**THE LAWYER AS PREVENTIVE LEGAL HEALTH CARE PROVIDER**

**By Thomas D. Barton[[1]](#footnote-1)**

[Lawyer as preventive legal health care provider (calbarjournal.com)](https://www.calbarjournal.com/August2013/Opinion/ThomasDBarton.aspx)

 Lawyers typically regard themselves, rightly, as problem solvers and facilitators of transactions. Clients come to them either when some dispute or legal difficulty has arisen, or when the client has decided to pursue a goal that requires legal analysis. In playing those two roles lawyers are immensely valuable socially, both for the justice they secure and the commerce they enable. American lawyers have built, and operate every day, a Rule of Law system that is envied throughout much of the world for its integrity and sophistication.

 Lawyers potentially have more to offer, however, beyond solving problems and facilitating transactions. Lawyers are well positioned to strengthen their preventive and proactive counseling role in ways that could greatly benefit clients, society, and the lawyers themselves. Currently, lawyers are underused in this preventive/proactive role: people tend not to seek counsel unless an immediate legal need is perceived; and even after a need clearly arises, people sometimes wait so long before consulting a lawyer that traditional legal methods become prohibitively expensive. Both of these shortcomings could be addressed by lawyers sitting down more often with clients for general counseling. By speaking regularly with their lawyers even where no legal need is easily visible, clients could avert some legal problems altogether. Other problems festering just below the surface could be addressed successfully without resorting to costly procedures. Valuable opportunities could be conceived and implemented, and the personal relationships between lawyers and clients would deepen. Finally, emphasizing preventive and proactive counseling would help to redress a phenomenon that may be on the rise: Millions of middle-class people suffer inadequate access to legal services even though many attorneys have spare capacity to provide services—capacity that goes unused. That sad trend, however, may reveal clearly that Preventive Law is an idea whose time has come.

Historically, clients and to some extent even lawyers have resisted the preventive/proactive role. That is odd because when we think about our physical health, we take for granted the need for periodic checkups. Doctors routinely advise preventively about keeping up our vaccinations, having proper nutrition and exercise, and maintaining sanitary environments. We also intuit easily that any disease or pathology left too long will require far more intrusive treatment—treatment that, even if successful, may leave us weakened physically and financially. Yet those same common-sense attitudes do not prevail regarding our *legal* well-being even while lawyers, owing to their training and experience, can foresee risks far in advance of the client and can imagine valuable prospects for the client that otherwise would never surface.

 These ideas are neither new, nor original to me. Louis M. Brown, a gifted California lawyer and educator, developed the concept of Preventive Law more than 50 years ago. He even analogized Preventive Law to preventive medicine. He inspired other leading legal thinkers like Edward A. Dauer and Forrest (Woody) Mosten to develop related concepts and practices about legal services and methods, some of which have become standards within the profession.

Lou Brown’s kernel idea of improving the well-being of individuals and society through regular, frequent, far-reaching conversations between lawyers and clients still has untapped potential. Perhaps Preventive Law battles a self-reliant streak in our culture that insists *if it ain’t broke, don’t fix it.*  By developing stronger preventive/proactive skills and attitudes, however, attorneys can help clients better understand that they do not always realize when things are about to break, nor how even good things can be improved. The resulting conversations can make the Rule of Law stronger and more affordable, to the benefit of everyone.

1. Louis and Hermione Brown Professor of Law, California Western School of Law, San Diego and coordinator of the National Center for Preventive Law, http://preventivelawyer.org. [↑](#footnote-ref-1)