

DON'T USE THE WORD *CHANGE* IN POLITE COMPANY

Well, That Will Change Too

The one word that seems to terrify most professionals is *change*.

The traditional format for professional firm structure, management, governance, and behavior, while rooted in what might have been pre-historic times, seems to have been institutionalized somewhere in the 19th century. In many respects, the law and accounting firms of most of the 20th century are barely different from those depicted by Charles Dickens. In America, the most profound difference in its current form may well be the absence of wigs.

Yet, the last 20 years seems to have begun to generate the chaos and confusion that's a precursor to change – changes in client relations, in frank marketing (*Bates v. State Bar of Arizona, U.S. Supreme court, 1977*), in governance, in organizational and cultural dynamics. In *The Marcus Letter* and other articles, and in several books, I've not only chronicled the chaos, but suggested that profound change in the professions was on the way. In *Client at the Core (John Wiley & Sons, 2004)*, my latest book (with August Aquila), I posited that the practices of law and accounting are no longer driven by the firms themselves, but by the clients and their needs.

Change of some kind wasn't hard to anticipate. The world in which the professions function has been itself undergoing substantial change, from globalization to increasing client sophistication, to new legislation and regulation, to astonishing technology and new communications media, to intensive marketing and new competition, and more. It seems impossible to expect that in a world that is itself so dynamic, that any institution that served that world could avoid resisting some measure of appropriate response. Traditional structures like partnership, hourly billing compensation, and firm governance can not much longer serve either the firms, or, more particularly, client needs.

Change, in law and accounting firms, rarely occur in revolution, but rather in evolution. There are, of course, exceptions. An adventurous firm may switch from hourly billing to value billing. A few firms, such as *Valorem*, may perceive of partnership as a team, and not just as a group of individuals in loose federation. For this kind of firm, its more than a leap of faith – it's a practical experiment.

Every so often, the accountants or lawyers convene a conference to explore the future of their respective professions. They labor and expostulate and make outlandish predictions that, in the end, inform nobody and are quickly forgotten.

Recently, however, three of the brightest and most knowledgeable men in the legal profession convened in Washington, D. C., at Georgetown Law School, for a two-day symposium on the Future of the Global Law Firm. It was organized by Prof. Mitt Regan of Georgetown, Prof. Larry Ribstein of the University of Illinois, and Bruce MacEwen, (*Adam Smith, Esq.*). The results were profound and useful -- the products of the best and most original minds in both the professions and the academic world.

As reported by Bruce MacEwen, some 130 attendees, roughly one-quarter of whom were academics and legal scholars and three-quarters practitioners and senior law firm leaders, from the US, the UK, Canada, and Australia, discussed and debated the most urgent problems facing the legal profession today and in the

future. The list of managing partners and academics included leaders of the profession's largest international and domestic law firms, accounting firms, and academic institutions, many of whom presented papers and led discussions. Seven panels over the course of Thursday and Friday through lunch tackled such problems as...

- The emerging dynamics of global competition.
- Ownership and capital structure, including the possibility and the desirability of outside (that is, non-lawyer) investment in law firms.
- Ethics and professional values.
- Perspectives from corporate law and finance.
- Organizational and cultural dynamics, and
- Lessons from other professional service firms.

It should be noted that the conference was convened by concerned individuals, and not by associations or any specific organization. This speaks not well for the bar associations, which should have organized this profound inquiry.

Papers presented covered such subjects as

- Predicting the Future of Large US Corporate Law Firms: AmLaw 2025
- Global Law Firms: A Strategy Looking for a Market?
- Is the EU Very Far Behind Australia and the UK With Respect to Publicly Traded Law Firms?
- Peering Over the Ethical Precipice: Incorporation, Listing, and the Ethical Responsibilities of Law Firms
- The Paradox of Institutional Success?
- Life After the Legal Services Act 2007
- The Law Firm as Firm
- Form, Function, and Fiduciary Law
- Navigating the Process of Innovation in Professional Service Firms
- Are We Selling Results or Resumes? The Under-explored Linkage Between Human Resource Strategies and Firm-Specific Capital
- The Demise of Professional Partnership? The Emergence and Diffusion of Publicly-Traded Professional Service Firms
- Post- Professionalism: How Multidisciplinary Accounting Firms are Reshaping Professional Institutions

“If I were rationed to just one word to encapsulate the conference's theme,” said MacEwen, “it would be *Change*.”

