways most frustrating for lawyers, is the fact that much of the information lawyers have traditionally sold is now freely available on the Internet. Books about law have been around for years, but technology now makes the information ubiquitous. Insights may be provided free in places ranging from Wikipedia to blogs, and the effect has been to make a great deal of formerly exotic legal information broadly accessible. Prepared by thousands of authors, these alternative information sources threaten the monopoly on which lawyers have depended for a steady client base. Clearly, lawyers will tend to be able to understand and apply such information more quickly and accurately than many clients can, but the breakthrough is that a lawyer's knowledge is no longer a black box that clients cannot penetrate. Whether clients are corporations or individuals, they can be expected to seek assistance from multiple sources ready to provide publicly available information rather than buying assistance in a proprietary form created and sold by lawyers alone.

5th Clearly related to the developments described has been the growth of the size of organizations in which lawyers now practice. In 1960, fewer than 20 U.S. law firms employed more than 50 lawyers each, and even by 1968, only 20 firms in the country had more than 100 lawyers. Now, Baker & McKenzie and DLA Piper have more than 3,500 lawyers each and at least 20 firms have now crossed the 1,000-lawyer mark. Firms grow for what are often good reasons, but the all-purpose lawyer we remember in stories of Abraham Lincoln, Clarence Darrow, and Atticus Finch is disappearing—and not likely to be seen again.

6th Another key development of the past 40 years has been the transformation of what scholars call the “hemispheres” of the bar. In 1960, sociologist Jerome Carlin reported that in New York, business lawyers made up 45 percent of the bar, while individual-oriented work such as personal injury, criminal, divorce, wills, and real estate made up the other 55 percent. Lawyers tended to work on one side or the other of the individual/business divide, and it was “people” lawyers who represented the public face of the law. Just 15 years later, Jack Heinz and Edward

The lawyers who prosper will be those who can make themselves the best available “go-to” person in a combined law-and-substantive field, and those who market themselves accordingly.

Laumann documented the individual/ business distinction in the Chicago bar and showed that the lawyers who populated each differed in terms of social class, where they went to law school, how much money they made, their status as leaders of the bar, and the like. They concluded that by 1975, 53 percent of lawyers worked on business issues, while only 40 percent of lawyers still did work for individuals. After another two decades, in 1995, the authors concluded that the proportion of corporate lawyers had increased to 64 percent, while lawyers for individuals had fallen to 29 percent. In short, less than one-third of legal talent in this country now focuses on trying to meet the needs of individual clients.

That does not mean lawyers for individuals are unimportant. It does not even mean no such lawyers make money. Successful plaintiffs' personal injury lawyers, for example, can earn incomes that make corporate lawyers jealous. Lawyers who help preserve pools of individual wealth similarly do well. What the trend means, however, is that a realistic look at the legal profession reveals that the number of attractive opportunities available to lawyers who do not want to do corporate work is getting smaller.

7th Even the growth of law firms and the shift of law practice toward corporate work pale in significance by comparison to the rising power of in-house counsel. Forty years ago, and in many cases much more recently, lawyers in private firms saw their role to be providing wise counsel to lay officers or employees of corporate clients. That is much less true today. The people most lawyers now have to please are other lawyers. This time, it is lawyers acting in the role of general counsel to corporations, government agencies, and other organizations. It is that smaller group of in-house lawyers—who number about 10 percent of all lawyers—that tends to decide what outside services the client requires and why.

Recruiting in-house lawyers rather than depending exclusively on outside firms began as a way for companies to avoid high law firm billing rates and as a form of vertical integration that reduced the cost of searching for lawyers to do recurring tasks. But a strong internal lawyer staff also helps ensure that legal service decisions are made by people who understand the client's business, know the type of legal work that is required, and are able to help managers think about the nonlegal issues inherent in important business decisions. A survey of CEOs for the Corporate Counsel Association, for example, stated that 93

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percent of senior executives believe inside counsel understand the company better and 37 percent even say they trust inside counsel more.

Private law firms are familiar with the practice of hiring contract lawyers, i.e., lawyers hired to do particular tasks when the firm is especially busy on a case or regulatory filing but whom the firm will not need in the long run. Today, private law firms can perhaps best be seen as inside counsel's version of contract lawyers. It hurts for lawyers in private firms to realize that their practice has come to that. The firm they spent their lives building has now become the functional equivalent of a temp agency, and it hurts even more when they are beaten out for commodity work on which they used to train associates but that can be done less expensively by firms in India. There is no escaping the reality, however, that the practice of law has become more competitive and lawyers have become more personally insecure. It is unfortunate but true that many lawyer-client relationships have become less like lifelong marriages and more like one-night stands.

8th Last on our list of changes driving ways the lawyer's world is transforming, the logical outcome of the growing significance of corporate counsel managing legal needs and the worldwide availability of help with legal matters, is the declining significance of having an American law license before providing legal services. One might think traditional unauthorized practice of law prohibitions will protect American lawyers' former practice areas, but changes ranging from who regulates lawyers to the way clients get information are likely to undercut efforts to protect American lawyers against these fundamental changes.

An executive order signed by President Bill Clinton requires federal agencies to allow nonlawyers to counsel and represent clients in agency proceedings, and the effect has been both increased aid available to claimants and a decline in the number of potential claimants that rely on lawyers. Lawyers themselves are breaking down traditional unauthorized practice barriers as they assist their clients, not only in the state in which the lawyer is licensed to practice, but in other states or nations where the client has legal needs.

