



**15th BILETA Conference:
“ELECTRONIC DATASETS AND
ACCESS TO LEGAL
INFORMATION”.**

Friday 14th April 2000.
University of Warwick, Coventry, England.

**Borders and Boundaries Impermanent Boundaries -
Imminent Challenges to Professional Identities and
Institutional Competence [1]**

Peter W. Martin

Co-Director, Legal Information Institute
Cornell Law School
New York, USA

I. Introduction

A. Boundaries, meaning, and identity

Visit the Pentagon or the New York Times, and everywhere there are maps, solemnly defining national borders and sovereign territories. No one shows any signs of knowing that we no longer live in geographic time and space, that the maps of nations [and states] are fully as obsolete as the charts of a flat earth, that geography tells us virtually nothing of interest about where things are in the real world.

- George Gilder, *Life After Television* (1994)

It is a widespread and generally useful human tendency to conflate what we do with how we are accustomed to do it and boundaries with what they surround. The transparency of tools and institutional patterns to those who have grown familiar with their operation, like the transparency of language and gesture to those who have attained fluency in their use, permits attention to be focused on larger aims, goals, or purposes.

Boundaries give shape to the world we inhabit. They assist our understanding and are essential to communication. They define both professional identities and institutions and frequently delimit legal authority

Boundaries hold this power even though they are often the product of historical forces and events, long past, even total arbitrariness. Boundaries can be dysfunctional and at the same time necessary. But like all social constructs, the boundaries that surround our institutions and professions are impermanent. They soften, they shift, they are beaten down over time, or swallowed through merger. At the time such changes occur rapidly, it can feel very much as if the earth were shifting. As in a quake irresistible forces propel movement while years of settled practice and understanding resist it. This seems to be such a time.

B. What is happening? - Globalization, Digitalization, Commodification and Defensive Reactions

Today, lawyers and law teachers, law firms and law schools confront strong forces that show little regard for historic boundaries, threaten deep seated notions of professional role and identity, and demand that our institutions adapt and grow at a pace and with an enterprise-wide intelligence many of them may not manage.

The three terms I'll use to identify about those forces are: **globalization**, **digitalization**, and **commodification**. I shall begin with an illustration or two of what I mean by each. Then I'll turn in order to legal education (about which I can speak with greater confidence, knowing it better) and law practice. I'll conclude with two concerns that relate to both.

1. Globalization

2 Law Firms Plan to Bridge the Atlantic. Merger Would Create a Global Powerhouse.

Senior lawyers at Rogers & Wells in New York and Clifford Chance in London have voted to join forces in what would be the first overseas merger of large law firms. ... If approved, the union could touch off a flurry of mergers between law firms in the United States and Britain, which are scrambling to expand their global reach to better serve multinational clients. The law firms also feel threatened by the giant accounting firms, which have jumped into the legal business by hiring thousands of lawyers and merging with whole law firms.

- New York Times - May 25, 1999 - C1 [This merger has now gone through a second phase. =>]

Within my professional lifetime U.S. law schools and law firms have pushed beyond state and regional boundaries. There were truly national law schools before there were truly national law firms. Today, there are large numbers of both.

Just as the growth of an integrated national economy and the emergence of nation-wide enterprises forced these changes in the face of tradition and resistant regulatory structures that still divide the nation into 51 autonomous units, so now the reality of a global economy and multi-national enterprises call for law firms and law schools able to work effectively across national boundaries.

2. Digitalization

[A]nybody who has made a business out of differentiating themselves on the basis of an information monopoly, or a locational advantage, may see their business disappear because this technology ruthlessly attacks those kinds of monopoly positions. That doesn't mean you won't be able to create differential advantage or margins, but they will have to be based on real value - some service, some technology, some concept you offer that is a superior value to ... buyers - not just information.