Lawyers, MacEwen noted, are notoriously poor at coping with change. “Recent psychological research indicates that change is not just hard,” he said, “but actually causes physical and mental

“Yet change is in our futures, like it or not,” he continued. “More than once the observation was made that from the invention of the Cravath System around the turn of the 20th Century through about 1985, the profession looked remarkably stable, but that the last 20 years have seen revolutionary changes and the next decade promises further departures at least as radical as those we've just experienced.”

Among the overall trends driving change cited by the conference participants are...

- *Segmentation*, meaning the increasing gap between firms able to win the highest-level, most complex work for the most demanding (and price-insensitive) clients, and other firms forced to compete on the basis of price and increasingly high client expectations for service quality, responsiveness, and consistency. “Once price becomes a material part of a client's selection criteria, unfortunately, firms have put one foot on an escalator that goes in only one direction,” MacEwen noted. “And segmentation is driving the evolution of our industry not just at the top, in AmLaw 25 land, but at every level of the industry, including regional firms, boutiques, and even ‘the 22 lawyer firm in Vienna, Virginia.’”
- *Globalization*. “It's no longer the exceptional corporation that has substantial business abroad, it's the exceptional corporation that doesn't”, MacEwen reports. “This trend is not going to reverse or decelerate. 20 years ago the percentage of lawyers working at NLJ [*National Law Journal*] 250 firms who were in overseas offices was just a few percent. Today it's nearly 17% and grew 11% in just the last year alone.”
- *Consolidation*. 20 years ago the AmLaw 50 accounted for about 6% of all private, for-profit law firm revenue in the US. Today they capture over 25% of that revenue.

Other concerns addressed were the "war for talent" and the challenges posed to the traditional law firm career ladder by Gen Y, and the changing role of women in law. “For about the past 30 years,” notes MacEwen, “essentially 50% of law school graduates have been women, yet throughout most of that time span, the number of female partners in the AmLaw 100 has hovered at a fairly constant 15-18%. I believe firms are going to have to face up to the reality that they need to take fresh approaches to the dilemma created by the fact that the prime child-bearing and family-starting years happen to coincide quite nicely with the path-to-partnership tournament years.”

The question of outside equity ownership of law firms was addressed in detail, including the need for capital in a labor intensive industry like law firms, and the history of other professional service firms that have accepted outside and investors. Also of concern were the ethical considerations and the viability of the partnership structure and corporate governance, should the profession seek outside capital, noting that both are likely to be virtually untouched by outside investment.

Panelists noted the "war for talent" has never been higher. “Today's clients and today's environment call for people with high levels of ‘emotional intelligence’,” MacEwen reports, and that outsourcing, a

matter of increasing concern, is no great threat to the profession.

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Overall, reports indicate that the conference was an invaluable success, and will be repeated in 2009. Says MacEwen “I’ve never been at a conference before where so many readily admitted to so few answers. But that’s the way entrepreneurship and innovation proceed. Not by knowing to a fare-thee-well what all will work, by specifying it exhaustively in advance, but by experimenting. “

Prognostication, as is often noted in these pages, is a mug’s game. In a dynamic world, there are too many random events to allow for certainty in any prediction. On the other hand, wisdom lies in knowledgeable people asking the right questions. Truth, it seems, lies in pondering, not in predicting. And that is precisely what happened in this invaluable convocation of bright and knowledgeable individuals.

To read Bruce MacEwen’s full conference report, from which this article was drawn, click *here*.

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