C•O•L•L•E•G•E of LAW PRACTICE MANAGEMENT
at The University of Denver College of Law

News

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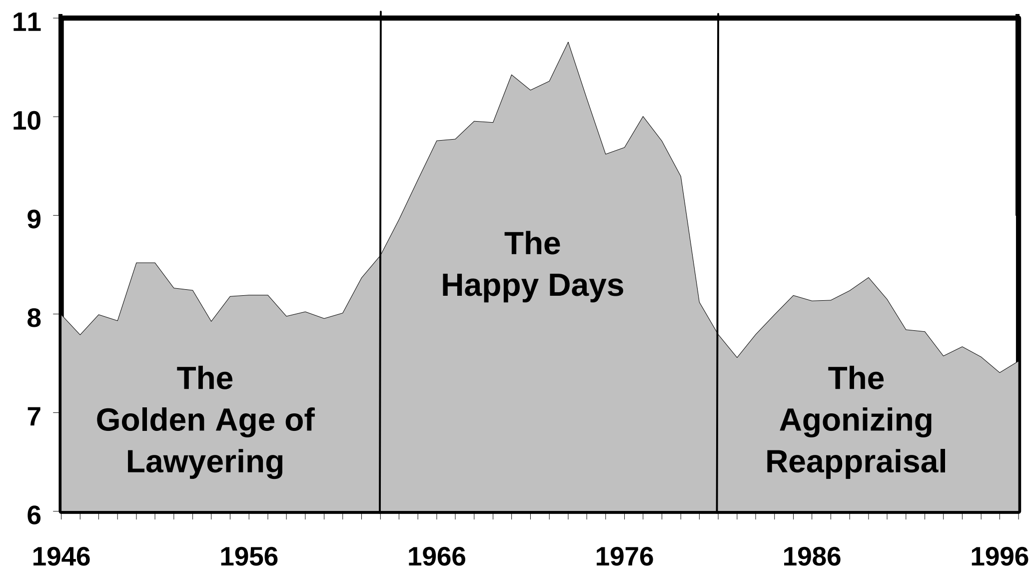
BACK — AND F0RWARD — TO THE FUTURE

By Leary Davis

[Note: an earlier, more elaborate version of this article can be found at 16 Campbell Law Review 147.]

The first of the three great planning questions is “Where are we?” For lawyers the answer lies in the 50-year swing of the legal services market pendulum from a buyer’s to a seller’s market and back. The swing is illustrated by the chart below, showing millions of dollars of GNP per U.S. lawyer over the last half-century.

MILLIONS OF DOLLARS OF GNP PER LAWYER IN CONSTANT 1992 DOLLARS: 1946-1997



The chart reveals three distinct legal markets.

Most people went to law school not because they expected to become wealthy but because other aspects of lawyers’ lifestyles were pleasing: interesting and important work, opportunities for leadership roles, and the ability to make a difference in the lives and institutions of other people.

1. The Golden Age of Lawyering

By today’s standards the economic goals of lawyers were modest during The Golden Age of Lawyering. Most people went to law school not because they expected to become wealthy but because other aspects of lawyers’ lifestyles were pleasing: interesting and important work, opportunities for leadership roles, and the ability to make a difference in the lives and institutions of other people. They shared risks with clients by charging value-based fees: fixed, contingent, percentage, or retrospective.

There were few law students and few jobs for new law graduates. Most lawyers were sole practitioners, and firms seldom needed to grow. Clients were scarce and lawyers maintained strong relationships with them. The times are remembered as more civil, lawyers as more professional. They could afford to be, since their financial goals were modest. Things had been getting progressively better for them as the economy grew slightly faster than the supply of lawyers.

2. The Happy Days

That growth accelerated in the 1960s, ushering in almost two decades we can refer to as The Happy Days.

These were the fun days to which lawyers refer when they say, "practice isn't fun any more." It was fun because of a seller's market in which almost all lawyers were fully engaged. For most, practice was glorious. An oft-repeated joke is that one needed two things to succeed in law practice in the late 1960s: a law degree and a pulse. Lawyers' compensation needs were met with relative ease.

The NIPP formula (through which firms could increase Net Income Per Partner in a seller's market by artful employment of average leverage, billable hours, billing rate, realization rate and profit margin) became the dominant tool of law firm management.

