

"Re-Creating a Sense of Family and Community in the Practice of Law"

Address Given By Marty Smith

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Thank you, Bob. I also want to thank KL Gates, the firm I practiced with for 25 years, Microsoft, my long time client when I was in the private practice, and Perkins Coie, a place where many of my friends work, for sponsoring this event.

Upon learning of my talk, a former colleague and a contemporary here at the law school called me and asked: "Marty, what incendiary thoughts do you intend to toss into the legal profession during the course of your remarks and have you thought through what the sponsors and your alma mater might have to say about it?" Well, Karl Quackenbush has always been a perceptive fellow and he is partly right. While I love our legal profession, I feel the best way to show my caring is to challenge the legal profession to think about what I see as some very hard issues before us. I strongly believe that we are at a historic inflection point in the practice of law, one that depending on how we react to it as lawyers, will define our profession and its practitioners for years to come.

I have often felt that one of the greatest assets of a lawyer is deep training in the precedential system. While a system of precedent is essential to the Rule of Law and to those who help administer it, this grounding in precedent can preclude a lawyer from thinking outside of the proverbial box. It is probably no surprise therefore, that the topic for my remarks tonight actually came from a non-lawyer, one of my best advisors and friends, and the person who most often challenges me to think outside of the box, my wife Cathy. Four months after leaving the private practice, Cathy and I were visiting over coffee about the challenges facing the profession today when she said: "Who says it has to be this way? It wasn't like this when you started practicing law 25 years ago." That simple question and observation led me down a path of looking at the practice of law today and asking "What has changed that I and so many of my contemporaries in the practice sense and feel in our hearts has threatened the spirit and soul of the profession, but perhaps few of us have yet to fully articulate? If we identify it and talk about it, what out of the box thinking could we bring to bear to help address it?"

This leads me to the topic of my remarks tonight, "Re-Creating a Sense of Family and Community in the Practice of Law". This title articulates what I believe is the fundamental challenge facing the soul and spirit of the legal profession today, namely, a loss of a sense of family and community in our profession, our law firms and legal

departments. I would further hypothesize, that this loss is spilling over into the personal lives of our lawyers and their immediate families in a very negative way.

The signs of this loss are everywhere. In his recent book "*The Destruction of Young Lawyers*" Douglas Litowitz, a law professor and practicing lawyer, succinctly states our current state of affairs:

Young lawyers are morosely unhappy by every conceivable standard. They arrive at our law schools brimming with enthusiasm, but a decade later they are reporting staggering levels of anxiety, drug addiction, and depression. In legal circles there is talk about a "crisis of professionalism" and a "decline in civility."

Dissatisfaction is not, however, restricted to young lawyers. The London Times reported in a story on July 2nd of this year that a recent survey of 2,500 U.K. lawyers found one-fourth of them want to leave the profession. The number of U.K. associates wanting to leave the profession is even greater at more than one in three. In a not unrelated finding, one in five law firm managing partners reported wishing that they were in another job. In a follow-on story on July 9th, the London Times reported that the U.S. was doing lawyer dissatisfaction "bigger and better" than the U.K. as evidenced by recent polls placing U.S. dissatisfaction at 40 percent. As the columnist noted tongue in cheek, there are now almost more books, articles and websites dedicated to the subject of legal despair than there are lawyers in America.

My remarks on this topic necessitate that I answer three questions:

1. What is the sense of family and community to which I am referring?
2. Has it really been lost and, if so, why should we care about it?
3. If this really matters to us, what can we do to re-create a sense of family and community in the profession and what is the role of technology in accomplishing that?

I want to recognize from the start of my remarks, that there are still a number of lawyers, law firms and legal departments that have very much kept the notion of family and community at the core of their values and actions. I applaud them for their courage and efforts. I am concerned, however, that in today's legal world, they are in the distinct minority.

