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## LegalCURRENTS

### Lawyers' collective 'milkshake mistake'

We've all enjoyed a cold milkshake on a hot day, but it turns out that milkshakes are far more than a dessert. Milkshakes, like most products, including legal services, are whatever the consumer needs them to be.

Clay Shirky, noted author and Internet and technology pundit, examines this idea in his book, "Cognitive Surplus and Generosity in a Connected Age." In his book, Shirky, (who will be the a keynote speaker at the upcoming Social Media and Communication Symposium at RIT on Sept. 29), describes how Gerald Berstell, a researcher hired by McDonalds, was tasked to improve the sales of milkshakes.

Unlike the other researchers, rather than focusing on improving the product, Berstell focused on the consumer's expectations and needs by tracking customers' purchasing habits. As he did so, he noticed something interesting. Most milkshakes were purchased in the early morning by commuters. Even though McDonald's marketed the milkshakes as a dessert, its customers disagreed. For most customers, milkshakes were a neat, tasty, convenient and easily transportable breakfast meal — more so than any of McDonald's other breakfast options.

As Shirky explained: "Not one conventional breakfast item [fit the] bill, and so without regard for the sacred traditions of the morning meal, those customers were hiring the milkshake to do the job they needed done."

Shirky referred to this phenomenon as "milkshake mistakes," something that occurs when an industry adopts a narrow view of its products, while simultaneously ignoring the needs and expectations of its customers.

Shirky then turned to traditional media and applied the "milkshake mistake" concept to the changing viewing and leisure habits of consumers. He described how people are now foregoing television to create and consume content online. In other words, rather than watch shows or read articles created by "professionals," many consumers are instead choosing to spend their leisure time watching YouTube videos or reading blog posts created by "amateurs."

After noting that this change in viewing habits occurred in record time, he then suggested that perhaps the traditional media industry had never truly understood the needs of its customers: "But what if, all this time, providing professional content isn't the only job we've been hiring the media to do? What if we've also been hiring it to make us feel connected, engaged and just less lonely?"

Most lawyers should be able to relate to this concept. How many times has this happened to you? After explaining to a potential client that litigation would cost more than the amount at issue, your potential client retorts: "I don't care! It's the principle of the matter!"

This is because although lawyers are purportedly hired to solve legal

problems, we're also hired to make the client feel better about their situation. In many cases the primary underlying motivations behind seeking legal counsel include reducing anxiety, mending bruised egos, satiating anger, achieving justice, and even obtaining revenge against perceived wrongdoers, no matter what the cost.

In other words, lawyers tend to overlook their client's multi-faceted needs and assume that they're only being hired for their legal expertise.

For many potential clients, that's simply not the case, and if there is an easier, cheaper way to ease their worries and accomplish their goals that isn't as intimidating as hiring a lawyer, they'll use it. And, just as is the case with traditional media, online tools provide consumers with a variety of new-found ways to meet their needs through legal self-help.

The Internet offers legal consumers more alternatives to traditional legal services than ever before — smack dab in the middle of an economic downturn during which the average citizen is highly motivated to solve their own problems and avoid costly legal bills. Whether it's virtual law offices, legal forms from LegalZoom or RocketLawyer, legal forms for uncontested divorces provided by state court websites, or crowdsourced legal advice from LawPivot, more and more online platforms are emerging that offer an increasingly vast selection of low-cost tools to assist legal consumers with commonly encountered problems.

Of course lawyers serve an important function in our society and I'm not suggesting that all forms of traditional legal services will ever be replaced by online tools or platforms. But the legal profession must avoid making the "milkshake mistake." The delivery of legal services is changing and consumers now have more choices when it comes to meeting their needs. Astute, forward-thinking lawyers will recognize, not ignore this phenomenon, and find ways to position their law practice to meet the needs of legal consumers in the midst of this rapidly changing technological landscape.

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*If you'd like to hear more from Shirky and others (Nicole Black be speaking on a panel as well) the RIT Social Media and Communication Symposium will be held on Sept. 29 and the cost is \$35 for the day (www.rit.edu).*



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