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Workforce and Workplace Considerations

Post COVID-19 Normal, Part 3

By James D. Cotterman

How might law firms reshape themselves in light of the experiences of the past several months? COVID-19 has forced and accelerated changes to operating norms. How much of this will remain? How much further might the profession go?

Remote Work

Can we envision a law firm with mostly remote teams connecting electronically – virtually? We sure can now that we have been doing it for the past several months. And some law firms have operated remotely or largely remotely for a number of years. What is new is the scale (and certainly the speed) of this undertaking.

Let's explore how firms might function with a more permanent remote workforce. There are two cultural/philosophical camps at play – in one, the employer has high trust in its workforce and, in the other, the employer believes in ongoing monitoring. Technology has and can facilitate the latter. And these tools existed pre-COVID. The former is preferential for high morale and workforce satisfaction.

Initial studies indicate that workers are generally satisfied with working from home. Conversations with Managing Partners indicate that they believe it will be a challenge enticing the workforce back into the office. If not already done, this is an opportune time to survey your workforce to determine how work from home is working, what issues exist, and to take the temperature of the willingness and desirability to return to the "office." These studies can be done fairly quickly with online survey tools. You need a good questionnaire and the ability to analyze the results across different positions, locations, practice groups, age demographics and the like. Using an outside group to conduct the survey, thus preserving anonymity, will increase participation and candor.

Lawyers are the most accustomed to remote work as it has been part and parcel of their careers for a great many years. Staff generally have had office-centric roles, so the pivot was a more profound change for them. And of course, IT had an urgent and critically important task to reconfigure infrastructure and accommodate a very different environment. Those initial tasks were completed quickly.

The positives of work from home are readily apparent – first and foremost no daily commutes! Personal activities that previously required a half- or full-day off now can be accomplished in a fraction of that time. Need to finish up a project but are short on time, no problem, you can do it after dinner with little hassle. Remote work is liberating and workers know what needs to be done and by when.

Concerns about work from home could be relegated to two baskets. The first basket contains issues from the initial pivot, while the second are longer-term concerns. The pivot required sometimes immediate moves from the office to the home to work. There was no time to plan or organize a new workspace and little opportunity to raid your current workspace for the conveniences you quickly missed from home. And in some firms, there was not even time to gather all necessary paper files and materials. Once the stay-at-home orders hit, the home internet service was being shared by an entire family – all working, learning, recreating and often using VOIP phone service – each consuming bandwidth on multiple devices simultaneously. As expected, the pivot created a brief productivity hiccup followed by more normal productivity after adjusting for pandemic-induced reductions in demand.

So, the challenge now is to pivot once again – this time from temporary to permanent.

The first longer-term task is to address the pivot-induced concerns. These are logistical and environmental – lack of the large multiple monitors, a good printer/scanner/copier, the ergonomic desk/chair, the fully functional office phone and better lighting for work and video conferencing. All of these are readily fixable in short order. Re-opened access to the “office” and therefore paper files will suffice for a while, but a more full-on move to digital files will address team access to needed materials long term. The tech support team will also want to ensure that the home offices have sufficient internet speed, more robust and regularly updated routers. If personal equipment has been used, there will need to be hardening of those devices and their VPNs.

Other longer-term concerns are going to require greater effort and time to address. The easiest of these will be collaboration. Tools such as Microsoft Teams have come to the forefront to address this need. Training of less experienced lawyers and maintaining a culture that historically has been built around in-person interaction are going to be more difficult. But this author believes not insurmountable.

A Lean Workplace

A short time ago, I was talking with two long-term clients who have recently moved to a new firm. They wanted to update me on their current situation and the advantages of their firm built for agility and mobility – including operating with one of the lowest overhead ratios I have observed in a good-sized firm. Why is not more of the profession doing this? Inertia, complacency with what has worked (and largely still does)? As is often observed, “How do you convince a room full of wealthy lawyers to change what they are doing?”

