

Staff Working Paper

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The Strategic Problem

In an ideal world, the State Bar would today be leading a statewide discussion and debate on its number one policy priority: how can we better protect the public by strengthening and tightening the regulation of the legal profession? How can we “raise the bar” for the practice of law in California? But to do so effectively, State Bar must first face and resolve a more immediate problem: its credibility among its key stakeholders – the Legislature, the Supreme Court, and the public.

In the spring of 2011, confidence in the State Bar reached an all-time low. The number of so-called “Walker petitions,” asking the Court to overrule the State Bar’s decision to close cases, had reached record levels. Moreover, as the Court reviewed those petitions, it found that documentation supporting the State Bar’s decision was frequently insufficient and occasionally absent altogether. At about the same time, the State Bar made public data indicating that the total backlog of complaints in the Office of Chief Trial Counsel was much higher than had been previously reported: almost two thousand active complaints, plus another two thousand either abated or “on hold.” It was in this context that many of the State Bar’s key stakeholders expressed serious misgivings about the direction of the organization.

To the State Bar’s credit, the latter half of 2011 saw the beginnings of a turn-around. A new management team in the Office of Chief Trial Counsel rededicated the office to the goal of public protection and re-configured the office to focus on the backlog of discipline complaints – with notable success. The backlog of active investigations was reduced from over 1,500 to zero. The notice drafting backlog was cut by two-thirds, from 554 to 187, even while absorbing the increased caseload flowing in from the re-invigorated investigation units.

Signs of improvement have not been confined to the Office of Chief Trial Counsel. Another indication of progress was received in January, when the Bureau of State Audits reported that – for the first time in years – the State Bar has no unresolved audit issues; all of the Bureau’s recommendations have been fully implemented.

The State Bar also took steps to improve its transparency in 2011. In April, it published its Annual Discipline Report in a substantially revised format, providing a more comprehensive and

detailed view of the discipline system than had ever been available in the past. And throughout the last half of the year, its newly formed Office of Budget, Performance Analysis, and Internal Audit provided the Board of Trustees with independent weekly reports on the State Bar's progress toward eliminating its backlog.

Finally, less tangible, though perhaps equally important, improvements have been noted in staff morale and in collaboration across department boundaries.

These are promising signs, to be sure. Had this been the first crisis of confidence in the State Bar, the results achieved in 2011 might easily have been the end of the story: crisis over, confidence restored. But this was not the first cycle of failure and reform. Long-time observers have seen the pattern before – stakeholder criticism of the State Bar's performance, followed by decisive reform, followed in turn by a gradual return to the old ways of doing business.

This makes the task of repairing the State Bar's credibility both more urgent and more difficult than in years gone by. The task is more difficult because history weighs ever more heavily against the Bar -- which now finds itself in the unenviable position of trying to persuade skeptical observers that, "This time, things will be different." The task is more urgent because past failures have eroded the patience of the State Bar's stakeholders in the legislature and the judiciary – and that patience is finite.

Moreover, the agency's loss of credibility makes it extremely difficult for the State Bar to spark and lead the necessary policy dialogue regarding how the legal profession should be regulated in the twenty-first century.

Given this background, the overriding strategic problem of the State Bar seems clear. It can be formulated as follows:

In order to assume a leadership position in the effort to better protect the public by strengthening the regulation of the legal profession, it is necessary for the State Bar to gain, to keep, and *to deserve*, the confidence of its stakeholders, despite its history of temporary reform and backsliding.

This is not an easy problem, and solving it will demand a well-crafted strategy.

The Strategy

The obvious strategy – or perhaps non-strategy – is simply to “try harder” to “do better.” This approach has been tried on many occasions, in many different organizations, with uniformly unsatisfactory results. It fails not only because “hope is not a plan,” but because the “doing better” is invariably defined as treating observable symptoms rather than their underlying causes.

In the case of the State Bar, the symptoms have become all too familiar – none more so than the persistent backlog of uncompleted investigations in the Office of Chief Trial Counsel. But these are not the core of the problem. In fact, the State Bar has demonstrated that it can, for example, significantly reduce the backlog, when it sets out to do so. In fact, the State Bar eliminated the backlog entirely, not only in 2011, but twenty years before as well. And that fact highlights the real problem, namely: the cycle of reform and relapse itself.

