

# **What Should You Do Now?**

## **A Roundtable Discussion on Law Practice in a Time of Great Economic Turmoil**

Moderated and edited by Dennis Kennedy

### **INTRODUCTION**

All of us worry about the almost daily news of unprecedented economic turmoil and wonder what impact it will have on our own practices and livelihood. We also worry about the impact on our clients, our communities, our countries and our futures.

I've never seen such an unsettling combination of denial and fear. Lawyers who say that they really don't expect to see any impact will suddenly confess that they are very worried about getting paid on any of their bills for the rest of the year and whether they can keep their jobs. Deep concern lies very close to the surface and will come to light in even casual conversations. The situation feels very different from earlier down times.

This special roundtable article arose from my own concerns and my desire to find out what experts on the legal profession were thinking and recommending. As a result, I decided to just ask them. I invited some of my favorite leading lights in law practice management to, on short notice, participate in a the following roundtable discussion. I'm grateful at how many were able to contribute to this article on a tight deadline.

The "panel discussion" that follows actually took place in a shared document in Google Docs where all of the participants could add their answers to my questions and see what the other participants were saying. I sequenced the answers to give some "flow" to the conversation. The result, I think you'll agree, is a thought-provoking, insightful and very practical discussion of the economic issues facing the legal profession today. I'll be the moderator and ask the questions. First, let's meet our participants.

## PARTICIPANTS

**(JC) Jim Calloway** is the Director of the Oklahoma Bar Association Management Assistance Program. He was chair of ABA TECHSHOW 2005 and publishes the blog Jim Calloway's Law Practice Tips, online at <http://jimcalloway.typepad.com>. He is the co-author, with Mark Robertson, of the book *Winning Alternatives to the Billable Hour: Strategies that Work* (3rd Edition) published by the American Bar Association Law Practice Management Section this past summer.

**(TC) M. Thomas (Tom) Collins** is the founder of Juris, Inc. purchased by Lexis/Nexis in June of 2007. The London-based publication Citytech called him an "outstanding individual and visionary" when Tom was named as one of the Top 100 Global Tech Leaders in the legal community. He retired from his business role at the end of 2007 to pursue his hobby as a mystery author although he continues to write and speak on the subject of law firm management. His current novel, *Mark Rollins' New Career and the Women's Health Club*, is available on [www.amazon.com](http://www.amazon.com). For more information about the Mark Rollins mysteries, go to [www.markrollinsadventures.com](http://www.markrollinsadventures.com).

**(JF) Jordan Furlong** is a lawyer and award-winning legal journalist who has spent the last decade as Editor-in-Chief of *National*, the magazine of the Canadian Bar Association. An Honourary Fellow of the College of Law Practice Management, he writes about innovation, collaboration, and the extraordinary changes underway within the practice of law at *Law21: Dispatches From a Legal Profession on the Brink*, an information hub for the new legal profession.

**(DK) Dennis Kennedy** is an information technology lawyer and legal technology writer based in St. Louis, Missouri. He writes the technology column for the *ABA Journal*, is a member of the Council for the ABA Law Practice Management Section, and, with Tom Mighell, is the author of *The Lawyer's Guide to Collaboration Tools and Technologies: Smart Ways to Work Together*. His blog [DennisKennedy.blog](http://www.denniskennedy.com/blog) (<http://www.denniskennedy.com/blog>) is a highly-regarded resource on legal technology topics.

**(PL) Patrick Lamb** is a Founding Member of Valorem Law Group LLC, a Chicago litigation boutique created by several "refugees" of large, prominent law firms who came together under the shared desire to eradicate the billable hour. He is the author of *In Search Of Perfect Client Service* ([www.patrickjlamb.com](http://www.patrickjlamb.com)), a blog devoted to discussions of how lawyers can better serve their clients.

**(BJM) Bruce MacEwen** is a lawyer and consultant to law firms on strategic and economic issues. He's founder and President of "Adam Smith, Esq." ([AdamSmithEsq.com](http://AdamSmithEsq.com)), which generates a third of a million page views per month, providing

insights on the business of large, sophisticated law firms. Since the site's launch in late 2003, Bruce has published nearly 1,000 articles on "Adam Smith, Esq." on the economics of law firms, covering such topics as strategy, leadership, globalization, M&A, finance, compensation, and cultural considerations and partnership structures. Previously, Bruce was CEO of a dot-com, practiced securities law in-house for nearly ten years at Morgan Stanley/Dean Witter; and practiced litigation and corporate law with Shea & Gould and with Breed, Abbott & Morgan in New York. He was educated at Princeton University (BA magna cum laude in economics), at Stanford Law School (JD), and at NYU's Stern School of Business (MBA candidate in finance).

