

Technology and Marketing in a New Age - eLawyering for a Competitive Advantage

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Introduction

It is no secret that the legal profession is highly stratified. Large law firms serve large corporate clients. Solos and small law firms serve consumers and small business. These are two different worlds. Marketing the services of large law firms is very different than marketing the services of solos and small law firms.

By and large, large law firms compete for a finite number of large corporate clients, whereas the markets for consumer legal services are constantly shifting, with some markets contracting (e.g., Chapter 7 Bankruptcy) while other markets are expanding (e.g. immigration). Consumer markets can be segmented by practice area and also by client demographics. For example, one specialist in divorce law may serve primarily a middle-class clientele community, and another divorce practitioner may serve very wealthy clients with millions of dollars in assets. Yet, a large proportion of the consumer market remains underserved by the legal profession because of affordability and access issues.

My comments today are focused on marketing on-line legal services to consumers and small business, as distinguished from marketing the legal services of larger law firms that serve primarily corporate clients. There is an overlap in approaches and methods between these two sectors of the legal profession. What I have to say will benefit lawyers from both larger law firms and smaller law firms, but my present work focuses on delivering legal services to consumers and small business. This is what I know most about, and this is the focus of this presentation.

The Market for Consumer Legal Services

The market for consumer legal solutions is changing in fundamental ways, primarily because of the ascendancy of the Internet. We have estimated that there is a huge latent market for legal services – approximately \$20 billion annually - that is currently not served by the legal profession.

During the last seven years we have seen the emergence of a new category of non-lawyer - legal information web sites that offer very low-cost solutions directly to the consumer. The legal information industry of self-help books/forms has gone on-line. It has the solo and small law firm segment of the legal profession squarely in its sights. A legal information solution can often substitute for the professional service of an attorney. This is the new reality that the legal profession now faces.

During the past five years, literally hundreds of legal information websites have emerged offering services in the area of wills, divorce, adoption, bankruptcy, business

incorporations, child support enforcement, living trust creation, debt counseling, immigration, trademark search, copyright registration, patent registration, and landlord-tenant law. These sites offer web-enabled legal forms, legal information services, advisory systems, law guides, frequently asked question guides, and other tools for legal problem resolution, short of delivering what could be called “full legal services”.

These new alternatives are capturing or acquiring clients from both the “latent market for legal services” and from existing law firms.

The impact of these legal information web sites on the legal profession is significant. In one area alone, *no-fault divorce*, we estimate that sites, such as completecase.com, legalzoom.com, selfdivorce.com mylawyer.com, divorcelawinfo.com, divorcenet.com, docupro.net, and uslegalforms.com, have processed more than 50,000 on-line divorces in the past 18 months. If the normal legal fee for an uncontested, no-fault divorce is approximately \$1,500, then approximately \$75,000,000 in legal fees has just been drained from lawyers’ practices on a nationwide basis. This not a small amount and will increase, at the expense of the legal profession. These legal information sites will become more sophisticated and incorporate more rule-based and intelligent web applications that substitute for the judgment and the labor of an attorney.

Crafting marketing strategies for law firms that serve consumers and small businesses requires a deeper understanding of what consumers want and why consumers are seeking out these alternatives to lawyers.

Why Do Consumers Look for Alternatives to Lawyers?

Our research shows that consumers will avoid using a lawyer unless they really have to for the following, major reasons:

- Consumers cannot afford lawyers at \$125-\$150 per hour.
- Consumers do not trust lawyers to always represent their best interests, despite what the canons of ethics require.
- Lawyers are inconvenient and inefficient to use.
- Consumers dislike hourly rates.
- Consumers perceive lawyers as high risk in terms of outcomes and cost/benefit.

Rather than seek legal assistance, many consumers will search for a solution that is “good enough.” Consumers will sub-optimize and seek the assistance of an independent paralegal, for example, rather than the full services of an attorney in the interest of economy. Although it may not be the perfect solution, it is “good enough.”

Very little market research data exists on the opinions of US consumers and their view of the legal profession. For good, in-depth research on this issue one has to turn to the United Kingdom. In that country, an organization called Which?, the largest consumer

organization in Europe and the equivalent of our Consumer's Union, has extensively studied consumers' opinion of lawyers. Their most recent findings are that:

- 29% of consumers reported that legal services were poor value for their money.
- 23% said that their solicitor did not listen to their opinion.
- 30% did not feel well informed about charges.
- 40% said that despite being unhappy with the service, there was no point in complaining because the Law Society would not do anything any way.
- 63% think it would be a good idea to get legal services at supermarkets or retail banking institutions.