Breaking the cycle requires a candid diagnosis of its cause: persistent dysfunctions in the organizational culture of the State Bar itself. More specifically:

- The State Bar has a long-standing **culture of insularity**. Toward outside stakeholders, this has manifested itself as a view that “nobody else can understand what we do,” leading to resentment of outside scrutiny and a posture of defensiveness. Moreover, a culture of insularity prevails internally; that is, between departments of the State Bar. The agency has begun – but only begun – the process of dismantling all of its non-communicating silos.
- Insularity inevitably breeds a **culture of complacency**. When criticism from the outside is dismissed as ill-informed or unserious, and when units inside the organization “mind their own business,” it is easy to lapse into the comfortable belief that problems are imaginary or unimportant. From inside a silo, everything looks fine. Recent management changes have undoubtedly chipped away at this complacency, but the underlying culture has yet to be eliminated.

- Finally, the cycle of reform and relapse has not gone unnoticed within the State Bar’s own rank-and-file. Hopes for improvement have been raised and dashed on more than one occasion. It is only natural that some would adopt an attitude of **cynicism toward reform** – a belief that “nothing ever changes” at the State Bar. And while there have been undeniable changes within the State Bar over the last several months, some doubts remain about their durability.

To break the cycle of reform and relapse, the State Bar must confront these aspects of its organizational culture and replace them with something better.

Strategy for Lasting Culture Change

Changing the embedded culture of an organization is extremely difficult. Culture itself is elusive – it pervades the thinking, activity, and habits of the organization, but it resides no place in particular. It is impossible to act directly on culture – because culture is a pattern of behavior, not a tangible “thing” that can be acted upon.

In isolation, “culture change,” like hope, is not a plan. And what might be called the “aspirational approach” to culture change – ceremonial declarations of good intentions and lofty goals, exhortations to “achieve excellence,” and what not – has a poor track record.

Instead, the State Bar’s strategy for lasting cultural change is to systematically create tangible “facts on the ground” with these strategic objectives:

- Disrupt existing routines and habits. In any organization, much of the day-to-day work is a matter of simply doing things as they have always been done. But the existing routines and habits are not only products of the existing culture – they are its strongest defense mechanism. If adhering to – or returning to – the comfortable ways of the past remains *possible*, it is highly likely to happen.
- Impose new activities and routines consistent with the new culture. It is not enough to break old habits. New, better habits must be established. For an organization, just as for an individual, the best way to develop a new habit is to *act as if you already had it*. The

State Bar must actively create circumstances in which acting in accord with the new culture becomes the easiest available option -- the path of least resistance.

- Sustain new routines and activities long enough for the new culture to become habit. Organizational culture is the product of years of history; it will not change overnight. Even if change appears swift, the fastest reforms are the most easily undone. Effecting lasting change is a long-term commitment, requiring both patience and persistence.

How the State Bar will accomplish these objectives is a matter of implementation, discussed in the next section. What all of the initiatives outlined there have in common is this: they impose positive, disruptive change on the organization. To be sure, each initiative delivers its own “tactical” benefits, independent of the larger strategic intent. But taken together, and in concert with improvements in day-to-day management, the combination is designed to fundamentally and permanently reshape the State Bar.

A New Culture for the State Bar

An entrenched organizational culture cannot be displaced by nothing. Culture, like nature, abhors a vacuum. The new organizational culture to be “installed” at the State Bar is a key element of its strategy. This new culture will be founded on three principles:

1. **One mission, many tools.** The State Bar delivers many diverse services, grouped into three principal service areas: Regulation and Discipline, Education and Development, and Access to Justice. Disparate as they may appear, all of the State Bar’s functions are united by its core mission: to protect the public. That common mission is best carried out when the State Bar’s tools are employed to support and enhance one another. There is no justification, no need, and no place for internal silos and autonomous fiefdoms.
2. **Transparency is a non-negotiable fact of life.** Outside scrutiny may be uncomfortable at times. In fact, that is a great part of its value; this kind of discomfort, or the wish to avoid it, can be a powerful motivator for continued improvement. Even with the best of intentions, backsliding is almost inevitable when individuals feel that “no one

is watching.” To prevent this, the State Bar will view transparency as a routine and pervasive fact of life, not as an occasional – and unwelcome – intrusion.

