

The emerging tech challenge to the legal profession

While technology can offer improvements in the delivery of quality legal services, the profession must recognize the risks.

by Richard Zorza

Lawyers, court professionals, and academics have only just begun to think about the societal implications of the Internet. Yet in a few short years, the relationship among lawyers and between lawyers and the public will be transformed as radically as bookselling, travel services, money management, and banking already have been.

The Internet is making it easier for clients to find lawyers, and easier and cheaper for lawyers to serve clients. It will allow us to create new forms of practice that more effectively meet consumer needs. We celebrate these facts; we encourage these trends; and we want to remove regulatory and other barriers to their progress. At the same time, we cannot ignore the risk that these changes may well force lawyers into radically different forms of professional association, lessening their independence and allowing for con-

trol by corporate entities—with arguably deleterious effects.

Attorney–client relationship

Traditionally, the attorney-client relationship was built and maintained by word of mouth. Most attorney mar-

keting was by referral, and most clients returned to the same attorney for transaction after transaction.

Today, however, on-line lawyer referral systems are on the rise. These systems have huge potential to attract large numbers of lay users by providing broad legal self-help information on the Internet and then linking users to attorneys based on need, expertise, and geographic location. This is not a problem in and of itself—it is a good thing that more people can find lawyers. The problems may come when lawyers become dependent on these systems for referrals.

Similarly, on-line systems are allowing attorneys (as well as other experts) to bid for the provision of defined and unbundled services to clients. This may raise quality control issues and increase the risk that attorneys become dependent on such a gateway for their professional work. Moreover, many of these systems allow users to rate their satisfaction with the service provider—a practice that weakens the relative force of traditional word of mouth while increasing attorneys' dependence on Internet services that are distributing satisfaction ratings to potential clients.

Many on-line systems also offer or plan to offer free legal tools to those who want or need to represent themselves. These tools might include on-

line forms, artificial intelligence–assisted decision making, and support for electronic filing. Such tools are highly laudable, yet they make clients more dependent on the services that provide those tools and less dependent on attorneys.

Legal services

Once a client secures a lawyer, the same general dynamics will come into play. To be effective, a lawyer will need to access and use a wide variety of electronic tools, including form generators, expert systems, databases, and automated practice systems that use statistical analysis to make decisions.

At this point in their development, these tools are relatively marginal in day to day practice and represent relatively small investments. However, as time goes by, the investments required to build these systems will increase, and access to them will become an effective barrier to entry for legal practice. Moreover, since the systems will be “self-teaching”—learning from the accumulated experience of millions of cases—it will be impossible for individuals or small firms to build their own systems. As in most commercial areas of the Internet, the vast majority of traffic will flow to a very small number of sites. In effect, lawyers will only be able to practice if they have access to these systems and will have to accept the terms offered by their providers.

Rapid technological shifts in the courts, particularly to electronic filing, will further enhance these forces. As courts' computer systems become more tightly bound with those of legal practice entities, lawyers will need to keep up to date with opportunities for the two-way data feeds that enhance practice.

Corporate practice

While these trends may be most dramatic for lawyers who represent individuals, a similar set of forces is at work in corporate law. As corporations continue to embrace the “business to business” model of Internet commerce, they will put more and more of their routine legal work out

RICHARD ZORZA is an attorney and a consultant on technology, justice, and nonprofits.

to bid, and only attorneys who are part of bidding systems and have the tools to make and live by competitive bids will be able to get business. Moreover, many of the tools being built for lawyers can be used by non-lawyers as well (such as paralegals), allowing corporate clients to move more of their work in house.

On-line conflict resolution tools will similarly cut into the legal profession's overall business base. Such tools are particularly appealing to corporations, which are often less interested in outcomes than in managing the overall cost of disputes.

What the private sector is doing

Faced with these trends, companies are moving to take advantage of the commercial opportunity to become the gateway to legal services on the Web. One way or another, they aim to attract potential clients and pass them on to attorneys, ultimately charging for the support services that they provide. Although such changes are moving more slowly than seemed would be the case a year ago, competitive forces will nonetheless push these companies to seek high market shares and drive down the cost of attorney services. As legal services become more tech driven, the marginal cost of each transaction will decrease and attorneys will become more dependent on gateway companies. (Several of these players see themselves as playing a broad social role to increase access to legal services for middle income people, allowing lawyers access to what is called the "latent legal market.")

In evaluating likely outcomes, a few truths about consumers and the Internet also bear repeating: As newspapers and encyclopedias are finding, consumers are very reluctant to pay for services that they can get elsewhere for free, regardless of any quality differential. The Internet democratizes expertise, giving consumers access to a wide range of alternatives to traditional services. And, because of the economics of marginal scale and low cost, the long-term race is always, in the end, won by the large and swift. Once several entities have made large investments in on-line tools and

obtained control over a significant portion of the client flow, it will be very hard for new players to enter the market and for attorneys to practice independent of these entities. Together, these changes will encourage effective monopolization of fee-based legal services on the Internet.

