

SURVIVING IN THE CURRENT CASCADE OF ECONOMIC DISASTER

How Obama's New World Is Likely To Change Professional Practice

The point is that no company, not even a profitable one, should assume that it will come out of this period looking as it did when it went in. The marketplace of the "revitalized" future, whether it emerges in 2009, 2010, or beyond, will have a new set of realities. Customers, competitors, and suppliers will have different expectations and behaviors. Companies must be ready for them by being different, too.

Jack and Suzy Welch, Business Week, 2/9/2009

It should be fairly obvious by now that the current economic situation, the plans for recovery by the new administration and congress, and the thrust of President Obama's governance, are going to alter the texture of the modern economic and social fabric. It will certainly alter the nature of professional practice. More so law firms than accounting firms, perhaps, but no business or industry in America will go unchanged. Look at the auto industry and as well at Home Depot, Macy's, and myriad other companies. Look also at companies small and large, where, these days, more employees pass through their doors on the way out than on the way in. Or through which customers don't enter at all.

Prognostication is, as the British say, a mug's game. Too many random or unforeseeable factors surface to alter the course of events. Some of these changes, as we've seen, come swiftly and unpredictably, and others creep in slowly and at a pace not noticed until it's too late. Some give warning signs – some do not. Most changes occur as a result of somebody else's actions.

I don't know any better than anyone else exactly how the successful professional firm of the future will look. I do know, though, that President Obama and the contemporary congress will bring forth a new regulatory structure, an enhanced communication system, and a new economic environment -- all of which will produce a new kind of economic and social structure, a new kind of law firm, and possibly a new kind of accounting firm as well. The changes will emerge more by evolution than by revolution. Most of it will probably happen at an imperceptible pace -- maybe one firm at a time. It will, I think, be driven by changing client needs, which will themselves be driven by a new economic and social environment, and an accelerating competition.

Nevertheless, there are some likely scenarios that, in one form or another will contribute to reshaping the nature of professional services practice. For example...

- Many people, including me, have long suggested that the traditional partnership structure was an antiquated and cumbersome form of professional firm governance that no longer best serves today's economic, legal and social conditions. Few partnerships are really partnerships, in collegial as well as practical terms. They bestride the two worlds of corporate structure and limited proprietorships. There are already a number of law firms that have moved or are moving in one direction or another. The ultimate success of new firms in today's economic environment is not quite ready to be judged – it's one of those things I was thinking of when I talked about evolutionary change – but who knows? The considerations that define a profession are sacrosanct, and probably necessary to sustain any professional practice. These include the prestige and integrity of professionalism, the independence of professionals, the ethical considerations, and tradition. But is the partnership still the best form of governance in today's economy? What would be a system that still respects these factors? I don't know. But I do know that lawyers and accountants are pretty smart. When it becomes obvious that there are better ways to serve the professions and the clients, they'll figure out how to do it. And that's pretty much what's

beginning to happen.

- It seems likely that the growing trend away from the billable hour will accelerate. People like Ron Baker have led the charge against the practice for decades, and must surely now begin to feel vindicated. I wrote an article called “The Curse of the Billable Hour” about 20 years ago. This practice too, is likely to have further unforeseeable ramifications, if only because not every lawyer or accountant will fully understand how to charge for value – a concept that itself will rarely be defined simply and in the same way by every law or accounting firm. This will affect the nature of competition. The billable hour ultimately evolved into a system in which everybody’s rates all fell into the same configuration, causing one very wise man to note the similarity to a cartel. But if everybody switches to value billing, and everybody has a different concept of value, it should be like loose cargo on an airplane in turbulent weather. If that happens, it could take years for the new system to shake out.
- Currently, unemployment in law and accounting firms, as well as among their clientele, is exploding. Law firms of all sizes are cutting both staff and professionals at an alarming rate. But when the economy begins to turn around, as it will most certainly, will there still be enough trained and experienced specialists available to help serve the legal problems of a recovering economic environment? What, then, will be the shape of the law and accounting firm as it emerges from the recession as it recedes?
- I suspect that the kind of law and accounting firm that will have the greatest trouble in the coming months will be those that are small or midsized, particularly those that are not what David Maister calls the *one-firm firm*. The one-firm firm is one in which the partners see themselves as part of a strong central firm, as opposed to the firm that’s a collection of independent entrepreneurs, competing with one another within the firm. In the competition for a diminishing client base, even the most successful specialist will need a substantial firm behind the individual. The entrepreneurial lawyer or accountant who does not serve the entire firm, and the firm that tolerates that behavior, will, I think, be marginalized.
- Is size alone a survival factor? Not necessarily. While we see reports that the clients of the larger firms are retrenching and diminishing the giants, note as well that the clients of the smaller firms, many of whom are smaller entrepreneurial operations, are also suffering from the same recession. President John F. Kennedy once noted that a rising tide lifts all boats. And what, then, happens in an ebb tide?
- Disintermediation, a common term in the financial world, in which consumers of services bypass intermediaries, such as brokers, is now beginning to pervade the professions. Users of tax preparation and other accounting software now increasingly bypass professional tax preparers and accountants. An increasing number of legal services – wills, business forms, legal advice, and so forth — are now available online or in consumer software. While there are of course limits to what can or can’t be done by consumers who bypass professionals, it is nevertheless a trend that can, and probably will, accelerate, particularly under current economic conditions. And if disintermediation becomes a habit during difficult times, it is likely to sustain through better times.

At the same time, consumers and clients using the internet to second guess professionals is increasing. Consumers are learning to go online to check opinions given by professionals (including, by the way, doctors). These activities don’t do much to enhance the prestige – or the practices – of the professions.