It is for these and other reasons that the United Kingdom is in the process of de-regulating the legal profession in the interest of promoting greater consumer choice and introducing modern methods of management, greater technology, and capital into the delivery of legal services. Sometime in 2007 these reforms will take effect. These reforms include:

- Independent regulation through a Legal Services Board that is not dominated by the legal profession;
- Complaints handled by a new independent Office for Legal Complaints;
- The authorization of Alternative business structures which would permit non-lawyer entities to invest in and develop law firms and create new legal service delivery structures;
- Abolition on the prohibition on splitting fees with non-law firms in order to encourage more innovative marketing arrangements; and
- Narrowing of the prohibition against unauthorized practice of law which will enable non-lawyers in many areas to provide legal advice and create legal documents for consumers.

It will be a long time, if ever, before these kinds of reforms will happen in the US, but it will be interesting to see what happens in the United Kingdom during the next few years as these reforms take hold. The US legal profession can learn from the experiments that are being carried out in the UK, and the impact of these experiments on consumer choices.

What Do Consumers Want?

Which? has also done extensive research on what consumers want from their lawyers. The dominant theme is better customer service. More particularly, consumers want:

- To know what their case is going to cost;
- To know how long will their case take?
- To receive progress updates on their cases;
- To receive prompt response to letters and phone calls;

- To have complaints responded to promptly.

Which? also reports that consumers want legal advice and legal services to be delivered :

- Online, by phone, or even by text;
- Outside the traditional 9:00 to 5:00 hours;
- Linked with related services, such as the purchase of a home;
- Together with unbundled and DIY legal services.

These findings mirror some of our own market research in the United States. Consumers of legal services in the UK are not much different from consumers in the US, so there is much to be learned from this research.

From the consumer's perspective, the system for delivering legal services needs to be re-designed to create a new value proposition. This new value proposition could involve elimination of the need to go to the lawyer's office, increasing the speed of the transaction, and offering services at a flat fee. It is a waste of marketing dollars to advertise traditional legal services to consumers when that is not what they want. Marketing is more than just "selling" or getting the word out about your law firm. It is more than publishing a web site that is little more than an online brochure. It is more than radio and TV commercials that make claims about what a great law firm you are. You cannot sell a product or service to a consumer if they do not want to buy it. Marketing is more than "promotion." I believe that fixing the system for the delivery of common legal services requires more radical changes if the migration of consumers towards less valued alternatives is to be stopped. These include:

1. Increasing the transparency of the transaction between client and lawyer by moving away from hourly pricing towards fixed pricing and pricing by result. The lack of transparency in lawyer pricing creates tremendous anxiety on the part of consumers. A consumer can get a fixed price from a homebuilder to build a \$1,000,000 house (with allowances for unforeseen circumstances), but cannot get a fixed price from a lawyer for a relatively simple divorce.
2. Increasing productivity of the legal transaction and passing the savings on to the client. Consumers suspect that lawyers are using information technology to increase their productivity by automating more routine legal tasks such as document production. They resent the fact that productivity enhancements are not passed along to the consumer in terms of lower prices. Without competition from other kinds of providers, the legal profession has no incentive to lower prices. Instead, legal fees tend to move up over time. However, this competition is on the horizon. Full service stockbrokers were impacted by online discount stockbrokers in terms of price reductions. A competitive economic environment for legal services would have the same result.

3. Making it more convenient to communicate and work with a lawyer. While it is necessary to appear in a doctor's office for a physical examination, it is not necessary to be physically present in a lawyer's office in order for the law firm to do its work. Yet the prevailing mode of doing business requires that the client give up half a day of work and travel to a lawyer's office for advice at the lawyer's convenience, not the consumer's.

The pressures to change the patterns of delivery of legal services for consumers will increase dramatically in the next few years, as a "connected generation" comes of age.

The trends that are now in place will accelerate over the coming years as "the connected generation" comes of age and begins to need legal services. The "connected generation" includes those born since 1970. It is this generation that looks to the Internet first, before checking the Yellow Pages, reaching for a telephone, or consulting with a professional face-to-face.

The size of Generation Y, those born between 1970 and 1986, in the United States is approximately 76 million. Coming right behind this generation is the **Internet Generation, or "iGeneration"** which includes those born since the mid-to-late 1990s. This generation grew up during the birth and rise of the Internet. Thus, the Internet Generation has memory of (or nostalgia for) a pre-Internet history, a factor which greatly differentiates them from older generations, who had to learn to adapt to 'new' technologies. The iGeneration simply takes the Internet for granted as 'natural,' with sites launched since 1998 such as MySpace, YouTube, iFilm, and the ever-growing use of Internet Forums, Wikipedia and Google as part of its global cultural ecosystem.

