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GETTING READY FOR 2000!
FOR SOLO/SMALL LAW FIRMS

by

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Getting Ready for 2000!
For Solo/Small Law Firms

Charles R.B. Stowe

Abstract

During the 1990's, the popular terms are downsizing, total quality management, technology and productivity. "Getting Ready for 2000!" discusses the implications of those terms on the legal profession with emphasis on practice development or marketing strategies for solo/small law firms. New computer technology has leveled the playing field between law firms. Today, a relatively small law firm with a modest investment can access, create and manipulate information that was only feasible by large firms. The glut of attorneys plus corporate downsizing has placed tremendous competitive pressures on the legal profession. But with change comes opportunities. By investing in new technology, careful target marketing, and implementation of process oriented management practices, solo/small law firms will be able to successfully compete while enhancing the profession.

Introduction

With the decade of the 1990's almost half over, how are you? If you are feeling squeezed by competition, uncertain about your career, or just nervous about the future of your practice or are you one of the thousands of law school graduates who is still looking for that opportunity to practice law you are in good company. Fortunately, in this sea of change, there are some fundamentals that will let you chart a successful course. This article explores these fundamentals and what you can do now to prepare for law in the year 2000.

Certainly the buzzwords of the 1990s for the legal profession are: "downsizing", "total quality management", "technology and productivity" and "intense competition". These terms and the trends they represent have had considerable impact on our profession. Combining an understanding of the trends along with an understanding of some fundamental marketing concepts and your practice will be better equipped to face the year 2000. And you will find some predictions about what the environment of the legal profession will be for the year 2000.
Downsizing

The major trend of the 1980's was mega-firm mergers. From New York to Los Angeles, large law firms were flexing their financial and "prestige" muscle adding smaller firms to their stables and increasing office size. The tremendous surge in the overall economy fueled in part by expanding foreign markets for US products and services led many to believe that "bigger is better". Afterall, how can a small firm compete with the financial and human capital resources of large firms? It seemed logical that "single jurisdiction" firms would not have the capabilities to handle clients that required legal assistance in many jurisdictions. Remember the predictions of massive law firms sucking up all middle and small business clients like a giant vacuum cleaner? Afterall, small firms will grow into big firms who will need large law firms to handle their complex legal problems.

In the 1990s many firms imploded. Unable to translate size into greater leverage and productivity, and faced with a slow down of in the overall economy, many firms that expanded in the 1980's are the same firms that today are currently "downsizing". Forty-four percent of the nation's 250 largest firms shrunk in size during 1991 compared with 16.6 percent in 1990, according to a survey published in the National law Journal.¹ Long term leases on huge and expensive office space, an unpredictable softening of the economy, and clients who are "auditing" their legal bills, all combined to crush many expansionist firms.

What are the implications for your practice? For firms that are hiring, the opportunity to acquire experienced talent or high potential law school graduates has never been better. Mid-sized firms that need to add attorney are in a "buyers" market. Another benefit for thriving law firms, large or small, is the availability of attorneys for hire on a contract, project, or part-time basis.

For victims of downsizing, the loss of security working for a large firm is unsettling at best. Many have decided to set up their own practices. If you are a senior legal practitioner who is now starting your own practice, you are not alone. Your competitive advantage is that you have experience in practicing law. With experience comes a certain degree of credibility in the marketplace - provided you have a strategy to convey your strengths. Your two

major challenges are to acquire clients who can afford your services and to properly manage your practice. The problems of collections, personnel, getting documents written in a timely manner, and getting the office cleaned now fall on your desk. Even deciding how to furnish and equip your office can be a distraction from developing and serving clients.

Fortunately, there is help available for attorneys who are having to deal with the administrative problems of setting up an office. One strategy is to hire an MBA on an hourly basis to manage your office. Forbes and other magazines have documented the "MBA glut" which is a national phenomenon. Demographically, many of these MBAs have experience but are returning home to raise a family or were victims like you of 'downsizing'. Find the right person, and you will have a person that you can trust to make sound decisions on setting up books and dealing with clients, vendors, and sales personnel so that you can focus on your practice.

In addition to the American Bar Association, you should check with your state and local bar associations and any local law schools to see what publications and courses they might offer in law office management. Chances are you have already been flooded with direct mail from law firm management consulting organizations offering their services. At one time these organizations only solicited large firms, but downsizing has affected their business too, and now many are more than willing to have your business. The problem is that the attorney who most desperately needs outside assistance is not in financial condition to afford the service.

