DISRUPTIVE INNOVATION IN THE LEGAL SERVICES MARKET:
Is real change coming to the business of law, or will the status quo reign?

Shannon Spangler
Shannon L. Spangler, PC
I. INTRODUCTION

Academics, consultants, and lawyers warn that disruptive innovation has come to the practice of law. Some predict the end of Big Law (as we know it today) by the next decade.¹ Others suggest that the small generalist firm will soon go the way of the dinosaur – even though by head count these lawyers may make up 50% or more of law firm lawyers.²

Through what lenses should lawyers examine and evaluate the predictions of the threats to Big Law and Small Law? Is there an “innovation imperative” in the legal services industry? What drives this imperative, and what changes are afoot? Are there adaptive strategies that law firms at any point along the spectrum can use to remain relevant, to join the “next-generation” of legal service providers?

II. THE “INNOVATION IMPERATIVE”³ IN THE LEGAL INDUSTRY

A. Economic Turmoil Hits the Profession

Few industries were left unscathed by the 2008 recession, and law is no exception. Some see the recession as a (or the) catalyst for the changes now taking place and/or anticipated in the legal services industry. According to some, it shifted “the demand curve

for Big Law services . . . permanently down.”4 The recession also may have fueled the trend
of increased regulation, which has made operating any business more expensive and
complex. Together, this has resulted in organizations reducing internal legal staff and their
outside legal counsel expenditures. At the same time, the regulatory climate imposes the
need for sophisticated legal support.5

Reduced demand from client corporations has contributed to an overcapacity
problem in Big Law and the legal services industry generally.6 Big Law responded in
several ways, in varying combinations – some, for example, with reductions in force, and
others by trying to create profit centers through lower margin, higher volume work. Still
others continued to increase their hourly rates year over year.

Although demand may be down in terms of hours and dollars, clients are asking for
more productivity (and results) from their lawyers -- for less. Efficiency, however, is
antithetical to the law firm business model, which is based on charging clients for time
spent, rather than on results or other measures of value.7 As a consequence, large
corporations are starting to find alternatives to the traditional law firm for at least some of
their legal work.8 Of course, many smaller businesses and individuals find legal services
unaffordable altogether, and simply do without, or turn to internet self-help resources,
such as Legal Zoom, Rocket Lawyer, NOLO and the like.

4 Mazzone at 2.
5 Susskind, R., Tomorrow’s Lawyers: An Introduction to Your Future, Oxford University Press, Oxford, UK,
2013, Kindle Edition at 3-5.
6 Scheiber at 2, 11.
7 See Mazzone at 2; Roster, M., “Time to Blow Up the Billable Hour Formula,” ABA Legal Rebels, found at
http://www.abajournal.com/legalrebels/article/time_to_blow_up_the_formula (last visited October 2, 2013)
at 1.
found at http://www.abajournal.com/magazine/article/whos_eating_law_firms_lunch/, last visited June 19,
2014.
B. The Power Balance Shifts

In addition to the financial pressures the recession imposed on both sides of the attorney-client relationship, increasing transparency – enabled by advances in information technology and ever more sophisticated uses of “Big Data” – gives corporate clients the information they need to more effectively wield their bargaining power. Law firms can no longer take a “black box” approach to service, and clients now have abundant data allowing comparisons among providers. Legal services have been demystified, and legal service consumers are more knowledgeable, sophisticated and connected than ever before.

Technology – and the resulting transparency – have fueled the growth of alternative sources of legal services, and there appears to be a growing acceptance of less traditional approaches. Many of these alternatives are more efficient and less costly than those offered by traditional law firms, and often of higher quality for the particular task at hand.

C. Identifying Barriers to Change

Those who both recognize and urge change in the legal services industry point to some common lawyer idiosyncrasies that may get in the way of innovation.

The legal profession depends on tradition and precedent. We assume that the structure of the legal industry will continue as it has been for many years, forgetting that some constructs that seem to be part of the law firm fabric – like the billable hour – are relatively new inventions. Lawyers tend to be suspicious of new things that others create. If disruption or “discontinuity” is what’s ahead, how will lawyers adapt?

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11 See, e.g., Zahorsky; Christensen (Oct. 2013) at 5.
Lawyers are not known for their collaboration skills, despite a growing body of research that underscores the need for collaboration to foster innovation, and the value of collective knowledge. Traditional law firms fail to retain women and minorities, thus excluding more than half the population from participation. However, research suggests that the highest performing groups are those with the most women.\textsuperscript{12}

Law firms, as partnerships, do not invest in new ways of doing business or delivering service. They are focused on the here and now, and they are adverse to returning profits to the firm.

