

BOOMERS IN THE **M**ILLENNIALS' **W**ORLD

THE FUTURE OF THE LEGAL PROFESSION

By Marta-Ann Schnabel



I have a daughter who was quite young when I began writing for this *Journal* back in 2002. Sara has trekked along beside me to many professional events and meetings over the years, and she has occasionally been mentioned (much to her chagrin) in opinion pieces I have written. Most notable, I suppose, was when I revealed to the world that she had a post-it note habit. As a child, between the ages of about 8 and 10, she would post reminders to herself on sticky notes around her room. This was not, in itself, an unusual thing to do. But instead of admonitions to do her homework, Sara's notes read, "Be nicer," "Work harder," "Say thank you" or "Smile." That I was charmed enough by this particular idiosyncrasy to write of it is the source of some bemusement now, since that golden age of childhood has been replaced — as was

inevitable — by the opaque haze of burgeoning adulthood. At age 20, she still never turns down an opportunity to travel with me, but there is little evidence that she considers the directives set forth in those early post-it notes.

Sara makes a brief appearance in these pages again 10 years later not simply out of nostalgia, but because, every now and then, in the midst of a free trip, she hears a speaker or presentation about the legal profession. Since the economic downturn, most of them have been about the "future of the profession." She has taken to characterizing these programs as the "Doom and Gloom" talks. A short-lived journalism major, she tells me that the atmosphere around the "future of the profession" discussions is reminiscent of her time as an intern at the *Times Picayune*. There, even before the layoffs and the limited print editions were announced, reporters and editors behaved as though they were frozen on the precipice of the end of civilization. She says that a roomful of quizzical "Boomer" lawyers trying to digest the latest trending on professional employment, private practice salaries, law school debt, globalization, outsourcing, and web-based competition have the same ambushed affect as print editors and journalism professors. Then she smiles and shrugs her shoulders, primarily because she really can't fathom what all the fuss is about.

My home-grown Millennial has adopted the Albert Einstein approach: "I never think of the future," he once famously said. "It comes soon enough."

I, on the other hand, am more sympathetic to the less famous George Carlin adage: "There is no present. There is only the immediate future and the recent past."

Following is a brief snapshot of the recent past and the smallest taste of what the immediate future might offer. It is by no means an exhaustive look at these issues, about which a great deal has been written and spoken, and I have borrowed heavily from others' writings, studies and speeches.¹ My hope is to give some context to the discussion which has begun to percolate in Louisiana and will no doubt preoccupy us for many years to come.

The Metrics of the Current Legal Economy

Most of us know that the economic downturn, which began in 2008, has not treated our profession very well. What may surprise, however, is that the number of lawyers practicing in law firms peaked back in 2004. Moreover, the legal market has lost more than 22,000 jobs nationwide since 2009. (*ABA Journal*, July 2011). According to a study published by the National Association for Law Placement (NALP) in July of this year, the starting salary for new law graduates from the class of 2011 fell 5 percent when compared with 2010, and has fallen about 17 percent since 2009. Most telling, the median starting *private practice* salary has fallen 35 percent (NALP calls its finding "astonishing") since 2009. 2011 marked the first year that less than 50 percent of law graduates went into private practice.

NALP also says that only about 68 percent of the class of 2010 had legal jobs upon graduation. In 2011, the employment rate was touted at a more impressive 84 percent. The truth, however, is that overall employment statistics for the profession are hard to wrangle, largely because of the varying definition of "employed." Until very recently, many law schools have reported a high percentage of their graduating classes as "employed," regardless of whether the employment was truly as a lawyer, or even full-time. Part-time waiters and bartenders have been rounding out the statistics published. Some schools have even provided short-term employment to their own graduates to boost their numbers, but the nature and extent of the skew has been hard to track. It is estimated by NALP that as many as one-third of all of the law school graduates across the country in the last 10 years are working in non-law-related fields.

According to Tim McMahon, a financial consultant and oft-cited expert in U.S. inflation trends (see www.inflationdata.com), college tuition has experienced an inflation rate of between 300-400 percent since 1985. The Department of Education's National Center for Educational Statistics confirms that law school tuition has risen even faster

and higher than the average undergraduate school tuition in the last 25 years. This is true in both the private and public school sectors. This documents what we all know: law school has become a very expensive proposition.

