

Lessons From an Outlier

What Young Lawyers Can Learn From the Story of Joe Flom

by Andrew Bolson

The topic of success is examined in *Outliers*, the 2008 bestselling book by Malcolm Gladwell. In the book, Gladwell, a renowned *New Yorker* essayist and the author of *The Tipping Point* and *Blink*, considers the ingredients for success through a series of anecdotes, ranging from stories about Bill Gates to the Beatles. For young lawyers, one chapter of the book is of particular interest. Titled “The Three Lessons of Joe Flom,” the chapter describes a lawyer’s rise from law firm reject to one of the most successful attorneys in American legal history.

From Rags to Corner Office

Joe Flom was born to Jewish immigrants during the Depression. While he grew up incredibly poor, Flom was able to earn a spot at one of New York’s finest public high schools, and eventually attended Harvard Law School. In law school, Flom was among the top of his class. However, after hiring season he was one of two students from Harvard Law who was not able to secure a job. Knowing that Flom needed a position, one of his professors suggested he meet a couple of guys who were starting a firm. The guys happened to be Marshall Skadden and Leslie Arps. While Skadden and Arps didn’t have any clients at the time, Flom liked the partners and decided to join the startup firm.

Although Skadden, Arps, Slate, Meagher and Flom would eventually become one of the largest law firms in the world, its success was not immediate. In *Outliers*, Gladwell quotes Flom as saying, “What kind of law did we do? Whatever came in the door!”¹ However, without knowing it, Joe Flom was poised for unusual success from the time he started to practice.

At the time Flom was entering the legal market, law firms in New York operated like private clubs. Gladwell detailed how “white-shoe”² law firms only looked to hire, “lawyers who are Nordic, having pleasing personalities and ‘clean-cut’

appearances, are graduates of the ‘right schools,’ have the ‘right’ social background and experience in the affairs of the world, and are endowed with tremendous stamina.”³ If you were not white-shoe material, you joined smaller, second-rate firms or went out on your own.

According to Gladwell, during the 1940s and 1950s “[t]he old-line Wall Street law firms had a very specific idea about what it was that they did. They were corporate lawyers. They represented the country’s largest and most prestigious companies, and ‘represented’ meant they handled the taxes and the legal work behind the issuing of stocks and bonds and made sure their clients did not run afoul of federal regulators. They did not do litigation; that is, very few of them had a division dedicated to defending and filing lawsuits.”⁴

One of the areas white-shoe firms refused to dirty their hands with was hostile corporate takeovers.

Since the prestigious firms refused to participate in litigation and proxy fights, the work was relegated to the second-tier firms, the firms that happened to be populated by those who did not fit the typically Nordic profile the white-shoe firms selected. Over time, Flom became the preeminent attorney handling proxy fights, and the white-shoe law firms were regularly outsourcing clients to him. While white-shoe firms disdained proxy fights in the 1950s and 1960s, by the 1970s and 1980s hostile takeovers had become big business, and all firms wanted to get into the game. According to Flom, “[The white-shoe firms] thought hostile takeovers were beneath contempt until relatively late in the game, and until they decided that, hey, maybe we ought to be in that business, they left me alone. And once you get the reputation for doing that kind of work, the business comes to you first.”⁵

Flom was not only fortunate to be practicing in the right area at the right time, he benefited by being born during the early 1930s. If he had been born earlier, he would have been practicing law during the Depression. Gladwell states that

during the Depression, Jewish lawyers were overwhelmingly solo practitioners. The Depression hit solo-practitioners extremely hard, and their staple of handling wills, divorces and minor disputes dried up. It was difficult to make a living as a lawyer because the supply of attorneys well outnumbered the pool of clients, a seemingly all-too-relevant problem. Attorneys who came of age during the Depression could not invest in learning about practice areas that would not pay the bills.

The Depression also had an effect on birth rates. At the height of the Depression, in the early 1930s, the number of babies born per year dropped dramatically. As a result, when Depression-era babies grew up, they had less competition getting into prestigious schools and obtaining quality jobs.

The Changing Demographics of Law

How does Flom's good fortune relate to the experience of today's young lawyers? The prevailing argument is that today's young lawyers are part of a so-called lost generation. It is widely held that the current glut of new lawyers has created an environment where jobs are scarce and competition is stiff. At first glance, it would appear this generation would have more in common with the experience of Depression-era lawyers. However, it is possible that for those young lawyers who are able to get their proverbial foot in the door, opportunity abounds.