The advent of the automatic typewriter, the plain paper photocopier and the dictation machine provided user-friendly technologies that allowed busy lawyers to make more events occur for clients in less time. Because lawyers were pressed to complete all of their work, clients did not have to worry about monitoring their efficiency. Indeed, it seemed reasonable to both lawyers and clients that lawyers use their new cost accounting data to shift to a cost-based billing system. They could determine their overhead, add reasonable take-home compensation for themselves, divide the sum by a reasonable number of hours, and employ the result as an hourly rate.

The supply of lawyers began catching up with the demand for legal services in the 1970s, and the recession of the early '80s found the country over-lawyered.

Thus was a billable-hour, growth-oriented law firm culture born. As long as the seller's market continued, clients were well served by law firms' growth strategies. Partners were now both professionals and capitalists, leveraging the sale of their associates' time to accumulate wealth while better serving clients. The NIPP formula (through which firms could increase Net Income Per Partner in a seller's market by artful employment of average leverage, billable hours, billing rate, realization rate and profit margin) became the dominant tool of law firm management. Law firm growth accelerated internally and through mergers, and all was well with the world, for a while.

In 1975 the nation's largest law firm consisted of 326 lawyers. By 1990 the largest firm had 1,519 lawyers, and the largest eight firms contained more lawyers (7,380) than the largest 100 in 1975 (7,144). The 250th largest firm had 131 lawyers. Firms grew aggressively, merging and hiring vast classes of new associates. Corporations soon grew tired of paying firms to train these new associates by having them do the corporations' repetitive "cash cow" work. They took that work in-house, expanding their own legal staffs. Outside firms in turn expanded their geographical markets, opening branch offices in search of replacement work. Leading firms in the states to which they moved in turn decided to expand in order to protect their client bases.

3. The Agonizing Reappraisal

For law firms and the legal profession to grow so rapidly, law schools also had to grow rapidly. Enrollment at ABA-approved schools, stimulated by the seller's market, the baby boom, and the entry of women into the profession, tripled from 1961 (38,894) to 1981 (120,879). As the chart reveals, the supply of lawyers began catching up with the demand for legal services in the 1970s, and the recession of the early '80s found the country over-lawyered. Law firms and law schools rethought their growth strategies, slowing momentum or reversing direction, and it looked as if the market would regain balance. Unfortunately, in the mid-'80s market discipline was undermined by a combination of savings and loan deregulation, huge federal deficit spending, and resulting real estate and M&A bubbles that created temporary needs for additional lawyers. In response to these needs, in 1986 leading New York firms raised starting salaries for new associates from $50,000 to

$65,000. In turn, the law school applicant pool, which had decreased by 20% in the first half of the '80s, increased by 50% in the second half, and law school admissions surged.

It felt like a seller's market again, but it was not. The economic bubble burst in 1990, and over the next four years the total number of lawyers in the nation's largest firms actually decreased. The gentler buyer's market that failed to get our attention had now re-established itself with a vengeance. Our reactions to the reappearance of the buyer's market have unfolded in three stages, or waves. Different firms remain at different stages in the adjustment process.

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The First Wave: Incremental Adjustments to the NIPP Formula, Tactical Planning Disguised as Strategic Planning

The initial response of law firms to the new buyer's market in the 1980s was to attempt strategic planning. Because they were thinking "inside the box" of their firms and did not yet realize the extent of change in the external environment, their goals were more tactical than strategic and reinforced a billable hour culture. They increased hourly rates; invested in marketing; initiated compensation systems that focused solely on origination and production of services; substituted "cherry-picking" other firms' best lawyers for merging with them; instituted administrative policies to enhance realization of accounts receivable; increased leverage by lengthening the partnership track, creating multi-tier partnerships, firing less-productive partners and recruiting lateral partners who controlled big books of business; and created minimum billable hour requirements for associates and partners.

First Wave tactics were helpful in eliminating inefficiencies and providing client focus. Though they introduced a degree of reality to law practice, their utility was limited in a buyer's market dominated by the billable hour. Over-reliance upon them became counter-productive. Something else needed to be done.

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The Second Wave: Premium Billing Disguised as Value Billing

The Second Wave was a brief effort in that regard, doomed to failure from the start. It involved an incremental attempt to change the way lawyers got paid without changing the way they practiced law. Essentially, lawyers tried to bargain in advance for bonuses in the event they obtained superior results, advertising their proposal as value billing. However, they were unwilling to reduce their fees if they got inferior results, and clients refused to contract with them on that basis.

The brief Second Wave and its rejection by clients forced lawyers to think about what they did for clients, and how they charged them for those services. It generated some alternatives to straight hourly billing and provided a prelude to a Third Wave which is now maturing.

