



The Future of the Legal Profession: A Small Firm Point of View

By M. Joe Crosthwait Jr.

In the spring of 1989, I attended an OBA-sponsored Leadership Conference in the then newly completed and now-named Marvin Emerson Hall at the Oklahoma Bar Center. In the keynote speech, a prominent Oklahoma lawyer and outstanding leader opined that the day of the solo and small firm practitioner was coming to its inevitable and not particularly scenic sunset. The new dawn would bring, he said with great confidence if not complete clarity, an era of national, international and supranational law firms, some with a population perhaps approaching that of New York City and they would soon displace all the little people, i.e. the solo and small firms. I had this mental image of a giant Pacman devouring the ghosts, one to five at a time.

Indeed, he correctly observed that the big firms were getting bigger as the rapid spurt of globalization was at its cusp. All the while, solo firms still had only one lawyer and small firms still only had two to five lawyers. And everyone was complaining that we had too many lawyers and getting more every day!

Having been a solo or in a small firm since the inception of my practice not too long before Richard Nixon resigned the presidency, such a notion, as he so convincingly argued, at once confused and terrified me. What if this prognostication were right? What if this radical transformation were indeed in the offing? What if what I did was no longer relevant and my clients were drawn inexorably to the black hole of "The Big Firm"? What would become of my clients who were terrified of heights and the elevators that took them there? What would I do for a living??

I had concluded early in the Nixonian-era (my college days) that I wanted to be a solo or small firm practitioner and, like Groucho Marx, knew that I would never choose to be a member of any club that would have me as a member. I am, like most solo and small firm practitioners, a lousy passenger. I want to sit in the driver's seat with wheel in hand and foot on accelerator and drive. Would I now become a displaced lawyer who must undergo vocational rehabilitation and perhaps years of behavioral modification and psychological counseling in order to survive, let alone thrive?

Or could it just be, oh please say it's so, that the Great Prognosticator was wrong?

Thankfully, once I regained my composure from these horrible imaginings and awakened from what I knew, even as I experienced it, must only be a bad dream, I recouped my

sense of the dual universes – one comprised of solo and small firm lawyers and the one with everyone else.

Then, as now, approximately two-thirds of all private practice attorneys in the United States are in solo or small firms and right at half are pure solos. Significantly, those percentages have not changed meaningfully since at least the Missouri Bar Survey in 1957.

That, of course, is not to say that the mega-sized and global firms haven't emerged as a phenomenon of globalization or that the nature of solo and small firms has not also evolved. Indeed, a lot has happened to alter the course and nature of legal services, who provides them and how. And like just about everything, it is the Internet and the ensuing globalization that have been the primary moving forces making the world a much smaller and faster place.

But wait! Could it be that the Great Prognosticator's prophecy was correct but premature? After all, Bill Gates famously said that we tend to overestimate the amount of change over the short term and underestimate it over the long term.

Flash back to the Nixonian-era – Manual and an increasing number of electric typewriters, carbon paper, white out, the 8-cent stamp (par avion was extra), no UPS or FedEx, legal size paper, real shorthand, no legal assistants (but experienced secretar-



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ies), dial telephones and smoking in the courthouse!! Never mind the demurrer docket on Friday mornings. Lawyers read abstracts and issued opinions and actually prepared residential real estate contracts. No cable, the Internet was used by 14 nerds, and what computers there were required special cooling rooms. Who'd have think we'd be where we are now? The lesson is that the best prognostication is only a guess.

So here are my “prognostications” of the unforeseeable future of the profession and the impact these imagined changes might well have on the solo and small firm lawyers.

First is the rule that demographics is destiny. At this point in time, nearly 40 percent of the lawyers in America will age out as the baby boomers go bust over the next 15 years or so. A disproportionate number of this group is the white male. Increasingly, and through no small effort of many, the number of women and persons of color and ethnicity have grown. But thus far, women tend to not remain in the profession as long and neither group has attained the median income level and partner status of the white male counterparts. And, of course, two-thirds of those aging

out are in solo and small firm practices. Big question: Will they be replaced, and if so, by whom? And will they be doing the same thing and representing the same folks on the same things?

