Balancing Customs to Adapt to the Legal Industry Evolution

By Ndidi N. Moses

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I remember spinning in circles in the office chairs in my father's law office a few years after he became an attorney in 1990. As a newly minted, but not so young lawyer, large firms weren't interested in my father as an associate, and he had little choice but to go into solo practice. In those days, it was common for young lawyers to hang their shingles. On main streets all over the country, signs read: "Law firm of..." or "Law offices of…." Solo and small firms, like my father's, were flourishing. My father was a general practitioner, but more precisely, he was a community lawyer. He handled any case that came into his office: criminal matters, civil cases, leases, contracts, taxes, divorce, bankruptcy, immigration, child custody. If he could not handle it, one of his friends in the same building or down the street accepted a referral. I spent my summers, as a child, watching in awe as my father built his legal practice from scratch.

The legal market back then was different from the one that exists today. In 1990, when my father passed the bar examination, and coincidentally the year *Connecticut Lawyer* magazine was established, the Internet, as we know it today, did not exist. In fact, a year prior, a British scientist had just finished writing a proposal for "a large hypertext database with typed links," known today as the World Wide Web.[1] In those days, the *web* referred only to something spiders spun to catch insects; a *tablet* was only known as "a small, solid piece of medicine;"[2] and if you told someone to call you on a cell phone, most people would assume you were in prison. Some would argue that those were the *good ole' days* when we did not have to worry about *spam* and *cookies*. In 1990, those words referred to only food items.

Over a decade later, after my completion of law school, I went to visit my father's law office. I noticed immediately things had changed. My father had moved to a smaller office. He had reduced his staff to only a part-time receptionist. His phone was not ringing as frequently. Fewer solo firms lined the main streets. It was clear my father's former clients were finding other ways to address their legal issues. What my father could not have known at the time was that the legal profession, in regards to its services to individual clients, was in the midst of an evolutionary trend, which has resulted in shrinkage rather than expansion.[3]

Studies suggest the shrinking of the individual market for legal services may be because over the past three decades, the cost of legal services has risen almost twice as fast as other items in the Consumer Price Index, such as education, housing, food, clothing, and medical care.[4] Indeed, studies suggest a negative correlation between the cost of legal services and the individual consumer's perception of the "relative importance" of legal services.[5] Instead of paying higher legal fees, individuals had begun to represent themselves. Moreover, the new technological advances of the past few decades have convinced some people that they do not need to hire lawyers. Many individuals who need legal help turn to online legal services, such as LegalZoom, Rocket Lawyer, and LegalShield for guidance.[6]

The decision of many individuals to "do-it-themselves" has transformed the dynamics in trial courts nationwide. The National Center for State Courts reported, in its 2015 report, *The Landscape of Civil Litigation in State Courts*, that over 75 percent of the cases in state court had at least one self-represented party.[7] The study found that "the civil justice system takes too long and costs too much."[8] As a result, "many litigants with meritorious claims and defenses are effectively denied access to justice in state courts because it is not economically feasible to litigate those cases."[9] Sophisticated clients with financial resources, aware of these trends, have begun to rely more on alternative dispute resolution and mediation to address legal issues.[10]

"Yesterday is gone. Tomorrow has not yet come. We have only today. Let us begin."

–Mother Theresa

While the aforementioned changes may appear to be relevant to litigators and transactional lawyers in solo and small firms, mid-sized and larger firms fair no better. For over a decade, studies have been showing that mid-sized and larger law firms are also "losing market share" despite the economic gains made in the markets overall.[11] This is because many law firms and lawyers seem to be "fighting the last war" according to the 2018 *Report on the State of the Legal Marke*t, published by the Center for the Study of the Legal Profession.[12] Most "law firms... remain committed to once successful strategies even as evidence mounts of their failure."[13] The studies point out that most firms are "[i]gnoring strong indicators that their old approaches—to managing legal work processes, pricing, leverage, staffing, project management, technology, and client relationships—are no longer working[.]" Instead of "risking the change that would be required to respond effectively to evolving market conditions," most law firms "choose to double down on their current strategies[.]"[14]

While law firms are "doubling down," corporations are increasing their internal budgets for their legal departments, and either not changing or decreasing their spending on outside legal counsel.[15] Where internal law departments are unable to fill gaps, many corporations are utilizing "alternative legal service providers" to cover services historically performed by law firms, such as e-discovery, document review, and contract drafting, to name a few.[16] This industry of alternative legal services, which was relatively unknown a few years ago, reported revenues of $8.4 billion, in 2017.[17] One former large firm partner remarked, "companies have been trying to get through the head of law firms that legal services, the way they're being currently delivered, are really inefficient and expensive."[18]