**(PM)** An internationally recognized authority on law practice management, and author of a number of business bestsellers, **Patrick McKenna** has worked with the top management of premier law firms around the globe to discuss, challenge and escalate their thinking on how to manage and compete effectively. Visit with him at [patrickmckenna.com](http://patrickmckenna.com)

**(EP)** A law practice management coach, consultant, author and speaker on topics relating to The Business of Law,<sup>®</sup> **Edward Poll**, J.D., M.B.A., CMC is a strategic law firm planner whose ideas have helped thousands of lawyers increase their revenue, improve their profitability and enhanced their satisfaction with the practice of law. Contact Ed at (800) 837-5880 and see more at [www.lawbiz.com](http://www.lawbiz.com) and [www.lawbizblog.com](http://www.lawbizblog.com).

**(ACS)** **Allison C. Shields**, President of Legal Ease Consulting, Inc., uses her experience as a lawyer and law firm manager to help lawyers create more productive, profitable and enjoyable law practices. In addition to her consulting practice, she provides practice management and business development resources for lawyers through her site, [www.LawyerMeltdown.com](http://www.LawyerMeltdown.com) and her blog, the Legal Ease Blog ([www.legaleaseconsulting.com](http://www.legaleaseconsulting.com)).

**(MAT)** **Merrilyn Astin Tarlton** has been helping law firms and their leaders to think differently about the business of practicing law since 1984. A respected and frequently quoted management consultant, she is past-President of the international College of Law Practice Management and was Editor-in-chief of the American Bar Association's Law Practice magazine for nine years. She was inducted into the Legal Marketing Association's Hall of Fame in 2006. Read what Merrilyn has to say about innovation and creativity in the business of law on her blog at [www.astintarlton.typepad.com](http://www.astintarlton.typepad.com).

## THE DISCUSSION

### 1. The Nature of the Crisis – Uncharted Territory

**(DK)** There's a general assumption out there that we are in the midst of a historic economic crisis that will leave the legal profession with visible scars at best and perhaps something much worse. Let's start by testing that assumption. From your perspective, what makes this situation unique or are we making too much of it?

**(EP)** Change in our society has been coming for quite some time. From a layperson's perspective, I tie the change to the political changes we've experienced. I sense another change in the offing, though I don't yet have a clue whether or how much reaction this will bring. The current financial crisis will not directly affect the legal profession, but will indirectly do so as our clients are impacted. When credit lines are stopped-up, people can't buy, which means inventories increase, which means companies reduce their production and lay off workers, which means that people have fewer dollars to buy, etc. It becomes a vicious and self-fulfilling cycle. Creative leadership is needed at the macro level to enable all industries, including the legal community, to get back to work. Thus far, however, I've not seen great impact on the legal community, perhaps because it has to hit our clients first. I think the second half of 2009 will see the greatest effect on the legal community.

**(BJM)** The immediate question is how long this recession will last; my guess is into early 2010. The longer-term question is what the economy - particularly the financial services sector - will look like on the other side. I don't think anyone can have any meaningful read on that at this point, but roughly the spectrum of possibilities will run from (A) "business pretty much as usual" to (B) "an enormous secular change because the US Treasury is a major shareholder in every major financial institution." Answer B has never been the way of the US, but these are unprecedented times.

**(PL)** I think things are very bad and will get considerably worse before they get better. Why? Because of what people much smarter than me are saying. Jeffrey Immelt of GE recently said we have a "once in a hundred year" crisis in the credit markets. Former oracle Alan Greenspan just said that we have a "once in a century" credit crisis. And to top it off, Warren Buffett recently said on CNBC: "Last week we were at the brink of something that would have made anything that's happened in financial history look pale." He later added, "If Congress doesn't help us on this, heaven help us." Bert Dohmen, who writes The Wellington Letter, a financial analyst who predicted our current mess many months ago, predicts the economy will worsen substantially before improving a bit. Several months ago, I wrote that every recession in the past 60 years has ended because consumers spent our way out of it. That won't happen this time because consumers have maxed out their ability to borrow and have lost their home equity. That tank is empty. So where will the kick-start come from? We are in novel territory.

**(PM)** I have been noticing, occasionally blogging on my web site ([www.patrickmckenna.com/blog](http://www.patrickmckenna.com/blog)), and advising clients about a potential economic crisis on the horizon since early last year. I have been following and listening to a number of astute economists, who in retrospect I guess were among the early harbingers of a coming economic downturn. What is truly different this time is that this will most likely become the

world's first global recession. In October alone, stocks worldwide reportedly lost \$10 trillion. The world stock index is down 48% so far for the year. I think that first, it was only the bankers who were panicking. Then, it was investors. Now, it's businessmen. And soon, it will be consumers. This kind of crisis runs downhill. China, India, Brazil and Russia (the BRICs), the biggest emerging economies, export most of their products either to each other . . . or to the developed economies [read that to mean mainly, the USA]. But, the next stage will come when consumers go on a rampage of thrift. Credit cards will go in the trash. Shopping malls will grow silent. Sales clerks will fall asleep on the job – and then be fired. Higher unemployment. More foreclosures. More bankruptcies. And when Americans don't shop, it will be products Made in China that they aren't shopping for. That's why the recession will continue to be felt worldwide.