Connected consumers value:

- Innovation – the better way;
- Immediacy- e.g., I want it now;
- Authentication and Trust;
- Interactivity;
- High customization: services and products that fit unique needs.

Consumer behaviors emphasize:

- Looking to the Net as the first place to go for information, alternatives, and options;
- Using comparison sites;
- Trying before Buying;
- Looking for interactive digital spaces and communities of interest where opinions and information can be exchanged;
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- Interacting with a web site before talking to a professional;

The “connected generation” wants to do business over the Internet with attorneys and understand elawyering concepts. Eventually, consultation with a professional may occur, but only after this digital exploration.

What is eLawyering?

The idea of eLawyering can be traced to the early days of the Internet when law firm web sites such as <http://www.visalaw.com> first appeared. In January 2000, William Paul, then president of the American Bar Association, created the ABA eLawyering Task Force. Thus, the idea of eLawyering was formally recognized as a way of delivering legal services. eLawyering will grow in importance in coming years, just as shopping on-line has experienced year-to-year growth. Paul’s vision was that lawyers would be able to use the power of the Internet to serve clients of moderate means who have been priced out of the legal market.

Marc Lauritsen, co-chair of the eLawyering Task Force in an article in Law Practice Magazine in January-February, 2004, p. 36, succinctly defined eLawyering as:

“all the ways in which lawyers can do their work using the Web and associated technologies. These include new ways to communicate and collaborate with clients, prospective clients and other lawyers, produce documents, settle disputes and manage legal knowledge. Think of a lawyering verb—interview, investigate, counsel, draft, advocate, analyze, negotiate, manage and so forth—and there are corresponding electronic tools and techniques.”

This is a good start to understanding the concept of eLawyering. In addition to this definition, I would add that eLawyering is an attitude about how to build a law firm business model, which exploits web technologies for competitive advantage. The core of this business model is a law firm web site that incorporates interactive and web-enabled applications and supports interaction between lawyer and client along a number of dimensions.

How Do You Build an eLawyering Practice?

The first step in creating an eLawyering practice, is to build a “strategy map” which identifies who and where your existing and potential clients are and how you can serve them more effectively over the Internet. A highly localized and neighborhood-based practice serving lower income families may find that the Internet is less relevant to its client base. On the other hand, a law firm that serves small business in a specialty area such as intellectual property, immigration, or employment law and is seeking to expand its practice from a single city to statewide will find the Internet very relevant indeed.

Time, pricing, the degree of required emotional handholding, convenience, unbundling, the degree of specialization that is required, and whether the transaction lends itself to

self-help approaches, are all factors that need to be taken into account in creating a strategy map for the law firm that wishes to develop an eLawyering dimension to their practice.

In order to develop a competitive strategy., you have to think like a disrupter. If you closely analyze companies like Southwest Airlines, the University of Phoenix, and Wal-Mart, you will see that their growth follows a common pattern. Each of these companies started with a solution that made it easier, simpler and more affordable for customers to solve a critical problem in their lives. Each of these companies then identified a group of customers that typical suppliers in the industry considered insignificant and each of these companies adopted an approach that made it difficult for traditional suppliers to respond.

As Clayton M. Christenson points out, when Sony entered the consumer electronics market, it did not compete with the leading tabletop radio providers by making better radios. Instead, it introduced a portable and inexpensive transistor radio that was designed for teenagers who wanted to listen to ball games or music without being supervised by parents. When Apple introduced the iPod, it did not compete with the Sony Walkman. Instead, it created a unique platform so that this same demographic could carry around their music libraries in their pocket.

The lesson here is that non-clients of your law firm can become great clients if you figure how to reach them with an alternative offering that really meets their needs. Sometimes the best target customers or clients are those that lack the skills, wealth, success or time to consume traditional legal products or services. Removing barriers to consumption can be a pathway to growth.

Once you figure out what kinds of clients you want and how you will serve them, you can translate the strategy into a web site development plan. This Plan will estimate investment costs, revenues, and the intangible benefits that result from the creation of a web-based legal service delivery system for your firm.

Many law firms have what could be called “first generation” web sites that consist of little more than an expanded yellow-page ad. A much smaller number of law firms have “second generation” web sites that provide rich substantive content and legal information.

