Sometimes change is sought. Sometimes it is dictated.

Billy Beane, general manager of the Oakland A’s major league baseball team and protagonist in the Michael Lewis book “Moneyball” (2003), found himself in the latter category as his club was cutting expenses—including his best players—while his competition was spending more. He needed a way to beat those teams, and traditional ways of winning typically required great players making big salaries.

We’re in a place now in the legal industry where change is sought and, in many cases, dictated. This is specifically the case for corporate transactions, where many lawyers see the gains in other areas of law and want to duplicate them, or see the opportunities for improvement but don’t know the steps to take to achieve them.

Beane’s solution was to identify how many wins his team would need to make the playoffs over the course of a year, and then ‘unbundle’ all the aspects of how to get those wins. It boiled down to making the sum of the parts greater than the whole, with players who excelled in certain areas (like just getting on base) playing specific, albeit untraditional, roles to achieve success as efficiently as possible. He transparently assigned value to their skills and identified players based largely on data, not necessarily his scouting department. This objective model flew in the face of baseball’s status quo, but was almost immediately successful.

We too can break our legal work into separate, component parts, and put value on each. Unbundling allows each task to be assigned to the service provider—inside or outside counsel, or a third party—whose service model and capabilities are best suited for that specific task, thus empowering the corporate legal executive to maximize efficiencies and reduce the company’s legal spend.
This is especially true in corporate merger and acquisition (M&A) transactions where the diligence component can be outsourced to a third-party service provider whose business model and capabilities are best suited for the diligence function. As Beane proved in his field, sometimes there is a traditional way of handling work that is ripe for improvements and efficiencies—getting the same or better result for less time and money.

**Arguments for the Status Quo**

To break this overview into a “pros and cons” analysis, we should start with the reasons that the current way of handling corporate transactions is still utilized. Like much work in the legal profession (or baseball), it’s simple: because, until recently, that’s the way it’s always been done.

Yes, it is easy to send all the legal work involved in a transaction to a law firm. The firm usually asks for it, or it is assumed it will handle it all. But in today’s business and legal environment, is that realistic or responsible?

A transaction is a daunting exercise that needs expertise—for negotiation, strategy, market analysis, risk assessment and a host of other factors. This is a core function of a law firm; its attorneys have that high-level expertise needed. Yet at the end of the day, the experts rely on the key information found within the data involved, and there is more data today than ever before. Is it an expert’s core function to know how to organize that data? Or how to utilize lean and better processes to get to the important information efficiently? Even if it is, should a client be charged a premium hourly rate for the expert to handle that function when it could be done by data and process specialists who work at a fraction of the cost?

The “pro” in this debate is that law firms are experts in strategic decisions, assessment and analysis, and their highest and best use is in those areas.

**Unbundling: The Modern Solution**

Given the fact that the primary purpose of diligence is to identify risks, the process by which these risks are identified becomes paramount to any successful diligence assignment. And we have made significant progress in the areas of legal process development and big-data management over the last decade. It all begins with a hard look at the work involved and the process to accomplish that work.

With outside (and inside) counsel handling strategy and high-level transactions work, let’s look at other pieces of work that can be transparently unbundled:

**Workflow/Process Refinement**

All the benefits of disaggregating come from a detailed look at process and workflow first and foremost. These words have practically become jargon in the legal profession now, although not necessarily in the transactions world. But the protocols and technology proved to work by third-party providers on other data-driven matters should absolutely be utilized in diligence. While the use of this model might be new, there’s no need to reinvent the wheel when it comes to a best-practices workflow.

A high-functioning workflow is cyclical, so that the various team members can be plugged into the process at any time during the transaction. With outside counsel managing the overall diligence function, the review of the data (particularly the material contracts) is outsourced (disaggregated) to a third party; solid workflow is vital to ensure the identification and communication of risk, proper integration of technology, quality control and proper reporting.

