



DELIVERING STRATEGIC SOLUTIONS ACCA'S 2000 ANNUAL MEETING

Remarks by Robert J. Grey, Jr.
Immediate Past Chair of the House of Delegates
American Bar Association

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Embedding Core Professional Values within the Technology of Legal Commerce

A few years ago, when e-commerce started to take hold, IBM ran a television commercial. The commercial featured a middle-aged executive huddled with a young technology consultant, looking at a monitor. The young man was showing off the bells and whistles as they discussed developing a web site. The executive was mulling over the strategic uses of the Internet, wondering out loud what it would be like for the sales force to be able to interface with inventory control. Finally he said, "If we could do that, now, that would change everything."

Since that commercial ran, we have all realized that Internet-based technology is changing everything. Our interactions, our communications, and our expectations from one another have changed the pace and depth of our culture. The Internet is fundamentally changing our relationships. And sometimes, these changes are challenging the ability of the legal profession to maintain and instill our core values. Let me focus on a few examples that illustrate the ways technology is redefining the relationships between in-house counsel and private practitioners, and challenging our values as it does so.

A. Partnering with Clients

Technology is improving the ways that lawyers "partner" or team with corporate clients. For too long, law firms have focused on what they have to offer. But with the widespread availability of the Internet, firms are beginning to think in terms of what the client wants and needs. Web sites have begun to provide information not about the firm itself, but about the subject matter of the service that the firm provides. Law firms now provide its clients, and many times, anyone who wants it, with detailed information by way of "frequently asked questions" and on-line client resource centers. For example, Perkins Coie, LLP, maintains an Internet Case Digest, <http://www.perkinscoie.com/resource/ecommm/netcase/index.htm>, providing case sites and annotations, broken down into dozens of topics, such as defamation, privacy and trade secrets.

Vinson & Elkins, LLP, encourages partnering by using its web site to invite "friends of the firm" to attend its CLE programs, which are described at the site. http://www.vinson-elkins.com/client_services/cle_calendar.asp.

Other firms are positioning themselves as the client's resources of information in more pro-active ways. For example, Arent Fox gives people the opportunity to sign up for e-mail alerts providing updated information about the firm and its fields of practice. <http://www.arentfox.com/emailAlert/emailalert.asp>. The firm also

hosts interactive on-line discussion forums on two of its areas of expertise. <http://www.arentfox.com/quickGuide/discussions/discussions.html> Similarly, firms have established interactive extranets and intranets that enable quick and confidential exchanges of information exclusively with individual clients. For example, Weil, Gotshal & Manges, LLP maintains a portion of their Web site "for our clients" http://www.weil.com/weil/forclients_frames.html and Davis Polk & Wardwell provides clientlink, <https://www.dpw.com/clientlink.htm>.

While partnering with clients advances the legal profession's values of service and fidelity and demonstrates some of the benefits of changes resulting from the Internet, other technological advances challenge our values.

B. Accessing Legal Services

Many lawyers first used the Internet as an advertising tool. In fact, spam was invented by a lawyer who was soliciting clients for his immigration practice. The first law firm web sites resembled at best a Yellow Pages ad and at worst a billboard. They then progressed to resemble firm brochures. In fact some firms have now stopped printing brochures and rely solely on the material available at their web sites. The ability to expand information and keep it current is obviously helpful.

However, client development has also evolved into a plethora of on-line directories and, most recently, case-matching based on bids for legal services. The RFP has come to the Internet. Web sites such as legal-bid (http://www.legal-bid.com/flash_splash.asp), casematch (<http://www.casematch.com/whatis.html>), elawforum (<http://www.elawforum.com/>), rfpmarket (<http://www.rfpmarket.com/>), sharktank (<http://h0060974ecf80.ne.mediaone.net/sharktank/site.nsf/home>) and others create forums designed to match clients with lawyers who seek cases by being the lowest bidder.

While this matching model may be helpful to improve access for personal legal services to individuals, we see the Internet here as a mechanism working toward the opposite extreme from that which helps create partnerships between firms and clients when it is applied to corporate legal services. We see basic business functions driven by bottom-line assessments and no regard to values that must otherwise be considered in a successful and long-term attorney-client relationship. Confidentiality, conflicts of interest and even fundamental notions of lawyer competency can be put at risk when strangers are brought together anonymously through technology. This is not to say that such mechanisms have no role in the delivery of legal services, but only that we must proceed with caution as we maintain and advance our core values.