1. What Is the Sense of Family and Community to Which I am Referring?

A Sense of Family: So what do I mean by a "sense of family" in the legal profession? Any dictionary definition of "family" typically includes the following:

"A group of people who are generally not blood relations but who nonetheless share deep interpersonal relationships, common attitudes, interests, goals and values and have long-term commitments to one another"

As an example of this meaning, they cite the following: “They treated me like family”. So what is it like to have a sense of family in the practice of law and accordingly to be treated like family? For me to articulate this, I need to take you back to when I started as a young associate at Shidler McBroom Gates & Baldwin in 1981. In looking back on those days, I believe that the Shidler law firm, as well as most other firms in Seattle, had a very strong sense of “family”. In my experience, that sense of family came from six distinct attributes:

(i) **Deep Interpersonal Relationships:** One of my first experiences at the Shidler firm was what was affectionately known to the associates as “The Long March”. Although he was retired, Roger Shidler made a point of taking young associates to lunch on a fairly regular basis. Roger in those days “shuffled” more than walked and one of his favorite activities was shuffling from the Norton Building to the Pike Place Market for lunch. Given Roger’s pace, it typically took about two and a half to three hours for this activity (hence the nickname the “long march”), but it was one of the best things you as a young lawyer got to do. Roger would visit with you on the way, asking what your goals were as a lawyer, how your family was doing, what matters you were working on and whether you were enjoying them, what were your plans for the coming weekend, and a host of other questions that really were all about you as a person. Roger, however, wasn’t the only one to make such connections. Each and every one of the partners and associates at the firm reached out and adopted not only you, but your significant other, and if applicable, your kids as well. Simply stated, we took the time to know each other and each other’s family members as individuals and human beings. We valued and placed real importance on interpersonal relations, not only at the firm, but by also allowing and encouraging our lawyers the time to develop a life outside of the practice of law and to spend time with and enjoy their own families and friends.

(ii) **A Long-Term Relationship:** Every associate at Shidler and for that matter at every other firm in town was hired with the belief and expectation that they were long term players. If in 1981 someone in Seattle had used the phrase “planned attrition” it would have been called out as the oxymoron it really is. You did not hire associates with the belief, let alone economic model, that more than three quarters of them would be gone in eight years. Just as young lawyers were investing their time and talents in the firm, the firm was investing its time and resources in them, their training and their growth. This long-term perspective led to a long-term commitment on both sides, with neither measuring nor assessing their relationship on a monthly, let alone weekly basis.

(iii) **An Environment of Teamwork and Trust:** Just as strong nuclear families have great teamwork, so do lawyers within strong law firms. Teamwork requires communication and trust, a common purpose, a willingness to give and receive assistance, and a capacity to put the interests of other individuals and those of the larger group over those of your own. Communication at the Shidler firm typically meant walking down the hall to have a face to face visit. It meant taking time at the beginning of the day to gather in the coffee room, read the paper and exchange viewpoints on a variety of topics well beyond the practice of law. The common purpose we shared was practicing law to the highest standards possible and doing so in an environment that respected and valued the

contributions of all within the enterprise. If you walked down the hallway at any given time, almost every door stood open and you were welcomed and expected to drop in to seek and give assistance and advice. Success was never at an individual level, it was always the firm who won or lost a case, closed a deal, or made new precedent. There was no place for self-aggrandizement. I'll never forget the first month I was at the firm; Bill Gates Sr. came around with a stack of \$100 bills, in those days a lot of money considering my annual salary was \$24,000. Bill proceeded to hand out a \$100 bill to each associate and to each staff member, thanking them for their collective efforts on a contingent case the firm had won. This gesture exemplified generosity, honored teamwork, and acknowledged everyone's role in the enterprise, no matter how small the contribution on this particular case.

(iv) An Opportunity for Personal Growth and Mentoring: Personal growth was always recognized as a necessity for every lawyer and employee at Shidler. Partners, associates and staff alike were expected to continue to grow and improve their skills and talents. Looking back on those days, there are two examples which I think exemplify a culture of personal growth and mentoring. The first is the story of Kim Church who, when I started in 1981, was a typist in the word processing department. When I left the Preston firm in 2006, Kim was the firm's Chief Information Officer, a position she reached through a lot of hard work but also with the support of a firm that believed in her and gave her the opportunity for significant personal growth. The second example is my own. As a young associate at Shidler I was an atrocious writer. Bill Gates put it to me simply after reading my first memo for him: "Marty, I don't think this is of the quality we would send to a client." Unfortunately, I did not learn to write well in my undergraduate years as a biology major and, I hate to say, those skills did not improve here at the Law School. Within literally days of my turning that memo into Bill I was enrolled in a special writing program with a personal coach. Simply put, the firm was willing to make a long term investment to allow me to grow and that investment caused me to want to make an equal investment back to the law firm. Mentoring in those days did not require a special, formal program. Every lawyer, whether at a mid or more senior level, was expected to mentor and help the younger lawyers in the firm. Whether taking a younger lawyer to court, a negotiation session, or on a civic project, importance was placed on the mentoring and training that took place and not on whether the time was billable.