As the cost of a legal education soared and jobs became scarce, salaries earned by those in the legal profession leveled or declined. According to NALP, the inflation-adjusted income in all sectors of law practice has been stagnant or going down since 1985, and, as noted above, it has taken a precipitous dip in the private sector since 2008. Yet, as Wendy Kaufman of National Public Radio reported in July of this year, law students have continued to incur six-figure debt in anticipation of six-figure salaries. Indeed, the lawyer population has increased by 19 percent in the past 10 years. These students entered law school apparently unable to predict that the *New York Times* would peg the median salary for a 2010 law graduate at \$44,220, while also identifying that there are more than 27,000 “surplus” lawyers in the country. (*New York Times*, June 27, 2011, “The Lawyer Surplus.”) One bright note: According to NALP, Louisiana lawyers fare a little better than the national average. As of Feb. 15, 2011, the median salary for a 2010 graduate in Louisiana was between \$55,000-60,000.

Still, it is a struggle to pay off \$100,000 in debt (the average amount owed by law graduates in the United States, according to Bloomberg Law) while earning \$55,000 a year, a fact not lost on those who founded a nonprofit called Law School Transparency, or LST. A quick trip to the LST website (www.lawschooltransparency.com/) leaves little doubt that there are a significant number of young people who feel betrayed by their legal education and who wish to warn off others. What impact groups like LST have is unknown, but last year’s law school enrollment saw a nationwide 7 percent decline, and a similar reduction is predicted for 2012.

Change is the Law of Life

While visiting Germany during the early years of the Cold War, President



John F. Kennedy told the assembled crowd in Frankfurt that “[c]hange is the law of life.” He warned that “those who look only to the past or the present are certain to miss the future.” A poetic sentiment in June 1963, but 50 years later, change occurs seemingly at the speed of light, and its impact is hard to miss. Remember typewriters? Carbon paper? Word processors? Land lines? Dial-up? VHS? CDs and DVDs? Affordable law school tuition?

Yet, as lawyers, we have been trained to respect precedent. We counsel our

clients to be risk averse. Our comfort zone is the status quo, the here and now. What is our commitment to the “rule of law,” after all, if it is not a commitment to predictability? Change is, in many ways, our enemy. Sometimes it’s just easier to do what we have always done than it is to look forward.

Rather than challenging Kennedy’s view of natural law, then, it is perhaps helpful to also call up the wisdom of Søren Kierkegaard, who wrote, “Life must be lived forward, but it can only be understood backwards.” I am typing

this on a QWERTY keyboard, developed for the manual typewriter and now adapted to my laptop (not to mention my smartphone).

Similarly, the traditions of our justice system and our profession reflect the longevity of a remarkable design which will be altered and adapted along the way. The future is coming and examining the current adaptations which foreshadow it is the best tool we have to prepare for it.

Signs of Change: Technology

Nothing strikes terror in the heart of the average Boomer — and even some Gen-Xers — more than a discussion of technology and its impact on the practice of law. I am no exception to this rule. But having recently conquered the three remote controls which operate what used to be my television (and is now more broadly referred to as the “entertainment system”), I am exhibiting signs of bravery.

Let’s begin with the day in 1987 when I laughed at my then-law partner for suggesting that we needed a fax machine. (In my defense, most of his ideas were genuinely laughable.) Now faxes are a relic, and I am accessible to courts, clients and opposing counsel around the clock. I would (and often do) complain, but the truth is that communication and information technology have become the great equalizers between large and small law firms. My small firm is aided in competing with the “big boys” by technology and its best ripple effect: lower overhead.

We are all familiar with the litany of technological changes that have impacted our practice, and even our everyday lives, over the past 30 years. There is no need to list them here. I am hardly qualified to even attempt to predict what technology will offer five or 10 years from now — although a recent hand surgery did send me to voice-recognition software — and I am convinced that the I-Phone’s Siri is the sly granddaughter of the famous Hal (of *2001: A Space Odyssey* fame).

