

Goat Entrails and Tea Leaves: Predicting the Future of Law Practice

By Sharon D. Nelson, Esq., John W. Simek and Michael C. Maschke
© 2022 Sensei Enterprises, Inc.

The Battle Royal: Hybrid or Back to the Office?

You might as well resort to reading goat entrails and tea leaves to predict the future of law practice, because it is woefully unclear what law firms will decide. There are two large and outspoken groups, those who believe that we need to get back to the office if we haven't already and those who believe that some combination of going to the office and working from home is the way to go.

As COVID continues to complicate our lives, most law firms we deal with are opting for the hybrid solution – not all of them enthused about it. Most, but certainly not all, of the law firm managing partners we have spoken with believe that remote working is less productive and that it seriously hurts the law firm culture.

Law firms find remote collaboration more difficult – there is a distinct advantage of having a team in a room with a white board working things out. Engagement via Zoom seems to pale in comparison.

While some lawyers working at home are perfectly content to do so, others worry that not being in the office deprives them of mentoring opportunities and the kind of personal engagement with others that leads to advancement within the firm. It is particularly difficult to train new lawyers.

Clients have had an impact here as well. Some are content that the work gets done no matter where the lawyers are located. Others are demanding office meetings or even traveling to attend meetings with the client.

Many law firms have said that trying to implement a hybrid is more challenging than when they were operating completely remotely, for some of reasons given above. There is often a sense that some employees are getting more flexibility than others – and that causes unrest. Navigating equity in a remote workforce has proven difficult. In a survey of firm leaders, most said they wanted lawyers back in the office at least three days a week. It is, in a word, complicated.

In late December 2021, Big Law firm Quinn Emanuel made headlines. John Quinn, the firm's founder, announced that all its lawyers, including those coming right out of law school, can “work from anywhere”- permanently. Is this a progressive move or an impending disaster? We shall see.

In the end, we are still living with uncertainty – at some point, the pandemic will become an endemic (of that the experts are sure), but what does that mean for the future of law practice?

What Does “The Great Resignation” Mean for Law Firms?

We started to hear the moniker “The Great Resignation” in the summer of 2021. In August, 4.3 million Americans quit their jobs, 4.4 million quit their jobs in September. 4.2 million quit their jobs in October. A record 4.5 million Americans quit their jobs in November. Truly mind-blowing numbers.

Why the exodus? Many reasons. Some jumped ship for better wages or better benefits. Some lawyers certainly quit because they didn't want to go back to the office or at least wanted a hybrid working

environment. Not having to commute was a joy for some and others were relieved to have time to care for children or aging parents.

One thing is certain. Everyone suddenly considered their options. They thought about retiring early, rethinking their careers, reshaping their lifestyles, creating better work/life balance, leaving crowded cities – and the list goes on and on.

Millennials between the ages of 30 and 45 in midlevel positions have had the highest increase in resignation rates according to Harvard Business. Seventy-eight percent of millennials, in a Harris Poll conducted on behalf of Personal Capital over the summer, said they were interested in switching their jobs. They are not enamored of the “hustle culture” that law firms, especially large law firms, have nourished for a very long time.

How are law firms reacting? They are paying more money. Signing bonuses suddenly rose to \$50,000 or more in larger firms. In Texas, the demand was so intense that some law firms were paying signing bonuses as high as \$500,000 to get the most experienced associates from other firms, especially in practice areas such as mergers and acquisitions, capital markets, real estate and complex commercial disputes. The battle for talent has become cannibalistic.

[Get Me to the Cloud!](#)

It was remarkable how fast lawyers abandoned their on-premise servers and moved to the cloud. The 2021 attacks on those servers, and the fact that the online version of Exchange was not impacted was the deciding factor for many.

Microsoft 365 became the default solution for the vast majority of law firms and, with the pandemic law firm closures, we saw increased usage of Microsoft Teams, particularly for internal firm collaboration.

Are there potential hazards for firms using the cloud? Certainly, but the overwhelming consensus is that the cloud providers will secure your law firm data better than you would. Security is integral to cloud providers. It is rarely “top of mind” for law firms.