Bar associations, which were established to help lawyers weather these legal storms, are also in jeopardy of becoming extinct for the same reasons law firms are struggling. Thirty years ago, it did not matter whether a bar association was mandatory or voluntary.[19] Lawyers instinctively joined the bar association upon graduation from law school as part of their civic responsibility to develop themselves and contribute to their profession.[20] Over the years, many bar associations have become complacent, failed to evolve, or failed to find ways to inspire and remind members of the association's importance. Today, most bar associations realize they must rebrand themselves.[21] Millennials prefer virtual platforms, something most bar associations are not structured to provide. Law firms, attempting to cut back on expenses, are questioning whether they want to cover the cost of association fees and travel expenses. All lawyers are analyzing the benefits and drawbacks of membership in a bar association.[22] Then, there is the question of—who has the time for non-billable work?

The Connecticut Bar Association (CBA), the largest advocacy organization in Connecticut dedicated to serving the Connecticut legal community, recognizes these challenges and has been working to address them with our members, in addition to members of our community, the federal and state courts, and corporations. As an association, we are beginning a dialogue with the community and businesses on how law firms can work with the community and corporate clients to reduce costs, improve efficiency, and better manage legal dockets. We are beginning a dialogue with the courts on how we can assist them with their rising pro se dockets, and help them ensure access to justice. These times demand that the CBA, through innovative and adaptable leaders, continues to advocate for the rule of law and lawyers. The CBA must facilitate conversations with market leaders on how legal services should be redefined and restructured. Without this advocacy, the fate of lawyers and the legal profession will be decided without us at the table. As an association, serving a legal community that is undergoing rapid change, we rely on forward thinking leaders who understand that we must leave the silos of our past conceptions about how to practice law successfully, as we work to revolutionize our profession to save it from demise. If we fail to evolve and continue to stagnate, the ever-changing and unapologetic market will substitute us.

I realize that I may be preaching to the choir. The quaintness of our state has lent itself, for the most part, to a collegial and supportive legal environment. While CBA members passionately argue their variant views on issues within the walls of the association, when the time comes to take action, the vast majority of our members understand the importance of putting aside our own self-interests and uniting behind initiatives that benefit the Connecticut legal community as a whole. Our members realize that no one person owns the rights to a section or committee, and that current members or officers do not own the CBA. Rather, we hold this association, and the practice of law, in trust for future practitioners.

While we need to understand the past to be successful in the future, we do not have to continue to live in the past. Thirty years after its conceptualization, the theory of the World Wide Web is now a reality that has transformed our lives, including how legal services are delivered. My father's law firm was a victim of this evolution in the legal market, similar to many other solo law firms nationwide. Still, each time I bring my four-year-old to my of-

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President's Message

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fice, and watch him figure out how to get on YouTube on my cellphone, as he spins around in my office chair, I realize that this is not the end of the story. This is simply the beginning of another chapter. To survive in this fast-changing world, we must learn from the past, and continue to adapt and progress as a profession that recognizes current market trends. We must leave our old predispositions and refrain from blindly following the practices of law that were relevant almost three decades ago. That world no longer exists. The time for meaningful change is now. The work must begin today.

As the president of the CBA, I pledge to ensure we continue to transform the organization to ensure we are serving the needs of our members and addressing the market trends. I also look forward to working to help improve the viability of law firms and ensure our community members can access justice. If you are interested in joining the CBA on this historic journey to protect the rule of law, please reach out to us at msc@ctbar.org to discuss how you can get more involved. ■