**(ACS)** The global nature of the downturn is certainly one thing that makes this situation unique - and as the world shrinks, this globalization will necessarily impact on the way that lawyers do business in the U.S. It's high time that U.S. lawyers make changes that are more in line with this global reality. Perhaps this economic 'wake up call' is just what lawyers need to shake them out of their complacency and look at their practices in a different way.

**(MAT)** Perhaps it is a mistake to think this is a temporary situation that will, at some future time, be "over." I suggest that, while admittedly the credit crisis is immediate and must be resolved, the global economic situation is merely the harbinger of enormous cultural, social, international and business change. Unable to make critical adaptations to known and undeniable issues merely because it was the right thing to do, I believe it is this financial downturn that will finally prompt systemic change worldwide. As I student of organizations, I know quite well that real change doesn't occur until the pain of not changing becomes too great to bear. This is going to hurt.

**(JF)** The economic crisis will pass - crises always do. The question is what the Western economic landscape will look like afterwards, and for how long. I think we'll see a couple of years of outright stagnation, thanks to reduced consumer capacity and low lending confidence as well as the downward competitive spiral of our manufacturing sectors. We'll then have to endure lower standards of living for at least a few more years, because the global economy is changing quickly to prize intellectual assets in which we will not automatically be market leaders and that we'll struggle to develop quickly (if you're a debt-laden country with a questionable education system and an aging population, this will be very difficult). Everyone will emerge with scars -- lawyers included -- partly because we've never seen a truly global economy tank, and partly because few of us have ever experienced real hardship the way our forerunners have. As Pat Lamb says, this is undiscovered country.

**(TC)** If you live long enough, current events seem more familiar. The current economic situation has its unique aspects especially the monumental intervention by our government. But frankly, we have been here before. Some law firms will disappear as a result, and others will take advantage of opportunities embedded in the crisis to leap forward in terms of size and profitability.

## **2. Tell-tale Signs – When Do You Need to Act?**

**(DK)** Many lawyers are nervous. Others are in denial. There's no doubt that we need to stay alert and agile. What are the first telltale signs lawyers and

## **law firms need to watch for to determine if things are starting to crack for their practices?**

**(TC)** If you are waiting for telltale signs that things are starting to crack, you have acted too late. The key not only to survive but also to prosper in such times is to look ahead. The firm should be engaged in a planning process that asks questions such as: Where and what are the opportunities that this environment has opened for us? How can we shift our resources and emphasis to take advantage of these new and better opportunities? The process of looking for opportunities will help lead the firm away from areas impacted negatively.

**(BJM)** Things "cracked" for most practices 15-18 months ago. The point is not to look back wistfully but to look ahead.

**(MAT)** As Tom and Bruce say, if you're watching to see when/if it will crack, you're too late. That's like waiting until the pandemic hits your neighborhood before getting vaccinated! Start now assessing the changes that must be made in your practice in order that it may thrive in the future. Admit it, you know what they are. Step back and take a big conceptual look at your area of practice, the industries you serve, the geographic implications, issues related to energy and economics. . . Pull together a small circle of wise leaders in your field and compensate them for a few hours of high-level brainstorming time. Discard all assumptions. Eliminate the excuses. The sound you hear is the world changing gears a little bit too quickly . . . how will you keep up?

**(PM)** There are probably a number of obvious signs:

- Your rates become subject of continued discussion
- Number of new matters sent to your firm becomes reduced
- Deals and projects are continually postponed
- Clients stop paying promptly
- Client calls are not being returned
- Invitees don't attend your functions
- Access to key decision-makers starts to decrease.
- You even stop receiving those unexpected RFP's
- Your phones stop ringing

**(PL)** As Patrick points out, there are many indicators, some trailing and some forward looking. Obviously resource utilization is a critical factor. But even that can be misleading, so couple it with number of new matters per month. If that slides, be concerned. Aging of receivables is another, since increases there suggest your clients are having financial problems.

**(ACS)** The telltale signs are all around us - and if you're not seeing them in your individual practice yet, you probably have your head in the sand. In addition to some of the warning signs mentioned above, take note of how cooperative your clients are, whether they begin to avoid your calls, and whether their trust in you seems to have eroded with their trust in the economy. Are they questioning you more? Has their scrutiny or criticism of your work increased? Even practices that thrive in a down economy (such as bankruptcy) need to recognize that the current economic situation breeds fear and insecurity, which necessarily has an effect on everyone - including your clients. The key, as Tom mentions, is to take action based on what the current reality is by planning and taking advantage of opportunities

that are arising now. Clients that are concerned about how this economy is affecting their business may have untapped legal needs that can help them to feel (and be) more secure. The lawyers that recognize those opportunities and aid their clients through the rough times will be seen as infinitely more valuable. Just as law firms need to keep their fingers on the pulse of their clients, it is important to stay engaged with professional and non-professional staff in the office. A law firm's biggest asset is its intellectual capital. If you're worried about the future of your practice, your employees are certain to pick up on that concern and assume the worst. It's important to be open about how you expect the economy to affect your practice and to reassure key employees wherever possible.

