

## 21st Century Task Force White Paper and Report

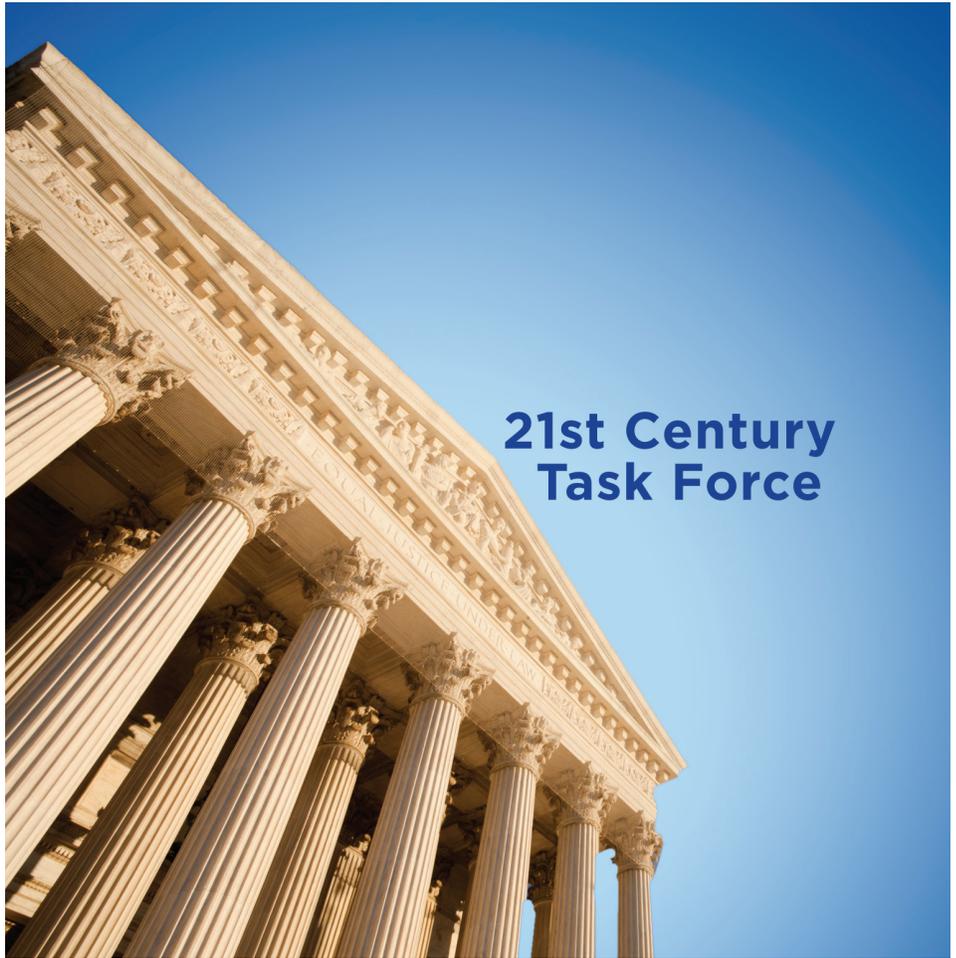
# Time for Creativity, Imagination, and Innovation

By Chrys A. Martin

*Daily articles in the legal press have made clear that the basic assumptions about practicing law in the twenty-first century have undergone a “paradigm shift.” DRI President Mary Massaron Ross, a leader in recognizing the shift and its urgency, created the DRI 21st Century Task Force to identify the skill sets that lawyers will need to succeed in the new practice environment and to develop programmatic proposals that would assist DRI members to master those skills. The task force recently presented these proposals to the DRI Board of Directors. This article explains the task force’s charge, work, and proposals.*

There is no doubt that the entire law profession—law firms, lawyers, law schools, and professional associations—are operating in a totally new context in the twenty-first century. In this century, we will continue to witness a decline in civil litigation work, a flattening in litigation—including insurance defense, a decline in demand for traditional legal services, a focus on maximizing law firm owners’ earnings, and limited funds and time allotments for continuing legal education and training for new lawyers. John S. Smock, Peter A. Giuliani, Joseph V. Walker, & Gary B. Fiebert, *Déjà vu All Over Again: Legal Marketplace Outlook for 2013 and Beyond*, 32 *Of Counsel* 6 (Apr. 2013); Marc Galanter & Angela Frosz, *The Decline of Civil Trials in American Court* 1–2 (2011 Forum for State Appellate Court Judges, Pound Civ. Just. Inst., July 7, 2011); Steven J. Harper, *The Lawyer Bubble: A Profession in Crisis* 70 (Basic Books 2013).