C. Legal Services as a Commodity

Richard Susskind is an expert on information technology and its relationship to law. In his book, *The Future of Law*, he paints a bleak picture of lawyers being disintermediated, or removed from the function of providing legal information and advice. He suggests that technology will turn legal services into a commodity that can be purchased and applied with little or no assistance from the lawyer. In fact, he indicates that lawyers will become software producers, or legal information engineers, converting information to boxed-packages. We see this with over-the-counter and Internet-based downloadable software for the creation of wills and corporation start-ups.

However, the legal profession has never presumed one size fits all. While legal functions can be mechanical, legal judgment cannot. The possibility of disintermediating lawyers challenges the value of our services. To what extent do we provide something of worth to our clients and society? Our adherence to core values defines the legal profession and separates it from all businesses. The adherence to these values also distinguishes us from the capacities of technology. As we go forward and embrace technology to better enable us to apply our skills, let us remember that technology has never known fidelity to a client. Technology does not understand independence of professional judgment. Technology does not recognize the need to provide

pro bono services. Until it adopts these values, technology should not transform legal services into a commodity.

D. The Impact of Expanding Access to Information

The very nature of the Internet's ability to expand access to information is resulting in changes that impact the ways we practice law. Two examples of this are class actions and vacatur.

While class action litigation obviously serves a valuable purpose, we have to be mindful of the possibilities for abuse. Web sites that promote class action litigation may lead people to believe they are entitled to greater compensation than they deserve or will receive. They may lead people to believe that class action litigation is a superior form of dispute resolution when it is not and they may result in litigation that has no merit but creates substantial costs to the litigants.

A more controversial and unsettled issue is that of vacatur, where litigants overpay a judgment upon the condition that the judgment not be published and is therefore not available as precedent. The law firm Anderson Kill & Olick has created the vacatur center as part of its web site. (<http://www.andersonkill.com/vacatur.htm>) The purpose of the site is to provide public information about cases that have been the subject of vacatur agreements. This raises a series of questions -- about the rights of parties to contract and about the role of precedents. This is yet another example of the changes we are seeing in the practice of law as a result of technology.

The ABA's Response

At its Annual Meeting in July, the American Bar Association's House of Delegates debated modifications of the profession's values that would enable lawyers to participate in multi-disciplinary practices. This so-called MDP debate resulted in a strong voice rejecting changes that would have had an impact on the independence of the lawyer's professional judgment. Even though a change in these rules would have expanded business opportunities for many lawyers, the vote was a barometer of the legal profession's dedication to its core values.

Next up, the ABA's Ethics 2000 Commission will issue its recommendations on changes to the ABA Model Rules later this month. Some of these changes are likely to be controversial and some may result in shifts in our values. We will look forward to the Commission's report and the Association's position on its recommendations.

With the expansion of large law firms and increased mergers creating an expanded global capacity, in large part facilitated by technology, the ABA has now created the Commission on Multi-Jurisdictional Practice. To some degree, this Commission will examine the impact of state-based regulations of lawyers who practice through the a-jurisdictional medium of the Internet.

Finally, I have been asked by ABA President Martha Barnett to chair the Association's Committee on the Future of the Legal Profession. Technology is at the top of our agenda.

Conclusion

When they first became available, law firms did not like to use them. Some of the largest and most prestigious firms waited years before they obtained even one. When they did, the firm put it out of the way. No one was very interested in using it. Frequently, they were considered unprofessional and something that interfered with the way things were done. I'm not referring to the computer, but the telephone and its reception by law firms in the 1880s.

Historically, the legal profession has not been the first to jump on the technology bandwagon. Certainly part

of this is the result of our quest to retain our values. But today our choice is not to accept or reject technology. The Internet is upon us. We must recognize its value and fully explore its utilization. But at the same time, we must manage the changes that result from it. We must do so in ways that are consistent with the virtues of the legal profession. We must embed our core professional values into the technology we use to provide our services. And when we do, to paraphrase the executive in the IBM commercial, "Now, that will change everything - for the better."

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