3. **We get better at something every year.** Like transparency, the State Bar will regard continuous improvement as the rule, not the exception. Change can – and does – happen, almost routinely. There is always room for improvement, so the State Bar will never stop looking for ways to do its job better, faster, and at lower cost.

Preparing for the Policy Dialogue to Come

In the long run, the goal of this cultural shift is not merely to rebuild the State Bar’s credibility, but also to clear a path to a new, substantive dialogue about the future of the regulation of the legal profession. The practice of law – like so many things – is undergoing dramatic change due to advances in information technology and communications. At the same time, the legal system plays a growing role in the lives of individuals at all levels of society. The State Bar should be taking the lead in exploring ways to strengthen the regulation of the profession and raising standards for the practice of law – that is, “raising the bar” for California lawyers.

In the immediate future, the State Bar’s strategy will be to lay the groundwork for this dialogue at the Board of Trustees’ level. At the State Bar’s January 2012 planning meeting, the Trustees identified a number of specific policy areas to be explored, both independently by the State Bar and in collaboration with stakeholders. (The specifics of this agenda are discussed in the implementation section, below.) By starting the process today, the Board will position the State Bar to capitalize on opportunities to make and influence regulatory policy even as confidence in the State Bar is being progressively strengthened.

Implementation

As explained in more detail above, the State Bar's strategy for the next five years is to lay the groundwork for a wide-ranging dialogue on regulatory policy while simultaneously imposing disruptive change on the organization itself in order to effect lasting change in its internal culture. This section of the *Five-Year Strategic Plan* lays out the specific initiatives the State Bar is undertaking to carry out this strategy.

Trustees' Policy Agenda

At its Annual Planning Meeting, held January 6th and 7th, 2012, the Trustees of the State Bar engaged in discussions of a variety of policy options -- within each of the State Bar's principal service areas -- for enhancing public protection by "raising the bar" for the practice of law. Out of these discussions emerged a number of policy initiatives for further exploration or, where feasible, immediate action. These initiatives include the following:

- Strengthening the regulation of California-accredited and registered, unaccredited law schools.
- More closely integrating the enforcement work of the Office of Chief Trial Counsel with that of law enforcement agencies.
- Expanding outreach efforts by the Office of Chief Trial Counsel to the individual courts in order to increase the likelihood of detection and prosecution of attorney misconduct.
- Strengthening the requirements for mandatory continuing legal education (MCLE) -- possibly increasing the total number of hours required; raising the number of ethics-related hours required; and/or adding requirements for practice management education.
- Strengthening the requirements for certifying MCLE providers and for auditing their programs on an ongoing basis.
- Establishing a mandatory education program for all new lawyers, specifically geared to the needs of those just entering the profession.
- Working to enhance the effectiveness of *pro bono* service

- Working to enhance the effectiveness of the legal services delivery system, including the mechanism for the allocation of funding.
- Working to enhance the effectiveness senior legal services.
- Reviewing the status and future of the Lawyer Assistance Program (LAP).

The Trustees have asked staff to prepare blueprints and action plans for the exploration of these potential policy initiatives

Disruptive Change Initiatives

The essence of the State Bar's strategy for achieving lasting reform in its organizational culture is to impose positive, but necessarily disruptive, change on a Bar-wide basis. In pursuit of that strategy, the State Bar is launching three inter-related initiatives:

1. **Information Technology Initiative:** Under this initiative, the State Bar will retire and replace all four of its core line-of-business applications over the next three to five years. It will transform the attorney discipline system from a largely paper-driven process into a near-paperless operation. And it will improve and expand access to State Bar services and information by delivering a user-friendly, task-driven online e-portal.
2. **Physical Facilities Initiative:** This initiative will transform the physical workspace occupied by the State Bar. Wherever possible, operations will be centralized in the State Bar's headquarters in San Francisco. The headquarters building itself will be reconfigured to accommodate the relocated functions, to provide modern open-plan workspace consistent with a silo-free culture, and to provide a more engaging environment for the public. In Los Angeles, the State Bar will procure workspace suitable to the reduced operational footprint, configured in accordance with the same design goals as in San Francisco.
3. **Operations Re-engineering Initiative:** Each of the major service areas of the State Bar will undergo a top-to-bottom process review and re-engineering effort over the next three to five years. These efforts will focus on leveraging technology to achieve

efficiencies and service improvements; identifying linkages (and possibly duplications) across departments and service areas; and eliminating processes which are redundant or otherwise unnecessary.

