



PASSAGES: A NEW WORLD FOR THE LEGAL PROFESSION

Are Lawyers Sailing into the
Same Storm as their
Predecessor Professions?

By William C. Cobb

The legal profession is not impervious to the changes that are occurring in the market place. The profession cannot stop those changes nor can the profession erect strong enough barriers to insulate it from progressive economic influences. The legal profession is bound by the evolution of the market and will be affected by the same forces that have affected all others who deliver products and services.

The following are not predictions, only possible implications of already demonstrated trends that affect one group of providers after another in almost the same consequences. To paraphrase Peter Drucker: "We cannot predict the future, but we can seek to understand the implications of current trends on the future." For me the question is not if the change is coming but "when" the change is coming. The importance is that we must recognize the changes as they

begin to occur on our radar screen, and then we must deal with the threat or take advantage of the opportunities created.

This view takes information from many experiences, anecdotes and sources, but the foundation came from articles that appeared in the late seventies describing the transition of the consumer products industry in the U.S. As I track through the changes, the reader should recognize that predecessors have encountered and dealt with the shifts in their environment. Successful models for adaptation are out there - even if they do not appear in the legal industry. According to Drucker, the legal industry has two roles in the future - marketing and innovation. Marketing is defined as "understanding the needs of clients and responding to those needs." In addition, the legal profession has to innovate - it must take knowledge and lessons learned from others who have suffered through the change and integrate those approaches into their management and leadership.

This article is intended to help the readers tune their radar. As an electronic countermeasures (ECM) officer on an attack aircraft helps separate real threats from ghost, leaders must help their constituencies discern threats from mere noise. Every ECM officer has done the homework on threats other attack aircraft have flown through, which allows the officer to recognize the threats. Lawyers must learn from others who have "flown through the flack."

The legal profession exists in a bio-economic world where every other entity will affect the approach the legal industry must take in adapting to change and become more effective in solving client problems

in a multi-disciplined way. The more a lawyer understands what is occurring to the relationship between the client and its customer, the more the law firm sees what will be happening to the relationship between the client and the law firm. Customer demands for higher usefulness and value added will create downstream effects and implications on the legal profession.

This article is not based upon some sophisticated study but on anecdotal evidence that I have encountered as a consultant, CPA, and avid reader since the early 1970's. A more scientific study would help, but hopefully this effort will persuade someone to begin the analysis that will prove or disprove my hypothesis.

I can distinguish seven major phases that occur in the leading edge of an industry that service oriented professions will pass through. The phases of progression through the phases of change, as shown in Figure 1 on the last page, are my best guesses. Many still do not see the trend and may be operating in a previous phase.

Phase I: The creation of the monopoly.

Phase II: Increasing capacity to meet growing demand.

Phase III: The use of an established distribution channel to pursue market share expansion.

Phase IV: The shift in power from the seller to the buyer or increasing customer sophistication.

Phase V: The reactionary response to forces not understood by the provider.

Phase VI: The quest for the "holy grail" or "silver bullet" to solve the emerging problems without having to make significant shifts in the culture and the vision of the

organization - the easy way out.

Phase VII: The recognition of the need for leadership and vision required to adapt.

The basic phases of transition in any industry cause tremendous upheavals in unprepared organizations. Taking one phase at a time, we will start with their affect on industry and then move to their effects on the professions in industry's trail.

Phase I: The Creation of the Monopoly.

How does one create a monopoly? First, by creating a market with only one possible supplier or that supplier is protected by barriers prohibiting other entries. Railroads, telephone companies, utilities have all been through this. But monopolies can also be created by early entry into the market. After World War II the consumer products industry was a monopoly. As the war machine was converted into supplying consumer products of a huge pent-up demand, only a few competitors were positioned to capture most of the market - e.g. automakers. These monopolies had very low raw material and human resources' cost. Everyone was looking for a job and all the raw materials of the war machine were being channeled into consumer products. Geographic boundaries and barriers were erected to keep the Japanese or European competition out of the U.S. The monopoly defined quality and measured its performance based upon product quality and technical competence.

Phase I indicators of established trends in creation of a monopoly:

Industry: Consumer products were scarce and any industry that produced such products became a

sole-source. The industry was protected by technological and production expertise and by geographic barriers.

Architectural/Engineering: A few providers were positioned to provide sophisticated expertise to meet the growth in capacity and construction.

CPA Profession: Increasing government regulatory efforts required the use of outside CPA's for audits and tax consultation.