Clients view billing rates as too high and new attorneys as not ready to practice law efficiently. They are no longer willing to pay law firms to train their associates. Richard



## 21st Century Task Force

Susskind, *Tomorrow’s Lawyers: An Introduction to Your Future* 4–5 (Oxford Univ. Press 2013). Corporations are under pressure to reduce their “legal spend” and at the same time are bringing more work in-house. William D. Henderson, *A Blueprint for Change*, 40 *Pepp. L. Rev.* 461, 479 (2013).

Scores of books, articles, and blogs chronicle the paradigm shift in our profession and

the need to change radically the way that the profession delivers and prices legal services, and the way that law schools educate lawyers. At the same time, new legal services providers have emerged that have very effectively reduced the market share of traditional law firms. As a result, according to Bruce MacEwen, one of the foremost specialists on law firm economics, “clients are pushing back as never before.” Bruce MacEwen, *Growth Is Dead. Now What? Law Firms on the Brink* 4 (Adam Smith Esq. 2013). MacEwen cites corporate seriousness about alternative fees, resistance or refusal to pay for junior associates and requiring major segments of legal work to be handled by alternative legal services providers as ways



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that clients have rejected traditional legal business practices. *Id.* at 4–5.

So what is the result of this significant paradigm shift in our profession? As one prolific law blogger notes,

these two forces—a decline in overall legal spend and innovative new options for legal services—combine to reduce demand for the services of lawyers... This one-two punch produces a large and growing pool of unemployed and underemployed lawyers, downward pressure on lawyer incomes (especially among inexperienced practitioners), and succession crises at law firms in which senior partners who control client relationships grip the reins of power even tighter.

Jordan Furlong, *The Evolution of the Legal Services Market: Stage 2*, Law21 (Nov. 6, 2012), <http://www.law21.ca/2012/11/the-evolution-of-the-legal-services-market-stage-2/>.

Welcome to the twenty-first century law profession.

Commentators also agree that legal education is in crisis. Huge proportions of law school graduates cannot find jobs in the legal field. Press Release, Nat'l Assoc. for Legal Career Professionals, *Law School Grads Face Worst Job Market Yet—Less Than Half Find Jobs in Private Practice* (June 7, 2012), <http://www.nalp.org/2011selectefindingsrelease>. Law firms and corporations find that new lawyers are not prepared to practice law. Scores of legal articles, symposia, and seminars in the legal education field have tried to address these issues. In a strategy memo to fellow legal educators, William D. Henderson, director of the Center on the Global Legal Profession at Indiana University Bloomington Maurer School of Law, stated that “the demand for our core product—traditionally educated law school graduates—is collapsing.” Henderson, *supra*, at 462. He noted that “creating more ‘practice ready’ graduates will help some law schools more effectively place their graduates in the finite—and likely shrinking—market for traditional entry level legal jobs.” *Id.* He then discussed “the principles that a twenty-first century U.S. law school needs to follow in order to survive the shift.” *Id.* at 464. Henderson identified a competency-based, experientially taught curriculum, including

“team work, communication skills, emotional self-control, problem-solving, and decision-making.” *Id.* at 505. Continuing legal education (CLE) providers can provide opportunities to acquire these skills in an experiential setting immediately with new offerings in the critical areas. Experienced as well as new lawyers need these new skills, and the DRI 21st Century Task Force members believe that DRI can and should provide those skills.

Law firms and CLE service providers

Clients demand change right now. They want lawyers who have project-management skills, team skills, communication skills, budgeting skills, and leadership skills.

cannot wait for law schools to retool their programs, holding off on hiring until a new wave of lawyers trained in more practical skills emerge from these new programs. Margaret Martin Barry, *Practice Ready: Are We There Yet?* 32 B.C. J. Law & Social Just. 247, 256 (2012). Clients demand change right now. They want lawyers who have project-management skills, team skills,

communication skills, budgeting skills, and leadership skills. Blogger Jordan Furlong, after chronicling the decline of “big law” and predicting a resurgence in the future of our profession, offers suggestions for the skills that our lawyers will need. He notes, “[p]roject-management is about as close to a silver bullet as the legal profession could ask for these days.” Jordan Furlong, *How I Learned to Stop Worrying and Love Project Management*, Law21 (Apr. 9, 2010), <http://www.law21.ca/2010/04/how-i-learned-to-stop-worrying-and-love-project-management/>. Kenneth S. Siegel, chief administrative officer and general counsel of Starwood Hotels and Resorts Worldwide, Inc., recently stated that he is looking for teams: “These virtual teams help facilitate knowledge and goal sharing while also keeping costs within reason.” General