Today, young lawyers are entering a legal market saturated with baby-boomer attorneys who are still practicing. For example, according to the American Bar Association's statistics, in 1980, 21 percent of lawyers were between the ages of 30 and 34.⁶ In comparison, by 2005 the percent of lawyers between 30 and 34 stood at only nine percent.⁷ It makes sense, then, that the number of attorneys practicing between the ages of 55 and 64 has risen. While

attorneys 55 to 64 represented 12 percent of the legal market in 1980, attorneys in this demographic now represent 21 percent of the legal market.⁸

In New Jersey, the number of attorneys being admitted to the bar is also slowing. Between 2002 and 2007, the number of attorneys in the state increased, on average, by 372 lawyers per year.⁹ Between 2008 and 2012, the average annual increase of lawyers decreased to 323.¹⁰ This is coupled with the fact that undergrads are now shying away from law school. As a result of the rising cost of a legal education and shaky job prospects, the number of law students has dropped significantly. In 2013, law school applicants fell to a 30-year low, and 2013 will see the lowest number of first-year students since 1977.¹¹

As a result of being born in the early 1930s, Flom experienced less competition throughout his career. This proved to be highly advantageous for him. In the not-too-distant future, young lawyers may find themselves in a similar situation. With baby boomers expected to retire in great numbers in 10 to 15 years, and students increasingly staying away from law school, today's young lawyers are in a better position than previously believed.

Standing Out in a Crowded Marketplace

Nevertheless, young lawyers should not simply wait for the demographics to shift in their favor. Flom was successful because he had experience in an area of the law others were unfamiliar with. Even in a future where the demand for lawyers outweighs supply, some lawyers will be more successful than others. No lawyer exemplifies this fact more than Joe Flom. The characteristics that made him successful can serve as a guide for any young attorney.

First, Flom's patience was a key to his success. It is natural for a young lawyer

to want to specialize in industries that are 'hot.' However, what is popular now may be soon out of favor.

Flom's success was not immediate. Although proxy fights would later prove to be highly profitable, it took many years for the industry to take off. Instead of switching focus, he stayed the course and developed a reputation for his skills in the proxy-fight arena. As a result, once hostile takeovers became a multi-billion-dollar business, it was Flom, who already had the experience in the field, who emerged as the industry's leader.

Beyond patience, Flom had the foresight to specialize in a relatively obscure field that was not popular when he entered the legal workforce. There is a lesson in this fact as well. While the future is unpredictable, a lawyer should be constantly questioning the *status quo* and examining trends in the law and areas for potential growth. If a lawyer wants to stay relevant, he or she must consider whether their specialty will be in demand in 10 or 15 years. Is their skill set subject to economic cycles? Is their practice vulnerable to a change in legislation? Henry Ford once famously said, "[i]f I had asked people what they wanted, they would have said faster horses." The same could be said about the law. The innovative lawyer will always be a successful lawyer. In deciding on an area to specialize in, young lawyers should be thinking not just about today, but about the needs of clients 10 or 15 years from now.

Finally, Flom was successful because he became the go-to lawyer for proxy fights. It is unlikely he got that reputation by happenstance. Instead, Flom worked hard to earn a reputation as a recognized expert in his field. If a young lawyer is to specialize, he or she should strive to become a leader in their chosen specialty. For example, young lawyers can publish articles, lecture on the topic and develop a network base that could provide future clients.

Conclusion

Successful lawyers will continue to be patient, forward thinking and hard working. Given the demographic shift expected to arrive in the coming years, the future for young lawyers may shine brighter than previously believed. Opportunity, though, will not guarantee success. Even with the requisite traits and the potential opportunities that may come along, not all lawyers will manage to become the next Joe Flom. Flom's story is not just about opportunity and success; it is about becoming an outlier. It is about becoming a recognized expert and serving as an asset (not as a cost center) for clients. Eventually, out of the present generation of young attorneys, someone will understand the changing dynamics of the legal profession and emerge to become the next outlier. Will it be you? ☺

Endnotes

1. Malcolm Gladwell, *Outliers: The Story of Success*, 118 (2008).
2. According to Malcolm Gladwell, white-shoe law firms were those traditional, old-line law firms that populated downtown Manhattan. The nickname, white-shoe is a reference to the type of shoe favored by those attorneys who staffed the traditional law firms. *Id.* at 122.
3. *Id.* at 123.
4. *Id.* at 124.
5. *Id.* at 128.
6. American Bar Association, Lawyer Demographics (2012), available at http://www.americanbar.org/content/dam/aba/migrated/marketresearch/PublicDocuments/lawyer_demographics_2012_revised.authcheckdam.pdf.
7. *Id.*
8. *Id.*
9. American Bar Association, National Lawyer Population by State – 2002-2012 (2012), available at www.americanbar.org/content/dam/aba/migra

ted/marketresearch/PublicDocuments/2002_2012natllawyerstate.authcheckdam.pdf.

10. *Id.*
11. Ethan Bronner, Law Schools' Applications Fall as Costs Rise and Jobs are Cut, *N.Y. Times* (Jan. 30, 2013), <http://www.nytimes.com/2013/01/31/education/law-schools-applications-fall-as-costs-rise-and-jobs-are-cut.html>.

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