**Work Product**

The majority of the work involved in a transaction, especially diligence, can be laborious and repetitive in nature. Repetition allows for the process work detailed above, and (good) process begets efficiency and consistency. Yet this is not how transactions have traditionally been approached.
The best way to achieve efficiency and consistency is to utilize the same, experienced attorneys on deal after deal. These diligence teams serve as an extension of the corporate legal department and, in some cases, of outside counsel; they are “on call” and work at a fraction of traditional costs. In many cases, the team members are, at their core, experienced M&A attorneys with a particular focus and skill in performing the diligence function—not the first- or second-year attorneys utilized in the traditional diligence approach. These team members not only know what is before them, but know what may be missing and the right questions to ask.

In fact, more and more law firms are exploring ways to improve efficiencies by outsourcing the diligence function themselves to third-party service providers. Outsourcing enables these firms to utilize their personnel more effectively by allowing the junior attorneys at these firms—who are typically tasked with diligence assignments—to work on more sophisticated, higher-margin work. This progressive step by law firms not only aligns the transaction team with the client’s cost-containment goals, but allows the technology and process specialists (the third-party provider) to do what they do best.

In the end, a dedicated team gets to know the client and its business extremely well, and that knowledge retention is invaluable from deal to deal. Because the process is handled by the same attorneys over time, the work product is more consistent and efficient and there is dramatically less expense in the end.

**Diligence Reports and Checklists**
Consistency is an important benefit of having a solid process and dedicated team in place, and that means everything is documented, tested and continually improved. And, let’s face it, many of the templates utilized in transactions need attention.

To be blunt, traditional diligence reports are now obsolete. In most cases, these reports have little or no value to anyone after the transaction closes other than to those who have the time or have been tasked with poring through hundreds of pages to respond to a particular issue. Today’s diligence requires sophisticated reporting protocols that allow usable data to be accessed on demand, both during and after a transaction closes. Certain third-party providers have honed these functions over the last decade on large-data matters such as discovery, and put them to use in transactions.

In many cases, these third parties have also developed best-practices checklists and protocols specifically for diligence. Rather than relying on outdated, generic due diligence checklists typically used in most transactions, these checklists and protocols are industry-specific and have been fine-tuned in real time, increasing significantly the value of the information obtained and the costs associated with obtaining it. After all, the third-party providers’ business model is designed for efficiency and cost savings.

This is particularly useful in transactions where traditional diligence costs are so high that the legal team delays commencement of the diligence activities until the parties know they have a deal. Diligence can commence early in the process and enables the deal team to obtain a more thorough analysis of the issues that are important to the company, and to get a head start on the post-acquisition integration planning. It results in better information, better decision-making and ultimately better deal-making.

**Early Risk Identification**
Speaking of risk, there is some support among attorneys and scholars that effective diligence may actually result in the mitigation or reduction of risk. That may be true if the parties decide to walk away from the deal altogether as a result of the diligence investigation. In most cases, however, the diligence function is designed to identify and present risks. With the unbundling approach, this is just done in a more efficient manner.
Once the risks are identified, it is up to the contracting parties to allocate these risks by determining through a negotiated process which party is going to assume the risk. Allocating risks in a corporate transaction is primarily the function of the representations, warranties and indemnities contained in the acquisition agreement. However, it is the diligence examination that provides the data that the parties must have in order to identify and understand the risks to be allocated. Therefore, the diligence function has significant consequences.

**Post-Deal Planning**

Successful post-acquisition integration planning requires that the plan be designed well before the transaction closes so that it can be implemented immediately after the closing. Modern diligence reporting, coupled with a useable database, allows the transaction team members to simultaneously access the diligence information during the transaction process so that the integration team will have relevant and timely information to design the integration plan well before the closing.

However, modern diligence does not end with the closing of the transaction and implementation of the integration plan. Rather than adding new hires, many parties continue to utilize all or a part of the diligence team to handle the post-acquisition and other overflow work that are a part of new business acquisitions. These teams are extremely valuable given their expertise of the business and the underlying legal documentation. These teams can also monitor the representations, warranties and covenants of the parties contained in the acquisition agreement at least until the expiration of the parties’ indemnity obligations under the acquisition agreement. The review and monitoring of these provisions over the survival period allows a party to make a timely claim for indemnification under the acquisition agreement or determine the appropriate response in the event of a breach.