Counsel File: Kenneth S. Siegel, *Practical Law*, The Journal (Apr. 1, 2013), <http://us.practicallaw.com/0-525-4223>. Deanell Reece Tacha, dean of the Pepperdine University School of Law, asserts that lawyers and law students must learn “to work together in teams to solve problems and to understand the business aspects of law practice like project management, the needs of cli-

## DRI 21st Century Task Force Members

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ents, and creative resolution of controversies.” Deanell Reece Tacha, *The Lawyer of the Future*, 40 Pepp. L. Rev. 337, 339 (2013). Tacha notes that our profession is responding: “Refreshingly, this very discussion is occurring in law schools, courts, bar associations, and throughout the legal profession.” *Id.* at 337. DRI needs to emerge at the forefront of this discussion and become a leader in implementing solutions.

As a result of these trends, closer cooperation between legal education providers, law firms, and clients is advocated to “emphasize tighter ties between legal training and practice, whether the focus is on writing skills, decision-analysis, management, business and financial literacy, time management or multi-cultural competence.” Martha L. Minow, *Making Global Lawyers for the 21st Century: A Blue Paper* 6. (Harv. L. Prog. Legal Prof. 2010) (Keynote Address to FutureEd 2 Conference, Harv. L. School Oct. 15, 2010). Commentators suggest returning to apprenticeships such as those practiced in the United Kingdom and Canada for new lawyers. Brian Z. Tamanaha, *Failing Law Schools* 175 (Univ. of Chicago Press 2012). Thus, to save our relationships with our clients, we increasingly need to partner with clients and achieve global understanding, diversity, a team approach, and associate understanding of law firm economics. We have a “lost generation of lawyers” that does not have these skills, including associates and partners at all levels currently providing services in law firms. The current economic realities further hamper law firms because senior lawyers currently do not retire and pass on their clients and trial opportunities to younger lawyers, either due to the economic need to stay employed or lack of succession planning by lawyers and law firms. Law firms and bar associations have not understood all the realities: “Most successful partners eventually will need help finding a path that reshapes their self-identity while preserving their dignity. For firms that care, the challenge is to permit disengagement with honor.” Harper, *supra*, at 190.

As Furlong has predicted, in the future “traditional volume-based lawyer organizations (bar groups, publishers, CLE providers, etc.) either radically reinvent

themselves or close.” The 21st Century Task Force agrees that DRI, to remain a viable organization, must supplement its traditional educational delivery model and courses to teach new and existing lawyers the skills that they will need to succeed in the twenty-first century.

### Task Force Charge

Lawyers, law firms, and their clients need new skills immediately, a pool of well-trained new lawyers for the future, visionary leaders, and bold succession planning

Lawyers, law firms, and their clients need new skills immediately, a pool of well-trained new lawyers for the future, visionary leaders, and bold succession planning to succeed.

to succeed. DRI President Mary Massaron Ross has been a leader in recognizing these issues and their urgency. She created the 21st Century Task Force to identify the skill sets needed by the twenty-first century lawyer and to develop curricula and delivery methods to assist DRI and its member law firms and corporate clients to meet the training challenges.

The DRI task force is composed of diverse lawyers in terms of years of practice, practice areas, firm size, and geographic location. (See page 7 for a complete list).

The task force began its work in October 2012, during the DRI Annual Meeting, followed by several lengthy conference calls and brain-storming sessions designed to identify what the practice of law will look like in the twenty-first century and the new skill sets that lawyers would require to practice in that environment successfully. We studied reports of legal scholars, read papers from symposiums analyzing legal education, and turned to consultant commentators about the future of our profession—particularly litigation. We identified a list of critical skills and categorized them into four general areas: litigation skills, client and professional relationship skills, law firm management skills, and alternative dispute resolution (ADR) skills.

We were tasked with preparing a comprehensive report explaining our work and suggesting new topics and delivery mechanism systems that would make DRI a leader in CLE for the twenty-first century lawyer.

### Identifying the Challenges

Before we started working on programmatic proposals, we identified the challenges to skills acquisition in the four crucial skills areas for twenty-first century lawyers. We broadly categorized the challenges as falling into four segments: litigation, client relations, alternative dispute resolution and technology, and law firm management. Identifying these challenges would inform our skills-acquisition proposals. Some of the many recommendations include the following.