That doesn’t make clouds bulletproof however. In December of 2021, the potential frailty of the cloud became apparent when Amazon Web Services (AWS), on which so many businesses depend, suffered two outages. This caused disruptions for a number of websites and online applications, including Google, Slack, Disney Plus, Amazon, Venmo, Tinder, iRobot, Coinbase and The Washington Post.

This news understandably made headlines everywhere. AWS said that the outage was caused by “traffic engineering” incorrectly moving “more traffic than expected to parts of the AWS Backbone that affected connectivity to a subset of internet destinations.” More simply, AWS routed too much traffic over one connection. While worrisome, law firms can be sure that Amazon has dissected both outages and taken steps to ensure that the autoscaling capability of AWS, critical to shifting resources when demand requires it, has been analyzed and altered so that erroneous “traffic engineering” is far less likely to be a problem. Still, we have created an extraordinary dependency on AWS and other providers like Microsoft Azure, Google Cloud Platform, IBM Cloud, etc. That dependency can have devastating consequences, however rarely.

Rapid Adoption of Technology by Law Firms

No one doubts that the pandemic spurred quick adoption by law firms of technology. Suddenly, we were all on Zoom or other video conferencing platforms, interacting with clients and participating in virtual court proceedings. Many experts have said that we moved ten years into the future in 10 weeks. While one can quibble with the exact numbers, the advancement has been fast and furious.

Law firms mastered DocuSign and Adobe Sign in a matter of days. The days of “wet signatures” on attorney/client engagement agreements are all but gone. Online intake forms became the norm, not the exception.

We preached for years about the many benefits of electronic payments, but the pandemic pushed law firms who weren't allowing electronic payments to adopt them – and the benefits became immediately obvious as the mail slowed and the e-payments came in steadily, increasing cash flow and decreasing the time it took to get paid. Online payments could now, by agreement, be automated. For clients who needed to pay in installments, this made legal services more affordable. It was no wonder that Clio CEO Jack Newton said that the launch of its own e-payment technology was the most important product release since Clio itself was launched.

Legal analytics continues to boom. Those analytics can aid in the hiring process assessing the litigation track records of attorneys and can also identify any conflicts they may have. Is a case wagging its tail or almost certainly a bonanza? Fed the right data, analytics may be able to tell you. The outcome of legal analytics may be shared with clients, who will appreciate the transparency and the collaboration in making decisions with their legal team. Legal analytics was previously the terrain of larger firms, but its use is now widespread – and its value is well established and growing year by year.

The pandemic made many phone systems obsolete. Everything is moving to the cloud including communication services. VoIP phones are taking over the world. Enter UCaaS (Unified Communications as a Service). UCaaS offerings provide robust features to VoIP phones without being married to a physical phone system. With UCaaS, you can use an app on your smartphone to emulate the phone on your desk. You can be working from home with the phone software running on your computer acting just like your desk phone too. Inbound calls ring on your computer phone app, smartphone app or physical desk phone. When you call out, the recipient has no idea you are calling from your smartphone at the grocery store. UCaaS provides communication services with just a network connection. You can speak to your clients from anywhere at any time...assuming you want to.

Small firms should not be spending any technology dollars for perpetual Microsoft Office licenses. Purchasing a subscription for Microsoft 365 is a much better alternative. If you purchase a perpetual license, you only get the features that are available at the time of sale and support is limited to only a few years. The subscription model gets you constant updates (security and bug fixes) and any new features and functionality. No question that the subscription model is the better – and more secure – pathway. The worst of the resistance to the subscription model eroded during the pandemic – we expect close to 100% adoption of Microsoft 365 by the end of 2022.

Our friend Richard Granat has predicted that productized legal services will be “the next big thing,” allowing lawyers to make money while they sleep. Sounds pretty good to us. Here's his definition of “productized legal services”: “A software application that enables a user to solve a legal problem without the assistance of services of an attorney.” A good example is a DIY interactive legal form that a

buyer purchases. Another is an application that analyzes contracts and software apps that do predictive coding as part of e-discovery.