Gen-Xers and Millennials both identify adaptation to technology and rapid technological advances as the defining component of the generational divide

between those running law firms/legal departments and those starting out in the profession. Millennials are almost smug about the potential for their professional success based on their digital aptitude. (See, “*Other Voices/Other Views*” on page 205.) And smug they should be: I still can’t fully fathom the difference between Tumblr, Facebook and Twitter. Plus, I can’t remember the password for the firm MySpace account.

All of this notwithstanding, the key game changer about technology is that it begat the Internet, and the Internet begat accessibility to information on a grand scale. If part of what your profession brings to the table is specialized access to knowledge and information, the Internet age is destined to have impact.

Signs of Change: Commoditization

There are 1 million lawyers in India who are trained in the common law and speak English. In October 2005, CNN reported that 40,000-80,000 legal jobs would be lost to India by 2015. So far, the figures are closer to only 15,000, and there are some indications that outsourcing has slowed because of the decline in the cost of U.S. lawyers (*New York Times*, Aug. 4, 2010, “Outsourcing to India Draws Western Lawyers”). The American Bar Association (ABA) admits, however, that law schools in China and Australia have applied for ABA accreditation.

Lest you think that this globalization “scare” is reminiscent of all the fuss and fizzle surrounding Y2K, I readily concede that most of us are not all that threatened by overseas competition. On the other hand, I suspect that the same “most of us” have already been impacted by the commoditization of legal services. This is the trending attitude, evident among institutional, corporate, business and individual clients alike, that lawyers are fungible. Most legal pundits (they do exist, go to www.legalonramp.com for a taste) think that the Internet drives legal commoditization. Access to information that used to come only through lawyers now is available on Google, if not through enterprises like LegalZoom, Rocket Lawyer and Cybersettle.

Perhaps you are not worried about the business otherwise going to self-help websites. Perhaps you believe that there is little, if any, profit to be made from clients who would turn to those web-based services. Consider, then, Internet forums like Ariba or Shpoonkle, which offer reverse auction opportunities for clients. Still think it’s not coming your way? Then look into RFX Legal, which promises to “optimize the value of legal services” by providing a “management integrated legal sourcing and procurement tool” to allow businesses to receive bids from lawyers and firms. It also offers an analytic tool to measure the value of the legal services provided.

If none of these services has yet touched your practice, it’s a good bet that they are on their way. Given the amount of time most of us spend bemoaning the lack of client loyalty, cursing client micromanagement or renegotiating rates, my guess is that they are influential already.

Some have suggested that the traditional law firm business model is out of date and contributing to the economic woes of the profession. This discussion began more than 10 years ago when the regulation of multijurisdictional practice sparked considerable controversy. More recently, the ABA Commission on Ethics 20/20 has taken on issues like profit-sharing with non-lawyers, maintaining a “virtual presence” in more than one jurisdiction, contracting with other lawyers and law firms, and reframing the definitions of conflicts of interest. The ABA effort is destined to go on for a while and, thereafter, the trickle down to states may be rather slow. Nonetheless, it is noteworthy that in the United Kingdom the rules have already changed, and outside investors are now permitted to invest in law firms (“Capitalism’s Next Frontier,” *The American Lawyer*, Nov. 3, 2010).

Signs of Change: Generational Alphabet Soup

About 55 percent of lawyers in practice in the United States today are part of the Baby Boom generation. That means they were born between 1946 and 1964,

making them between 48 and 66 years old. The remaining 45 percent of practitioners are split between Gen-X, who were born roughly between 1965 and 1979 and range from 33 to 46 years old, and Millennials, born in the 1980s and 1990s and who are 20 to 35 years old. If you are wondering, as I did, what became of Gen-Y, it turns out that it mostly went the way of the “Pepsi Generation” — which is to say that the label lost popularity fairly quickly. Gen-Y and Millennial refer approximately to the same set of young people. There also seems to be a Generation-Z, meant to identify the teenage siblings of the youngest Millennials. Gen-Zers’ most noteworthy characteristic seems to be that they are “digital natives.” These are individuals who have never known a world without the Internet, computers, i-phones and digital technology, and they are on the cusp of entering law school now.