These three initiatives support one another. The Information Technology Initiative, for example, is a major enabler for Operations Re-engineering. Conversely, the analysis needed to support Operations Re-engineering will be valuable input into the selection and implementation of the State Bar's new IT applications. Similarly, the Physical Facilities Initiative provides reengineering opportunities which would not exist without it, while the Operations Re-engineering process will generate useful guidance for facilities planning. Each initiative, and each project within the initiatives, will yield its own, stand-alone benefits. But the "strategic punch" is derived from the combination of the three which, taken together, will re-shape the State Bar for a generation.

Information Technology Initiative

The Information Technology Initiative is a set of projects which, over the next three to five years, will accomplish the following objectives:

1. Retire & Replace Outdated Line-of-Business Applications

Though the State Bar relies upon dozens of application programs of varying scale and complexity, the core business of the Bar is built around four applications:

- Prosecutorial Case Management System
- Court Case Management System
- Admissions System
- Member Records & Billing System

All four of these applications are custom systems, developed by the State Bar's in-house programming team over a period of many years. All were developed to operate in a pre-Internet world, a world in which line-of-business applications had no "public face," in which e-portals and online filing of documents and forms were anything but common. Finally, all are essentially designed as adjuncts to fundamentally paper-driven business processes.

Over the course of the next three to five years, the State Bar will retire all four of these systems and replace them with modern commercial off-the-shelf (COTS) alternatives.

Tactical Benefits

- Efficiencies and cost savings, releasing financial and human resources to higher-value, higher-priority tasks and services.
- Improvements in service quality and turn-around times.
- Improvements in work environment for staff.
- A more mainstream computing platform, enabling the State Bar to benefit from future technological improvements.

Strategic Benefits

- Replacement of key systems makes continuing habitual “business-as-usual” processes simply impossible.
- Preparation for selection and implementation of new systems require thorough analysis of existing processes and procedures – and creates the context for re-thinking them.
- New systems, configured to support new processes, not old ones, make backsliding difficult and help keep re-engineered processes in place long enough to “take.”
- New systems will be selected and implemented with full consideration of the need to produce actionable management information and performance data – that is, they will lay the foundation for a culture of routine transparency.
- Demonstration to internal and external audiences that substantive positive change *is* possible in the State Bar.

2. Near-Paperless Discipline System

Today, the attorney discipline system is fundamentally a paper-driven process. Within the Office of Chief Trial Counsel, physical case files are moved from desk to desk depending on to whom the cases are assigned and/or who happens to need information they contain. In State Bar Court, pleadings and motions are filed the old-fashioned way: on paper, via the postal system (sometimes called “snail mail,” due to the days or weeks that must be allowed for delivery, in comparison with near-instantaneous electronic communications) or in person.

Over the next three to five years, the State Bar will reconstruct the discipline system on a near-paperless model. This will include developing the ability to accept electronic filings from members of the public. The key technological enabler for this effort – in addition to the modern case management systems to be implemented in the Office of Chief Trial Counsel and State Bar Court – will be a Bar-wide document and content management system.

Tactical Benefits

- Efficiency and speed improvements. Multiple investigators and/or attorneys will be able to access case file materials simultaneously. Delays arising from the need to move physical files between San Francisco and Los Angeles, or within offices, will be eliminated.
- Ease of filing papers in State Bar Court – for both internal and external parties – will be increased. Access by authorized parties to filed documents will be enhanced.
- Bar-wide document management infrastructure creates opportunities for data exchange between departments and other business process improvements.

Strategic Benefits

- Disrupts existing paper-based processes, requiring analysis and re-thinking of these processes.
- Further demonstration that a – long discussed – change can occur at the State Bar. A visible, tangible break with the “tradition” of paper-driven processes.