We'll have to check on that prediction in 2023!

Payment with Cryptocurrency Still on the Horizon for Most Firms

Perkins Coie, Steptoe & Johnson and Quinn Emanuel Urquhart & Sullivan all accept cryptocurrency. But a lot of other firms that you might **think** would accept cryptocurrency are not. DLA Piper has said that limited demand to make payments by cryptocurrency has meant that it is not worth the trouble to create the infrastructure.

Currently, we are hearing about more smaller firms accepting cryptocurrency, especially in Nevada and Washington, D.C. which have ethical opinions guiding lawyers on the acceptance of cryptocurrency as payment for legal services. Author Nelson has formally requested that the Virginia State Bar issue a legal ethics opinion in that topic. We'll revisit this topic in 2023 and see if the movement toward acceptance of cryptocurrency has gained momentum.

Will Courts Ever be the Same?

Probably not. Courts adapted rapidly to the pandemic, establishing a structure for remote proceedings and utilizing electronic filing and email correspondence functions with court clerks. The Texas court system had never had a civil hearing via video, but it handled 1.1 million civil and criminal remote proceedings from March 2020 to February 2021.

In our own neck of the woods in Virginia, we watched judges and courts adapt (some more grudgingly than others) to remote appearances and new ways of providing justice. There were fits and starts at the beginning, and plenty of mistakes made, but in the end, justice prevailed, and courts adapted to the pandemic world fairly well. Roadblocks included attorneys and clients without high-speed connections and procedural differences among the judges which caused confusion.

Legal Conferences

This became a big topic at the beginning of 2022. Microsoft and Google pulled out of CES (and CES was very sparsely attended) and we are seeing many a live conference being delayed (Law Week is one example), going virtual or discussing going virtual. In the CLE world, lawyers have learned how great it can be not to consume time driving to a CLE or conference and how convenient it is to attend webinars instead. The authors have discussed this with a number of CLE organizers and they concur that, although there will be some live conferences, there is resistance from those who have simply gotten used to getting their CLE credits at the office or at home without travel or cutting into their billable time.

The networking opportunities are lost but, for many lawyers, that is a small price to pay. Conference organizers have a miserable job these days. Before the recent rise of COVID cases, many were planning live conferences. They are now rethinking those conferences, worried about whether attendees will come or exhibitors will think it worthwhile to exhibit if the number of attendees is lower. More and more, organizers are concluding that they will need to have a virtual component in order to succeed.

Digital Marketing

We were sold on digital marketing before, but never as much as now. Without the ability to network in person, there has been an increased reliance on digital marketing, especially using social media. That

trend is very likely to continue. As fishing captains are fond of saying, “You have to fish where the fish are.”

If you want to follow the thinking of one of the leading legal digital marketers, go to <https://www.attorneysync.com/about/gyi-tsakalakis/> and subscribe to Gyi’s marketing tips.

It is critical to keep up with the SEO changes that Google has made – and not easy to do on your own.

Also, take note that your website may be dated – and if it is, it is not going to rank well on Google. It may be time for a redo – less language, more white space to accommodate our dwindling attention span, and above all the loading speed that Google ranks so highly. Don’t forget that you need to optimize your website for smartphones – more than half of all the visitors to our website get there through their phones.

Make sure your “calls to action” appear everywhere on your site so that getting in touch with you is easy. Simplify your language. Do you know what “TLDR” means? “Too long, didn’t read.” If you are too wordy, you will lose their attention. Many law firms, caught up in the pandemic, now need to revisit their websites and learn the new rules of the road. We have just redone our own website in accordance with the advice above and are now more highly rated by Google and receiving more inquiries via the website. It wasn’t cheap, but it has already paid for itself in the number of clients that have been acquired through the website. The proof is in the pudding, right?

[Laser-focused on Cybersecurity](#)

There continues to be a laser focus on cybersecurity, which is no surprise given that the 2021 ABA Legal Technology Survey Report revealed that 25% of law firms have been breached at some point. Quite an alarming stat. Since the authors frequently are part of data breach investigations, we can assure you that they are calamitous events, especially if law firms don’t have good – and tested – backups that are impervious to attack.