Medical Profession: Tremendous increase in demand for medical services and the infusion of new specialist to handle the demand.

Legal Profession: Increased demand for legal services as the number, diversity and complexity of legal issues affecting clients increased exponentially.

Phase II: The drive toward increasing capacity to meet growing demand.

Business could not possibly keep up with the demand for product - there were too many demands and too few producers. Producers sought to increase their capacity by building larger plants and more efficient production lines in order to leverage the limited management talent available in their industries - those people who could manage production. Of course, competing in a virtual monopoly allowed the industry to provide their products and services based upon cost plus pricing. In the "high-demand" market, prices tended to drift upwards, pushed by the cost of production.

Phase II indicators of established trends in building capacity:

Industry: In order to meet

demands, industry built new, larger plants with borrowed money. The focus of marketing was to push product in order to fully utilize built-up capacity.

Architectural/Engineering: Firms grew as multi-disciplinary providers. The loyalty of clients to the firm created multi-disciplined organizations. The growth was fueled by the buyer needs for architects, engineers and project managers to produce turn-key projects.

CPA Profession: Firms grew through local and international offices to cover the audit requirements and integrate the services with a common supporting structure.

Medical Profession: The medical profession increased the number of hospital beds and acquired expensive and sophisticated equipment to meet the demand. The price-insensitive market and this growth shoved up the cost of medical services. Surgical fees shot up to pay for scarce resources and new equipment.

Legal Profession: Law firms grew to meet the demand and provide the diversity of services required by clients loyal to their firm and without the threats of optional providers to replace the law firm.

Phase III: The use of an established distribution channel to pursue market share and expansion.

Profits increased with elastic pricing and some expense controls. Established production capacity and the perceive prowess of management motivated organizations to capitalize on their credibility with distribution channels and loyal customers.

Since business pundits measured success based upon the volume of business, being big meant success and power. This business strategy created conglomerates that brought in a large portfolio of products and services under one tent. Management emphasis moved to smoothing out and maximizing production, while controlling expenses. The new emphasis of leadership: push volume and acquire larger and larger market share to utilize production and experience capacity.

With the commitment of resources to manage such diverse products and services, production and management expenses began to grow exponentially. Unit costs (and fees) began to rise faster than inflation. But, fortunately the volume kept revenue growth ahead of the rise in expense.

Phase III indicators of established trends in diversifying and expanding to capture market share:

Industry: Industry acquired other businesses that could use the same distribution channels that were established by the core products of the company. They acquired suppliers who provided raw materials and customers who controlled the distribution channels. For example, gas transmission companies acquired the fertilizer companies to whom they provided raw materials.

Architectural/Engineering: The acquisition of design, engineering, project management and construction arms captured the entire vertical process for “turn-key” projects.

CPA Profession: The acquisition of smaller CPA firms all over the country and the expansion into international arenas brought

experience and expertise to broader markets, capturing a greater market share of the client work. CPA’s used their access to auditing clients to cross-sell other profitable services into the client company.

Medical Profession: The profession created larger and larger hospital systems and clinics with branch clinics to capture and funnel the high-end, surgical work to the medical group’s specialists.

Legal Profession: The profession expanded into other geographic markets to sustain growth and apply accumulated knowledge and expertise. An additional rationale: acquire a broader range of practices, providing “one-stop” shopping for clients.

Phase IV: The shift in power from the seller to the buyer - customer sophistication.

The power began to shift from the seller to the buyer. As geographic, national or professional certification barriers came down, customers were presented with more options. The protected U.S. automakers never saw the change coming from the Japanese who understood that U.S. customers were demanding a much higher quality car with better gas mileage. As the sophistication increased, customers began to compare the added value of products and services offered to costs of those products. The provider was required to increase the quality of its product in both technical areas and in usefulness to clients. At the same time, alternative providers were competing for the same customers, causing price to become a factor.

Phase IV indicators of established trends in the shift of buying power:

Industry: Japanese and German automakers moved into the market promising and delivering cars more responsive to the needs of the buying public. U.S. automakers could not provide the quality of product at the price consumers were willing to pay. Additional products invaded the market, including coffee makers, digital watches and other consumer products. The buying public soon came to regard these foreign producers as more responsive to their needs.

Architectural/Engineering: Clients began to demand much stronger control of projects, forcing many companies to move to “fixed-price, incentive-fee” contracts. Firms began to feel the pinch of their far flung activities, overhead burden and lack of tight project management.

CPA Profession: Audits became a commodity driving clients from firm to firm, based upon the best price clients could get from a request for proposal process. Clients saw very little added value from the auditing effort.