The Third Wave: Creating New Frameworks for Practice

Subsequent responses to the buyer's market remain both complicated and inspired by other trends. The geometric expansion of information and technology has fostered a global economy. This new economy requires substantial new legal services and has attracted competition from accountants and other substitute providers of those services. It is an economy of instant communication that demands responsiveness and heralds "the death of time." This means time is not a good thing for lawyers to sell. Value no longer equals Billable Hours x Hourly Rate. Today Value = Quality/Time. The better and more timely legal services, the more valuable they are to clients.

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Third Wave lawyers are reframing the way legal services are delivered and paid for. The perspectives of hourly billing are being replaced by perspectives of continuous improvement, reengineering, reinvention, creativity and innovation. The challenge of Third Wave thinking is to change the current culture of hourly billing. Because we have multiple practice settings and because some clients like hourly billing in a buyer's market, we should hope for multiple cultures constructed upon foundations of common values. These cultures will be strong, consistent and stable in both buyer's and seller's markets if they are compatible with the traditions of the legal profession, particularly those of client-centeredness, competence and high ethical standards.

Conclusion

These cultures will be strong, consistent and stable in both buyer's and seller's markets if they are compatible with the traditions of the legal profession, particularly those of client-centeredness, competence and high ethical standards.

The challenges and rewards of law firm leadership are greater today than they have ever been. Having determined where we are, we can answer the other planning questions, "Where do we want to be?" and "How do we get there?" We can reinvent the profession, and with it the futures of our clients, communities and nations. The next recession will help tell how well we are learning from the lessons of experience.

NOTES FROM BOB

The College's Trustees had a very successful meeting in Denver during February.

We met with Dean Emeritus Bob Yegge of the University of Denver School of Law and the leaders of the school's program in law practice management. We could not help but be impressed with the program and the students who are learning all the aspects of practice and firm management which most of us learned on the job.

Of course, the University of Denver Law School is our new home. Alice has set up our office on campus. However, she still does much of her College work from home, so our mailing address will not change at present. We are hopeful that we will be able to draw on the resources of the Law School for our programs as well as contribute to the educational experience.

We reviewed the host of nominations received for College Fellowship. It was difficult, as always, deciding among many qualified candidates. Thank you to everyone who submitted nominations. We wish we could take them all, but that is not possible. We have another excellent class and so far everyone invited has accepted.

This is the last year I am eligible to serve as College President. In order to have an orderly transition, I asked the Trustees to designate my successor. Lowell Rothschild of Tucson, a Founding Fellow of the College, will take office at the Annual Meeting in September.

Lowell has served as Officer and Trustee and is a vital contributor to the College's success. Jimmy Brill will continue as Vice-President, Chuck Coulter will serve as Secretary, and Fran Musselman remains your Treasurer. We are all very lucky that they all have agreed to serve.

We had some very sad news. Our Fellow and Trustee Sam Smith of Ruden, McCloskey, Smith, Schuster & Russell, P.A., died after a long battle with cancer. Sam was a loyal, creative and energetic contributor to the College's early success. We will miss his counsel and candor.

Mary Ruprecht of Mary M. Ruprecht & Associates, Inc., a Fellow since 1995 was elected by the Trustees to fill out the remainder of Austin Anderson's term as Trustee.

The annual meeting will also be in Denver. Harris Morgan is planning another interactive experience which will rival last year's success. Again, we will have a participatory experience focusing on the future of law practice. Mark your calendars for September 24-26, 1999. Space will be limited and it will be first come, first served.

Enjoy a happy and healthy Summer. We will be back to you with more details on our Annual meeting in late June.
...Robert M. Greene, President

DENVER IN SEPTEMBER

September 24-25, 1999
Denver — Hyatt Regency Hotel
Be there for the
1999 Annual Induction Weekend.

The College will induct at least 19 individuals, one of its largest classes ever. The program will focus on multidisciplinary practice. It's coming. Are you prepared? Do you know what it is and how you and your practice are going be involved? You will if you attend the program.

Watch your mail in late June for details, and registration and reservation information. Remember, it is black tie, so get your duds pressed.

P.S. The fall colors should be at or near their peak just before and after the meeting. Why not plan to come a day or two early or linger after the meeting to "leaf peep" in the Rockies. You won't believe how the aspen shimmer in seas of gold. Don't miss the elk bugling at Rocky Mountain National Park.