(v) Respect and Support for a Lawyer's Outside Interests: Each lawyer brings to their job interests that go beyond the legal work they are currently doing in addition to interests that go beyond the practice of law. In my case, I had an interest in international law that went beyond both what the Shidler firm in 1981 had in the way of client needs as well as beyond anything I had done in law school or the practice to date. Undeterred, in 1983 as a second year associate, I proposed that I be funded and allowed to go on a King County Bar Association trip with 25 other lawyers to the People's Republic of China in a first step to begin to understand and develop a practice in international law. The firm allowed me to take that trip which, along with a lot of individual study, gave me the knowledge and confidence to take on Microsoft's international legal work when their need for that expertise began to explode in late 1983. But the firm's support for the outside interests of a lawyer also went beyond new areas of practice. One of the more

memorable examples I can recall is the story of Bill Pope and the Village Theatre. Bill was a contemporary of mine and, along with his wife Cheryl, was a very active supporter of the dramatic arts. Together, Bill and Cheryl signed up for the lead roles in “Grease” at the Village Theatre in Issaquah. The firm not only gave Bill the time to make his many practices, but a large majority of the firm took the time to attend opening night as well. When Bill then decided that he would help out on the capital campaign for a new building for the Village Theatre, the firm was a significant donor and worked to get a number of its clients, including Microsoft, to support that cause as well.

(vi) **Fun and Laughter:** There are two quotes about laughter that I love. The first is by Victor Borge: “Laughter is the shortest distance between two people.” The second is by Jean Huston: “At the height of laughter, the universe is flung into a kaleidoscope of new possibilities.” It probably goes without saying that I believe laughter is a key element in creating a sense of family in a law firm. The reasons are many. First, we should seek to have fun each and every day of our lives. Life is simply too short to do otherwise. Second, a person who has fun on the job comes home with positive energy that infects his or her family to their benefit. Conversely, a person who comes home with their energy drained and their sense of humor at an all time low is not going to be the best spouse, parent or neighbor with whom to spend time. Third, laughter does in fact improve interpersonal relations and lead to new creativity as the quotes indicate. At the Shidler firm, the sense of humor and fun was exemplified from Roger Shidler on down. Practical jokes, associate skits, after work socializing all led to the creation of a fun place to spend time and work. No matter how hard the day, there were always interactions that kept you smiling.

A Sense of Community: One of the best definitions of “community” in the manner I intend to use it in my talk tonight is one I found on the Internet: “A socially organized response to authentic human life”. So what is it to be an active participant in your community when you practice law? For me, as an associate at the Shidler firm, this revolved around the following: *An Expectation that You Would Give Back of Your Time, Talents and Resources to Your Greater Community*. Bill Gates Sr. used to say that lawyers were uniquely suited amongst all the professions to give back to their community. Their training, their advocacy and counseling skills and the nature of their work days allowed them to take on unique roles in their communities to foster change for the good of society. Whether it was serving on a board, taking on a pro-bono matter, organizing a firm-wide food drive to fight hunger, or making a financial contribution to a worthy cause, lawyers were expected to be leaders of positive change within their communities. Not only was time made for these activities, there was an affirmative expectation that as a lawyer you would be involved in improving your community. Part of your personal compensation, and that of the law firm, was simply the good you were able to help accomplish for the society in which you lived.

2. Has This Really Changed and If It Has, Why Should We Care About It?

I know there are a lot of you out in the audience tonight who are probably saying to yourself that Marty’s retirement has lead him to do nothing but wax nostalgic about his

younger years and the days when he really did look like that photo in the program. Well, you may be right, but the dissatisfaction numbers amongst current practicing lawyers speak for themselves. In my mind, the question becomes what is at the root of that dissatisfaction and does it potentially arise from the loss of a sense of family and community. If you'll bear with me for a few minutes, I'd like to focus on today's lawyers and law firms through the lens of the attributes of family and community I just articulated:

(i) **Deep Interpersonal Relationships.** There is no scientific poll I have found that tracks this attribute, but my own personal experience tells me we have lost a lot of the interpersonal aspects of the practice of law over the last ten or more years. For those of you in law firms today, I ask you to think about the people you practice with or who have offices on the same floor that you do. Can you name each of those lawyers and their significant others as well? Do you know if they have children and the names of their children? Do you know their outside interests and hobbies or where they last went on vacation? If so, I applaud you, but I suspect you are in the minority of lawyers in this room. It goes without saying that the average size of today's law firm is significantly greater than it was 20 or 25 years ago. But I ask you, does the overall size of a firm preclude a lawyer from developing interpersonal relations with at least a subset of the lawyers with whom they spend significant hours in the same practice area or walking around the same floor of the same office building? I would argue not, but I believe that we have let the size of law firms be a convenient excuse for the increasing lack of interpersonal relations in our professional practices. Let's face it. Lawyers are no different than any other type of worker. They want to be and will only remain in an environment where they find a personal connection to the individuals that they spend the majority of their working day with.

(ii) **A Long Term Relationship.** This is an attribute for which there is interestingly a lot of data. The National Association for Legal Career Professionals (NALP) put the 2005 attrition rate for 5th year associates in private law firms at 78%, compared with 60% in 2000. The average annual attrition rate for all associates in 2005 was 19%, compared with 16% in 2000. In an article entitled "Exit Strategy", the American Lawyer reported that nearly two thirds of 3rd and 4th year associates surveyed did not expect or didn't know if they would be at the same firm in five years. The numbers on partner departures are harder to find, but given the people I personally know who have changed firms or left the practice, I suspect that the partner numbers are also at all time highs.

(iii) **An Environment of Teamwork and Trust.** This attribute is another one that is hard to measure or to gather data on. Every law firm in its recruiting and client facing materials will tout its teamwork approach to the practice of law. But the amount of teamwork that actually occurs at a given firm is often a different story. Perhaps the easiest way to test the importance of teamwork to a law firm today is to look at their compensation model. Does it truly reward team players and team conduct and, equally if not more importantly, does it penalize solo operators no matter how big their financial contributions? Most law firm compensation models I have first or second hand experience with, place the primary if not exclusive emphasis on individual productivity numbers. Other ways to probe around on the issue of teamwork is to ask a given lawyer

how they actually got a particular project – did they originate it or did it come from a colleague who appropriately brought them in due to their skill or background? What would most of the lawyers in your firm say? Similarly, if you look at the staffing of a particular deal, does it truly reflect a teamwork approach with the right expertise and levels of experience brought to bear, or was the collection of personnel pulled together for other reasons? Perhaps a different approach to looking for teamwork and trust in today's law firms is to go back to the attributes of teamwork I previously discussed: communication and trust, a common purpose, a willingness to give and receive assistance, and a capacity to put the interests of other individuals and that of the larger group over those of your own. Using just those subjective metrics, how does your law firm or legal department measure up? How is your communication? Can you articulate a common purpose? Is assistance readily given and received? Whose interests dominate the day?

(iv) **An Opportunity for Growth and Mentoring.** It is an interesting phenomenon that most firms have created, or are in the process of creating, more and more categories into which to place their lawyers. Everyone knows the two primary categories of partner and associate, the same that were around in 1981. In recent years, however, I have come across multiple new categories: equity partners, non-equity partners, income partners, guaranteed payment partners, contract partners, of counsel, senior counsel and the list is growing. And if that list isn't enough, last week the Chicago based firm of Chapman and Cutler announced that it is going to a two tiered associate model. So, what are the opportunities for growth in a profession that now has so many boxes into which to pigeon hole their lawyers? How does a lawyer get from one box into the next? Are these boxes good for the lawyers and their growth opportunities or for the financial good of a few? At least one researcher has concluded that there is “some evidence that the appeal of permanent non-equity partnership status, which typically would entail fewer business development demands, may set in motion an adverse selection problem at the associate recruitment level, thus undermining some of the perceived benefits of a two-tier format”. Stated differently, if we don't present our lawyers with growth opportunities and the prospect of a long term relationship, we will not attract and retain the type of talent we need to grow and maintain a successful law firm.