Medical Profession: As cost rose, clients began to band together into large buying organizations, such as insurance companies and HMO’s, to force fee restrictions and slow the escalating growth of medical costs.

Legal Profession: Fees began to rise at an exponential rate to cover costs from the increasing need for lawyers from a litigious society. General counsel offices grew and became more sophisticated in outsourcing work.

Phase V: The reactionary response to forces not yet understood by the seller or professional service provider.

Providers began to position themselves based upon their old perceptions of marketing. Providers kept trying to get the word out on their technical competence and product quality. At first, the industry was reactionary, touting a multiplicity of new designs and increasing the options list for the buyers. They began to cut cost of production and position themselves to be low cost providers, instead of increasing the quality of their products to meet customer demands. Industry began to cut expenses (and cut middle level management) with across-the-board percentage reductions. Authors Blaxill and Hout discussed "The Fallacy of the Overhead Quick Fix" in the Harvard Business Review, July-August 1991. This article focused on the need to look at the core competency services and then focus the infrastructure and expenses to support those services. This article demonstrated that producers who focused on niche products had 67 percent of the overhead per unit than those industries that tried to market and produce a wide-range of products. Those companies who chose their core competencies and focused upon them could reduce their overhead per unit. The shakeout was on. Low cost providers who kept cutting into their quality and production capabilities to lower costs began to go out of business or to be acquired. Individual entities that could not see their place in the large conglomerate with its high overhead began to split off (e.g. leverage buy-outs) and compete more effectively. More customer responsive providers began to emerge. For example, financial managers who were more "high-touch" replaced traditional providers in the consultation role for wealthy individuals. The old monopoly businesses kept saying:

"Here is our great product. You should buy it because we think it meets your needs." The alternative providers were saying: "We understand your problem and your needs, and we will develop a solution to specifically fit your requirements."

Phase V indicators of established trends in reaction responses:

Industry: Industry went through major downsizing and consolidation to reduce costs.

Architectural/Engineering: Entrepreneurial, niche providers were created by spin-offs. Downsizing placed other professionals out on the street. In order to compete, these niche providers had to partner with other niche providers in responding to request for proposals.

CPA Profession: The profession turned its focus to the return on billable time of the professionals assigned high billing rates to cover the overhead carried by the large CPA firms. Unable to meet the realization requirements, many local offices were "spun off." Professionals with the large firms were required to push their leverage and provide a high volume of billing credits.

Medical Profession: Doctors began to look for ways of negotiating with the major buyers by establishing larger medical groups or management service organizations. Hospitals were merged to reduce costs by sharing common services and equipment.

Legal Profession: Partners focused on cutting overhead, lawyers as profit centers and short-term measurement of contribution. Entire conferences concentrated on how to measure a partner as a

personal profit center and how to fire a partner. Since contribution was measured on personal billing credits and control of work, lawyers hoarded clients and began to sell themselves to other firms. Leadership, in determining who was contributing to the firm, gravitated to the statistical performance measures of hours and collections.

Phase VI: The quest for the "holy grail" or "silver bullet" to solve the problems without having to make significant shifts in the culture and the vision of the organization - the easy way out.

Industry tried to copy the Japanese without making the leadership commitment to changing the culture of their organizations. Industry tried Joseph Juran's quality concepts, management by objectives, TQM and Reengineering to fix the problems they were facing. Industry was looking for a quantum leap into new levels of profitability. They could not grasp the concept of evolutionary change, where the slate was wiped clean and the organization would "learn its way" into a new paradigm. Unfortunately, most of the efforts were based upon old assumptions of what made the company successful - size and product. The old bureaucracies created an impregnable barrier to change. Consultants were called in to define the problem and provide a quick solution. TQM and Reengineering were instituted to achieve what the old paradigm managers wanted to happen - reduction in cost without a change in their power. All of the McManagement approaches became perceived by the employees as a quick solution to focused on short-term goals and reduction in staff.

At the end of this phase, leaders saw the “silver bullets” for what they were - quick fixes that would sustain continual improvement. Disillusioned, they declared TQM and Reengineering as failures.

Phase VI indicators of established trends in the quest for the “holy grail:”

Industry: A horde of quick fix consultants “fogged” into the market. These consultants soon were called Sea Gulls. They flew in from the coast, did the project, collected their money, dropped a pile of “white stuff” known as a report in the lap of the client and then flew back to the coast. Sustained change was not possible because the business had not incorporated the change process into their culture.