- Kim Clark, Dean of the Faculty of Business Administration, Harvard Business School, Feb. 1999

Information and communication are central to both legal education and law practice. Consequently, the implications of flexible, high capacity electronic storage, communication and exchange media for us - both individually and institutionally - are huge. Since our professions are utterly dependent on

others - students in one case, clients in the other - as those critical constituencies move into digital communication and workspace so must we. Once there we confront unfamiliar challenges and opportunities. These, after all, are technologies that pay slight attention to distance and that can penetrate geographical, political, and institutional boundaries which previously seemed utterly defining. In theory they might enable law faculties to expand their reach, to play a role in the education of additional categories of students. More generally, they might lead our institutions to a radical change in how we conceive of our student bodies, faculties, and research possibilities.

Significantly, all of this should be able to occur across national boundaries. The possibilities for lawyers and law firms are, if anything, more revolutionary.

3. Commodification

If you look at most industries today, there is a class of jobs that are "human modems." You know, you call up your bank and ask, "What's my account balance?" The person on the phone looks at a screen and tells you. Most lawyers and people you think are highly professional tend to have a routine component of their job that a computer could do better.

- Shikhar Ghosh, Cofounder and Chairman of Open Market, Inc., Feb. 1999

Both law teachers and lawyers like to see themselves as delivering unique, freshly crafted professional service - day by day, class by class, client after client. Both draw upon information products prepared by others, as well as assorted tools and props but the verbs we use to describe our work - teach on the one hand, counsel, negotiate, advocate on the other - emphasize real time, ad hoc, interactive service.

Much of this is mythology. What to our students and clients appears fresh, even hand-tailored to their needs generally contains a significant core of recycled content. The potential gains available from converting discrete portions of that content into pre-programmed course or practice modules are compelling large. The vision, accompanied by various levels of dread, is of a shift from Arthur Miller at the front of the room to Arthur Miller and other highly skilled presenters on disk or served as streaming video from the Net, a shift from the lawyer who prepared my mother and father's income tax forms and furnished them tax counsel (as well as the countless lawyers and accountants rendering similar services) to a software package (Turbotax) which does the same for me and millions of others. The question is not whether such new service commodities will be built, but who will build them, and what altered space they will leave for individualized, ad hoc service.

4. Status Quo, Not an Option

[Click here for Picture](#)

<http://www.pli.edu/>

One can, perhaps, get a measure of the pace and scale of imminent change for legal education and law practice by looking at a neighboring sector with which both closely identify - namely, law publishing. Roughly twenty-five years ago, LEXIS introduced a computer-based federal tax library, comprised of statutes, decisions, and agency material. It was a novelty, greeted at first with huge skepticism. The established law book publishers were dismissive. In the decades that followed the birth of LEXIS, computer-based law systems moved from being powerful, but expensive, print supplements used by a few to print replacements relied on by many. Trailing after the initial shock wave came successive others with even greater cumulative impact (inexpensive, high density disk distribution and most recently the Internet). For a brief time (perhaps as long as a decade) it may have seemed to law book publishers and their customers that digital technology allowed both to

function largely as they were accustomed to, aided by new tools promising greater functionality and reduced cost ("faster, better, cheaper"), but that was the standard delusion of a passing regime.

Today, the several billion dollar U.S. legal information industry is totally realigned. Century-old book publishers are gone, swallowed by multi-national enterprises based outside the U.S. that have assembled full print and electronic distribution capability, but equally the victims of many other independent actors, including both public agencies suddenly able to reach the public directly without use of commercial intermediaries and new commercial distributors. The informal but pervasive "partnership" arrangements between courts (and other public organs) and commercial law publishers involving the exchange of "official" or other special status in the distribution of their output for below market prices on legal information products in return have suddenly begun to unravel. These interconnected changes fueled battles over the reach of copyright protection to commercial compilations of judicial opinions and statutes and a struggle for vendor and media neutral citation. The sums and energy devoted to these "technical issues" by those favored by past distribution patterns and their new competitors leave little doubt that the stakes are very high.