**(EP)** Always, first, look at cash flow. Look to see that collections stay on pace. This is the first telltale sign. Lawyers traditionally have failed to pay close enough attention to this, wanting to do the work. When they turn around to realize that a client hasn't paid the bill, they are already into the problem so deeply that they feel compelled to continue in the hope that a successful outcome will cause the client to pay the now increased billing. Seldom does this occur. If you have to take a loss, it's better to take a small one earlier in the representation, freeing up your time to seek a new, better client.

**(JF)** You're already talking to your clients on a regular basis, right? Of course you are. So you know which of them are truly frightened and which are just generally concerned, and you know that all business from the former group is at serious risk. You're also checking the stock price of your publicly traded clients, the industry conditions of all your business clients, and the general state of affairs of your individual clients' communities. So you certainly won't be caught off-guard. . . . In addition to these signs of trouble from clients, keep an eye on your talent and monitor the office vibes. Worried employees are standard in a downturn -- but associates and support staff in particular are on the front lines of the marketplace, they talk to friends in other firms and in-house, and they hear bad news first. Talk and listen to your front-liners as frequently and openly as you can; you'll less likely be caught by surprise and you'll have a better chance to keep the best ones from bolting. And take at least one lesson from Heller Ehrman and Thelen Reid: if a firm contacts you about a possible merger, walk very fast in the opposite direction.

### **3. Taking a Prudent Approach – Setting the Right Priorities**

**(DK)** It's always struck me that in tough times the watchword becomes "prudence." We really want to take a "prudent" approach, which to me has always meant a reasonable, business-oriented, but tough-minded approach that focuses on current and future strategies. Being prudent means something different from being "cautious" or "over-cautious," even though caution certainly plays a part in any prudent approach. In that light, what areas must lawyers and law firms be sure to make top priorities?

**(TC)** Firms in a position to capitalize on the opportunities created during times of economic turmoil are the firms that exercised prudence during the good times. Most businesses respond to a recession the same way. The Standard Operating Procedure (SOP) is to curtail investments in new or replacement assets, shut down advertizing expenditures, stop all nonessential travel, impose a hiring freeze, and eliminate or reduce salary increases. Thus, most businesses sacrifice momentum during such times. The prudent firm will have

the dry powder needed to buck the herd mentality. They have the capacity to take advantage of investment opportunities, hire while others are shrinking, and aggressively add market share while others are losing it.

**(PM)** There are two areas that immediately come to mind:

(1) Some renewed focus on client needs and wants. I have spent over 25-years working with significant firms encountering partners who either don't want to invest non-billable time visiting with clients and providing value-added (means: free) services; or don't want to capture knowledge so that they are not reinventing the wheel as that would adversely impact their billable production; or don't want to have to give the client a matter budget as that might invoke some sense of financial commitment.

(2) Combined with some innovative means of working with clients . . . for example, rather than layoff some associates, would it not be more productive to arrange a secondment with some of your larger clients? One view would be that rather than discount fees, paying the salary of a secondee could be more cost effective for your firm. It could result in having an associate returning to the fold with enhanced knowledge of the client's operations, closer relationships to decision-makers, and improved awareness of the industry issues. Another view might be to borrow a page from the business model currently being proffered by Axiom. Become a placement service for otherwise redundant associates by securing temporary assignments for them with major companies. Axiom provide services at rates in the range of about \$150 to \$225 an hour with the average attorney receiving a salary of \$200,000. This may be a very viable alternative to losing the talent through necessary layoffs.

**(PL)** In any chaotic situation, there are huge opportunities, so the top priority needs to be having a strategic plan. If you could grow the number of clients and amount of client spend you capture, wouldn't you seek that, especially in this environment? But those things are clearly possible if you change your business model. Marketing and business development go hand in glove with the strategic review of your firm.

**(ACS)** A top priority at this time should be getting laser focused on who your best clients are, what their needs are (even if those clients don't immediately recognize those needs), and helping your clients get through this crisis. You've got to know your value and be able to articulate it, and to create new value by providing services you may not have considered before. Instead of focusing on hours, focus on how you can work better with clients. Although it may seem counter-intuitive, now may be the best time to re-evaluate your client base and your client selection process so that you can focus your best efforts and resources on the best clients, and let the less valuable clients go elsewhere. The same can be said for staff (both professional and non-professional). If you've got dead weight but have been avoiding the unpleasant task of weeding them out, now is the time to do it. It can even boost morale if it's done the right way. True talent resents being brought down by the dead weight.

**(JF)** There's very little room at the top of the Priority Pyramid; you can pay serious, active attention to one or at the most two priorities when thinking about avoiding a recession-induced crisis. If you can do only one thing, it's this: find out what steps your most important clients are planning to ride out the recession, and make absolutely certain that you're part of those plans. If you can somehow manage to do a second thing, identify your irreplaceable talent and take whatever steps are necessary to lock it up. Most assets you can afford to have washed overboard in a storm, but some you can't live without; know the difference and batten down accordingly.