If you are a victim of downsizing and you once worked at a fairly large law firm (from the perspective of your particular jurisdiction), you are probably competing against your old firm. However, if you were the only specialist in a particular area of the law at your previous firm, then perhaps they may have occasional use for your services perhaps as a part time consultant basis. In that case, you should plan to maintain contact with your previous firm. Chances are you were the victim of downsizing because the firm did not feel they could earn enough from your field of expertise. They may still have some cases where they might use your services on a contract basis. This trend of hiring attorneys for their specific expertise on a contract basis permits the firm to serve the client without having to keep the expertise in-house on a full time basis.

If you are an attorney with a track record in a particular subject area or have developed a good reputation within a particular area of law, your best strategy is always to "play your strongest card." Before you spend lots of money advertising in an area of law
you are unfamiliar with, look twice at your efforts in personally contacting those who need you for your current area of expertise. Some time ago, an attorney asked me about the process for obtaining an SBA loan. His plan was to use the funds to purchase advertising.

Theoretically, large law firms should have the advantage but the reality is that few of them know how to leverage size into client satisfaction. For example, many large firms "invested" in marketing professionals. The results are mixed at best. Some firms relegated their marketing professionals to designing brochures and conducting wonderful recruiting parties for Ivy League law school students. Few firms permit their marketing professionals either the stature or authority to attend partners' meetings and really influence the manner in which firms organize their marketing efforts. A telling point is the average longevity for non attorney in-house marketing professionals is only 18 months according to a report published in the Wall Street Journal.

A law firm consultant recently described the challenge of managing a large firm as "trying to herd a group of cats." So, do not be intimidated by the thought of having to compete against law firms. The key is to understand why clients might go to large law firms and what counter-strategies you might want to employ.

**Why Clients Seek Large Firms**

Here are a few reasons why a client might go to a large firm and what you can do to effectively compete:

- Belief that larger firms win more money, more often. This perception is probably based on the notion that bigger is better. How should you combat that perception? Simple: communicate your success to your clients. If a case you handled happens to make the papers, send your clients a copy of the story. Another technique is to write up your cases as "hypothets" to be included in newsletters or better yet, personal letters to clients.

- Belief that larger firms have more clout in the community. This perception can be countered by developing personal ties with key business leaders. In smaller cities most of the deal-makers are active in community organizations like the chamber of commerce, downtown projects, etc. Take a look at how you spend your free time and opportunities to make a positive impact.

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time. Are you involved in the type of community or civic activities that are frequented by your "target" market?

Belief that larger firms have a better understanding of their business. Armed with an effective marketing plan, you should not permit this perception to hamper your practice. The irony is that large firms are only beginning to manage their operations to maximize their potential. And frankly, the whole billable hour game coupled with the organization of many large firms by "practice areas" means that large firms rarely assemble teams to cross market their expertise. At some large firms, the only time they access their client list is for billing and conflict of interest issues. So, if you are striving to serve business clients, have you asked them to sponsor your involvement in their trade association? One of the major complaints that business clients have is that their attorneys are so wrapped up in the law that they know little about the dynamics of the industry. If you are a good speaker, make yourself available to the group to talk about the impact of a particular law on their business. Or, if you are better in writing, then offer to contribute a column to their newsletter.

Here are some concerns that a client might have about going to a small firm:

What will happen to their case if something happens to you? That is a very real but often unexpressed concern. Next time your clients visit, introduce them to a trusted colleague. Explain that you have an organized filing system that would permit your colleague to pick up the matter if something were to happen to you. When you send your client copies of legal papers, use a stamp that indicates that you have placed a copy in their client file. For business clients, you might have your colleague return a phone call to provide the client with a specific update on a matter. That definitely conveys the fact that your small firm is organized as a team.

As the client grows, the client may wonder if you can handle more complex matters. One way to blunt this potential problem is to inform your client of the continuing legal education you are taking to enhance your professional knowledge. Make a list of CLE topics that are going to be offered and ask your client if there are any topics that they think might be of interest to their business. If you are a general practitioner, tell your clients that should a matter arise that demands highly specialized expertise, you would like their permission to consult with a specialist. Use that opportunity to explain that they will save money by paying your hourly fees for doing most tasks rather than paying a higher specialist fee for handling the entire matter. Most business clients understand that
attorneys cannot be experts on all matters. They want the assurance that your ego and self-interest will not jeopardize their position for failure to have appropriate assistance.