Finally, an even smaller number of law firms actually provide applications that help clients solve their legal problems over the Net in a satisfying and price-competitive way. These include legaladvice.com, njchapter13.com, mdbankruptcylaw.com, visalaw.com, mdfamilylawyer.com, and lemonlaw.com, to name a few. These are 11 examples of true elawyering web sites that offer legal solutions directly to middle-income consumers.

We would not consider a law firm that has a first generation web site, as defined above, as one that is engaged in eLawyering. These sites do not have any interactive applications and are little more than brochures in digital format. Often these sites exist

within a larger law firm directory and the firm has no control or access to the web site itself in order to be able to add interactive applications. For these law firms, the Internet is no more than another media channel for communicating about the law firm's capabilities. They are not "interactive service" sites. For these firms, law practice is business as usual.

On the other hand, a law firm web site that is based on eLawyering concepts involves moving beyond site that contains only legal content to one that helps clients collaborate with their lawyer and do legal tasks over the Internet. The impact of these web based, interactive applications is to save lawyer time, and often increase lawyer productivity and profit margins, while providing a more satisfying experience for the client.

The law firms that are moving into this next stage are what we call "web-enabled law firms" because of their commitment to use the power of the Internet to change the way they practice law by creating web sites that are highly interactive with their clients.

For these law firms, the web site becomes the primary way in which the law firm relates to its clients and manages the flow of legal work. To accomplish this objective, a web-enabled law firm would consider using the following applications:

Client Extranets. A client extranet is a secure and private space for each client, where the client can communicate with his or her attorney securely, documents can be archived, the client can check the status of his case or matter, and legal fee billings can be presented, reviewed, and even paid electronically. A client extranet permits personalization of the client experience; security of communication; convenience of having all of one's documents and transactions in a private and secure web space. A client extranet can be costly to create if you program the entire application yourself, and few lawyers possess this level of programming skill. A more practical alternative is to create a client extranet around applications that are hosted by third parties, such as Findlaw, Microsoft's Sharepoint, and WebEx Web Office. These applications are easy to set up and substantially reduce the cost of entry. For example, if you already have developed a web site with FindLaw, you can add their Workspace® application which is a secure, online collaborative workspace that supports information and document sharing with clients at any time and from any place. Workspace® is very flexible and can be modified for a wide variety of practices such as litigation, corporate, real estate, and family law.

Web-Enabled Document Automation. Within a secure extranet client space, clients can answer an on-line questionnaire, which automatically generates a legal document through the use of web-enabled document solutions such as HotDocs OnLine, Ghostfill, and Rapidocs Online. Enabling the client to provide the data directly into an online interview reduces the time that the attorney has to spend on the interview process and results in an instantaneous generation of a draft ready for more detailed review. Web-enabled document assembly enlists the client's effort in providing the data that is used to create a customized document without initial lawyer intervention. Document automation has

traditionally been used by lawyers within the office environment to speed up the production of documents of all kinds. Speeding up internal document assembly within the law firm is important, but does not have as dramatic a change in law firm work process as client-centered and web-enabled document automation. By moving the document automation process onto the Web and enabling the client to provide data online, a major increase in lawyer and client productivity occurs.

Productizing Legal Services

Productizing a legal service means systemizing the production of the service, rather than custom crafting the service every time you produce it. Often this means integrating a digital application with the production of the legal service.

Here is an example of productizing a legal service using web-enabled document automation tools.

We run a virtual law firm in Maryland from the web address <http://www.mdfamilylawyer.com> . We specialize in helping parties in family law represent themselves in routine divorce matters. We offer legal forms bundled with legal advice for a fixed price. When a client enters their secure client space they have the option of completing an online questionnaire for a Marital Separation Agreement and a set of divorce pleadings. When the client is finished entering into their information, all of the documents are instantly created as a first draft ready for review. A paralegal on my staff reviews the documents and emails the client if there is a need for additional information. By the time I get the documents they are 90% complete and ready for sign off. If I have to do custom drafting I do it at that point, after entering into an email dialogue with the client. Our selling price for a divorce package is \$299. On average, we spend 20 minutes per transaction. My paralegals and the digital application do most of the work. Our operating profit margin for this unit of service is approximately 80%. One can apply the same principles to other areas of law practice.

Creating automated document templates that work on the web is not a trivial undertaking. All of the major document automation systems require some scripting language skills. If the firm has already automated documents that have been used on the desktop the task of importing these documents for use on the web is made much easier. HotDocs and Rapidocs already have large inventories of state-specific legal automated documents, which can often be used with minor adjustment. These document templates can be used to generate first drafts, which are then further customized by the attorney.