**(EP)** Aside from collections, focus on the increasing revenue. I just returned from a Law Firm Leaders conference, and managing partners agreed with me that cutting (or watching) expenses and overhead is important. But, you'll address only a very small percentage of your revenue. However, by increasing revenue, you will increase your "bottom line" by a very large percentage. You can never spend your way into debt if you continue to increase your revenue. Thus, pay attention to your existing clientele, serve them well so that they become your advocates in the marketplace and continue to seek new clients in areas of your expertise.

**(BJM)** To paraphrase Baron von Rothschild, "sell when the violins are singing and buy when the cannons are pounding and there's blood in the streets." Now may be one of the most opportune times in recent memory to acquire talent and practices which are suddenly "cheap" through no intrinsic fault of their own. Firms that are financially strong, with little or no debt, may be in a position to emerge from this downturn in a significantly enhanced market position. This does not mean I'm counseling imprudence; I'm counseling opportunistic investing (cf. Warren Buffett with Goldman Sachs and GE).

**(MAT)** Don't panic! Figure out which are your most critical resources: specific clients, lawyers, employees, offices, etc. And lock them up. Figure out what you can afford to lose and either eliminate them now (if you can afford to lose them, why do you have them in the first place?) or plan for their elimination. Identify targets of opportunity - in keeping with your strategic plan - and seize them. Rather than retreating in fearful silence, model inclusive behaviors and involve everyone in the firm in a developing new strategies for the future. And let me say it again: Don't panic.

#### **4. What Steps Do Make Sense? Some Practical Advice**

**(DK)** **Merrilyn makes a great point. I assume that we all agree that panic is not a good strategy. What types of decisions, approaches and behaviors should all legal professionals try to avoid?**

**(PL)** You're absolutely right, panic is not a good strategy. Nor is hope. Now is the time to coldly analytical about your strengths and weaknesses. Resist the temptation to cut expenses and personnel simply to reduce overhead or head count. If you have weak practice areas, decide whether the practice area is core to your firm and either strengthen it or get rid of it. Build up areas that are your strengths. Don't go into a shell. But above all, resist the inertia that causes most people and firms to do what they've done before. The opportunities are there if you change the business model on which your firm is based. Think client first, think value and think about increasing your margins while reducing your client's costs.

**(PM)** Avoid not communicating frequently with your people. Walk the halls. Have constant updates going out to your partners and staff. Be accessible (and non-defensive) to questions about what's going on. Regardless of how challenging the particular circumstances of your firm's situation may become, communicating frequently and keeping everyone informed about any issue that have the potential to impact them personally will pay dividends in productivity in the short-term and loyalty in the long-term.

**(MAT)** In a healthy organization, each individual is aligned and focused on the overall

goals of the firm. When crisis strikes, or when the organization is under stress, the natural human response to ask "What does this mean to me?" Very quickly, it can become a case of "everyone for themselves!" Don't let that happen. Demonstrate leadership. Foster an "us against the world" attitude among your people. Challenge them to perform. Recognize effort. Behave respectfully and humanely in all circumstances. Communicate, communicate, communicate.

**(BJM)** I agree that relentless communication is a key management technique now. Information abhors a vacuum, and if you don't communicate rumors will fill the void. But I'm also recommending that lawyers commit an unnatural act in this environment: Admit that you're anxious, uncertain, and nervous. Your clients certainly are and it won't hurt to let them know they're not the only ones with zero forward visibility.

**(EP)** The best strategy, I believe, is to spend time to develop a strategic plan. The time spent usually is short and worth far more than the cost of the time spent. When you have a plan that you accept and understand, you will be working from a roadmap. When you work from a roadmap, fear and panic are reduced considerably. You then have the opportunity to convert panic and anxiety into eagerness to move forward. The two emotions are very much different. With eagerness, you will see opportunities in front of you; with panic, you will be occluded and unable to see these very same opportunities.

**(TC)** Be proactive not reactive. Focus on opportunities rather than problems.

**(ACS)** Avoid panic, certainly, but avoid denial as well. As painful as it may be, now is the time to evaluate the reality of your client base and your firm's economic position. Knowledge is power. Without it you can't act. At the same time, avoid focusing too much on the short term and throwing out the baby with the bathwater. Some cuts may be necessary, but others are just foolish. Trimming good talent with potential may cost you more in the long run. Give serious thought to any proposed cutbacks on marketing and client relations. Clients will pick up on your panic and your lack of attention just as employees will. Clients need their lawyers to help them through tough times. They want their lawyers to be an island of stability in an unstable world. You must stay in touch with clients so that they know you're there for them and you won't abandon them.

**(JF)** Think ahead to the worst-case scenario: your firm has fallen victim to a hard recession, become another headstone in the profession's graveyard. From that vantage point, look back and think: How did it come to this? What did I do, or fail to do, when the recession broke that brought us to this pass? Chances are you'll be regretting any or all of the following:

- pretending nothing's really wrong and fundamental change is unnecessary;
- failing to run a financially literate and disciplined business up to and during the crisis;
- keeping an ill-fitting partner or practice group around because their revenue seemed all-important;
- failing to identify your best clients' priorities and make them your own;
- making any decision primarily to preserve or enhance profits per partner; and
- maybe most importantly of all, not trusting your instincts.