**The Bottom Line**

Ultimately, unbundling is the pathway to transparency. It empowers the corporate legal executive to truly understand and assign specific roles, maximize efficiencies and reduce the company’s legal spend. Moreover, the quality of work is superior because the tasks that are performed are among the core competencies of the parties performing these tasks.

It’s also about bettering the status quo. Legal departments cannot tread water in today’s environment—they have to continually improve, demonstrate value and do more with less. Unbundling is a giant leap in that direction, and we can see the same, immediate success Billy Beane did.

After all, Beane’s successful model was quickly duplicated throughout major league baseball.

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From Big Law to Lean Law

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From Big Law to Lean Law

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A B S T R A C T

In a provocative 2009 essay entitled The Death of Big Law, the late Larry Ribstein predicted the shrinkage, devolution, and ultimate demise of the traditional large law firm. At the time virtually no practicing lawyer took Larry seriously. The nation’s large firms were only one year removed from record revenues and profits. Several decades of relentless growth had conditioned all of us to expect the inevitable rebound. Similarly, few law professors (including me) grasped the full reach of Larry’s analysis. His essay was not just another academic analysis. Rather, he was describing a seismic paradigm shift that would profoundly disrupt the economics of legal education and cast into doubt nearly a century of academic conventions. Suffice to say, the events of the last three years have made us humbler and wiser.

This essay revisits Larry’s seminal essay. Its primary goal is to make Larry’s original thesis much more tractable and concrete. It consists of three main pillars: (1) the organizational mindset and incentive structures that blinds large law partners to the gravity of their long-term business problems; (2) a specific rather than abstract description of the technologies and entrepreneurs that are gradually eating away at the work that has traditionally belonged to Big Law; and (3) the economics of the coming “Lean Law” era. With these data in hand, we can begin the difficult process of letting go of old ideas and architecting new institutions that better fit the needs of a 21st century economy.

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Our late colleague, Larry Ribstein, left us prematurely. In terms of academic productivity, however, he had already lived several lives. He was a dominant figure in not one legal subfield, but several.1

One of these subfields was a focus on the legal profession and lawyer regulation. Larry’s core critique, developed over a series of articles,2 was how the legal ethics rules, through bans on noncompete agreements and nonlawyer investment, were limiting the ability of lawyers to create new forms of organization that would facilitate optimal levels of risk sharing and innovation. Larry advanced these arguments long before the first signs of trouble. When the large corporate law firms were finally showing signs of stress, Larry reviewed the evidence. He concluded that most large law firms were evolving into highly inefficient, sprawling structures that worked to the benefit of individual lawyers and, as a result, were hollowing out the very mechanisms needed to strengthen and grow the organization. He also took stock of broader trends affecting the market for corporate legal services. The clients were wising up. Moreover, they had other options. Playing out the logical next steps, Larry confidently pronounced The Death of Big Law.3

As someone who closely follows the legal market and talks regularly with a wide range of lawyers, I can say with confidence that three years after the publication of The Death of Big Law, Larry’s thesis is not widely accepted, let alone understood, by most large law firm lawyers. Yet, for reasons entirely rooted in self-interest and survival, it ought to be. By extension, legal education, which over