Ransomware continues to be the nightmare of all nightmares. Routinely now, ransomware gangs will take your data and then encrypt the files on your network. If they’ve taken it, you have a data breach and all sorts of ethical duties, including the duty to abide by your state’s data breach notification law - and all states have them. Depending on your state, you may privacy laws to abide by. And there are a number of federal regulations governing data breaches too.

Avoiding the scourge of ransomware takes money and effort but recovering from a breach takes even more money and effort. Here are some of the best defenses against ransomware which should be part of your 2022 checklist:

1. Get a good cyber insurance policy.
2. Maintain, test, and secure backups so they can't be deleted or encrypted.
3. Control or disable network services. Stop using Remote Desktop Protocol!
4. Use an endpoint detection and response solution, which monitors for behavior indicating malicious software or an attacker.
5. Install patches promptly.

6. Train and test employees on phishing and other dangerous user behaviors on a regular basis. Have a process for employees to report suspected phishing emails to IT.
7. Restrict privileged access and deploy a privileged access management solution.
8. Build decisions about ransomware attacks into your incident response plan.
9. If you get hit with ransomware, retain a law firm with cybersecurity expertise. The firm will help you retain other experts.
10. Decide whether you will reimagine or fix in place.

By the way, only 36% of law firms currently have an Incident Response Plan (IRP). That's deplorable – and all of the defenses listed above constitute the “reasonable measures” cited by ethical rules requiring lawyers to be competent and to safeguard the data of their clients. 2022 (and beyond) will undoubtedly see law firms compelled to “up their game” when it comes to cybersecurity.

Remember the words of Benjamin Franklin: “By failing to prepare, you are preparing to fail.”

Another scary stat: ILTA's 2021 Technology Survey of 454 law firms found that 62% of respondents don't conduct incident response table-top exercises. Of those that did, only 26% included all their firms' departments in the exercise. These exercises are very important and allow you to explore variables – perhaps you have a data breach and the managing partner can't be reached or the electric grid is down. It is instructive to imagine how a change in circumstances may require modification of the IRP.

Zero Trust Architecture (ZTA) is VERY slowly being adopted by some law firms. 2022 is the year to get acquainted with one of the best steps you can take to protect your law firm data.

The National Security Agency has stated, “The Zero Trust security model assumes that a breach is inevitable or has likely already occurred, so it constantly limits access to only what is needed and looks for anomalous or malicious activity. Zero Trust embeds comprehensive security monitoring; granular risk-based access controls; and system security automation in a coordinated manner throughout all aspects of the infrastructure in order to focus on protecting critical assets (data) in real-time within a dynamic threat environment. This data-centric security model allows the concept of least-privileged access to be applied for every access decision, allowing or denying access to resources based on the combination of several contextual factors.”

In other words, trust nothing and constantly verify. It gives new meaning to Ronald Reagan's words, “Trust, but verify.”

The current security perimeter model is one and done. Once a device or person is trusted, that trust is not re-verified. This means if someone gains access to a user's credentials, they will be allowed to access the network and data no matter who they really are. Since users and devices regularly move from inside the network to outside, the ZTA approach means that a once-safe device cannot be assumed to still be safe.

Multi-factor authentication (MFA) is slowly becoming accepted by lawyers who find it an infernal nuisance. In this case, lawyers are going to have to sacrifice convenience for security. As Microsoft itself notes, MFA stops 99.9% of Account Takeover Attacks. Not a bad price to pay for something that can

keep your account from being compromised by a cybercriminal who now has access to all your contacts, emails, etc.

Note well: Cyberinsurance companies are beginning to require the use of MFA. In fact, insurance applications are much longer and often filled with security questions or requirements. In 2021, rates rose 30-40% while coverage was reduced. Everyone is watching this volatile industry and 2021 may be just the start of paying more for less. All of which means that protecting yourself as well as possible is a smart thing to do.