Law firms have long used paralegal and other support personnel nominally working under the lawyer supervision that ethical standards require. Now, corporations use nonlawyers to help deliver the total package of services they

need to have done. Negotiating contracts, troubleshooting discrimination claims, even writing pleadings can all be done by nonlawyers within an organization receiving a level of lawyer supervision and training to

which unauthorized practice rules cannot effectively speak. Current legal ethics rules require a lawyer in a private law firm to supervise and take responsibility for the nonlawyer's work, but that requirement is easily met, and the nonlawyers are often accountants or lobbyists, economists or nurses, statisticians, or business specialists who are more than capable of acting on their own.

Implications for the American Lawyer of the Future

What then will the future American lawyer do? I think lawyers are likely to spend their careers trying to stand out among a collection of diverse service providers, each fighting to add more to a client's work and life than the client must pay for the service. Even if some of the providers still call themselves lawyers, at any given time in their careers they will likely focus the work in narrow fields in which they can be known as among the best. Lawyers might change areas of concentration as areas of client needs become obsolete or others open up. In a stratified, globalized world in which clients have technology available to find the kind of counselor they need, each provider will have to become among the best at doing particular kinds of work.

Many traditional lawyer services to individuals will tend to be delivered as commodities, that is, as standardized products sold primarily on the basis of price. Estate planning, real estate transactions, adoptions, and uncontested divorces each can present unique negotiation and human relations problems, but the legal components of the cases tend to be repetitive. Technology will allow documents for many such cases to be sold as forms or tailored to individual needs using a few clicks of a computer mouse. If a client needs face-to-face advice for reassurance, needs help in places to which it would be costly for the client to travel, or needs to take a matter to court, someone with legal training might become involved and provide valuable services. But for the kinds of work that many legal service providers with modest training can do quite well, competition should drive fees and lawyer incomes to levels far lower than we see today.

It is a mistake, of course, to view all cases as routine matters. Some individual clients find themselves injured and in need of compensation from persons or organizations that are not willing to pay. Others find themselves charged with crime, find

their immigration status challenged, or are assessed back taxes, fines, and penalties. Such clients will continue to entrust their future to legally trained providers. Even some litigation can involve standardized templates to be sure issues are raised or defended correctly, but many who today call themselves trial lawyers will continue to find their services in demand in the years ahead.

The trend of American lawyers toward disproportionately serving organizational clients is likely to continue if only because businesses are likely to offer the most money for legal services. But there, too, tomorrow's lawyers are likely to find themselves competing against a wide range of foreign lawyers and nonlawyer consultants. Lawyers are likely to find that fewer issues will be seen as distinctively legal in character. Lawyers might be retained among a mix of advisers as a company formulates an environmental compliance program, for example, but the company is likely to give equal or even greater weight to the views of biologists, chemists, and ecologists. Legal training may add weight to a lawyer's opinion, but lawyers who cannot provide nonlegal insights as well may find their phones ring less often.

Lawyers like to think they are good at lots of things, but experts in finance and accounting are equally likely to think they can look up the law themselves or hire less expensive lawyers to do it for them. Lawyers will continue to be called upon to be problem solvers, but they will be working in competition with a million fellow lawyers—as well as several million other consultants—to try to advise yet other lawyers who themselves have training relevant to a client's needs. Nonlawyer providers will make it a point to learn enough about the law relevant to their own activity that lawyers will not be able simply to bluff them into submission by asserting an exclusive right to explain legal issues.

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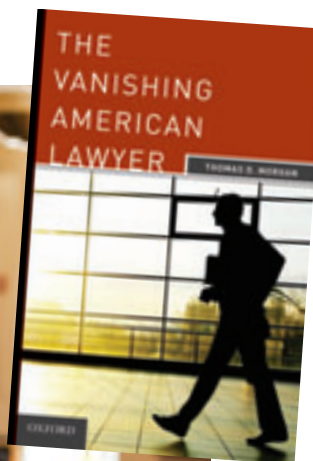
law-and-substantive field, and those who market themselves accordingly. Blogging and use of networking sites will increasingly be attractive to lawyers who want to make themselves known to potential clients. To the extent someone else offers services of more value, clients will turn elsewhere. In any event, client needs will typically have little or no relation to subjects now traditionally tested on bar examinations.

Changes on Legal Education

One effect of all this on people now in law school (or considering going to law school) is likely to be that even fewer will see the financial rewards that top graduates have come to expect as their due. That cannot help but impact the multi-billion-dollar world of American legal education. At George Washington, for example, considering tuition, books, room, and board, each year is estimated to cost a student \$66,300, or a total of \$200,000 to earn the J.D. degree. That means that, each year, when GW Law's more than 500 graduates pick up their diplomas, they have invested a total of \$100 million in their professional education. Are students getting what they paid for? The question is important today, but it will be critical in the future.

As a very large law school, GW is exposed to the challenges from a decline in law school applications. We have not yet seen such declines, however, and a GW education should be extremely attractive to students facing the future they are likely to experience. The number of GW's high-value specialty programs—such as intellectual property, government contracts, corporate law, international law, environmental law, and trial practice—are regularly regarded as among the best in the country, and the value of studying law in Washington is unlikely to decline. As it has been in the past, then,

in the future bearing down on lawyers, having a law degree from George Washington should be a credential to be prized. **GW**



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