## 5. Predicting the Future

**(DK)** Our assumptions about the economic turmoil keep changing as the news changes. Predictions are difficult to make with any level of comfort, but that won't stop me from asking to forecast the future. As Jordan suggests, we do need to trust our instincts on this. With that in mind, what changes to the legal profession will we attribute to this crisis when we look back in the near future - two to seven years?

**(TC)** I would like to say that the period brought about a new emphasis on operating the law firm as a "business". However, I don't anticipate that there will be any important changes in the legal profession attributable to this particular economic downturn. We will, of course, have the usual pattern of winners and losers.

**(JF)** Probably we'll see a few changes we've been expecting and a bunch that we weren't. I wouldn't count on the billable hour being a casualty - I've come to conclude lawyers will be billing by the hour until shortly before the sun goes supernova. The biggest change will be the competitive environment - financially squeezed companies will use outsourced and offshored lawyers for 60-70% of their outside work, and recession-battered individuals will be encouraged to self-represent or hire "non-lawyers." The result will be that within a decade, there'll be a lot of "legal process companies," fewer "law firms," and hardly any such thing as the "unauthorized practice of law." A new class of law firms will emerge that make no pretensions to excellence -- blue-collar lawyers who pointedly sell legal work that's "good enough" will become remarkably popular. Clients will gain more power in the relationship, but not outright control - while process work will become commoditized, high-end work will go even higher, because good legal advice will become more valuable when "bet the company" situations arise once a month, and good legal advisors will be able to name their terms. Outside investment in firms will accelerate in the UK and premiere in North America in part because law firms will require monetary injections to satisfy lenders and cash out partners. Basically, the state of suspended animation in which law firm business models have existed for decades will come to a jarring halt.

**(MAT)** I disagree with Jordan and Tom's fatalism. I think this episode *will* be the catalyst for significant change. Law firms and lawyers, just like other businesses, will find that you can stay alive and, indeed, thrive in a stricken economy if you are willing to develop new business models. The firms that do will enjoy enormous - but admittedly changed - success. Those who do not will wish they had.

**(ACS)** I agree that a change in the 'typical' law firm business model is coming, and that this economic crisis is going to bring it about more quickly - although perhaps not in the time frame you describe. Clients are already demanding more from their legal counsel and expecting more concrete responses. They expect budgets and more certainty with regard to fees and fee structures. They are seeing more and more legal services as commodities. Billable hour rates can't get much higher, and in this climate, clients won't stand for traditional hourly rate increases. Lawyers are going to need to be able to articulate value and innovate to provide services that make more sense to clients, and they're going to have to provide those services faster as technology becomes increasingly sophisticated. All of these factors will contribute to the breakdown of the billable hour model. It won't be complete within the next two to seven years, but more and more firms will adopt alternative billing methods and alternative methods of providing their services in order to differentiate

themselves and to keep clients. This may include increased reliance on technology to collaborate, keep costs down, and communicate quickly and effectively with both clients and staff. I wouldn't be surprised to see one of the results of this economic crisis be a bigger push toward changes in 'fee-splitting' rules and the ability of law firms to own other businesses (or be owned by them), creating entities which can provide a wider range of related services to clients.

**(BJM)** I've felt for some time that there are elements of the current law firm business model (associate lockstep, the "long tail" of clients, the growth of non-equity partner ranks, the shocking attrition among women lawyers, the billable hour, the chronic failure to institutionalize business-side professional management, just to pick some low-hanging examples) that survived only because the economic environment was remarkably unforgiving. So if you change that environment, Darwinian pressures may increase. As to what will emerge, all I can say is it will surprise us and will be prospectively unforeseeable and retrospectively seemingly inevitable. But we just don't know. Imagine showing someone in 1998 a BlackBerry from 2008 - they would never have guessed, but we take it entirely for granted.

**(EP)** I don't see any changes that will be directly attributable to the current financial crisis other than a more focused review of current operations. The changes that I say have already started. Changes like convergence, reduction of the number of law firms representing one company, sharing of work product amongst law firms working for the same company across the country/globe, efficiencies enabled by increased technological advances, outsourcing to the lowest labor cost of repetitive tasks required by lawyers, and perhaps the public's investment in law firms as begun in Australia. Along with these changes will come changes in the rules of professional conduct. But, these changes are already under way and I don't see the current chaos as impetus for increased pace of these changes.

**(PL)** I think we will look back and find that this was a period of unprecedented upheaval among the AmLaw 200 - many firms will go out of business (we're already seeing that with Heller and Thelen and others) and many others will merge because they can't survive alone. It's an open question whether these mergers will work or not. And perhaps it's just wishful thinking, but I believe the Valorem business model (value pricing for litigation rather than billable hours) will become pervasive since clients won't continue to pay high rates and firms will have to find other ways to generate profits than simply raising rates every year.