Cybersecurity should be top-of-mind for all attorneys no matter their firm's size. Ransomware attacks have escalated at an alarming rate, especially since the beginning of the pandemic when lawyers were working on their insecure home networks. Some reports put ransomware growth at 150% or greater.

Traditional antivirus software is no longer sufficient to protect your computer systems from attack. Yes, you still need to keep your investment in your antivirus/malware applications, but there is another piece of security protection you should be implementing. Firms should be investing in some form of endpoint detection and response, or EDR.

Think of EDR as being the next generation of antivirus and anti-malware. We are seeing it being adopted, but far more slowly than is needed.

EDR is extremely effective in combating ransomware. EDR uses sophisticated techniques such as artificial intelligence, machine learning and heuristics to determine what would be considered normal operations for your computer systems. Activity outside of normal would cause the EDR solution to take action. It might quarantine files, block activity, or even automatically disconnect the computer from the network.

Some EDR solutions work in conjunction with a SOC (security operations center), which adds a human element. Some have rollback ability as well, meaning your computer system can be rolled back to a known good state prior to the ransomware attack. This is invaluable. EDR solutions are generally very affordable, even for the solo attorney. Investing some 2022 technology dollars in an EDR solution is highly recommended.

[A Law Firm Opens an Office in the Metaverse – Will Yours?](#)

At the close of 2021, the ABA Journal carried a story about a New Jersey personal injury law firm, Grungo Colarulo, which has opened an office in an online metaverse known as Decentraland. The metaverse has virtual reality, augmented reality video featuring users who "live" within a digital universe. A client or a potential client may interact with a Grungo Colarulo avatar.

Richard Grungo Jr., a founding partner, says "I think that there's going to be an opportunity to connect, collaborate, transact, perform, argue, advertise and create like never before in history." He added, "The sooner you get there, the sooner you put boots on the ground and start experimenting, the sooner you can start being effective there."

Two things struck a nerve with us after our initial skepticism subsided. First, Grungo noted that he has a lot of difficult conversations with personal injury victims. As he says, "I think they may want to be behind an avatar to have that conversation." We began to see possibilities there. And we've just been through a holiday season where we've seen our children and grandchildren take to VR like a duck to water. It's

only a step further to the metaverse. A bit of a puzzler is whether law firms will embrace the metaverse, but we wouldn't bet against a slow growth in experimentation with it.

In late breaking news as we write this article, Californian law firms Falcon Rappaport & Berman and Metaverse Law are also there. Perhaps the growth of law firms in the metaverse will be greater than we initially thought!

What Do the Goat Entrails and Tea Leaves Tell Us?

Perhaps the most telling reading of those entrails and leaves is that the future is uncertain. We cannot clearly see the path forward until COVID is fundamentally defeated, with the pandemic reduced to being an endemic. Some look toward a "new normal" and others (like Clio's Jack Newton) look toward a "better normal."

One thing we are sure about: Our lawyer friends who long to return to the practice of law as it existed pre-pandemic are not going to get their wish. The practice of law has evolved in so many ways that we will, for the most part, have no alternative to embracing a different way of practicing law.

Sharon D. Nelson is a practicing attorney and the president of Sensei Enterprises, Inc. She is a past president of the Virginia State Bar, the Fairfax Bar Association, and the Fairfax Law Foundation. She is a co-author of 18 books published by the ABA. snelson@senseient.com

John W. Simek is vice president of Sensei Enterprises, Inc. He is a Certified Information Systems Security Professional, Certified Ethical Hacker, and a nationally known expert in the area of digital forensics. He and Sharon provide legal technology, cybersecurity, and digital forensics services from their Fairfax, Virginia firm. jsimek@senseient.com.

Michael C. Maschke is the CEO/Director of Cybersecurity of Sensei Enterprises, Inc. He is an EnCase Certified Examiner, a Certified Computer Examiner (CCE #744), a Certified Ethical Hacker, and an AccessData Certified Examiner. He is also a Certified Information Systems Security Professional. mmaschke@senseient.com