How does a firm change? How does a firm get to a super-lean overhead? Look where your costs are – people and office space are the two leading contenders. The profession had more lawyers than necessary for the available work pre-COVID-19, but little had been done about it across two decades. Excess lawyers yield excess staff and space. Staff utilization is artificially high because lawyers are resistant to learning how to use technology tools efficiently and effectively and are unwilling to supplant labor with advanced machine learning.

Excess lawyers are the sum of three categories – investments in the future, warehoused lawyers and chronic underperformers. The first category is good, the next two are not and are all too often re-categorized back into the first in order to avoid dealing with the problem.

People investments in the future should have a short-term timeline to full productivity – say six to eighteen months. Hiring to meet anticipated increases in demand has been a stalwart principle in law firm hiring. To borrow from a movie reference – if you hire them, the work will come[i]. And for decades that worked. But somewhere around the turn of the century, this adage ceased working, or at least working as consistently as before. This has led to long-run deterioration in timekeeper productivity. After two decades it has created the structural problem of warehoused labor. This is costly and in times of contraction a significant anchor that limits management's options. Warehoused labor should have been dealt with during good years – a lesson we had hoped had been learned in the Great Recession. If we are serious about reshaping our law firms, this must take high priority as firms come out of the pandemic.

THE COST OF WAREHOUSED LABOR WITH AVERAGE OVERCAPACITY
– 400 LAWYER FIRM –

	Number of Lawyers	Reduction in Force	Average Compensation	Saved Compensation
Equity Partners	88	11	$500,000	$5,500,000
Non-Equity Partners	64	14	$250,000	$3,500,000
Others	248	27	$125,000	$3,375,000
Total	400	52		$12,375,000
Adjusted Savings (50% of total)				$6,187,500
Per Equity Partner				$80,357

COVID-19 has created another type of investment in the future – in the decision not to lay off formerly productive lawyers and groups because the pandemic has decimated their practices. Law firms eventually may have to do that if the crisis is too long or too extreme, but the cautious attitude that looks out into 2021/2022 and says we will need these skills and experience so let's find a way to manage through with them is the smart strategic opening gambit in this chess match.

The last category, chronic underperformance, goes beyond simple inadequate economic contributions, although many firms define chronic underperformers by their low billables. Chronic underperformers are typically a small number of individuals who cast a very long and disproportionate shadow over firm management. Just ask your high performers what drives them crazy – it's management not dealing with the underperformers.

We take a slightly broader view of underperformers, recasting them as under-contributors. This fits with our sense that the firm should also be just as upset with a shortfall in contribution across an array of factors[ii] that are relevant expectations for the position. Chronic underperformance using this definition will possibly double the small number of chronic economic underperformers, based on our experience. Candid conversations regarding performance deficiencies must be had during the remainder of the third quarter of 2020. If a turnaround is to be undertaken it should be with milestones and mentoring. Within six months you will know if a turnaround will be successful, even if the turnaround plan calls for 18 months or longer to be fully implemented. Again, timelines should account for the COVID effect on markets and operations. Outplacement assistance should be provided for those who do not want or cannot step up to expected contribution levels.

First the lawyers, then the staff. Reductions in lawyer headcount cascade into staff support reductions in secretaries, technology, finance and other positions. Significant reductions in legal secretaries have been underway in the profession for some time and show little sign of slowing down. As lawyer technology proficiency[iii] is enhanced, there are opportunities to achieve even further personnel reductions across all jobs.

Law firms like to say they are learning to operate like businesses and fashion themselves around traditional corporate operating structures. And like corporates, they can become bloated with excess bodies and layers of management. Strip it down to the essentials – fewer C-suite executives and flatter structures. When corporates slim down you often see reductions in management levels and positions. Law firms should do the same.