That brings us, or me at least, to the subject of legal education. The general trend is up in law school applications and enrollment, although not with the same up slope of the last three decades. And my bet is there will not be enough in total new admittees to keep up with the boomers' bust. That said, the credentials of incoming students continue to improve. Demographics, however, suggests a net drop in the total number of lawyers with current trends. Moreover, the average new attorney has college and law school indebtedness of \$100,000 plus and the stratospheric starting salaries for new associates which make the front pages applies to an arguably insignificantly low percentage of new lawyers. The average salaries of associates other than those selected for the highest paying jobs are barely sufficient to service the debt and sustain a very modest lifestyle. Public service lawyers and pro bono fall early victim to this paradigm. The implications of these trends for the profession generally and the solo and small firm practitioners specifically are, in a word, sobering.

On the flip side is the fact that many main street people still prefer the services of the main street lawyer. Many areas of practice such as family law, estate planning and probate, personal injury and workers' compensation, and small business representation lend themselves

as well to solo and small firms as to larger firms, and in many cases, are a better fit. But much of this type of practice is increasingly being done pro se and by self-help lawyering and provided by unregulated "document preparers" and otherwise is not creating the robust market that it has been in the past.

There are also appearing more regulatory issues that may hit solo and small firms disproportionately. While we tend to think of globalization and multi-jurisdictional practice as within the primary concern of larger firms, it is in fact the solo and small practice which is least prepared to take full advantage of these enormous changes. Likewise, there is increasing pressure for compliance with such regulations as the so-called gatekeeper laws that will create a regulatory burden on all and especially solo and small firms.

Solo and small firm practitioners were early and ardent adopters of the new technologies brought about by the computer and the Internet and have continued to adopt and adapt to these technologies in ways the Great Prognosticator of 1989 could not have reasonably imagined. They have been in no small measure the tonic to energize the solo and small firm practice and keep them not only competitive, but ahead of the game. Reduced costs and enhanced productivity continue to advantage all lawyers, but especially solo and small firms. For example, research and marketing tools, among the most expensive overhead expenses of solos and smalls, have become basically cheap and easy. Individual attorneys are able to market their unique abilities and



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experiences with the same market penetration as large firms. Geographics and location will of course continue to dictate to some extent how large firms are and where they are. That is not to say, however, that solo and small firm practitioners in smaller communities are not subject to all of the other competitive forces both in and out of the profession.

Not to be ignored is the impact of all of this on the “organized” bar...the licensing bars as well as the voluntary bars. The latter will of course have to continue to generate and demonstrate their value. The so-called “patriotic membership” will in my estimation diminish proportionately to the boomers. The mandatory bars that fail to provide “value-added” service will be at risk of a division into the licensing component and the rest that would be purely voluntary. Again, the Internet and the change of relationship interaction will be a big driver. Bars will have to justify themselves as never before. They will have to be relevant and responsive.

So what does the future of the solo and small firm practitioner look like nearly a decade into the new millennium? About the same as it did going in to the last decade of the last millennium.

The big prediction: The dual universes of the large and global firms on the one hand and the solo and small firms on the other will continue to travel through time in parallel. Both universes will experience a growth in market through increased demand as well as a slightly diminished supply of lawyers. There will be more opportunities created for all new lawyers as the boomers go on to their great reward and/or retirement, golf or whatever it is they do and will do. Some hopefully will choose to hang around and continue to practice or provide other services now denominated, “the second season of service.”

The continuing and incoming solo and small firm practitioners who will thrive are those who continue to leverage their practice with technology and through personal and professional development. That is, they will need to

be not only the best of what they do, but the only ones who do what they do. Solo and small firm practitioners will no longer be viewed as just lawyers but rather the persons who act much like personal general counsels as the legal landscape becomes increasingly complex, guiding their clients to expertise when they themselves lack it. They will be in a sense “Jiminy Crickets.” (Boomers remember that, right?!)

They will also need to develop a greater “multidisciplinary” background in order to compete with the larger firms which possess concentrated abilities. And they must continue to innovate and maximize the use of technology in all aspects of their practice, promotion and management.

And as a profession, we must assure the most efficient and affordable means of educating lawyers. Nothing less than the quality and independence of our profession are at risk as the best and brightest in the middle tiers might opt for alternative careers if we don’t. We must have the best and the brightest in our profession.

And finally, the solo and small firm practitioners who will succeed “big” will be those who follow the teaching of Benjamin Franklin: “Tend thy shop and thy shop will tend thee.”

ABOUT THE AUTHOR



Joe Crosthwait received a B.A. in 1971 from OU and a J.D. from OCU in 1974. He is a past president of the Oklahoma County Bar Association and the Oklahoma Bar Association and is currently president of the National Conference of Bar Presidents. He has served on and been chair of both the OBA’s and the ABA’s Standing Committees on Solo and Small Firms.