**(PM)** My personal view, which I've shared with clients (at the risk of being labeled a pessimist) is that everything I'm seeing confirms for me that this is going to be a very deep and protracted economic downturn - read that to mean at least five years. I've said to clients, whether I'm right or wrong is immaterial. The only thing that is relevant is how prepared you are for a worst-case scenario. Here are the 10 questions that I've strongly recommended that the partners of firms need to discuss:

*"Assuming that we collectively felt that there was a chance that this was going to be a very prolonged, (a minimum of five years) and extremely painful economic downturn - how would that affect our strategic thinking and the decisions that we make with respect to the direction that we pursue on a number of fronts?"*

*1. Are there any areas of discretionary spending (staff functions that have tended to 'put on weight,' nonessential projects that seemed like good ideas at the time, etc.) where you feel that we should be making budgetary cuts?*

2. Are there any areas (supplier contracts that could be renegotiated, tasks that could be automated, meetings that could be held without travel, moving resources to less expensive locations, etc.) where we could be more creative and far more cost effective in how we operate?
3. Given that in times of economic adversity 'cash is king' – are there actions that we should take to better enhance and preserve our cash flow (ensuring that all WIP is billed in a more timely manner, putting extra attention into collecting receivables, reminding clients that are slow to pay, and discontinuing representation of those clients who are not paying their bills)?
4. What can we now do (in a more proactive manner) to get closer to, add value, and enhance the relationships we have with our key clients – that we have not found sufficient time in the past to do properly?
5. Is there something we should be doing (perhaps be doing differently) about where and how we market our legal services (to reduce our reliance on a few marquee clients or a few practice areas or a few offices) and the client industries that we choose to target (some industries, like makers of hefty durable goods, are already in free-fall and may be particularly vulnerable to wide-scale bankruptcies)?
6. Given that most firms have been able to boost rates 4 to 8 percent at the beginning of every year and that such hikes will be in very bad form in the current environment, are there ways in which we might price our service, and/or methods in which we could improve our productivity to enhance the firm's profitability going forward?
7. Do we have the right mix of practice groups and geographic offices, and is it time to invest more heavily or withdraw from some of them?
8. What choices (the type of candidate we need, in the practice area that makes sense) should we be making in the laterals that we seek to recruit to our firm?
9. Are there underperformers in our firm (those who don't produce, follow the rules, irritate clients, crush morale, and drive away high performers) that we have been slow to address and that now need some timely attention?
10. How can we better recognize, reward our top performers and make their lives easier when our ability to offer the same kind of compensation increases that we have in the past, may be somewhat limited?

## 6. Best Practical Tips.

**(DK)** Patrick has given us a powerful and important set of questions that will benefit anyone who makes the effort to answer them honestly. It might well come down to nuts and bolts and blocking and tackling, and getting the fundamentals right. Readers will definitely want practical tips and tactics that can consider and implement as soon as they finish this article. Let's leave them with some answers as well as questions that they should be asking. What are your two or three best tips for today and the near future?

**(MAT)** Convene a meeting of your firm's decision-makers tomorrow. Agree together to cease hand wringing and start planning. Don't leave the room until you have a short list of things that must be done and the names of the people who will do them - plus a deadline. Hold each other accountable. Switch from saying "What are we going to do?" to "Here's

what we're going to do!" If you find it difficult to take the lead rather than wait for the next ugly shoe to fall - fake it. It will become more natural with time.

**(PL)** Go visit your major clients. Find out how each is faring given the economic upheaval, what changes they expect to their business and how you can help. Remember, your goal is reducing the size of their pie. If you help them meet their objectives, you will end up with a larger share of the pie. But above all, make them happy. If you don't, someone else will and you'll be down one client. Second, look for potential clients who need help in your areas of excellence. Go meet with them. See what you can do that their lawyers are not doing for them. Times of chaos are times of opportunity.

**(TC)** Stop acting like it is "business as usual". Take steps to assure that you have adequate capital - speed up billing, shorten collection cycles, increase requirements for front end payments and client advances, reduce funding of client expenses, keep more margin dollars in the firm (hold back more profits). Don't follow the pack and shut down. Instead, pull your team together and start thinking ahead. What new risks are we facing and what can we do to minimize them? What new opportunities will present themselves, and how can we capitalize on them? You must plan, set objectives, measure performance, and hold people accountable for a new environment. It isn't "business as usual" - it is a different game and you need a different game plan.

**(PM)** This is fast becoming a time when 'cash is king' so it becomes critical that you manage your cash position:

- Watch your accounts receivable daily. Beware of any clients who display a pattern of slow payment and call or visit them immediately. Review both your largest clients and your riskiest clients to determine the potential impact of economic adversity on their ability to meet their obligations to you.
- Make sure your overall cash position and anticipated cash needs are in line with your firm's short-term goals and risk tolerance. Do you have sufficient cash reserves for the next 60 days to 90 days?
- Check with your bankers on the status of your credit availability. Are you in compliance with their terms? Will your bank renew their commitments at similar amounts, rates and terms?