Well, what about training and mentoring? I have yet to find a firm that doesn't tell recruits about some form of mentoring program or process. However, the reality is that formal mentoring programs rarely work. The best training and mentoring I personally experienced took place in a centuries old way, namely an apprentice accompanying a master tradesman on the job. So, what are the opportunities for a young lawyer to learn in today's world by the old fashioned apprenticeship model? I would argue they are few and far between, and the reason has nothing to do with the desires or talents of either the apprentice or the teacher. Rather, it has everything to do with billing rates and retention rates. Years ago, I would routinely call a client for permission to “double bag” a client meeting, a negotiation session, or similar environment where learning could take place. Typically, the client would have two questions in this order: First, is the associate you have in mind a long term player in your practice group? Second, what is the associate's hourly rate? In my experience, clients were always willing to pay for associate training provided that the cost was reasonable and the training would benefit the client in the long

run. Today's associate rates, driven both by salaries and overhead, have many clients refusing to pay for this approach to associate training, especially when retention rates are so bad. Unfortunately, this leaves young associates between a rock and hard place; namely, whether to volunteer on a non-billable basis to participate in such meetings, which then puts them behind on their hourly quotas, or to figure out on their own other ways to learn the practice of law.

(v) **Respect and Support for a Lawyer's Outside Interests.** This is another attribute of family and community that is hard to measure. However, thinking that this point is what many in the profession would call "work/life balance", I undertook a very simple exercise. I typed into an Internet search engine the words "lawyer work life balance" and came back with 2,210,000 hits. If you do the same but use the word "physician" in place of lawyer you end up with 323,000 hits. Hardly a scientific study, but I would suggest our profession has created the greatest difficulties in finding work/life balance for our practitioners. We are also the only profession to have an online "[Attorney Work Life Balance Calculator](#)" that purports, and I quote, "to help you determine how many total hours you must spend in your office during the week (Monday through Friday) in order to meet the billable hour requirements of your firm (taking into account vacation, personal and other "days off"), and the amount of time you'll need to spend working at home after work or on weekends if you can't meet your firm's billable hour requirements solely from your time in the office during the week." While I did not use the term work/life balance in my earlier remarks, I would suggest that respect and support for a lawyer's outside interests is really all about promoting a healthy work/life balance. The very existence of such "online calculators" for our profession is indicative of the terrible job we are doing helping our young lawyers find meaningful balance in their professional and personal lives.

(vi) **Fun and Laughter.** This attribute is another one not subject to scientific assessment, but I suspect if you asked the majority of lawyers when was the last time they had fun in the practice, or a belly laugh with their colleagues, they would take more than a few minutes to respond.

Finally, I want to turn briefly to community. I know that a variety of local, state and national bar associations are working hard to improve the pro bono performance of individual lawyers and law firms and have made some real headway in that regard. However, if you look at community work outside of pro bono, I have to ask some questions, especially as to the future: Where is the next generation of community leaders within our profession? Leaders like Bill Gates Sr., Jim Ellis, and Shan Mullins for Seattle or their equivalents in any other city? From which pigeon-holed category of partner will they come? Are they out there today learning how to be effective community leaders for tomorrow, or are they in their firms working to make sure they meet their monthly billable hours? If they are out there, who is taking the time to mentor them?

So, what does this all mean? Is our working environment really that bad, and if so, should we really care about changing it? Isn't it just a fact as I have been told time and time again that law is just becoming a "big business" and that we need to accept the inevitable

changes that normally come with large enterprises? My strong conviction is that, regardless of the increasing size of our institutions, law firms face dramatic challenges we desperately need to care about and address lest we leave the profession of law truly at stake. Thinking about the current state of the legal profession, I challenge you to ask yourself honestly whether you would encourage your son or daughter to go into the practice of law today. If not, why not and what does that say about the future of our profession? Is not the role of lawyers in our society critical to the rule of law, fundamental justice, and a functioning democratic system? If we can't attract, train, and retain the best and the brightest, will our legal system ever be the best it can be?

3. What Can We Do to Re-Create a Sense of Family and Community in the Profession, Our Law Firms and Legal Departments and What Is the Role of Technology in Accomplishing That?

So, what can and should we do about this and given that this is the Shidler Center for Law Commerce and Technology, what role can technology play? I believe there are four steps we need to undertake to re-create a sense of family and community in the practice of law and to create a better profession for ourselves, our younger colleagues and for future attorneys.