**Total Quality Management**

The term total quality management (TQM) is a '90s buzzword that has tremendous potential for those who seize the day! The irony is that corporate America's successful implementation of TQM concepts is one reason behind the downsizing - America is producing higher quality products with less people thanks to TQM.

Can you apply TQM to your practice to help increase productivity and create more effective practice development strategies? Yes.

TQM applied to practicing law means analyzing each service provided to clients and delegating those tasks to the most cost-effective individual. Instead of assigning a client to a particular attorney, a "team" is assembled, briefed on the client's needs, and a strategy is formed. Instead of senior partners holding on to as many billable hours as possible, a TQM strategy means treating all clients with a "fixed price" mentality so the incentive is to accomplish tasks in the most efficient manner. Repetitive tasks get analyzed and streamlined. Senior partners focus their efforts on areas of expertise and leave the creation of forms to less expensive personnel. Quality control should be enhanced by this system because the more experienced attorney is setting and implementing strategy and the more experienced paralegals are focused on the administrative aspects of the case. This approach also enables firms to price their services competitively and defend bills to clients who are familiar with total quality management.

Even one or two person law firms can implement TQM. The problem with TQM is that everyone who participates must understand it for the system to work. That gives the solo or small firm practitioner a tremendous advantage. TQM experts suggest that even if your firm cannot afford the cost of a TQM consultant, your client may be willing to permit you to attend its in-house training sessions on TQM (particularly when they believe that it will reduce their legal costs in the long term).³

Table 1 describes some of the changes that TQM entails for a solo or small firm practice.

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<td><strong>TQM for Solo/Small Firms</strong></td>
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³. Id.
1. Total client satisfaction. That is the mission of a firm committed to TQM. Knowing what a client really wants is the first step. ABA studies have shown that clients want empathy, responsiveness and communication even above the issue of winning their case. All but the least sophisticated clients understand that litigation is a gamble. But returning phone calls, showing concern, and communicating are controllable.

2. More fixed pricing. The market is demanding that we set some limits and not merely work by the hour. Not all clients nor all engagements lend themselves to fixed price billing, but by adopting this mentality instead of the billable hour mentality, we automatically start to channel our time to increase our productivity. If we can shift time spent on "reviewing files" to communication with existing or prospective clients, then greater client satisfaction and potentially more work may follow.

3. Organizing work as projects. Budge time and money for each step. Keep logs with all documents to track true effort and time for the purpose of looking for ways to reduce time. Accountants do this for audits even though no two companies have the exact same accounting system or same procedures. It is time to examine our bill by the hour mentality and exchange it with "value for the client" philosophy.

4. Do it right the first time. We have to work smarter to minimize the number of times a document is passed over our desk. It is more efficient to do something right the first time than rushing to get something in and making corrections later.

5. Involving "all hands" in the process of delivering legal service. TQM is not simply a theory for managers, it requires the active participation by all personnel. To leverage your effort, you need to have your staff understand that TQM means that they have an active part in total client satisfaction. Examples of "all hands" means giving each staff member their own business cards and training your staff on how to respond to client concerns when you are not available.

6. Delegation of duties to the most efficient and competent. More training to your people will result in greater job satisfaction, self-esteem and more important
efficient use of your time. Firms operating under the billable hour mentality tend to lose their young attorneys when the market is soft. The senior partners tend to hoard billable hours rather than delegating or training. Small firms equipped with TQM can gain an edge with a TQM outlook.

7. Recognizing that contrary to mathematical theory, making incremental improvements in productivity results in gains bigger than the sum. A cellular phone won't replace a secretary, but it will permit you to return calls while you are in traffic. That converts "dead" time into billable time and it increases communication with clients.

8. The key word is "quality". TQM means reviewing all procedures to see how they contribute to producing quality legal service. In this context, training is not jumping into a CLE class right before your hours are due. Training becomes an investment in enhancing your practice, your contacts in the profession and potentially, it may give you insight into future trends that will help you design more effective practice development strategies. There are advantages of going to these large meeting rooms with other attorneys - you get to talk with your competition and get different perspectives on the implications of changes in the law and the economy for your practice. Though in-house CLE programs are getting very popular due to convenience and cost, there are potential advantages to getting away from the office to immerse yourself in a new area of law.

TQM and Practice Development Strategies

There are three principles to keep in mind when applying TQM to your practice development strategies. As previously mentioned, always lead with your strongest suit. Second, to know what to fix you have to know what is wrong. And, make time to analyze your present clients to learn how to increase referrals.

