

# President's Message

by Michael W. Robinson



## “The Times They Are A-Changin’”

*Come gather around people  
Wherever you roam  
And admit that the waters  
Around you have grown  
And accept it that soon  
You'll be drenched to the bone  
And if your time to you is  
worth saving  
Then you better start swimming  
or you'll sink like a stone  
For the times they are a-changing*

Recent Nobel Laureate Bob Dylan penned those words fifty-two years ago proclaiming the massive social, political, and generational changes underway in the country. I thought of those lines when considering the changes our profession has recently seen and continues to face. We lawyers can be slow to embrace change; remember, one of our key decision-making tools—precedent—relies on past decisions as an essential guide to settle current issues. But the scope and pace of change has hit like a flood, and as Dylan warned, we better start swimming.

Numerous factors have driven the changes we see in the practice of law. But chief among them is the advent of technology and an Internet-based, e-connected populace and economy. The digital age has changed the way people obtain and exchange information, shop, communicate, make “friends,” learn, and do just about everything else. For lawyers, it has remade and spawned entire practice areas. It has changed the way we communicate with clients and each other, changed the way we market and how clients—individual and corporate—choose lawyers, changed how we

develop evidence and try cases, altered how we store sensitive client and business information, and brought new competitors and competitive pressures.

The ABA and state bars and bar associations have attempted to examine the changing tides. The VSB committee studying the future practice of law recently issued its initial report (available at [www.vsb.org](http://www.vsb.org)). The committee examined on-going changes in the profession, the external forces driving those changes, and the positive and negative disruptors to the profession and legal market. It provided several specific recommendations, and identified issues that require further attention. The report is available on the VSB website, and I encourage members of the bar to review it.

The report examines many issues, and the following highlights just a few:

- The access to justice gap is increasing, and legal services are out of reach for the economically disadvantaged and the middle class. In addition, economic and generational changes have led to a noticeable increase in pro se litigation. Courts are struggling to address programs to assist pro se litigants and to likewise narrow the access to justice gap.
- Internet based non-lawyer providers of legal services and information are creating new competitive pressures. Avvo and Legal Zoom are perhaps the two best known. But in the last two years, more than 1,000 new non-lawyer legal start-up companies—not law firms—were formed. And there is significant equity funding available for these start-ups; millions of dollars are being poured into them. The capital markets sense great opportu-

nity in the unmet legal needs of the middle class.

- Cyber security is, and will remain, a hot topic. The FBI has issued warnings that law firms are a frequent target of cyber-attacks, and many firms have already suffered breaches. Lawyers must be vigilant in making sure they are taking reasonable steps to protect their clients' information in a digital world, an issue now expressly addressed in Rule 1.6 of the Rules of Professional Conduct.
- Potential alternative business structures—whether to allow non-lawyers to have ownership interests in law firms or the corporate practice of law—remains controversial. But the approach is gaining slow but steady ground in other countries. The traditional reasons for prohibiting non-lawyers from having an ownership interest in a law firm must be reexamined. Analytically, it would seem that appropriate rules could be developed to safeguard our bedrock duties of loyalty, confidentiality, and lawyer independence. But there is little empirical evidence or experience, and the issue requires additional study.
- Lawyer advertising and marketing are so different in the current information age that our rules regarding lawyer advertising, as well as sharing our fees and participation in third party “for profit” referral services may need to be reexamined, making sure that the rules continue to serve public protection goals. Lawyers must recognize that participation in certain referral or legal service programs

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2016: 67, 73, 75, 84, 86, 88, 91, 94, 96, 97, 100, 103, 107, 110, 113A, 119, 120, 121, 126, 127, 130, 137, 138, 139, 141, 143, 148, 149, 156, 159, 165, 167, 169, 175, 188. <http://www.vsb.org/site/regulation/upl-opinions-on-line-alpha-index>.

Should you have any questions on these matters or any others involving the Virginia State Bar, do not hesitate to contact me at [Gould@vsb.org](mailto:Gould@vsb.org) or Ethics Counsel Jim McCauley at [McCauley@vsb.org](mailto:McCauley@vsb.org).

Endnote:

- 1 Prior to this change, the VSB on occasion had forwarded LEOs to the Court asking for their approval.

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offered by companies such as Avvo, for example, may be precluded by current restrictions on fee sharing, paying something of value for referrals, handling of client funds, and fee agreements.

In thinking about the report, a couple of quotes other than Dylan's lyrics came to mind. "The future is now." This apocryphal quote is frequently attributed to the late NFL coach George Allen. It applies in two senses. First, the challenges and issues addressed by the committee are not simply projections of what's coming down the road. The practice has already forever changed and that process is accelerating. For those who thought they would simply ride things out and retire without dealing with the seismic changes; it's too late.

This point was particularly brought home by the committee's discussion of artificial intelligence. The impact of "thinking" robots on the practice of law sounds like a theoretical debate, fit for an upper-class philosophy-of-mind course. But the theoretical debate will soon be buttressed by empirical evidence; as the report notes, law firms are already starting to license IBM's Watson and Ross and are looking at other "learning" computers not just as research tools but to analyze complex and simple legal issues.

Second, George Allen's reference to the future as now was directed to an assembly of players referred to—perhaps lovingly—as the "over the hill gang," players who may have been considered too old but nevertheless continued performing successfully at a high level. Some of us may feel we

belong to such a gang. But we will not be able to rely merely on experience. We must confront and embrace the changes in our profession or face the risk and likelihood that the profession simply will pass us by regardless of training, skill, and ability.

Finally, as Yogi Berra warns, "If you don't know where you're going, you might end up somewhere else." We should not risk this as a profession. The report is not an end in itself. It should be properly seen as the beginning of an ongoing discussion. Reviewing the changes in our profession and in the legal marketplace, gives needed information on where we are going and what we need to do to get there successfully. After all, we don't want to be surprised and end up somewhere else.