

***Disaggregation  
and the  
Guild***

John Steele

# History of the Guild

---

- 1970s
- 1980-90s
- Dotcom boom
- Today

# Clients today

---

- Naïve clients
- Clients like Del Monte
  - GCs cut costs
  - GCs “shield” officer/directors
  - GCs manage litigation

# Biglaw today

---

- High profit margins
- Chasing PPP for rain-makers
- Yet, psychologically “at the margin”
  - New work
  - New revenue
  - Profitable work

# Biglaw today

---

- The elastic tournament
- Reserve army of lesser employed
- More AmLaw 100s chasing same students

# Disaggregation

---

- High costs invites competition
- DuPont Plan
- E-discovery
  - High costs
  - (Primary responsibility on lawyers)

# Contracting Process

---

- Client advantage
  - RFPs, ITBs
- Law firms slow to innovate
- “Battle of the Forms”
- Firms will accede to client needs

# Limitations on Disaggregation

---

- Ethics
- Fear/Conservatism
- QC
- Economics

# Limitations: Risk

---

- Qualcomm (cont'd below)
- Morgan Stanley
- Orrick v. e-discovery vendor
- Sullivan v. e-discovery vendor

# Qualcomm

---

- Large patent case
- \$10 million sanctions & loss of 2 patents
  - Six lawyers referred for bar discipline
- Disaggregated legal work:
  - In-house counsel
  - Trial counsel
  - E-discovery vendor

# Limitations: Risk

---

- What will London say?
- Hold harmless and indemnity clauses
  - Traditionally unethical
  - Standard in commercial settings
  - UK firms now routinely seek them
- What will the US do?
- Exporting costs to India?

# Prognosis 1: Disaggregation

---

- Cannot be stopped
- Through outsourcing and otherwise
- Economics are too attractive

## Prognosis 2: Firms

---

- Will push back on risk
  - Seek hold harmless, etc.
- Will work more like accountants do
- May become innovators
- Elastic tournament accelerates
- Brass ring for fewer and fewer

# Firms managing the problem

---

- Meticulously document disaggregation
- Consider what we can't delegate
- Work papers like accountants?
- Getting client buy-in
  - Opponent who claims spoliation
  - Cranky judges
  - Mistakes

# Prognosis 3: Law Schools

---

- Increased pressure on tier 3-4 schools
- Focus on professional trade education
  - Carnegie Report
- Undergraduate studies?
- Good for law schools abroad?

# Prognosis 5: Clients

---

- Accelerating disaggregation
- Continue driving trend
- Will respond to firms' risk sharing moves
- Bring the market to law firms