Many who promote change in the legal services industry barely acknowledge some of the constraints in law practice that require consideration in crafting the future of law. These include licensing requirements, privilege and confidentiality, and other ethical duties. New business models or approaches to legal service delivery must respect and accommodate these constraints.

D. Insights from Other Professional Services Providers

Much of the current debate about the future of the traditional law firm applies with equal force to other types of professional services firms.

Other professional services are seeing the same changes as law firms, and for many of the same reasons. Democratization of knowledge is a factor, which brings transparency,
which in turn brings loss of value and differentiation for market leaders. Thus, as in the legal services industry, consulting firms are seeing their clients reduce their reliance on “solution-shop providers” in favor of a more modular approach.\(^\text{13}\) Clients have more speed, responsiveness and control. Alternative providers often use leaner project teams, freelancers, and more experienced consultants, all of which contribute to efficiency and lower costs for consumers.\(^\text{14}\)

More generally, these factors affect almost every industry:

- Abundance of computing power and storage, with decreasing cost
- Ever-increasing data volumes, and increased use of analytics and smart systems
- Tools that change how people do their jobs, such as video-based communication, social media
- A pace of change dictated by the consumer, not the supplier
- Greater acceptance and trust in “market places” or exchanges that present choices to consumers (e.g., Angie’s list).\(^\text{15}\)

It seems difficult to understate the impact that harnessing social era collaboration and communication tools will have on professional service firms. Collaboration tools allow organizations to be smaller, for example, potentially eliminating back room operations by

\(^\text{13}\) Christensen (Oct. 2013) at 6-8.

\(^\text{14}\) Id. at 6.

making it easier to deal with external partners/experts for non-core functions. In short, “[o]pen collaboration is the new business model.”

III. Evidence that Change Is Afoot

While some dismiss the changes we’ve seen in the industry so far as little more than an attempt to embrace some new best practices, others believe that real change in professional services is underway. Below are some examples of technology-enabled transparencies and legal services alternatives that have the potential to give consumers of legal services more choices in how those services are delivered. Many allow clients to disaggregate their legal needs and choose a provider that gives the best value for different components of a deal or dispute.

- **Big Data Analytics** – Sky Analytics and TyMetrix provide their corporate and law firm clients with detailed and comparative information about law firm rates and legal spend. These “big data” applications allow in-depth analysis and monitoring of rates by experience, efficiency, and typical activity costs.

- **“Value” Firms** – A number of firms have emerged over the past decade that purportedly have abandoned the billable hour in favor of a different pricing model. Valorem Law Group, for example, says that it “focus[es] on the values important to you, not [on] hours.”

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16 *Id.*

17 For example, Mazzone, at 3, describes law firms’ approach to innovation as “a pinch of efficiency here, a touch of discounting there.”

18 Christensen (Oct. 2013) at 5-6.

19 Valorem Law Corporate Website, October 2013.
• **Alternative Providers** – Legal process outsourcing firms they take on process or routinized work that was in the past done in-house or by higher-cost law firms. Other firms, such as Axiom, offer a broad range of services that purport to bring together alternative staffing and pricing models, use technology in creative ways, and leverage project management skills.

• **Content Management Solutions** – E-Discovery has been a driver of technology, staffing and process innovations. As data hosting, search, review software and, more recently, machine learning technologies, improved, technology both supports and displaces humans in document review. Other technologies are relevant as well, including workflow systems and automated information governance systems, many of which contain imbedded legal or policy rules to reduce the need for lawyer or paralegal input.

• **Collectives and Consortia** – Organizations like AdvanceLaw provide a way for General Counsel to join together to vet and retain the legal talent they need for specific matters. Other organizations, such as eLawForum, conduct online auctions for legal work, similarly acting as legal services matchmakers.

Perhaps not far off is a “liberalization”\(^\text{20}\) of how law firms obtain capital. A number of countries, England included – through its allowance of ABS (alternative business structures) -- have loosened the rules surrounding non-lawyer ownership of law firms. This liberalization may bring with it additional transparency, the ability to invest in technology infrastructure, and a focus on strategy by professional managers -- all of which have the potential to foster greater innovation in the industry.

\(^{20}\) Susskind at 6-9
IV. THE THEORY OF DISRUPTIVE INNOVATION

"Disruptive Innovation" is a construct intended to explain the impact of technological innovation on markets. In The Innovator’s Dilemma, Christensen set out to understand why good, well-managed companies fail.21 He concludes, based on a series of case studies, that good companies fail because of good management – continuing to do the “right things” even when it left them blind and inflexible.22

Christensen defines “technology” as the “processes by which an organization transforms labor, capital, materials, and information into products and services of greater value.”23 Thus, disruptive innovation often is not about mere technology, but about a game-changing business model that makes new use of an existing technology or takes advantage of a technological advance.24

The framework Christensen proposes rests on three findings from his case studies.