- The Obama administration seems to be rewriting the book on regulation, as well as on the financial and social landscape of the United States. Certainly, this will cause a shift on the emphasis in many practices, both legal and accounting. Ultimately, it will create a new prosperity, as do all new regulatory structures. But unlike many such shifts in the past – the effects of an ERISA or new tax law, for example – the new regulatory environment may result in structures that streamline the way law and accounting firms operate and relate to clients. How this will evolve is anybody’s guess, but evolve it will.
- The rash of mergers we’re seeing today will also ultimately affect the shape of the professions. When firms merge, it’s not just the same old firm with new or different people. It’s a merger of

cultures as well. Three things can happen. The acquired firm can adapt to the culture of the acquiring firm. Or the acquired firm culture may prevail. Or what's most likely, a new culture may develop. But it's likely to do so slowly, and most importantly, reflect the radically changed conditions in the economic and social world.

- Many bar and accounting associations change slowly, but quickly become anachronisms. Those associations that adapt to the demands of changing economic and social conditions will thrive. The others will become irrelevant, will probably be superseded by new kinds of organizations that are more in keeping with contemporary conditions.
- I continue to be appalled at the disconnect between lawyers and accountants, and marketers. It seems that neither group truly understands the other. Lawyers and accountants are not particularly comfortable with non-professionals in their midst, and each group has different expectations of the other. The problem is that where there is professionalism in marketing, and where competition is most keen, there may be nobody more important to a firm than a knowledgeable and experienced marketer. At some point, in this dismal economy, with cost-cutting the new religion, it will dawn on the lawyers and accountants, and on the marketers as well, that they had better understand this.
- At the same time, changes will affect the professionalism of marketers. Lawyers and accountants spend many years in school learning their craft, have serious apprenticeships, and are certified by boards and agencies with stringent standards. The range of education of a marketer, particularly in his or her craft, with a few notable exceptions, goes from zero to mostly haphazard. Marketers learn from other marketers, and unfortunately, accountants and lawyers learn about marketing from marketers who have little training or experience. No wonder there's a disconnect. There are, indeed, talented, skilled, and professional marketers who excel at the craft, but unfortunately, most lawyers can't tell the difference. It is an unfortunately difficult situation for both sides.

I suspect that in the next few years, this situation will change. With the consolidation of firms due to the recession, the remaining corps of marketers will be those who are more professional, more imaginative, more skilled than the larger body of marketers. At the same time, the surviving firms that retain them will themselves be better educated in marketing practices, more understanding of the nature of marketing, and more realistic about expectations.

There will be, I think, many more changes. In many aspects, the world is a closed hydraulic system, in which pressure at one point effects changes at another. We have seen thus far this effect in our economy, wherein the financial services world is substantially altered, almost beyond recognition, followed by vast economic and social destruction. This will most certainly happen in the professional world. In some respects, we've already seen the dynamics for this change. As in the sequels to a war, new institutions, new economic forms, new commercial and social structures will emerge. The professions are not likely to be immune to this kind of change.

One thing that seems to be happening is not just change, but irrational change. Reading the news, and particularly the trade press, we see attempts at cost cutting by throwing people to the wolves, without any apparent regard for the fact that the world and the economy change – without too much thought being given, it would appear, about the future. Not in all cases, of course, but in more than a few. Long range planning, even under the current circumstances, is not a luxury.

Our economy today will clearly get worse before it gets better. It would be folly to expect that the old Dickensian model of the law firm, and the traditional nature of the accounting firm, will be unaffected. The firms that will survive are those that are prepared to accept the changes wrought by the cascade of current events.

As for the marketers, their effectiveness will be judged on their ability to produce clients. Not branding, not prestige or reputation, but clients. The art of practice development will trump the vagaries of many of the mechanics and false promises of marketing. But those who understand how to use the tools and mechanics of marketing to produce clients, and to shape a practice to meet the needs of an emerging clientele, will be the marketers who survive and thrive.

I suspect that in the next four to eight years, the successful law firm will be one that...

- Recognizes changes in the economic and social environment, and how they can change a practice
- Is more focused on client needs rather than on traditional firm practices
- Understands modern communication techniques
- Is not bound by traditional law firm structures, nor tightly defined by obsolescent rules of traditional bar associations
- Is a one-firm firm
- Takes calculated risks
- Values talent above tradition
- Understands marketing and competitive research
- Understands that professional practice is competitive
- Is more cognizant of future needs than of the firm's history
- Understands the role of marketing as an integral part of practice
- Understands and accepts the professionalism of marketers
- Is willing to push the envelope in the service of clients, without breaking the bounds of ethics
- Understand the role of ethics as an integral part of contemporary society and commerce, and not just as rules cut in stone
- Is in touch with the dynamics of the new Obama administration, the new economy, and the new society being forged by contemporary circumstances, new forms of information, and new economic and social structures.

Assuming the accuracy of the foregoing, or even an approximation, what can lawyers and accountants do now to gain a foothold into the future?

Pay attention. Listen. Read the trade press, and particularly legal and accounting blogs. Competitive intelligence is increasingly important in the new emerging world. Learn long-term planning, which has, in the past, not been particularly common.

This is an era in which listening carefully to clients is more important than ever before. The lawyer or accountant who sees clients as merely a stage upon which to perform legalistic magic is most likely to be marginalized.

These ponderings, I believe, are worth considering, because among those caught up in the nation's kaleidoscope of sound, color, and texture will be the law firm. And perhaps the accounting firm as well. And those caught in the maelstrom of the brave new world will either survive and thrive, or be cast off to a premature and unexpected decline and demise. We've seen that already in the financial industry, as names we have heard since childhood fall off the horizon. The legal and accounting professions, it is clear, are not immune to the turbulent tides of our times. There may no longer be a *usual*, as in business as usual.

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