If you are a solo or small firm practitioner make a point of visiting one client per week. While many large firms are sending out cards that look like hotel questionnaires, as a solo or small firm practitioner, you should use your size to your advantage. Conduct the survey in person. Take the client out to lunch, or take a
doughnut to them at work. Get a face-to-face meeting and ask them if they were satisfied and what could you have done to improve your service. You will learn more by reading their faces than by what they say. If you aren't good at reading people, take one of your colleagues with you. If the client responds negatively, handle it with concern and sincerity. They may not immediately respond to you, but the fact that you would take the time to ask will leave a positive impression.

Even if you are trying to build a personal injury law firm, you should keep in personal contact with your past clients. Though most people will not have repetitive serious injuries, their life crises will put them in touch with people who may need legal assistance. The same is true for divorcees.

Carry your questions in writing with you so that your clients know that you are doing a serious study and not just taking up their time. At the conclusion of your survey, tell the client that you would make time to help anyone they might refer to you. Use the personal visit to educate your client as to other legal services you can provide. A listing of your CLE courses, a list of your publications, a list of your speaking engagements - or merely providing copies of ABA or your State Bar pamphlets on specific topics might be useful sales tools. Be sure to have your firm's name, address and phone number printed on the materials.

Process Engineering

The whole focus of TQM is on the process. TQM specialists take nothing for granted. Like children, their favorite question is why. Remember the story of the spouse who always cut her ham in half before baking it? The family asked why in earth do you go to the trouble of cutting the ham in half? The cook responded that her grandmother always cut the ham in half. Sometime later, the family asked grandma why she always cut the ham in half before baking it. Grandma responded "Because my oven was too small to cook an entire ham!" Too often we replicate office systems without thinking about the cost or the impact on delivering quality legal advice to the client.

Total quality management means challenging the old patterns. Focus your inquiry on "how does this procedure result in quality service?" Then ask "is there a way to avoid duplication of effort?" One attorney explained to me that in drafting divorce decrees, she uses a feature on her computer that prints out lay explanations of complicated terms only on the copies provided to the clients. That technique saves phone calls from confused clients while delivering
what the client can only perceive as quality service. Developing personalized communication that anticipates clients' questions or concerns is one way to build client satisfaction.

A criminal defense attorney told me that when his clients are convicted, he has a pamphlet of prison rules on what to bring and what not to bring, visiting hours, etc. which he provides to the client and their family. He also has several letters that he sends to them during their incarceration... sometimes just a clipping about their favorite sports team.

It is impossible in this article to outline every conceivable strategy of rendering client satisfaction. The point is that we tend to focus too much of our effort on legal brilliance and technicalities leaving it to the justice system to build client satisfaction. With that strategy, the best odds are 50-50. With TQM, our goal is to strive for 100% client satisfaction.

Technology

The other buzzword for the '90s is technology. Remember what the book Megatrends predicted: the higher the technology, the higher the need for the human touch. In law, simply using the computer to generate pounds of paperwork for the sake of impressing a client is not likely to win you friends when it comes time to collect on your bill. Legal newspapers are full of horror stories about clients who have hired "legal auditors" to review bills. Instead of thinking of your computer as a more elaborate typewriter, think of it as a document assembly and management tool with tremendous "multi-media" and presentation potential.

Under TQM, technology becomes a means for providing enhanced service. One small example: you are preparing a will for an elderly client. Use the power of your computer to print the will in larger, bold type. Now that should be a vivid case of how to use technology to enhance service to a client.

Another example is getting an e-mail address. Most corporations are now using e-mail. This is a great way to maintain communication with existing clients and a great way to send memos on current legal topics to selected clients.

If you are a litigator, consider programs that permit you to generate computer diagrams in large sizes to display to the jury. However, instead of taking the time to master the program, look around for a college techie to create the exhibits for you. Thanks to technology, the price of creating fairly sophisticated exhibits and multi-media presentations has dropped tremendously.
Consider investing in your state bar association's video tapes on divorce, child custody, DWI and other informative programs relating to your practice. Most bar associations are now producing videos that are targeted to your clients to explain the legal process. These are great tools to use in your practice to inform your clients, enhance your communication. You might even consider going to your local college and having a TV class produce a five minute tape of you explaining your fees. One lawyer told me that he started his tape by explaining that he practices law because he likes to help people and that talking about fees is always a difficult subject for him so that is why he made the tape. This may not work for your particular practice, but the point is that technology provides new ways of communicating ... of serving our clients.