First, he distinguishes between sustaining technologies and disruptive technologies. Sustaining technologies improve established products but tend to preserve the market’s status quo. Disruptive innovations, on the other hand, result in less desirable products in the near term, but they have features that new or underserved customers value.25

Second, market leaders introduce sustaining technologies that customers don’t want. In other words, they over-serve their customers with products that exceed their

22 Id. at Loc. 134.
23 Id. at Loc. 149.
24 Watson at 12.
25 Innovator’s Dilemma at Loc. 199.
expectations and budgets.\textsuperscript{26} As disruptive technologies improve and gain broader market acceptance, over-served customers will migrate to the inferior product or service.

Finally, the existing customers and infrastructure of successful companies drive the sorts of investments they will make as compared to new market entrants.\textsuperscript{27} Because disruptive products are often lower margin, first appear in emerging markets, and do not appeal to established customers, market incumbents will not invest until the time to do so has passed. In other words, they are busy doing the “right things.”\textsuperscript{28}

From a Big Law perspective, and likely many of its clients, alternative vendors may provide an inferior service – it is not a “bespoke,”\textsuperscript{29} “solution shop”\textsuperscript{30} product. Nonetheless, these alternative legal services may provide access for customers entirely foreclosed from the legal services market, those who can no longer pay top-of-the-market prices due to budget constraints, and those who are currently “over-served” by Big Law’s no-stone-unturned, technology un-enabled approach to the practice. Perhaps the legal services industry is seeing signs of successful disruptive innovation. The questions, of course, are how far will it go? And what should industry incumbents do to respond?

\section{V. Surviving Disruptive Innovation}

How can law firms position themselves to be on the giving rather than the receiving end of disruptive innovation? Christensen proposes strategies that leaders must “harness or accommodate” to survive disruptive innovation. The teaching of each principle is quite
simple: One must accommodate changed conditions by engaging in changed behavior. Changing behavior, though, is difficult, especially if all else remains static. To encourage the sort of behavioral change needed to drive or meet industry disruption, law firms may wish to experiment in three areas: Structure; Attorney-Client Relationship; and Collaboration.

A. Structure

The traditional law firm business model may not easily accommodate experiments in new ways of delivering legal services. Thus, to overcome reluctance to invest in lower-margin opportunities that their customers are not interested in, organizations can create a separate internal unit or stand-alone entity to build an entirely new business around the disruptive innovation.\textsuperscript{31} Within this structure, the law firm can experiment, conduct pilots, and incubate ideas, choosing goals and measures that appeal to law firm partners.\textsuperscript{32} Providing a space where the participants can fail fast and often, while allowing the firm to manage its existing business model as it works to develop a different model for the future, keeps risk under control.

Because disruptive innovations often create new markets, there’s little to analyze or know, making planning infeasible. Instead of foregoing the opportunity because of lack of data, organizations should experiment and learn, assuming all the while that whatever data and analysis -- and strategy -- they have is likely to be wrong.\textsuperscript{33}

Some willingness to invest in the future is a prerequisite to this sort of experimentation. That may mean that partners can no longer pull all of the cash out of the


\textsuperscript{32} Mazzone at 5-6.

\textsuperscript{33} \textit{Innovator’s Dilemma} at Loc. 323.
business shortly after the end of each fiscal year, or that they must accept both cost and revenue implications that follow from a commitment to experimentation.34

Firms also need to continue to invest in their technology infrastructure, in at least three areas. First, they need tools and processes that enable collaboration and connectedness. Second, there are technologies that support process automation, allowing lawyers to complete client work more quickly and efficiently. Finally, content management and search tools become more sophisticated every day, and these help the firm’s lawyers and staff put their hands on what they need, when they need it.

B. Attorney-Client Relationship

When clients complain about their outside law firms, they often point to price or cost as the source of pain, although the issue is likely one of overall value. Alternative fee arrangements have met with some success, although most still depend to some degree on rates and hours. It likely is premature to abandon all efforts to find a way to price engagements based on typical market factors, including cost of delivery, a reasonable margin, and market prices. However, rather than focusing solely on cost, law firms and clients might be better served by looking for opportunities to address how they work together.