Law practice and legal education appear to be positioned at an earlier point on a very similar curve. That means that for some few years to come there will still be a great deal of first-order or transitional change of the sort that characterized law publishing ten to fifteen years ago.

Already computers have moved to the desks and into the briefcases of lawyers, law teachers, and students. Large U.S. law firms have offices from Moscow to Hong Kong and fledgling work product capture systems in place. U.S. law schools have hugely expanded their international offerings. For those courses and others teachers are beginning to turn to the Web as a source of supplementary information and path for faculty-student exchange beyond the classroom. But the pace of change is still slow and most of the excitement and controversy has focused on what is essentially new wiring of old architecture rather than boundary shattering changes of the scale now visible in law publishing.

5. Attempts to Reinforce Boundaries with Regulation

[T]he "practice of law" ... include[s] the giving of advice or the rendering of any service requiring the use of legal skill or knowledge, such as preparing a will, contract, or other instrument, the legal effect of which under the facts and conclusions involved must be carefully determined.

- Texas Government Code § 81.101

Relied on by Judge Sanders in Unauthorized Practice of Law Committee v. Parson Technology (D. Texas, Jan. 22, 1999), granting summary judgment against the defendant whose software product "Quicken Family Lawyer" sold throughout the U.S. was found to be engaged in the unauthorized practice of law in Texas.

On January 22, 1999, Judge Sanders, a U.S. District Judge in Texas, granted summary judgment against Parson Technology at the behest of that state's Unauthorized Practice of Law Committee, ruling that Parson's software product "Quicken Family Lawyer" which is sold throughout the U.S. was engaged in the unauthorized practice of law in Texas.

[D]elivery [of legal instruction] to a person's home or office would generally not be in compliance with these principles [governing distance education.]

- ABA Temporary Distance Education Guidelines, May, 1997

A year and a half earlier, the ABA Section on Legal Education and Admissions to the Bar issued Temporary Distance Education Guidelines, which analogized the wide range of educational innovations being carried out under that rubric to correspondence schools and set up a clearance procedure for all "distance education ... experiments." Understandably ABA accredited schools saw "go slow" written all over these rules, which remain temporarily in place.

For those who have close-hand familiarity with legal education and law practice in the U.S. - faculty and students, attorneys, regulators - those closely connected activities tend to be tightly identified with very specific spaces, practices, people, and institutions - all functioning within established boundaries. Given the difficulty of gauging professional performance, administrators and regulators, especially, focus on such tangible features - on specific inputs rather than measures of accomplishment.

The principal regulatory standards in the U.S. governing legal education stipulate the number of hours students must sit in classrooms, the qualifications of those who preside over those class sessions, and the institutional setting where they take place down to minute physical detail (e.g., the number of student work spaces in a law school's library). [ABA Standards and Interpretations.] The definition of legal education they yield is perilously close to: "whatever law faculty members choose to do with students in regularly scheduled meetings held at a law school site over the course of an academic term of prescribed length." Most definitions of law practice embody a similar tautology - i.e., the practice of law is what credentialed lawyers have customarily done.

(c) In this chapter, the "practice of law" does not include the design, creation, publication, distribution, display, or sale, including publication, distribution, display, or sale by means of an Internet web site, of written materials, books, forms, computer software, or similar products if the products clearly and conspicuously state the products are not a substitute for the advice of an attorney. ...

- 1999 Tex. Gen. Laws 799, Approved by the Gov. 6/19/1999

Threatened by change, some in our professions will seek to deploy such standards defensively - in the name of protecting "educational quality" and assuring "competent service." Mandates laid down in terms of "classroom hours," "resident" faculty and students, size of library collection, number of seats may for a time defend against virtual courses and virtual libraries. But they cannot and so will not prevent students from being networked. They cannot and will not prevent other entities from offering instruction focused in more efficient ways on the exams and other credentials remaining in the control of the formal organs of legal education. Mandates laid down in terms of where services are rendered, where lawyers have been educated or admitted to practice, may for a time slow the growth of virtual and global law firms. But they cannot and therefore will not prevent citizens and business entities from seeking legal information, counsel, and more active assistance via the same networks they use to access other information-based services. Consider the swift legislative response in Texas to the ruling that a software product should be banned for being engaged in the unauthorized practice of law. In less than six months a statutory amendment reversed the decision. Furthermore, history suggests that wherever defensive regulatory measures like these are deployed for long, the institutions surrounded by them are likely to be the ultimate victims. The constraints on non-traditional educational applications of technology imposed by law school accreditation standards in the U.S. give an unfortunate long-term competitive advantage to schools and programs not covered by them.