If you serve business clients, be sure that your computer has a fax-modem. This will save time and delivery fees. With a fax modem, you can send a page over the phone for less than dollar while a delivery service might charge up to $15 for overnight service. The bottom line is to make technology your friend.

The Legal Environment 2000

The end of the century is almost upon us. The environment for those practicing law will continue to change. Here are some of the changes we might see.

Competition in our profession will continue to impose pressures except that by 2000, the pressures will be less from the sheer number of lawyers than from changes in the training of attorneys. Instead, we will see that technology and new law school curriculum will make newer attorneys ever more effective in legal research and office management.

Technology has already bridged the gap between the level of service that smaller firms can offer versus larger firms. By 2000, technology will bridge the gap between what a less experienced but computer literate attorney can offer versus a more experienced practitioner. The next jump in technology is storage and retrieval. Current technology means that legal research is relatively expensive and most firms still maintain a linear filing system. However, just around the corner is the ability to inexpensively archive electronically and use relational data base search programs to find portions of past documentation or legal research.

We may well see law firms with the practical capability of developing their own electronic libraries. Highly specialized law
firms will be able to keep records of every single case in their field of specialization. And in addition to case law, expert opinion testimony that might have been taken for one case will be available through electronic searches to shed light on a current case. All this is possible now, but the costs render electronic impractical for most firms.

The decrease in cost of super-size electronic storage will reduce the barriers to competition in legal publishing. As court houses begin to use electronic storage, we may one day be able to search trial cases to better value cases and assign risks to outcomes. We may also see specialized research organizations that will develop their own databases of case files, petitions, etc. that would be useful to have.

Negotiation, mediation and case valuation expertise is going to accelerate. For law firms serving business clients, the turn of the century will see more lawyers acting as counselors. Even in the face of mal-practice threats, the marketplace will demand that attorneys serve in a more advisory role. Technology will allow firms to more effectively search their data basis in such a manner as to indicate some predictability to costs of continued litigation and probability of outcome for success. Law firm software that is now single task oriented: billing systems, word processing, document assemblers will become ever more integrated so that one document created by one program can be planted into another program. Document storage will permit law firms to not only search old files but new programs and filing approaches will store outcomes and provide lawyers with the ability to render more effective legal counsel.

Changes in legal education are brewing, but by 2000, the profession will be impacted by changes that are only now beginning. While MBA schools use the team approach and push the concept of process and project management, law schools are still on the single lawyer mock-trial or moot court competitions. Conventional law school with its Socratic method and individual competitions fosters individualism, legal research skills and critical thinking skills, but not innovation, management or leadership. Beware, however, law schools are changing their curriculum.

The pressure of large contributors who want young lawyers to be a little more amenable to working on teams, graduates who cannot find employment and "techie" lawyers turned professors, is just now beginning to result in what will be a major change in legal education.

Law schools are changing their curriculum in two important ways. Many institutions are developing new courses that teach law as a process while still offering substantive law courses. Different
from the traditional courses in procedure where students memorize rules, these courses will put students into teams that will actually work with legal documents through a simulated case. The use of technology will result in "virtual reality" courses in which each side of a case enters their petitions, motions, etc. into a computer and a "judge" in a multi-media context responds. This sort of training will give law students some experience in actually working on a legal team ala O.J. Simpson style. And, it will give students "hands on" experience in combining legal research and legal reasoning skills with technology. The result is that by 2000, the first group of the "process-oriented" lawyers will enter the job market.

The second way in which the course will be offered is that ethical issues will be merged into the "reality play". Law schools have been under increasing pressure by the bar to teach ethics in a manner that affects future behavior. Multiple choice electronically graded exams have apparently not produced the results sought by bar leaders. In the course of injecting ethics into the virtual reality courses, guess what? ... law students will face a computer printed law firm financial statement that will tempt them into drawing from the trust account! This type of law practice oriented course driven by technology will expose law students to the business management aspect of practicing law. So, the next generation of law school graduates may well be better equipped to not only research through the computer, but to work in teams and make better use of law firm resources.

Clearly, to remain competitive, the entire profession will find that continuing legal education in whatever form will have value not just in conveying changes in substantive areas of law, but in upgrading research, client communication and management skills. None of these developments suggest that smaller law firms will disappear or that the practice of law as a personal professional service will change.

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