It may be a digression to define the characteristics regularly associated with Baby Boomers, which seem to be well known. We are the folks at the laboring oar of most law firms and legal departments these days. We were the post-WWII bonanza generation, the inevitable intersection of nascent affluence and the GI Bill. We emerged from the “Summer of Love,” Woodstock, ’Nam and Watergate full of transformational ideals, most of which were ceded to practicality. We are on the verge of a perhaps underfunded retirement.

Gen-Xers are somehow less often defined by popular culture than the generations on either side of them, perhaps because they have left behind youth and still have some distance to retirement. Moreover, when they first emerged on the scene, they took considerable heat from their elders. According to the University of Michigan’s long-term research project called “The Longitudinal Study of American Youth” (LSAY), Gen-X is the first generation to grow up in the Internet era. About 86 percent work part-time or full-time; 70 percent spend more than 40 hours a week working and commuting; 79 percent of Gen-X women work; and 47 percent of the working women work more than 40 hours per week. Two-thirds of Gen-Xers are satisfied with their current jobs. About 66 percent are married, and

71 percent (77 percent of the women) have children at home. One-third report active participation in a professional, business or union organization. About 4 percent reported active membership in a book group, and only 3 percent reported involvement in an environmental group. About 97 percent regularly use the Internet; 80 percent indicated they used the Internet to obtain health and medical information, but apparently the LSAY did not ask about use of the Internet to obtain legal information. In short, Gen-Xers are industrious but independent. They were “latch-key” kids who watched their parents toil in a traditional market environment while the economy changed around them. They learned the lesson of adaptability and flexibility, tempered by a certain amount of impatience. They are inclined to make a change rather than “tough it out.”

In 2010, the Pew Research Center published its study of Millennials with the descriptor “Confident. Connected. Open to change.” The report notes that this generation is more ethnically diverse than those who came before — with the percentage of the white Millennials 9 percent lower than the percentage of white Gen-Xers. Nearly one in four Millennials have a piercing other than on their earlobes; nearly four in 10 have a tattoo. About 75 percent have a social media presence. Only about 60 percent were raised by both parents, and 37 percent of those between 18 and 29 years were unemployed at the time of the study. Pew reports that Millennials consider themselves to be a distinctive generation, primarily because of their understanding and use of technology. They are, as young Sara exemplifies, unfailingly optimistic in spite of tough economic times.

Optimism is a Strategy for Making a Better Future

A topic as broad and textured as “The Future of the Legal Profession” evokes a thousand different visions, only a fraction of which have been touched on here. As an insular and chubby 50-something woman who has just been inducted, most unwillingly, into AARP, there is little

doubt of my taint. I’d rather return to my Dictaphone and, if at all possible, narrative billing. I’d trade in my smartphone for being tied to the desk until 8 each evening and carrying a paper calendar. I’d like the occasional two-hour lunch without interruption. Mostly, I dream of a one-day jury trial every month or so.

And then I remember that during those “good old days,” I was often the only woman in the room. Sometimes I wasn’t even invited into the room.

Noam Chomsky, the octogenarian professor of linguistics, better known as a political philosopher and lecturer, once said that, “[O]ptimism is a strategy for making a better future. Because unless you believe that the future can be better, you are unlikely to step up and take responsibility for making it so.”²

Or, as Sara might write on a post-it note, “Embrace the Future.”

FOOTNOTES

1. My profound thanks go to Frederic S. Ury of Ury & Moskow, L.L.C., Fairfield, CT, past president of the National Conference of Bar Presidents; Thomas W. Lyons III of Strauss, Factor, Laing & Lyons, Providence, RI, past president of the National Conference of Bar Presidents; Elizabeth Derrico, associate director for Bar Information and Management, American Bar Association’s Division for Bar Services; and Jordan Furlong of Edge International in Ottawa, Canada, author of the *Law 21: Dispatches From A Legal Profession* on the Brink blog, all of whom compiled much of the information referenced here and have graciously shared it with me.