(i) **Define Our Profession by More than Money.** For some reason in the last ten or fifteen years, we as a profession have allowed so called industry pundits to define law firm success through one dimensional metrics. When we allow simple measurements such as raw numbers of lawyers in a firm (the AmLaw 100) or how much money equity partners make (the AmLaw reporting of Net Income Per Partner) to be the primary if not sole measuring sticks of lawyer performance and law firm standing or success, it is no surprise that the sense of family and community, of which I have been speaking, quickly falls by the wayside. When law firms compete to attract new talent based solely on starting salaries and not on the quality of life, community service, a long term relationship, the type of work available and overall job satisfaction, we lose all of the values of which I have been talking. When law students chose their firm based solely on who pays the most, we unfortunately evolve down to a single, shallow metric by which to measure ourselves as professionals. I personally believe a large part of the problem is that we as a profession have a very inflated sense of our worth in the world. When the starting salary for a first year lawyer in New York hits \$160,000 dollars as it recently did, it places that first year lawyer in the top 3% of all workers in the United States -- without ever practicing a day in their lives. Looking at it differently, that salary is equal to the salary paid to five starting K-12 classroom teachers. I personally believe the issue of inflated compensation is not limited to associates. For 2006, 59 of the AmLaw 100 firms had net incomes per partner (NIPP) in the \$1 million-plus category, 15 had a NIPP of \$2 million or more, and 3 firms had a NIPP in excess of \$3 million. I hope I am not the only one wondering, what lawyer in the world is worth the equivalent of 94 school teachers or 68 police officers?

These examples more than suggest that there are some very hard issues and core values our profession needs to think about and address. Success is ours alone to define, and I

strongly believe the time has come for a new and multidimensional definition of what it means to be a successful lawyer and law firm. I believe this definition needs to be created by our profession, both practicing lawyers and law students, and not delegated by inaction to industry pundits. Perhaps a model for us to look at is the rating systems of colleges and universities that have been developed by Princeton Review and US News and World Report. Their factors include, in essence, quality of work (as measured by academic rigor), mentoring (as measured by faculty to student ratios), quality of life (as measured by student happiness and other factors), retention rates (as measured by returning freshman), peer assessment (as measured by the institution's reputation in the academic community), success in getting its students to the next level (as measured by graduation rates and acceptance in graduate programs), diversity (as measured by minority and women students and faculty), alumni support (as measured by alumni giving), community service (as measured by town and gown relations) and financial resources (as measured by per student spending).

(ii) Change Our Infrastructure to Reduce Our Costs and Enable Alternative Staffing Models. If high salaries weren't enough, Altman Weil reports that law firms have allowed their overhead to expand over the last twenty years at a rate that is almost double that of the Consumer Price Index for the same time period. Because traditional law firms continue to build out expensive, high rise office space while at the same time adding layers of management and so called marketing expertise, it is no surprise that low priced competition in the form of Legal Process Outsourcing operations (LPOs) based in India, the Philippines and a host of other countries are challenging many U.S. firms for low end legal work. High overhead also makes it difficult, if not impossible, for law firms to employ part time lawyers whether they are parents with young children or just individuals who can't or do not want to put in the hours needed to cover an excessive overhead. Just this week, I had a conversation with a managing partner of the Seattle office of a very large multinational law firm (and no, it was not my old firm). Like so many conversations I have had with managing partners over the years, he said "Associates just don't get it. I explain to them their salary and their overhead and they still won't do the math to see how many hours at their rate we need them to work just to break even." I would suggest that, just perhaps, it is the managing partners who are not getting it. There are four variables in the equation (salary, rate, hours and overhead) and perhaps all four should be examined as variables and a new approach developed.

The time has come for those in the legal profession to think outside of the box as to both lawyer infrastructure and staffing models. In many ways, a rethinking of overhead and staffing has already started and, not surprisingly, it is taking place outside of traditional law firms. Several of my former colleagues have developed very successful careers using nothing more than a home office and a personal computer. Interestingly, they are working at about half the pace, have reduced the hourly rates they charge their clients, and still have managed to earn close to their prior incomes. Organizations such as [Axiom Legal](#) are also appearing on the scene. Axiom bills its lawyers at \$150 an hour, pays those lawyers on average of upwards of \$200,000 a year and allows those lawyers to say no to assignments and to set their own work/life balance, including the ability to take off three to six months a year. Needless to say, the Axiom work model has very little overhead.