Online Calculators. Online web interview forms can be used to collect financial data and calculate an immediate, useful legal result..

Examples of this kind of application are the calculator on <http://www.mdfamilylawyer.com>, which estimates child support payments and the calculator on <http://www.njchapter13.com>, which determines eligibility for Chapter 7 bankruptcy.

Client Appointment Scheduling. Clients can make appointments to see their attorney directly through the web site using third party applications such as Microsoft's Appointment Scheduler.

Client Data Intake. Clients can provide information through online forms that is the basis for an office consultation. Providing the data in advance enables the lawyer to fully prepare for the office consultation and often reduces the time required for the in office consultation. <http://www.mdbankruptcylaw.com> uses an online form to collect client financial information prior to the first office interview in order to determine whether the client will have to file a Chapter 7 or a Chapter 13 under the new bankruptcy law.

Interactive Legal Advisors. Some law firms are creating interactive legal advisors. Similar to online document assembly, the client answers questions through an online questionnaire, but instead of a legal document being created, the intelligence engine generates a legal answer with a series of if-then statements. While these interactive legal advisors are not easy to program, once they are completed they can be used for a long time without major revision. Interactive legal advisors can be designed with a trap door to alert the lawyer of potential problems that require more sophisticated analysis and direct legal advice. The US Immigration Service has several such legal advisors on its site, which make a determination, for example, of the immigrant's eligibility for US citizenship. Some law firms have learned how to monetize the use of such legal advisors, either on a transaction basis or a subscription basis, realizing every lawyer's dream of making money while they are sleeping.

Online Legal Advice. Lawyers are providing legal advice by telephone and e-mail, publishing both the questions and the answers to a client's secure web space for future reference by the client. Often such legal advice is offered at a fixed price per incident. See for example, <http://www.legaladvice.com> and <http://www.mdfamilylawyer.com>. This is a convenient service for clients who have relatively narrow questions and want a quick answer. Lawyers can answer these questions during times of the day when they are not busy, maximizing use of time that normally has marginal billing utility.

Online Case Management. Data about cases can also be made available over the Internet for clients to view and analyze. Keeping clients informed about the progress of their cases on a current basis will bond the client to the law firm in the same way that a consumer gets bonded to their online brokerage firm. All of the major case management software vendors are, or will soon be, offering web-enabled versions of their desktop applications which can be made accessible to clients through a client extranet.

Online Dispute Settlement. Video and Web Conferencing applications can also support forms of online dispute settlement and mediation. An online dispute settlement space can be set up easily by renting Microsoft's Sharepoint Application and dedicating it to a particular case or controversy. The application contains discussion group functions, document uploading and archiving, scheduling, and email notification within a secure web space. This provides all of the elements for asynchronous communication.

Additional web-enabled, interactive applications will continue to be developed by third party vendors. Watch for them and continue to evaluate whether they can be incorporated into your web site.

New Media Developments:

Communication with the "connected generation" should not be limited to textual material. An "interactive law firm web site" maximizes the benefits of multimedia.

Educating clients about their legal situation today can be done using multimedia that engages the client or prospective client in ways that plain text cannot.

Some law firm web sites are integrating video and Podcasting into their web sites to complement the text. Web sites, blogs and podcasts offer unprecedented opportunities for reaching connected clients in unique ways. You need to determine what sets you apart, and convey your differentiated message consistently using the media of the online generation. That way, clients will get to know you in an authentic and compelling way before they even set foot in your office.

Marketing

Finally, you do have to market the features of your eLawyering practice. Add information to your home page about your new web site's functions and how client's can take advantage of the new functionality. Advertise your new capability as a way that your law firm does business differently over the Internet. These efforts will attract a clientele that prefers to do business over the Internet. Participate in on-line lawyer directories that will publish a link to your new web site.

The web is an interactive medium. What distinguishes a law practice based on eLawyering concepts is an interactive platform that involves clients with the actual legal work of the firm. Interactivity with clients is the true marker for what constitutes eLawyering in the law firm of the future.

Figuring out how to incorporate these newer "interactive technologies" into law firm business models will be both a challenge and opportunity for law firms, particularly those that offer personal legal services to the middle class. Initial efforts are promising that the legal profession will rise to the challenge of offering legal services on the Web.

The future belongs to law firms that learn how to use Internet technology to disrupt their competition by offering a client experience that is both low cost and of high quality.