Architectural/Engineering: Firms enlisted sales and marketing in order to appear on the Request For Proposal short list . Such firms struggled to define in what niche they would compete more effectively, seeking any work that kept them busy.

CPA Profession: Partners were told their contribution and compensation would be based upon their production. They were given higher and higher revenue goals. Consultancy groups within these firms became more powerful, forcing a more multi-disciplined approach to assurance work. But the culture kept bringing the assurance partners back to the old, secure work-papers approach, which lowered the realization on the projects that were being performed under fixed-price engagement agreements.

Legal Profession: Firms and others solving the problems of their clients

Medical Profession: Medical groups were rolled up into management services organizations. Doctors became employees and minor shareholders. Groups began to seek ways of getting around government and buyer guidelines e.g. Columbia Hospital Systems.

Legal Profession: The profession tried cross-selling, marketing coordinators, reorganization into practice groups, chased “hot” practice areas, TQM and other “solutions,” yet failed to recognize their culture of anarchy and unwillingness to listen to the clients who were at the root of the problem.

Phase VII: The recognition of the need for leadership to completely refocus the entity on its vision, mission and accountability to those precepts.

True change began as the leaders recognized the importance of a vision and mission. They saw that those entities with a strong vision for serving their customers were able to rally their employees toward more accountable behavior in reaching that vision. Their mission helped identify their core customers and the core competencies of the organization in meeting the needs of their customers. The mission helped leaders make tough choices pertaining to where resources would be invested and the accountability of their employees.

The organizations began to learn their way into a new way of operating. Teamwork and mutual accountability became the key to improvement, and knowledge sharing became the vehicle for accelerating change and customer responsiveness. New measures of performance, such as economic value added (EVA), were instituted to measure the value added of the organization to the customer.

The organizations began to learn their way into a new way of operating. Teamwork and mutual accountability became the key to improvement, and knowledge sharing became the vehicle for accelerating change and customer responsiveness. New measures of performance, such as economic value added (EVA), were instituted to measure the value added of the organization to the customer.

value added (EVA), were instituted to measure the value added of the organization to the customer.

Phase VII indicators of established trends for leadership and vision:

Industry: Leaders in the industry have begun to focus their companies on client service and process improvement that cut across traditional organizational lines. Reengineering has become more holistic and effective. Measures of economic value added (EVA) for customer service processes replace traditional cost accounting of individual functions, such as sales, production or accounting.

Architectural/Engineering: Virtual partnerships form to take advantage of core competencies of multiple organizations. Each client receives a different mix of providers, based upon the client’s needs.

CPA Profession: Services to clients become multi-disciplined and change management will become the key role for the professionals. Assurance partners embrace a new approach to audits that will provide real benefits to their clients from the data collected.

Medical Profession: The profession is sorting out into highly effective groups of practitioners who share a common set of core competencies and can accumulate and deliver experience and knowledge. General practitioners will become diagnosticians, forwarding patients to those groups or combination of groups who can cure the patient.

mission statements to define what core clients will be served and what

services will be provided to sustain their relationship with those clients. Firms operate more like a true partnership in which collaboration will be the culture of the firm. The firm will be a group of professionals bound by a common vision and accountable to one another for the realization of that vision. Included in that accountability will be the recognition for tremendous investments in training people to be more responsive to clients. Finally, realization on the time of the professionals will become as, or

more important than the number of billable hours produced or the size of a lawyers portfolio.

The next phase is unknown, but I believe it will be a much stronger sense of collaboration among more entrepreneurial organizations, with many individual units networking together to meet the demands of their customers and clients. The Internet, Domino Sites and new knowledge sharing platforms, such as Lotus Notes, will enable individual companies and firms, or

units within large companies and firms, to operate more effectively as a network.

As I said in the beginning, I am not trying to predict the future. I am only stressing the need for law firms to innovate. The legal profession must bring the lessons learned from those who have been there before into the leadership and management of their efforts to deliver quality legal services.

This article was written in preparation for the Seize the Future: New Strategies Conference co-sponsored by the American Bar Association Law Practice Management Section and Lotus Development Corporation. The Conference was held in Phoenix on October 29 through November 1, 1997.

For further information, please contact William C. Cobb at the address below.

**WCCI, Inc. • Cobb
Consulting**

Tel. 713-227-2300; Fax 713-227-7081

Internet: Cobbwc@msn.com

www.Cobb-Consulting.com

**The Passages of
Industry and the
Professions That**

Follow