First, of course, lawyers can simply seek to be more efficient in providing their services. Usually, this means establishing processes that are technology-supported, using

34 See MacEwen, B., Growth is Dead: Now What? Law firms on the brink, first published as a series by Adam Smith, Esq., Fall 2012, Kindle Edition at 83-84.
lower cost labor, and ensuring that the right person is serving in the right role on any given client project.\textsuperscript{35}

Second, law firms can use workflow systems not only to address routine internal tasks, such as completing and submitting expense reports, but also externally with their clients, as a way to deliver client services efficiently and consistently. Some tools have legal and policy standards embedded, or provide templates and checklists. This provides a way for lawyers to pre-package their experience and make it available as systems for use by in-house counsel or non-lawyer clients.\textsuperscript{36} For example, some corporate law departments provide intranet-based checklists that allow internal business clients to ensure compliance without a visit to their in-house lawyers.

Third, in light of many clients’ growing comfort with the use of social media, there may be new opportunities for multi-client collaboration facilitated by one or more law firms and the use of secure social-media-like tools. This sort of collaboration could be accomplished anonymously, or through communities of practice, forums and other type of work groups. In short, law firms should look for the chance to bring together clients who can share the cost of some types of legal services. This may work particularly well in the compliance arena, where resources and systems for regulatory compliance could be shared without loss of confidentiality.\textsuperscript{37}

Fourth, multi-client collaboration may be just one step short of commoditization of legal services, which suggests an open source approach, making legal knowledge available

\textsuperscript{35} Susskind at Loc. 682.
\textsuperscript{36} Susskind at Loc. 457 see generally.
\textsuperscript{37} See Susskind at 19-22.
on the Internet. See, for example, www.nolo.com, which purports to be “law for all,” and Rocket Lawyer, www.RocketLawyer.com – both inform, help laypeople do-it-yourself, or finds lawyers who can help.

Fifth, clients can disaggregate (or decompose, or modularize) their legal support, using different providers that “specialize in supplying one specific link in the value chain.” This shift usually comes when clients realize they are paying for services they do not value, or they want more control. Clients have become more willing to look at nontraditional talent options, recognizing that not all resources must be “onsite, full-time [or] human.” While this seems to happen frequently in practice, it is usually at the client’s behest. More forward-looking firms may offer this approach to the clients instead, relying on highly developed project management practices and a willingness to affiliate with other providers to bring all the pieces together.

New technologies provide opportunities as well. While it may be old news now, “technology assisted review” for document discovery was an outgrowth of technologies that perform sophisticated pattern matching processes, among other things. In the broader consulting arena, vendors are exploring how to use predictive technology and big data analytics to extract insights that are delivered to clients in easy-to-digest forms. In addition, there are already systems that provide legal information and guidance online, permitting self-help or expert help through the Internet at low prices.

38 Id. at 25-28.
40 Id. at 6.
41 Mazzone at 4.
42 Christensen (Oct. 2013) at 9-10.
43 Susskind at 43-44.
Technology will also impact how disputes are resolved, and there’s a growing trend towards internet and technology-enabled mediation, with greater or lesser degrees of automation depending on the complexity of the dispute.\(^\text{44}\)

C. Collaboration

Although not explicit in the preceding discussion, there’s a thread that connects the various areas of inquiry or experimentation described above: the need for lawyers to be connected and collaborative -- both within their firms and externally.

There’s a growing understanding that “everything from scientific progress to entrepreneurial success hinges on collaboration.”\(^\text{45}\) In similar vein, “reframing” -- looking at the world using a different mental model, as Christensen and others suggest is necessary for disruptive innovation – requires connection and collaboration with various stakeholders and third parties to enable leaders to avoid myopia,\(^\text{46}\) and to enable detection of the warning signs of impending “big bang” innovations.\(^\text{47}\)

VI. CONCLUSION

Now that free tools exist to crowd source legal research and vet legal arguments, with all the features of familiar social networking sites, it seems difficult to argue that

\(^{44}\) Susskind at 100.
significant change is not well underway. Mootus (www.Mootus.com) says that it “helps law students and lawyers build skills, reputation and knowledge for free through open, online legal argument.” CaseText (www.CaseText.com) provides access to a “database of millions of judicial opinions, statutes, and regulations;” which are annotated by “practicing attorneys, professors, and other experts.” Users can annotate as well, building a free source of legal information and a reputation as an expert.

Where will the lines be drawn between winners and survivors, and survivors and losers, in the legal services industry? The winners likely will be those firms willing to embrace a business model that leaves them agile, able to easily scale size and service levels to meet client needs, and willing to invest in leading edge technologies that support efficiency, collaboration, and possibly even predictive analysis through the collection and use of “big data.” The losers will be the firms and lawyers who reject all but the most basic technology, and who cannot or will not use it to drive efficiency and productivity. The survivors will inhabit a spectrum somewhere in the middle – adapting more slowly than the winners, but adapting nonetheless, perhaps finding themselves more often playing a bit role in the client’s legal services value chain than acting as the sole provider.