II. One Perspective on These Forces - From inside Legal Education

A. Globalization

The rise of the global economy has spurred many countries to upgrade their legal systems in attempts to meet the demands of the world marketplace.

The collapse of the Soviet Union left its former republics and a number of former satellite states struggling to develop constitution-based legal systems. Many sought guidance from the West, particularly the United States with its robust and influential system.

- ABA Journal, August 1999

My perspective on these boundary shifts and the forces propelling them is at once informed and limited by 30 plus years of affiliation with one law school - Cornell. In 1988, it celebrated its centenary. The occasion prompted reflection on the several different institutions the school had been over its first one hundred years and the slim likelihood that either the fact or pace of change would halt. When Cornell Law School was established, the school's founders saw its future solely in terms of the needs of New York state (and upstate New York, at that). One hundred years later the school had become in reality, not simply aspiration, a national law school. Today it is becoming a world institution located in upstate N.Y. In 1988 there were but five non-U.S. nationals per class enrolled in the school's JD program and two dozen pursuing a one-year masters. A short decade later there are three times as many students from abroad in the masters cohort and 10 out of 183 in the JD entering class.

B. Digitalization

[Click here for Picture](#)

<http://lii.law.cornell.edu/>

More dramatic in some ways are the changes that have taken place in the school's deployment of digital technology, for ten years ago the precursors were nearly invisible. It was only in 1992, ancient history by Internet time, but only two short cycles ago as most law schools reckon that Tom Bruce and I established the Legal Information Institute (LII) at Cornell. Though the means were novel, our initial aims resonated with those stated in the first issue of our school's law journal close to eighty years earlier, namely: "to connect the full resources of the school with the legal profession, with other law schools, with the world."

In short order we established the first law site on the Web, began to establish standards for format and functionality in legal document collections, and commenced construction of a series of core collections of legal content now used by an enormous and diverse audience of practitioners, non-lawyer professionals, academics, public officials, and ordinary citizens both in the U.S. and abroad. We have, in truth, been riding an earthquake for the past few years, one that could truly transform a century old law school if it proves willing, for we have via the Net broken through the barriers of geography and professional identity that limited the school's constituency to a small number of students seeking professional degrees.

Currently, the LII's array of servers contends with over a million data requests a day, representing at least 40,000 user sessions. Every time the Supreme Court releases decisions, summaries linked to the opinions in full text are dispatched via e-mail to 20,000 or so initial recipients of the liibulletin. In short each day Cornell Law School's new institute, the LII, provides at least a small measure of legal information to several times the number of people the school has educated since its founding. and its electronic bulletins regularly reach many more lawyers, judges, legal academics and others than the Cornell Law Review.

We began our existence imagining that we would provide services to "law people". Time has proven that so narrow a view of the demand for well organized and clearly presented legal information and

education was simply the product of our vision being limited by traditional boundaries. "Law people" use our services, including importantly those not well served by commercial sources and large numbers from outside the U.S., but they are also heavily used by teachers and students at the high school and college levels, police officers, government agency personnel, journalists, ordinary citizens.

In 1996-97, the LII undertook to explore how digital technology might be used by law schools to reach students and involve faculty remote from their campuses. Seeking to adapt standard law school course educational aims and practices to the Internet's very different environment, the institute offered instruction, for credit, to students at four scattered sites.