**(EP)** I agree, and the best tips I can provide relate to cash flow. Ultimately, perhaps the most effective cash flow strategy is to work closely with your firm's banker. Your bank is your ally in effective cash flow management – defined as the best steps to get funds into your bank account as quickly as possible – and can help you develop the best strategy to manage these essentials:

- Maintain a high average daily balance. Most banks focus on the "average daily balance" in your account when analyzing a loan request. Maintain as high a balance as possible by depositing revenue immediately upon receipt and spreading the payment of bills throughout the month.
- Request a daily automatic bank sweep. Establish a minimum amount, such as \$2,500, to remain in your general account. Then, instruct the bank to segregate all funds in excess of this amount at the end of each day and "sweep" or transfer those excess funds into a money market account. With a good attorney/banker relationship, the cost for this service (if any) is usually included as a negligible element of the bank's total fees.
- Take advantage of the new check scanners offered by banks to more quickly and securely deposit client checks. Scanners treat a check virtually as a debit card,

making deposit instantaneous. A related but more comprehensive strategy is to negotiate for a lockbox with the bank. Many banks now advertise this as one of their premier business services. In this arrangement, the bank uses online technology to pick up remittances several times a day, record them and send details of the transaction to you as the customer, either the same day or the day after funds are deposited.

- Work with your banker to set up an effective trust account withdrawal process. Flat fees or retainers can be withdrawn from a client's trust account as specified in the engagement agreement. Deposit retainer fees into a general account, or split it into a non-refundable retainer and a balance withdrawn as the work is performed. When your bank understands the method you use, you get access to the money sooner.

Effective cash flow management often comes down to the steps any administrator can take to get funds into the bank account as quickly as possible. Often these are common sense efficiencies that, over time, can make a tremendous difference.

**(BJM)** Cash is king. Get very, very close to your bankers. Manage expectations. Keep it all in perspective.

**(JF)** I'm going to borrow a page from a remarkable and important book, *The Fourth Turning*, by William Strauss and Neil Howe. Suppose the coming winter actually lasted 12 or 18 months, with all the bleak weather, depression, exhaustion, and institutional paralysis that would entail. How would you prepare your home and your family if you knew about it beforehand? Start thinking like that. As others have said, this is not just a downturn - this is a fundamental reordering of the economy on a global scale. Your best competitive move could be simply understanding and acting on that, because it means you'll be taking seriously possibilities that your rivals will be trying not to think about. Maybe we're all wrong - maybe this is just a blip and everything will be fine again in a year or two. In that case, you'll have poured a lot of sweat and equity into redefining your business for harsh times, and that can only leave you more competitive and better able to respond quickly to future upheaval. But if this isn't just a blip, if this is as serious as it seems, taking these steps may be the difference between being a rare survivor and being just another victim.

**(ACS)** One of the lessons learned from this Presidential election is that consistency and having a good strategic plan can work wonders, particularly if those elements are paired with true passion, purpose, and an ability to connect with others. Instead of closing ranks and focusing only on stopping the leaks, think about how you can re-invigorate your practice. Find the purpose that keeps you going and that will keep your clients coming back. Look forward instead of back. Start looking at other industries to see what is successful and how you can apply those principles to your practice. Instead of thinking about how you can hold on to clients, think about how you can delight your clients. Don't get caught in 'analysis paralysis' and let fear stop you from moving your practice forward or from trying something new. Seek input from everyone in the firm about how you can improve your services and create loyal clients. Stay connected with your clients and your employees and make sure your clients have an exceptional experience with your firm even in these uncertain times. It's usually the smallest (and most unexpected) aspect of your service that makes the biggest impact.

**[(JC)]** Some smaller law firms may not have paid close and constant attention to their

financials and now they clearly need to be more strategic and vigilant about numbers and reports. Monthly data is too dated. Weekly analysis is likely the minimum. Cash flow, receivables and cash reserves are critical items. In addition, if your law firm represents many consumer clients and you don't accept credit cards, you should move to rectify that immediately. The cost of credit card processing fees now pales in comparison to the possibility of not getting paid or losing business to a firm that accepts credit cards. Credit cards are like outsourcing your financing.]

## CONCLUSION

I want to thank our stellar panel for taking time out of their busy schedules on short notice to share their advice, insights and wisdom. I'm struck by the sense of gravity they all have about this situation.

It's interesting to me that our panel often suggest doing several seemingly opposite things at the same time. That seems to me to be a key insight. We need to focus on short-term tactics, such as collections, yet also take time to formulate long-term strategies. Concentrate on cash flow, but at the same time look for innovative approaches. Consider staff reductions, yet make certain that we retain our best people. Don't panic, yet don't deny that something important is happening that requires our attention.

It all reflects that we are indeed in uncharted territory. I hear of firms facing the dilemmas of drastically reduced practices and clients in great difficulty and other firms overwhelmed by unanticipated increases in new businesses in unexpected areas, which is another source of problems these days.

The threads of the conversation that jump out to me are communications and clients and, ideally, the combination of the two. To make it through these times requires communication and collaboration with your clients, having a dialogue, being able to listen to what your clients are saying to you. Placing your bets on having a highly client-focused practice, with an attention to the business side of the practice of law, seems like a path we all want to take.