#### Litigation Challenges

Noting that the base of DRI membership is composed mostly of litigators and corporate in-house counsel who manage outside litigation, we focused on the shifting paradigm within that particular area of the law. Based on their own personal experiences, task force members agreed with commentators that the twenty-first century practice of law will continue to encounter a diminishing number of cases advancing to trials, resulting in few opportunities for new lawyers to hone trial practice skills. With corporate legal budgets constrained, lawyers will have to practice in a much more efficient manner. Clients also now require lawyers to prepare and stick to accurate budgets, provide fee estimates, and embrace alternative fee arrangements. This all requires precision in litigation management, which is accomplished through strategic planning, project management principles, and creating teams of diverse experts. Working cross-border and with non-lawyer team members will become the new norm.

#### Client Relations Challenges

On the client relationship front, as clients become more globalized and diverse, lawyers need to learn business etiquette and how to behave professionally in diverse business and social situations, including cross-border etiquette for international

clients and referral sources. In the age of corporate convergence programs, it is critical that lawyers provide services in a manner that will allow them to be seen as loyal and trusted client advisors rather than as providers of fungible legal services. Thus, attorneys need to understand how to get and keep clients in this changing environment.

### **Alternative Dispute Resolution and Technology Challenges**

More senior lawyers must embrace the skills that Gen X and Gen Y bring to the table: the powerful use of technology and social media to manage cases efficiently and to obtain clients. Presenting to Gen X and Gen Y jurors also requires that litigators use new types of trial skills because these generations process information in different ways. Taking short attention spans into account, increased reliance upon technology and eye-catching visual experiences are required and have joined traditional oral advocacy as valued and necessary skills.

Clients have become focused on ADR as a cost-effective alternative to litigation in the courts. With the continuing shrinkage in the number of jury trials and the rise of ADR, lawyers handling disputes between clients will need a different set of skills than before. Negotiation skills have fallen by the wayside due to the overreliance on professional mediators rather than face-to-face negotiations between the attorneys for disputing parties. A direct negotiation may be much more efficient and reduce the costs of settlement efforts for clients. Approaching and effectively undertaking the “trial” of a case before an arbitrator or a panel of arbitrators involves different presentation skills from those that lawyers used before a jury of the twentieth century. Lawyers need to learn skills to help them partner with clients to develop reasonable, efficient, and enforceable arbitration programs that will withstand judicial scrutiny.

### **Law Firm Management Challenges**

On the law firm management front, rapid technological changes, the inability of lawyers to retire early due to recent economic declines, and the eventual exo-

odus of Boomer lawyers when they can afford to depart, all create the need for law firm managers to be visionary leaders and change agents possessing financial acumen—all skills that law schools do not teach. It will be equally important that senior lawyers remain loyal to their firms and engage in thoughtful transitions of clients and opportunities to younger lawyers. Compensation structures will have to incent such behavior as well as reward practical skills training and mentorship of younger lawyers.

In the age of corporate convergence programs, it is critical that lawyers provide services in a manner that will allow them to be seen as loyal and trusted client advisors rather than as providers of fungible legal services.

### **DRI'S Role**

So what does this mean for DRI? DRI has always been at the forefront of providing quality legal education, both nationally and internationally. DRI seminars are lauded by in-house counsel, private law firms, and claims professionals. Despite shrinking CLE budgets, DRI seminars remain fairly well attended. However, if DRI does not enhance its CLE offerings to meet the skills needed by the twenty-first century lawyer, law firm, and client, it will suffer negative consequences. More to the point, instead of just supplementing traditional legal education offerings, DRI should “radically reinvent” itself to emerge on the cutting edge of providing the type of CLE needed by the twenty-first century lawyer. Jordan Furlong, *The Evolution of the Legal Services Market: Stage 4*, Law21 (Nov. 8, 2012), <http://www.law21.ca/2012/11/the-evolution-of-the-legal-services-market-stage-4/>. DRI should lead this transformation. Furlong urges all involved in the legal profession to rise to the occasion, noting that

it involves screwing up our courage, building up our confidence, and letting our imaginations roam over the possibilities of 21st Century lawyering. It requires lateral thinking and

creative brainstorming, anchored by a clear-eyed assessment of both our own strengths as professionals and the evolving needs of a globalized society. Once we've done that, once we've cleared that enormous (for us) hurdle, then the second stage is not only easy—it's almost fun. What could we do? What might we be? There is a vast, uncharted and unclaimed territory out there—what could we build on that new landscape?