Five scenarios

It is far from clear how these structural forces will play out in practice. Following are five possible scenarios, all of which result in the extinction of the non-capitalized solo practitioner.

The large, high-volume firm. One possible model is a restructuring of the legal business into a small number of large firms with many relatively low paid attorney employees. These firms will (regardless of the formal accounting mechanism) be highly capitalized, with investments in on-line client recruitment systems, electronic advocacy tools, and electronic linkages, and their control over the flow of clients will give them high market power over their staff. It may not make much difference whether they are controlled (as is currently required) by attorney partners, or by some other form of ownership by attorneys, non-attorneys, or some combination; even if the organization is controlled by attorneys, their functional role will be as owner-managers rather than leading practitioners. This model is closest to the emerging organization of the accounting profession.

Attorneys as private contractors. Perhaps the most likely scenario is that large companies will develop on-line client development systems and attorney support tools, and will then feed clients only to those attorneys who accept the companies' terms. Such a scenario would result in a radical lessening of professional autonomy.

In this case, the large firms will come up with innovative ways of structuring their financial relationships so that they do not violate the Code of Professional Responsibility, or they will obtain legislative removal of current restrictions. While in theory these organizations could eschew control over the terms of the at-

torney-client relationship, as a practical matter their interest in volume and their market power make this unlikely. This model is like the medical HMO model, in which the HMO controls much of the practice without taking legal responsibility for it.

The profession disappears. The high price of legal services provided by actual lawyers, together with the likely abundance of low- or no-cost on-line tools that replace the work of lawyers, could eliminate all but the upper end of the profession, who will work for the very rich and corporations. Under this scenario, most people will use on-line services to handle their interactions with the state and one another.

A highly fragmented and marginalized bar. Under this scenario, lawyers will remain, but most of the profession will be highly marginalized, performing low-paid form fill-in work, with a much smaller high-paid bar. In some ways this will be like the current structure of the bar—only more so.

Lawyer cooperatives. Large-scale investments and the establishment of on-line client recruitment systems and client support tools need not necessarily lead to attorney marginalization. If such systems were built by lawyer cooperatives and operated in the interests of the members of those cooperatives and of the justice that the profession is supposed to serve, then they could enhance rather than threaten professional autonomy. The model for such systems already exists in bar association legal referral systems.

The rapidly increasing pre-paid system also provides another potential model: the democratic political system. To be successful politically, such systems would need to ensure that they were run in the interests of clients as well as the profession, not necessarily an easy task.

Does it matter?

Does it really matter if most lawyers are dependent on large-scale organizations for their clients and for the tools with which they do their jobs? The economist's answer may well be

(continued on page 329)

Viewpoint

(from page 303)

“no.” These large entities will drive down the costs of legal services, enabling many more people to obtain professional help. They will result in higher-quality work and better outcomes for clients. That lawyers will not ultimately control the practice does not really matter, since the marketplace will demand both quality and loyalty to client.

I believe, however, that there are significant dangers in a legal profession dominated by a small number of economically powerful players, including:

Local monopolies. Since the legal market remains highly geographically fragmented, there is a real risk that in any one jurisdiction a single corporate entity will effectively control everything—access for lawyers, access for clients, the pricing structure, and the quality of practice. The effects could be disastrous.

Lack of autonomy. Attorneys dependent on large entities and with little choice between these entities will find their loyalty to their clients diluted. In particular, they may be forced to accept pricing mechanisms that inhibit quality practice.

Lack of innovation. Highly capitalized systems, as we know from industry, are ultimately very conservative. With automation, routine practice will be much easier and of higher quality, but also likely to be much more expensive to change. It is likely, therefore, that the legal profession will be discouraged from developing innovative theories or techniques.

Surrender to the market. In the end, however, what I fear most is the final surrender to the market. Most of us became lawyers because we believed—and still believe, on our better days—that the system ultimately worked to improve the world. If the bulk of legal practice moved through a small number of economically powerful players, it would be only a mat-

ter of time before those players moved to reshape the legal system in their interest—a *business* interest, not a public interest. (Indeed, even today, it is hard to deny that bar associations tend to defend their members' economic interests, rather than a broader public interest.) Issues of court reform, access to justice, legal procedure, and even the underlying substantive rights would become captive to the economic interests of those powerful economic players.

If we agree that technology can offer huge improvements in the delivery of quality legal services, but that there are dangers inherent in economic consolidation, then we must find ways to structure the profession to give lawyers and clients the benefits of technology while minimizing the dangers of centralized power. In short, we must transform it into the customer-driven, public interest profession that it holds itself out as being. ☞