3. Streamlined E-Portal

Currently, the availability of State Bar information and services online is uneven. A great deal of information *is* available – such as the discipline records of individual attorneys (with links to public filings), as well as the calendar and docketing information of State Bar Court. Many services are also available – it is possible to file a complaint against an attorney online, for example; members can pay their dues online. However, more remains to be done – both in terms of expanding the available offerings and of organizing those offerings for easy access by the public.

Over the next three to five years, the State Bar will make all of its information and services – to the extent possible, given confidentiality requirements and similar restrictions – online, and in a format that is readily accessible.

Tactical Benefits

- Filings, submissions, and requests submitted via the e-portal can be handled electronically without re-keying.
- Electronic forms can be validated prior to actual submission. This should reduce the need for resubmission of incomplete or erroneous forms and simplify the handling of the (pre-validated) data received.
- Easy availability of self-service information via the e-portal will reduce telephone requests for the same information.

Strategic Benefits

- Broader availability of State Bar data reinforces a culture of transparency (and customer focus).

Physical Facilities Initiative

[under development]

Operations Re-engineering Initiative

The initiatives described above deliver direct, or “tactical” benefits. However, they offer something more from the strategic perspective. Each one contributes to the disruption of existing habits and routines – in effect, clearing the ground and opening up space in which something new can grow. But it is not enough to leave the ground bare and ready to nourish any seed that may happen to fall there. Deliberate cultivation is called for.

To maximize the benefits of the disruptive change effected by the IT and Facilities initiatives, the State Bar is concurrently undertaking a systematic program of operational reviews and process re-engineering in each of its principal service areas. These efforts are designed interdisciplinary as collaborations between the following:

- Executives within each service area, as leaders with bottom-line responsibility for organizational performance;
- Manager and staff within each service area, as the source of front-line, hand-on knowledge of day to day operations;
- The Office of Budget, Performance Analysis, and Internal Audit, to provide analytical support;
- The Office of Information Technology, to provide systems and technology support.

The objective of these efforts is not merely the identification of opportunities to increase performance at the margin; it is also to reconsider the fundamental design of the State Bar’s programs and processes.

One example of this fundamental re-thinking (which is already being implemented) is the internal reorganization of the Office of Chief Trial Counsel on a “vertical prosecution” model. Under this model, the same attorney handles a case throughout the investigation, notice drafting, and trial stages. This eliminates inefficient “hand-offs” of cases from one attorney to the next as the case progresses, and it removes the temptation to pass incomplete work “down the pipeline.”

The objective of this initiative is to bring the same level of thinking and analysis to all of the operations of the State Bar. By the end of 2012, “reorganization” plans will be developed for

each of the State Bar’s principal service areas, with implementation timelines of up to three years. These plans will lay out how the State Bar can best structure each of its operations, particularly in light of opportunities afforded by the Information Technology Initiative and the Physical Facilities Initiative.

Tactical Benefits

- For new technology and re-designed facilities to yield actual benefits, the State Bar must consciously adapt its ways of doing business to leverage the capabilities that these investments provide. The Operations Reengineering Initiative represents the State Bar’s effort to do just that.
- Reengineering multiple service areas concurrently may identify opportunities for improving cross-functional cooperation, streamlining business processes that cross organizational boundaries, and eliminating redundant efforts.

Strategic Benefits

- This initiative supplies the crucial “change management” framework without which the campaign of disruptive change could degenerate into destructive chaos.
- The practice of re-examining its own practices and procedures with an eye to how they might be improved – or eliminated – is at the core of the new organizational culture this strategic plan aims to instill throughout the State Bar. This initiative will bring first-hand experience with this practice to executives, managers, and staff in all of the State Bar’s principal service areas.

Conclusion

The three initiatives outlined above do not exhaust the list of activities and efforts the State Bar has undertaken in order to re-shape its organizational culture to support lasting improvement in performance. Changes as large as the consolidation of the State Bar's business services under the oversight of the CFO, and as small as establishing a more professional dress code, are being made on an ongoing basis.

These are, instead, the principal keys to implementing the State Bar's strategy for regaining, retaining, and deserving the confidence of its stakeholders – namely, the imposition of disruptive change to re-shape the State Bar's organizational culture in such a way as to break its intractable cycle of reform and relapse.

Financial Implications

[under development]