2. Quoting Chomsky, particularly in this era of red v. blue politics, may send an unintended message. I hope not. I’m just a sucker for a nicely phrased sentiment.

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Other Voices/Other Views on the “Future of the Legal Profession”

By Marta-Ann Schnabel

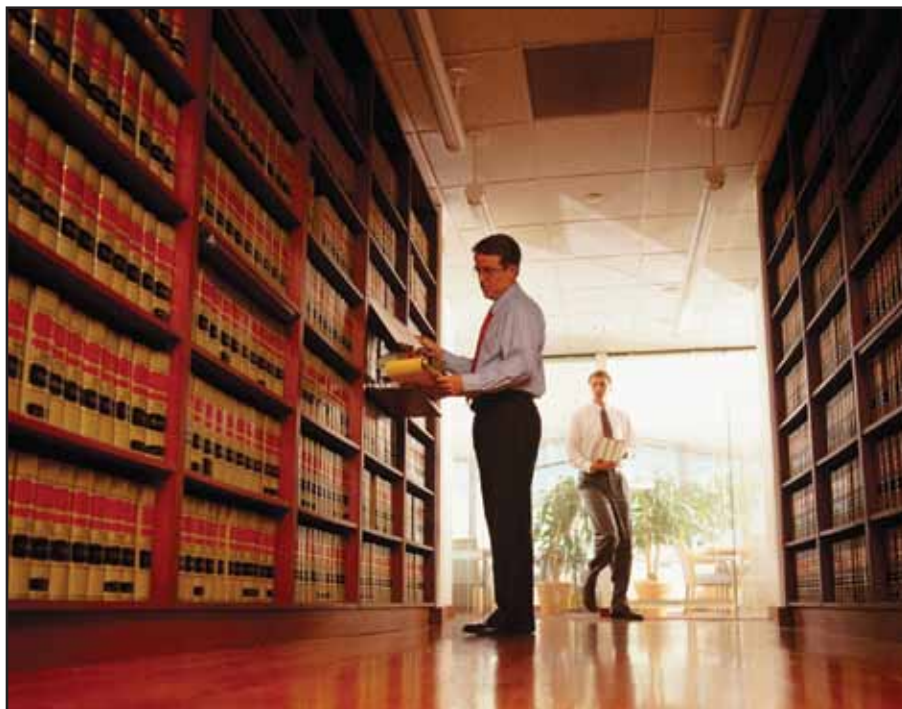
The vast majority of articles, PowerPoint presentations, lectures and even hushed conversations about the “future of the profession” either originate with, or are directed at, the over-40 crowd. What we think of as “the future” is, to some extent, the reality of life for most Millennials. It seemed less than sporting, then, to allow this Boomer the last word on the topic.

Many thanks to Michael W. Schachtman, Kristen H. Schorp, Jonathan M. Rhodes and Sarah E. Stogner for their help in cajoling their friends and colleagues into this discussion. The result is a very unscientific sampling of lawyers with fewer than 10 years in the practice and from various settings and backgrounds. In an abundance of caution, their contributions have been provided without attribution and with a minimum of editing. Hearing these viewpoints has been heartening. It appears that the thread of what motivates us in this profession remains the same, regardless of age, experience or technological differences. Still, the voices of these young lawyers strongly echo the concerns of their generation and of the times in which we live.

When asked what appealed to them about being an attorney, many cited the service component of the profession. They have a strong desire “to make a difference” or “help other people.” A number added that “problem solving” gave them particular satisfaction.

“What I like most is the opportunity to care for the people I represent,” offered one respondent.

“I find it very gratifying when I have the opportunity to help someone achieve a result, whether that is the enforcement of a contract, the grant of a servitude, or upholding the validity of the last will of their family member,” said a fourth-year



associate from Alexandria.

Harnessing a legal education to effect change was a motivator for some. “I like feeling like I have the power and the ability to make a difference,” said one 2007 graduate who practices public interest law.

Another, who works in government, said, “I love the responsibility that comes with being an attorney.” Before law school, he worked as an assistant on Capitol Hill, but he did not really feel like his role had impact. “Now,” he boasted, “I am making a substantial change . . . [in] the city of New Orleans, which would not have been possible without that [law] degree.”

