

LIVING THE UNTHINKABLE

Change Comes To The Bar

There is word that a move is afoot, in some quarters, to change the rules to allow accountants to become partners in law firms.

The foundations of legal elitism are shaking. The idea may be rational in view of today's economic landscape, but it threatens generations of believing that the only way the legal profession can sustain its exalted position of integrity, probity, and yes, superiority is to keep the profession as pure as Caesar's wife. Those walls that separate lawyers from the rest of the world have long ago crumbled. Except, of course, in the halls of many Bar Associations, in which old men -- at least in mind if not in grey hairs -- serve as gargoyles guarding the gates of the castle. On the escutcheon is self-deception rampant on a field of anachronism .

What those Dickensian old-timers fail to recognize is that the world has changed. For example,

- *Bates v. State Bar of Arizona*, which enabled lawyers and accountants to market out loud, introduced the concept of frank competition. That alone changed the nature of the professions. It let the outside world into the professions of law and accounting.
- That was good and bad. It was bad because it breached the wall that protected lawyers from blatant commercialism. (A law firm isn't a business?) It was good because it opened the profession to treating the public like customers. It helped the public understand the lawyers and what they do, it clarified expectations on both sides, it sharpened the profession because of the need to compete in an increasingly competitive environment.
- It forced changes on the practice that were long overdue. Value billing. Governance that's more responsive to the needs of clients. Two-tier associate structures. Competing by listening to clients and adjusting practices to realistically address client needs and concerns. Creating new client services.
- But at the same time, by allowing the public in, it accelerated the growth of those firms that learned to compete.

And there's the rub. The growth of the law business accelerated beyond the ability to finance that growth through the traditional partnership contribution. Thus, the need for outside capital beyond bank debt, and the need for equity capital and changes in securities law to manage a firm's capitalizing by non-lawyers. And thus, as well, changes in governance structures to manage equity rather than a partnership hierarchy.

Witness, now, the unthinkable not only being thought, but happening. In Great Britain, as you may have heard, outsiders are contributing to law firms as investors. When I suggested this in the mid-80s, eyebrows were raised and people laughed. But seeing the signs for change would have anticipated the changes we begin to see today. When I was chided for this notion and other similar observations, (the demise of the partnership structure as a form of governance, for example) I was asked -- from behind smirks -- what form of governance would replace the partnership, and still sustain its virtues of probity and independence. "I don't know," I said. "but you lawyers are smart. When the times and the clients demand change, you'll figure out how to do it."

I was working as Donaldson, Lufkin, & Jenrette's marketing consultant when they planned to be one of the first investment banking firms to go public. Unthinkable at the time – but made necessary by the need for growth capital. When they (and Merrill Lynch, who was actually first) did it, the world did not leave its axis.

Technology, as is often noted, has altered the face of the entire universe, and the legal profession as well. It has helped create such unthinkables as sophisticated clients who challenge the given wisdom of their law firms, and flouted the long standing tradition of one law firm forever for everything.

Then, of course, there is the billable hour, which now begins to sound medieval.

The interesting thing is that change, in both law and accounting firms, rarely arises from the lawyers or the accountants. Exceptions, of course, but not many. It was the premise of my book (with August Aquila), *Client At The Core*. But the way things are going these days, I expect that will change, too.

And that's why the concept of accountants in law firms is no surprise.

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