Jordan Furlong, *The Evolution of the Legal Services Market: Stage 5*, Law21 (Nov. 9, 2012), <http://www.law21.ca/2012/11/the-evolution-of-the-legal-services-market-stage-5/>.

DRI should rise to this challenge and let its imagination run.

### **Task Force Skills Findings**

Partly in response to the national consensus that alternative delivery systems for learning will be critical for all types of legal education, the task force studied potential alternative educational delivery models and evaluated ways to supplement the traditional DRI educational service delivery model with alternative options. Many ideas for new CLE delivery methods and topics emerged during our work, including some that DRI would deliver and some that DRI would develop but that others would deliver. As mentioned, we also identified the new skills that lawyers will need, concluding that the successful twenty-first century lawyer would need unique skills in four areas: litigation, client and professional relationship, law firm management, and alternative dispute resolution. Some of the many recommendations include the following.

### **Litigation Skills**

The task force identified the following litigation skills as necessary to success:

- Trial skills with fewer trials and new age jurors
- Case evaluation skills, specifically so that a lawyer will know how to evaluate cases and prepare useful report letters and exposure analysis
- Witness interviewing skills that will allow a lawyer to obtain critical information in an efficient manner

- Budgeting skills, ranging from how to prepare accurate budgets to providing good fee estimates
- Strategic planning for litigation management skills, in particular how to use teams to make strategic decisions on legal matters

As previously mentioned, some of these skills have become very challenging to acquire since so few cases reach the trial stage at this point.

#### **Client and Professional Relationship Skills**

A lawyer also will need the following client and professional relationship skills to succeed in the profession:

- Business development skills to obtain and keep clients
- Social media use for business development and networking
- Civility and professionalism skills
- Skills to develop, budget, and manage alternative fee arrangements
- Project management skills
- Ethics skills, which would partly depend on having professional ethics knowledge, so that a lawyer could navigate effectively in the electronic age

#### **Law Firm Management Skills**

- To thrive in the profession, the task force concluded that a lawyer will need these law firm management skills:
- Technology and social media skills
- Retirement planning skills
- Firm leadership and professional leadership capabilities
- Succession planning ability to assist a senior lawyer to know how and when to introduce and “sell” other attorneys to clients properly

#### **ADR Skills**

A thriving twenty-first century lawyer will need these skills that are crucial to ADR:

- Negotiation skills, both direct with opposing counsel and in mediation
- Arbitration skills to enable an attorney to handle arbitrations properly, from selecting a forum and an arbitrator to understanding the applicable rules

#### **New CLE Proposals**

After further deliberations and refinement in subgroups, the task force merged these twenty-first century skills with promising

twenty-first century educational delivery mechanisms to recommend several new educational offerings. Many of the recommendations involve alternative delivery options to create more meaningful learning experiences.

The task force determined that educators could not teach and attorneys could not learn many of the most critical skills effectively in the traditional day-and-a-half DRI seminar model.

Under a mandate from the DRI Board and Executive Committee the organization will develop prototype programs based on many of the findings and recommendations of the task force.

#### **Summary of Recommendations**

The task force members determined that every one of these proposals represented significant responses to twenty-first century challenges. The proposals have built-in adaptability so that DRI or others could present the programs in diverse formats. They would provide valuable education and support to the DRI substantive law committees, improve relationships with SLDOs, and offer unique services to DRI members and their firms. Individual members will receive cutting-edge legal education. Law firms will have better-trained lawyers with skills to practice law and to lead their firms successfully during this paradigm shift. Clients’ in-house lawyers will become educated in these critical skills areas as well as experience improved services, efficiency, and customer service from their outside lawyers.

The task force hopes that DRI will undertake a critical analysis of these programs and decide on an implementation schedule. The advice that MacEwen gave to law firms seeking to prepare for the twenty-first century is equally pertinent to DRI: “We have to find our own new answer to the changes in our profession. Time for creativity, imagination, innovation. Try things. But don’t try one big thing, try lots of little things. Don’t put all your chips in the center of the table; learn as you go along, make mid-course corrections, seek continuous feedback, react.” MacEwen, *supra*, at 105. He prefers “nimbleness, decisiveness, and immediate readjustment” to “grand plans.” *Id.*

To paraphrase MacEwen, if DRI does not also embark on this new direction, our competitors will “do it for us and to us.” *Id.* at 106.