Others enjoyed the challenge inherent in learning about their clients’ business in order to find solutions for them. “[A]s a lawyer, you obtain a working knowledge of a wide range of subjects, from banking to insurance to health care and so on. I can’t think of a profession where one has such varied experiences.”

In describing what troubles them most about the profession, some expressed disillusionment about the nature of the justice system. “I thought that whoever was ‘right’ with respect to the law would prevail. In actuality, success in litigation is a function of several factors, including, but not limited to, a persuasive legal argument, the immediate wants and needs of the parties involved (for example, what might be revealed through the discovery process), and the ability to communicate effectively with the court and opposing counsel. I have been disappointed that negotiation often turns on the question of ‘what will it take to make this lunatic go away?’”

Not surprisingly, most noted that the hardest hurdle to overcome has been the cost of their legal education. “A large part of my career choices center on the debt burden of my student loans,” said one respondent, echoing the sentiments of many.

Continued next page



In addition, these young lawyers complain about the tone of the practice. “What I like least is the unnecessarily adversarial posture that many other attorneys adopt, without any real purpose,” offered one general practitioner who has been in private practice for three years. A number of respondents indicated that “billable hours,” a demanding schedule and heavy workloads were their least favorite aspects of the profession.

These young lawyers were most prolific when describing the divide between older and younger lawyers. “Older attorneys have had to significantly adjust the way they practice over the course of their careers as technology has developed. Email has replaced the telephone as the primary means of communication, computers and the Internet have been substituted for books when doing research, computers replaced typewriters and Dictaphones . . .,” one respondent confided. “As a younger lawyer, I have grown up with these technologies and developed my practice using them, as opposed to having to adjust to them. I think this helps me be more efficient and streamlined.”

An associate in her fifth year with a large firm notes, “While there is no substitute for being in the office, most young lawyers are technologically adept and can perform quality work outside the office and during nontraditional hours.” A solo practitioner noted that “the Internet is obviously a game-changer — from

marketing, to cloud computing, to having all my files available to me at all times.”

Most respondents felt that technology had positively impacted legal research as well. “Many older lawyers speak somewhat condescendingly about younger attorneys’ ability to ‘use the books.’ I do use the books when I am at a loss as to where to start my research. But, in most instances, I find the Boolean search capability of a good legal search engine to deliver much better results.” They noted that access to legal research is easier and cheaper than it has ever been before.

Some young lawyers mark the difference between the “good old days” and their current circumstance by decreasing opportunity. More than one suggested that “hands-on” experience has become more difficult to obtain, largely because so few clients are willing to take a case to trial today as compared to 20 or 30 years ago. “I think attorneys of my generation fail to see the value of camaraderie because they aren’t spending as much time in court together,” offered one fourth-year associate at a medium-sized New Orleans firm.

Another suggested that because of this change in the practice, she handles clients differently from the way her elders do. “I like to focus on the big picture. In today’s legal practice, almost every case will settle. I try to manage my client’s expectations from the beginning and try to get them in the mode of accepting a

‘fair compromise’ instead of ‘winning.’”

The question of the practice of law as a business rather than a profession, which is a recurrent theme among older lawyers, is on the mind of these Millennials as well. “Our generation is facing a bigger concentration on profitability” is the opinion of a 2007 graduate. “I feel that law firms are run today more like other businesses than they were in the past. I don’t necessarily think that this is bad, but I think it has changed the culture at a lot of firms such that people have become numbers. A lot of firms fail to value the non-billable time which is committed to bar and civic work.”

Only one of those polled was equivocal about whether she would become an attorney again if given a second chance. The practice of law is not what she expected, she said, and she constantly feels “behind and in a reactionary role.” She had hoped for more job satisfaction. But the balance of the respondents like what they do.

“I think that this new generation of attorneys has a much wider array of resources to pull from,” explained one young man who practices environmental law, “and this benefits research and overall work product.”

Looking to the future, a fifth-year associate at a major regional firm suggested that “the entrepreneurial culture that is taking over the state can only brighten the legal profession’s future in Louisiana.”