A Smaller Space

The workforce shift creates opportunities to reconsider the second largest cost – physical space requirements. If occupancy is roughly 6% of revenue and it is cut in half (a reduction to 3%), it increases profits 7.5% from 40% (a typical ownership profit margin) to 43%. How much law firm work can be done remotely? Some are estimating that anywhere from 10% to 33% of lawyers and staff could easily stay remote, and with some effort possibly up to 50%. With determined focus those projections could prove quite low. However, we will not know how far we can push this if we don’t capitalize on the initial steps forced upon us out of necessity. There are huge corollary benefits to this – less commuting and less stress on mass transit/roadways, less pollution, less wasted time and expense for both employers and employees. As for that remaining office space you need to retain – you will have far more bargaining power as rising vacancy rates create a renters’ market.

POTENTIAL SPACE COST SAVINGS FROM RIGHTSIZING AND REMOTE WORK
– 400 LAWYER FIRM –

	Number of Lawyers	Billable Hours*	Average Billing Rate*	Fee Collections
Equity Partners	88	1,450	$505	$64,438,000
Non-Equity Partners	64	1,360	$415	$36,121,600
Others	248	1,650	$310	$126,852,000
Total	400	623,840	$365	$227,411,600
Full occupancy cost (est'd. 6% of gross revenue)**				$13,645,000
Full occupancy cost - per Equity Partner (88 EPs)				$155,057
Savings from 13% rightsizing (52 lawyer reduction)				$1,774,000
Savings - per Equity Partner (77 EPs)				$23,039
Savings from 50% remote workforce after rightsizing				$5,936,000
Savings - per Equity Partner (77 EPs)				$77,091
Combined savings from rightsizing and remote workforce				$7,710,000
Combined savings - per Equity Partner (77 EPs)				$100,130

** Average for 2018*

*** Typically, 850 square feet per lawyer and $40 per square foot, or 6% of revenue*

COVID-19 Epilogue (hopefully)

Some firms have begun to restore pay and hours sensing that possibly the worst is past and that the low economic point has come and gone. We have seen this first in accounting firms and obviously law firms and in the broader reopening efforts around the nation. This is good news but should not be a reason to fall back into old patterns.

While the mantra has been, we are all in this together, in business there will be winners and losers. Some part of a firm's fortunes will be determined by decisions made long ago on practice or client focus. Those are inevitably linked to the consequences of COVID’s path. Other outcomes will be determined by the actions of leaders. Those are not inevitable, but after a while may be irreversible.

Remain vigilant and cautious as further unpleasantness could be ahead of us. Continue to run your projections. Use multiple scenarios, including COVID resurgence in various forms. The data on reopening illustrates the risks and volatility of this situation. There is still a great deal to learn about the virus, how to stop it and how to protect against it. And we have not yet felt the second, third and fourth order effects of the pandemic. Pay close attention to how cities, counties and states are adjusting their efforts and protocols. Monitor what the school systems are able to do and recognize that if learning remains mostly remote, it will affect your workforce.

In 2019, McKinsey & Company did a study of economic downturns[iv], and one of their key findings was that the top-quintile performers post-Recession – termed by them as 'Resilients' – delivered bottom line results in spite of top line challenges primarily through operational effectiveness and cost reduction. While the initial gambit in this pandemic induced recession has been an appropriately different tack; the long-term need to deliver remains paramount.

Beyond that keep a keen eye focused on your ability to serve client needs and to reshape your law firm for the new normal.

Stay well and safe.

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End Notes

[i] "If you build it, he will come," *Field of Dreams*, 1989.

[ii] See two Altman Weil articles that provide a more complete picture of a fully contributing partner. These contributions are not optional and are applicable to other lawyers when appropriately modified for the role and experience level of the individual.
- *What Is Expected from a Partner?* by James D. Cotterman, Altman Weil, Inc., www.altmanweil.com/Expectations
- *What Are the Obligations of Partners?* by Thomas S. Clay, Altman Weil Inc., www.altmanweil.com/Obligations

[iii] For more information on technology proficiency for lawyers, readers might refer to the Legal Technology Assessment: www.procertas.com/offerings/legal-technology-assessment

[iv] *Bubbles Pop, Downturns Stop*, McKinsey Quarterly, May 21, 2019, McKinsey & Company. www.mckinsey.com/business-functions/strategy-and-corporate-finance/our-insights/bubbles-pop-downturns-stop