We've already learned enough from this venture to be confident that "distance learning" is not science fiction, that it can be challenging and highly interactive, and that it need not be limited to special cases or commercial providers. In implementing this course and its two successors to be offered next year, as with many other institute activities, we've been reminded time and again that the cultural and institutional issues and challenges are far more perplexing than the technical ones. The activity we launched less than ten years ago is still an uncertain graft onto an education institution that still relies heavily on pre-digital methods and is conditioned to respond to new ideas and opportunities at a very deliberate pace.

C. Commodification

[Click here for Picture](#)

<http://www.pli.edu/>

Point and click legal education employing pre-packaged multi-media materials need not be imagined; it is here. Pioneered in text form by a law school consortium the [Center for Computer Assisted Legal Instruction](#), CAI has now moved to the Net and CD-ROM. The PLI's Interactive Courtroom, now used in law schools and CLE programs, is but one multi-media example of what is possible.

Dear Law Student:

....

Students at Concord will be able to access instructional material for which I have been an advisor. The material has been put together for the Internet, but embodies my approaches to the teaching of legal principles in my classes over the years. I know you will find the material to have excellent coverage and to be easy to digest. The opportunity to make this material available for students who otherwise may not have had an opportunity to attend law school has and will continue to be a source of great pleasure for me.

....

**Sincerely,
Professor Arthur R. Miller**

Dramatizing the digital possibilities for legal education in a bolder way is a brand new institution, which just opened its (virtual) doors a year and a half ago, on the Internet - the Concord University School of Law. Concord appears to be the first law school, based in the U.S., with a URL <http://www.concord.kaplan.edu/> but no campus. It offers a four year course of study to be delivered via the Internet that should qualify its graduates to sit for the California Bar Exam. As Concord's Web site notes, a "critical factor in the evaluation of any institution is the organization behind it." The institution directly behind Concord is the commercial test-preparation service provider, Kaplan, which has decades of experience preparing prospective law students for the Law School Admission Test (LSAT). Kaplan is, in turn, a subsidiary of The Washington Post Company

Concord has two or three different categories of "faculty." One category is comprised of professors who hold tenured positions at conventional institutions. They are members of Concord's Faculty Board of Advisors. Each advises and presents with respect to a course. Their class lectures are not delivered in real time but captured for on-demand, on-line playback. Concord has a second faculty that works with its students day-by-day, week-by-week. They add value to the pre-packaged courses created by Arthur Miller et al. They conduct on-line Socratic sessions, and evaluate assignments. Finally, Concord has a group of paper readers and graders. By dividing the traditional law school course in civil procedure or criminal law into a pre-packaged, reusable commodity and interactive service components Concord is able to keep costs (and tuition) down even as it offers very attractive faculty-student ratios with unusual levels of student evaluation and feedback. It is model from which conventional law schools can, from which they must learn.

The pressures for dramatic change in the means of delivering legal education are large, for the potential gains are enormous and the prospect of competition real. The overhead generated by the physical environment of higher education - the library facilities, classrooms, and student spaces of all kinds along with the staff involved in their operation - constitute a major part of the explicit cost of university-based legal education. The time and place requirements that limit the formal education process to students who are resident during a term and to groups of students able to assemble in scheduled meetings (not conflicting with other course sessions) impose additional implicit costs on those students who are able to enroll. They also effectively exclude others from the educational process. Classroom centered programs produce a heavy scheduling burden, forcing unhappy trade-offs on students, faculty members, and curriculum planners. Creating the course and exam schedules for even a modest sized U.S. law school is a task of near industrial complexity. And the segmented educational program we are accustomed to, chunked in courses of standard length and pedagogy, is in no small part a consequence of rather than the reason why we march students through our degree programs in measured time, to a near military beat.

Digital distribution of course materials and networked communication linking faculty with students (and students with each other) together with greater use of pre-programmed course content has the potential for liberating legal education from many of these costs and rigidities and for breaking through the limits set by the poor faculty student ratios with which all law schools operate.