CLASS OF 1999

At its February meeting, the Trustees, per the bylaws, elected or reconfirmed the election 27 new Fellows. To date, 21 have accepted election and 19 are planning to attend the induction ceremonies in Denver in September. Generally, newly elected Fellows have two years from the date of election to be inducted. Several individuals have schedule conflicts this fall and have indicated they plan to be inducted with the class of 2000. We are awaiting word from six individuals.

Watch your mail in late June for details, and registration and reservation information. Remember, it is black tie, so get your duds pressed.

2000 & 2001 MEETINGS SCHEDULED

We've done our best to listen to the meeting location suggestions of all, attempting to blend hub locations with a relaxed atmosphere so those wanting to focus on the meeting can, and others interested in partaking of the local ambience can as well.

GET YOUR CALENDARS OPEN, AND BE PREPARED TO MARK THEM!

2000 — San Diego

The Hilton La Jolla Torrey Pines is the site for the 2000 meeting, September 15- 16. La Jolla is only 15 miles north of San Diego. You'll need a rented car only if you choose. The hotel (resort actually) boasts free transportation to downtown La Jolla and local attractions within a five-mile radius. La Jolla is rich with art galleries and outstanding restaurants, and it is perched on a ridge above the Pacific. Don't miss the harbor seals beaching themselves for sunning and napping, and their frolicking just off shore. The Torrey Pines State Reserve is close by for running, hiking, and cycling.

2001 — Washington, D.C.

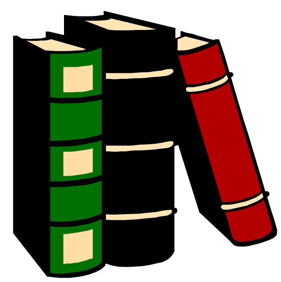
In 2001, we'll be at the Park Hyatt Washington, D.C. The Park Hyatt is located near downtown and just two blocks from Georgetown. There's loads of history here and seeing the sites of D.C. is easy to do. The Annual Induction weekend will be September 14 and 15, 2001.

1999 SUSTAINING FELLOWSHIPS SOAR!

Fellows are continuing to demonstrate their commitment and generosity to the life and work of the College. Since the Winter edition of the newsletter in which it was reported that 31 Fellows and Honorary Fellows contributed $3,500, we now have 49 Sustaining Fellows who have collectively contributed $5,050. Outstanding. Many thanks to each of you. Those whose contributions we've received since January 6 are listed below:

William A. Bachman, Guy M. Bennett, Robert Boyer, David W. Brink, Simon N. L. Chalton (in honor of Thomas Ley Chalton), Charles R. Coulter, Anthony E. Davis (in honor of Richard C. Reed), Jay G. Foonberg (in honor of the 4th edition of "How to Start & Build a Law Practice"), Gary R. Garrett, Herbert J. Goodfriend, Gordon L. Jacobs (in honor of the first anniversary of his wedding to Heather Jacobs), Nancy Byerly-Jones, J. Harris Morgan, Francis H. Musselman, Sally J. Schmidt, and Charles E. Stinnett.

READING LIST

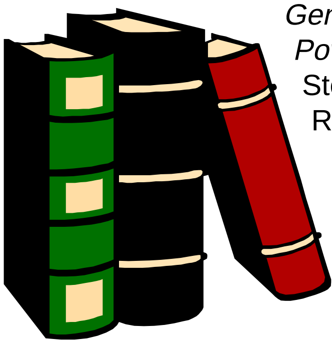


Generation X is a hot topic these days. What makes them tick, how do you motivate and manage them, why don't they want to pay their dues, why and how are their values so different from yours? Here's a short list to help clear the fog:

Naked Management: Bare Essentials for Motivating the X-Generation at Work, by Marc Muchnick, Ph.D. Kogan Page, Ltd. (1996).

Generations Apart: Xers vs. Boomers vs the Elderly (Contemporary Issues), by Richard D. Thau and Jay S. Heflin. Prometheus Books. (1997).

Beyond Generation X: A Practice Guide for Managers, by Claire Raines. Crisp Publications. (1997).



After the Boom: The Politics of Generation X (People, Passions and Power), by Stephen C. Craig and Stephen Earl Bennett (Editors). Rowman & Littlefield. (1997).

Welcome to the Jungle: The Why Behind 'Generation X', by Geoffrey T. Holtz. St. Martin's Press. (1995).

Generation X Field Guide & Lexicon, by Vann Wesson, Erik Aukerman, Chris Kendall. Orion Media. (1997)

Managing Generation X: how to Bring Out the Best in Young Talent, by Bruce Tulgan. Merritt Company. (1997)

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