(iii) **Move Away From the Billable Hour.** Perhaps not surprising, it is clients who have started to lead this discussion. Mark Chandler, the General Counsel at Cisco, gave a speech in February of this year in which he said “the most fundamental misalignment of interests is between clients who are driven to manage expenses, and law firms which are compensated by the hour.” Mark went on to say that “the current system also disserves the lawyers themselves, particularly the associates, also known as the next generation of partners.” I have known Mark for a number of years now, and he really has been at the front of the parade in driving law firms to change their models. In a recent conversation with Mark, he told me that he has been able to move over 80% of Cisco’s legal work to fixed fees, including areas such as M&A and litigation. Not surprising, flat fees shift the cost risk on to the law firm as well as create an incentive for the firm to be more efficient, resourceful and accountable. Lawyer compensation, rather than being gauged by how many hours you bill, becomes instead a task of how efficiently can you work. Not surprisingly, efficient lawyers have more time for outside interests and community service, which allows for better work/life balance. Finally, fixed fees remove the potential for ethical abuses such as padding of hours, undertaking work for which there is a questionable need, or having over qualified lawyers take on work in order to meet quotas – all of which can exist in today’s hourly model.

(iv) **Utilize Technology for More than Email and Word Processing.** During a time period when most every other industry and profession in America has found a way to use technology to lower their costs and improve their efficiencies, we seem to have found a way to use technology as a convenient excuse to increase billing rates and client fees. As previously mentioned, it is not surprising that a business that is paid by the hour has little incentive to use technology to reduce the number of hours it takes to accomplish its work. However, every law student in this room tonight knows the power of technology and what it could do to truly revolutionize the practice of law and increase access to justice. If we think of the various issues I have discussed tonight, technology can play a large role in addressing every one of them. Let’s look at just a few.

How many lawyers in the room tonight have Skype or Facebook accounts? If you want some fuel for the fire about how to improve interpersonal relations in today’s world, just ask anyone under 20 how they use tools such as Facebook and Skype to create virtual communities of their friends and colleagues. I know some of you may get queasy at the thought of how our teenage population uses Facebook, but look at the underlying concept and its power. [Legal OnRamp](#), a Bay area startup, has in essence has built out a Facebook type of site for lawyers that is getting phenomenal traction. You should really take a look at it for an example of how technology can create online communities of lawyers, help establish interpersonal relationships, and enable a real time exchange of ideas all while building a form of collegiality. Legal OnRamp is also building out a community based legal knowledge system that is free or very inexpensive. Their belief is that basic legal knowledge in the information age will be free, and that main role for lawyers in an age of technology will be advocacy and counseling and not today’s cash cows of basic legal research or massive document reviews.

As some of you know, I have spent a fair amount of time and effort working on software products that improve the efficiency of the legal practice and in the process enable lawyers to move away from the billable hour. [Attenex Corporation](#), of which I was a co-founder, markets data analytics software tools that removes much of the drudgery from the legal review of large document sets, whether in connection with e-discovery or M&A due diligence, while at the same time improving the number of documents that can be reviewed in a hour by a factor of ten. If firms are willing to use such new technology along with a new business model (for example, billing by the document reviewed as the KL Gates firm did over 6 years ago), both lawyers and their clients can win.

Expert systems already exist that can speed up the creation of documents and the finding of relevant information within a law firm. The question is, which law firms will be the first to truly employ such systems for the benefit of both their lawyers and their clients? Virtual communities of both full and part time lawyers with significantly less overhead are already being established by players such as Axiom Legal. The opportunity clearly exists for such new enterprises to challenge traditional law firms in ways yet to be imagined while, at the same time, creating for their practitioners a sense of family and community missing in most traditional, physical law firms.

So where does this all lead? Can we as a profession reclaim a sense of family and community, and along with it, improve our destiny? Is it as simple as articulating and following a more complete metric for measuring success, lowering our overheads, changing our billing model, and using technology? I am by no means certain this is the right formula, but I do know that the time has come to talk candidly about our issues. If we use our collective experience and tap into the optimism of young, enthusiastic law students like the ones in the room tonight, anything is possible. Professor John M. Richardson Jr. at American University once said:

“When it comes to the future, there are three kinds of people: those who let it happen, those who make it happen, and those who wonder what happened.”

Let ours be a profession that makes the right thing happen.

Thank you.