With the capacity to educate at a distance, law schools could and therefore law schools might expand their reach in other directions, offering programs aimed at a huge variety of new audiences. With it much easier to teach non-resident students, who have not committed to a multi-year program, law faculties might play a greater role in continuing professional education on the one hand and the education of students not headed toward professional roles in law on the other.

They say [referring to M. Milken, P. Allen, and L. Alexander] they will turn the \$700 billion education sector into "the next health care" - that is, transform large portions of a fragmented, cottage industry of independent, nonprofit institutions into a consolidated, professionally managed, money-making set of businesses that include all levels of education.

- New York Times - Nov. 4, 1999 - A-1

Concord's appearance on the U.S. legal education scene is a signal that another boundary has been breached. Higher education is no longer the exclusive province of not-for-profit and public institutions.

III. Lawyers and Law Firms

A. Globalization

Her Partners Can Call Her Ms. Chairman
 - New York Times - October 9, 1999 - C1

Reporting Baker & McKenzie's selection of Ms. Christine Lagarde to head the firm. Ms. Lagarde is French, lives in Paris, and rose to her new position having previously managed the firm's Paris office and chaired its European regional council. She speaks her native language (French), Spanish, and English.

Prior to the merger of Clifford Chance and Rogers and Wells, Baker & McKenzie was the world's largest law firm. According to the American Lawyer's special "Global Boom" issue of November, 1998, eighty percent of the firm's lawyers are outside the U.S. with offices spread through 35 countries. A number of the top "global law firms" are simply large U.S. and U.K. firms with a significant overseas presence - 10 percent or less of their lawyers and offices in a half dozen countries, but that is not the model that is emerging as law firms wake up to the fact that outside the U.S., if not inside it, they are in competition with the Big Five accounting and business consulting firms - all of which have comparable numbers of lawyers, plus accounting professionals spread in two to three dozen countries around the globe. KPMG, for instance claims to have 1,300 tax partners and more than 10,500 tax professionals worldwide. PricewaterhouseCoopers has offices in 39 countries.

While most visible at the scale of a Baker & McKenzie or KPMG, globalization of law practice has not been limited to large firms any more than international trade has been owned by the Fortune 500. As clients large and small have moved into global markets, the lawyers and other professionals serving them have as well. One of the most successful immigration law firms in the U.S., Siskind, Susser, Haas & Devine, is located in Tennessee, a state with no international borders. More than half of its business reaches it directly through its Web site < <http://www.visalaw.com/> >, established in 1994.

B. Digitalization

[P]rofessional authority tends to decline when informational distances are smaller. The status and authority of law and lawyers, therefore, are related not simply to what they do but to what they know, and to how distinct the information they possess and control is from generally accessible information. It is related ... not only to the physical separation of law libraries from other libraries but to the distance created by legal language, by digests, by key numbers, and by other tools of access to the storehouse of legal information. ... The role, authority, and domain of the lawyer become vulnerable as the "distance" that exists between law and citizen, between lawyer and lay person, and between legal and nonlegal bodies of information narrows.

- M. Ethan Katsh, *Law in a Digital World* (1995)

The Net is changing the lawyer-client relationship, as it provides clients with direct access to information and pre-packaged advice.

Thanks LII for putting the U.S. Copyright Act on the Net. Now I don't need to go to our lawyer to have it read to me.

- From a middle manager in a technology oriented company to the LII in 1993

I feel more confident retaining an attorney and preparing information for my attorney. I also feel comfortable knowing what conduct and services I should expect from the attorney I

retain.

- From an LII user, 1998

On the Internet nobody knows I'm a dog reads the caption for a New Yorker cartoon that has become a Net cliché. On the Internet location and professional status are hugely reduced in importance. Clients can access information that previously was available only through a lawyer interface. And when information is not enough they are likely to move for advice or ancillary services to those proximate to the information source wherever or whatever that may be.