NOTES

1. Berners-Lee, Tim (March 1989). "Information Management: A Proposal". World Wide Web Consortium. Retrieved July 11, 2019, from https://govbooktalk.gpo.gov/tag/history-of-the-world-wide-web.
2. Cambridge University Press. (2008). Cambridge online dictionary, Cambridge Dictionary online. Retrieved July 11, 2019, from https://dictionary.cambridge.org/dictionary/english/tablet.
3. Henderson, Bill (January 2018). Legal Services and the Consumer Price Index (CPI). Retrieved July 11, 2019, from www.legalevolution.org/2018/01/legal-services-consumer-price-index-cpi-cost-going-up-wallet-share-going-down-042.
4. *Id.*
5. *Id.*
6. *Id.*; Law and More (May 2012). "Solo Practices: Your competition is DIY, e.g. LegalZoom, not other law firms." Retrieved July 11, 2019 from lawandmore.typepad.com/law_and_more/2012/05/solo-practices-your-competition-is-diy-eg-legalzoom.html.
7. National Center for State Courts (2015). "the Landscape of Civil Litigation in State Courts." Retrieved July 11, 2019 from www.ncsc.org/~/media/Files/PDF/Research/CivilJusticeReport-2015.ashx.
8. *Id.*
9. *Id.*
10. *Id.*
11. Georgetown Law Center for the Study of the Legal Profession (2018). "Report on the State of the Legal Market." p. 14. Retrieved July 11, 2019 from www.legalexecutiveinstitute.com/wp-content/uploads/2018/01/2018-Report-on-the-State-of-the-Legal-Market.pdf.
12. *Id.*
13. *Id.* at p.3
14. *Id.*
15. *Id.* at p. 14.
16. *Id.* at p.15
17. *Id.* at p.15.
18. Storm, Roy (December 2017). "Big Law Looks On as 'New Law' Gets Closer to Clients," The Am Law Daily. Retrieved July 11, 2019 from www.law.com/americanlawyer/sites/americanlawyer/2017/12/07/big-law-looks-on-as-new-law-gets-closer-to-clients.
19. Koch, Adrienne B. (February 2019). "The case for bar associations: Why they matter." Retrieved July 11, 2019 from www.abajournal.com/voice/article/the-case-for-bar-associations.
20. *Id.*
21. *Id.*
22. *Id.*

Informal Opinions

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the witness's testimony, and is being made solely for the purpose of compensating the witness for the time the witness has lost in order to give testimony in litigation in which the witness is not a party … such payments do not violate the Model Rules."); CBA Informal Opinion 92-30, *Payment to Attorney as Fact Witness* ("Compensation for income lost in order to be a witness is permitted for both payor and payee, as long as the payment neither affects nor is intended to affect the content of the testimony.").

The financial inducement at issue in the facts presented here is not described as payment for a witness's time and expenses, nor may it reasonably be characterized as such.

2. Along similar lines, Conn. Gen. Stat. § 53a-150 makes it a Class C felony to "solicit[], accept[] or agree[] to accept any benefit from another person upon an agreement or understanding that such benefit will influence his testimony or conduct in, or in relation to, any official proceeding."
3. On the surface, Rule 3.4(2) would appear not to apply where it is the witness demanding the inducement, rather than the lawyer *offering* the inducement. But of course, if the lawyer were to agree to the witness's demand, the lawyer would then be in the position of offering an inducement.

Highlights

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affidavit. *Commissioner of Administrative Services v. Mulcahy*, 67 CLR 274 (Noble, Cesar A., J.).

■ Workers' Compensation Law

Fuller v. Western Connecticut Health Network, Inc., 67 CLR 802 (Krumeich, Edward T., J.), holds that the provision of the Connecticut Workers' Compensation Act that authorizes an employer to intervene in an employee's personal injury action against a third party tortfeasor arising out of a work-related accident to recover paid workers' compensation benefits from the employee's recovery, Conn. Gen. Stat. § 31-293, applies only to benefits paid under the *Connecticut* Compensation Act and not to benefits paid under the compensation laws of any other state. Therefore, an employer who has paid benefits pursuant to another state's compensation laws cannot intervene as a matter of right in an action brought by an employee in Connecticut. An employer's lack of workers' compensation insurance causes the loss not only of the employer's immunity from common-law liability for injuries to employees, but also (a) loss by the employer's employees of immunity from common-law liability claims by co-employees, and (b) loss of the employer's immunity from loss of consortium claims by employee spouses. *Wilson v. Hopkins*, 67 CLR 766 (Moukawsher, Thomas G., J.).

■ Zoning

188 Westmont Lot B, LLC v. West Hartford PZC, 68 CLR 208 (Berger, Marshall K., J.T.R.), holds that alternate proposals for IWC applications that *preserve* existing wetlands should be given preference over alternatives that *modify*, *enhance*, or *create wetlands*. The opinion vacates a commission decision to approve an application to locate a home directly over an existing wetland while authorizing the creation of a larger wetland area on another portion of the lot. ■