C. Commodification

Firms forge alliance with CPAs

What may be an unprecedented alliance of attorneys and accountants in a cutting-edge interdisciplinary practice has been formed by a Chicago law firm, ... Horwood, Marcus & Berk Chtd., [together with... Morrison & Foerster LLP, headquartered in San Francisco, Holland & Knight LLP, a Florida firm with numerous regional offices throughout the state [and] its largest office in Washington, D.C. , Walter Hellerstein, a professor at the University of Georgia School of Law, [and the accounting firm KPMG].

The move by the three law firms comes at a time of considerable debate among members of the American Bar Association about whether lawyers and accountants should formally be allowed to practice together.

- Chicago Daily Law Bulletin, August 9, 1999

The large accounting and business consulting firms have not simply created interdisciplinary service groups they have built practice systems - seeking ways to harness technology to capitalize expertise and distribute consistent, cost-effective service throughout a large organization. They have moved to become both publishers and producers of expert software systems.

The client wants a solution, wants to manage risk at a competitive price, and doesn't care whether or how a lawyer is involved.

- IT manager of a major U.S. firm, June 1999

Law firms, too, have worked at reducing the number of times their own lawyers have to draft routine documents from scratch or "reinvent the wheel" in other ways and to assure quality across a distributed organization. In theory all would have work done by lawyer A in the Phoenix office a year ago be available to lawyer B confronting a similar matter in Miami today and the expertise of the most senior tax partner inform the work of a beginning associate, but achieving those ends seems to have proven more difficult for law firms than for the organizations with which they compete. That is one of the reasons Corporate Law Departments have grown as well as one of the strengths of the Big Five.

At the consumer level, commodification is likely to play out on a still larger scale. The consumer who has turned to Amazon.com at the expense of the neighborhood bookstore is likely to be quite ready to buy law products from Nolo.com's Self-Help Law Center in order to prepare a will, incorporate, secure a patent or get a divorce. Nolo expects \$10 million in sales this year.

IV. Structural and Cultural Barriers

The organizations that will truly excel in the future will be the organizations that discover how to tap people's commitment and capacity to learn at all levels in an organization.

- Peter M. Senge, The Fifth Discipline (1990)

[M]eeting or exceeding customer expectations ... shaped by fierce (often global) competition will require redesigned business processes, supported by the intelligent use of technology, within a restructured organization that is prepared to accept if not embrace change.

- Frederick Nader & Alan Merten, September, 1998

Enterprises across the land are seeking to become "learning organizations", "agile organizations". They are recruiting leaders with the experience and know-how to lead the firm's development of Internet strategies.

Some of the large accounting firms practice what their consulting units have been preaching for a decade or more. They have reengineered themselves, worked at providing workplaces and career advancement paths designed to retain and draw the best from a large and diverse professional team, embraced technology. For the past two years, one of the big Five firms has placed well up on the Fortune list of the 100 best enterprises to work for. [Ernst & Young -- 1999 Awards.]

Despite the outpouring of complaints that the profession is turning into a business, surprisingly little effort has focused on bringing business management skills to the structure of professional workplaces. ... [T]he state of human resources management in most law offices is nothing short of "Dickensian." Seldom are the responsible lawyers trained in personnel issues, and seldom have they made adequate use of research on employment satisfaction.

- Deborah Rhode, September, 1999

By contrast our legal institutions are, many by design, slow to act. Most of them, law firms and law schools included, are not well suited to launching venturesome new initiatives nor to adapting their mission and practices to large-scale external changes. For institutions with such characteristics the immediate future is frighteningly full of hard choices. Their effective resolution will require strategic decision-making, swift response, and in so fluid an environment, frequent revisiting.

Moreover, the attrition rate, problems with overwork, substance abuse, family breakup in many law firms suggest that the creation of interdisciplinary teams and knowledge capture systems is not the only lesson law firms can learn from the Big Five.

Law firms (and law schools) must also achieve a capacity to engage in strategic planning that most will find difficult. For our institutions face choices we blunder through at our peril - to grow or concentrate, to specialize, to join with others. And these decisions will confront us in a context filled with far more direct competition than we have known before. Deciding on how to focus limited human and other resources to maximum effect, deciding which new opportunities to pursue will be difficult enough for those who fully recognize the challenge.

Effective use of digital technology in the educational and research activities of a law faculty will necessitate the addition of significant numbers of technology specialists and the creation of far more collaborative working relationships among legal experts and these and other professionals. The culture and status arrangements of both law faculties and law firms make this very difficult to achieve.

V. Some Concluding Concerns

In addition to the challenges confronting our own institutions, there are risks for others to which we ought to be attentive.

A. New boundaries resulting from proprietary technology

Up to now technology as improved access and leveled the playing field, but electronic filing requirements threaten just the reverse - technology barriers that only large, sophisticated firms can surmount.

- Long Island Lawyer, September 1999

The first risk is that new technology will be used to extend old boundaries or even to raise new ones.

Public bodies, those responsible for making law and structuring its application, have historically been poor at technology take-up. This tendency is aided and abetted by the many both within and without government with a strong stake in the way things have been. Many public bodies are finding it difficult to understand and respond to their responsibilities in this new environment. And they are being courted by a new set of commercial partners offering to lighten the load of government with their technical expertise in return for leverage if not control over the flow.

We can hope that public bodies will rise to the opportunity and challenge. We can hope that they will insist on open rather than proprietary formats for electronic information flow in and out of the law making and law applying agencies. We can hope that they come to understand the importance of these systems and insist on remaining in control of them, which means, in significant part, knowing how they work. We can hope but we should help.

Can the bar, law schools, the courts, legislature, executive branch and technology vendors work together on these matters? They need to, difficult though that may seem. The stakeholders are numerous and the stakes very high. It will be tragic if insufficient resources and inattention allow the current opportunity to slip away.

B. What about the "have nots"? Will the commitments to social justice and the public interest of global, networked law schools and law firms remain focused locally?

A lawyer should render public interest legal service. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations, by service in activities for improving the law, the legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means.

- Rule 6.1, Washington Disciplinary Rules of Professional Conduct

The forces changing our professional worlds have a differential impact on societies that have and those that have not. Historically, the legal profession has professed a commitment to public service, at the individual and the institutional level. As practice and education go global and digital, there is a risk that these public service activities will remain focused locally or be carried out with stale technology, if not jettisoned altogether.

[Click here for Picture](#)

<http://zamlia.zamnet.zm/>

As enthusiastic as I am about Cornell's Legal Information Institute, I care still more about the Zambia Legal Information Institute which we helped establish in 1996 and which our institute continues to support through training and long distance technology assistance. Its web site collects and redistributes a core collection of legal materials both domestic and international in a setting where lawyers and judges, law teachers and students, have long been deprived of adequate legal information. It shares decisions of the Supreme Court of Zambia with the world and has become a model of how digital technology might be used to step across a decade or more of law publishing failure in the entire sub-Saharan region.

Individually and collectively we need to adjust our notion of what it means to serve the public interest, unconstrained by old borders and possibilities.

VI. Conclusion

As the means of exchanging knowledge, of communication, and perforce of education and professional practice undergo transforming change, important limits that have defined both how law schools and law firms functioned and for whom are falling away. The resulting new opportunities are exhilarating, even as the consequences of not adapting threaten a diminished role. As wide-spread access to law data has exploded and both national and professional boundaries have become increasingly porous - the capacity to aid in selecting, structuring, explaining, and applying that data on a global scale has acquired new value. Law schools that remain stuck in old roles and patterns and law firms that persist in replicating the past may well have an excellent view of others laying claim to functions they once dominated. On the other hand, those that are able to identify and pursue appropriate opportunities to expand their roles as educational centers on law and legal service providers with a consumer orientation and international reach have a good shot at exciting futures.

[1] Earlier versions of this paper were presented at the University of Seattle (Oct. 1999) and Cornell Law School faculty workshop (Dec. 1999)