1 Larry Ribstein’s SSRN homepage has abstracts for 95 articles posted since 1997. Substantive areas include agency and partnership, limited liability companies, corporate law, securities law, corporate governance, choice of law, legal ethics and lawyer regulation, law firms, class actions, jurisdictional competition, federalism, and lawyers in cinema. See http://papers.ssrn.com/sol3/cf_dev/AbsByAuth.cfm?per_id=47251.
2 See Bruce H. Kobayashi & Larry E. Ribstein, Law’s Information Revolution, 53 Ariz L. Rev. 1169 (2011) (foreseeing the partial replacement of legal practitioners by “legal information engineers” who put highly valuable legal information into legal products that can be sold over and over again to a broad audience); Larry E. Ribstein, Practicing Theory: Legal Education for the Twenty-First Century, 96 Iowa L. Rev. 1649 (2011) (arguing that “for the first time [law schools may] need to provide the type of education the market demands rather than serving lawyers’ and law professors’ preferences”); Milton C. Regan Jr., Bruce MacEwen, & Larry Ribstein, Law Firms, Ethics, and Equity Capital: A Conversation, 21 Geo. J. Leg. Ethics (2007); Larry E. Ribstein, Ethical Rules, Law Firm Structure and Choice of Law, 69 U.Cinn. R. Rev. 1161 (2001) (arguing the ethical rules on capital structure and noncompetition agreements, particularly for firm with offices in multiple jurisdiction, stifles innovation and “may perversely hurt the very clients such rules are supposed to protect”); Larry E. Ribstein, Ethics Rules, Agency Costs and Law Firm Structure, 84 Va. L. Rev. 1707 (1998) (analyzing several ethical rules that regulate nonlawyer ownership of law firms, vicarious liability, noncompetition agreements and conflicts of interest that compound rather than mitigate the problem of agency costs between lawyers and clients).
the last several decades became heavily dependent on the fortunes of Big Law,\textsuperscript{4} also needs to grapple with the Larry's core message of value creation.

The purpose of this essay is to move from the plane of high theory, where Larry Ribstein was a virtuoso, to the ground floor of practical application, where law firm leaders and educators have to assess myriad messy facts and make decisions about what to do next. Big Law is not dead—Larry was trafficking in metaphor—but it has plateaued. It is also losing market share.\textsuperscript{5} This creates an environment of uncertainty that is rarely acknowledged by law firm leaders and legal educators. Something new is going to gradually supplant, or at least rival, Big Law; and as a practical matter, none of us really know what it is going to look like.\textsuperscript{6} In times of massive structural shift, strategy is little more than an informed guess. Yet, such an approach is more likely to be successful than one that relies on false, outdated assumptions.

Drawing upon Larry Ribstein’s insights and some more recent market data, I will attempt to draw a more concrete picture of the state of Big Law, the evolving market for corporate legal services, and how the future might unfold. This Essay is organized in three sections. Section 1 is a summary of Larry’s primary critique of Big Law. Section 2 adds color and concrete detail to Larry’s prediction by examining recent trend data for both large law firms and non-law firm competitors that Larry’s predicted would grow at Big Law’s expense. Although Big Law remains big, it appears to be losing market power. Further, Larry may have underestimated the dynamism of non-lawyer entrepreneurs operating in the legal industry and underestimated the need for regulatory changes to spur innovation.\textsuperscript{7} The breadth and depth of change is very large and gaining momentum. Section 3 outlines the prevailing economic conditions of the post-Big Law period—which I refer to as Lean Law.

1. Ribstein’s critique of Big Law

What do large law firms produce that is distinct and apart from the legal work performed by partners, who own the firm, and their lawyer employees? According the Larry Ribstein, the most persuasive explanation was reputational bonding.\textsuperscript{8} Lawyers are in a better position than clients to evaluate the skills, integrity, and work ethic of other lawyers. Therefore, highly capable lawyers have a strong incentive to organize themselves into firms, not only to provide more specialized services to clients—which clients surely need—but also to erect a screen to filter out less able or trustworthy lawyers. Over time, the firm earns a reputation for skillful lawyering and excellent client service. That reputation has positive value that enables a firm to charge premium fees.

Yet, the Ribstein critique also points out that the success of the large firm also gives rise to opportunistic behavior by individual lawyers. Once the firm’s vaulted reputation is in place, partners may be able to make more money by focusing on their own client relationships and giving short shrift to activities that would preserve and grow the firm’s reputational capital (e.g., training and mentoring junior lawyers).\textsuperscript{9} Firms can mitigate this behavior through careful screening and monitoring of partners. Yet, firm size, geographic dispersion, and lateral turnover make this job more difficult.\textsuperscript{10} In addition, the rise of limited liability through LLP and LLC business forms seemingly reduce the downside individual risk of poor monitoring, which means that lawyers become less vigilant monitoring each other.\textsuperscript{11} Big Law as a business model is dead, according to Ribstein’s critique, because the firms’ reputational capital is being steadily eroded away by a confluence of pervasive business practices. These include five factors:

(1) Bad Incentives. Compensation structures that reward individual rainmaking and provide inadequate incentive to build the firm for the longer term.\textsuperscript{12}

(2) Diluted Selection Criteria. Lenient partner and senior selection processes that end strict or out in favor of keeping lawyers who add to short to medium term profits.\textsuperscript{13}

(3) Inadequate Monitoring and Training. Excessive partner to associates leverage, which makes high quality training, mentoring, and monitoring infeasible.\textsuperscript{14}

(4) Lack of Shared Downside Risk. The migration away from general partnerships, where vicarious liability for partner behavior is potentially unlimited, to limited liability entities, such as LLPs and LLCs, which typically caps liability to one’s capital account.\textsuperscript{15}

\textsuperscript{4} In 2007, 42.5% of all law school graduates entering private practice started their careers at firms of 100 lawyers or more. See NALP Bulletin (July 2012). Since that time, the proportion has dropped to 23.0%. This latter figure understates the magnitude of the drop because only 45% of the class of 2011 obtained entry-level jobs in private practice, down from 55% for much of the preceding decade. See NALP Bulletin (July 2012).

\textsuperscript{5} See Toby Brown, Is the Legal Market Flat? 3 Geeks and a Law Blog, July 10, 2012, at http://www.geeklawblog.com/2012/07/is-legal-market-flat.html (director of a strategic pricing and analytics at anAmLaw 50 firm reviewing data on the corporate legal market, noting the flat revenues of large law firms and the rapid growth of companies like Pangaea3, which is a legal process outsourcing, and concluding that “[the simple math of 50% market growth suggests LPGs are taking market share from firms].”

\textsuperscript{6} Note that changing market conditions and obsolescent of products is a recurring and ordinary feature of capitalism. See generally Joseph Schumpeter, Capitalism, Socialism and Democracy (1942). The ordinary feels extraordinary, however, when it is our industry that is inching toward destruction.

\textsuperscript{7} Albeit Larry’s thinking was rapidly evolving. One of his last papers considered the growing evidence that law was poised for major disruption as the unlocking of legal information made it possible to create legal products separate and apart from legal service providers. See Bruce H. Kobayashi & Larry E. Ribstein, Law’s Information Revolution, 52 Ariz. L. Rev. 1169, 1192–1197 (2011) (“discussing advent of legal information and products that are made possible by the rise of the internet and other digital technologies that were hitherto not available, and providing examples of" automated advice" and other new business made possible by legal unbundling”).

\textsuperscript{8} See Ribstein, The Death of Big Law, supra note 3, at 753 (noting the most persuasive explanation of firm-level income is that the firm effectively charges clients for the value of its long-lived reputation).
(5) Proliferation of Exit. Increased emphasis on lateral partner hiring to grow the firm, which “complicates a firms’ ability to maintain a strong culture of trust and cooperation.”

Notwithstanding the appearance of massive size, Ribstein argued the above pervasive practices have made Big Law remarkably brittle and unstable. As stated at the beginning of this section, reputational capital is what enables individual lawyers to obtain firm-level profits distinct and apart from the sale of their own time and services. Yet, “the firm’s reputation lasts only as long as lawyers gain more from investing in it than they do from building their own clienteles.” When lawyers infer that their partners lack such a commitment, they become inclined to “grab” clients and invest in behavior that creates portable clientele, which creates better options for exit. When partner profits fall short of their expectations, they head for the doors. Because so few firms in the Big Law sector have avoided these pitfalls, reputational capital, Ribstein argued, is being rapidly dissipated. As a result, large law firms have increasingly become “just a collection of individuals sharing expenses and revenues that has little or no value as a distinct entity.”

The core message of the Ribstein critique is that The Death of Big Law is caused by the decline of the traditional reputational capital model. As discussed above, this decline is substantially caused by the inability, or failure, of law firms to preserve an environment and ethos where individual lawyers invest in the long-term fortune of the firm.

But according to Ribstein, the value of reputational capital is also declining because of external factors, such as the rise of in-house legal departments. With improved ability to evaluate cost and value, legal departments can avoid the price premiums of Big Law by expanding their own in-house capacity. In-house lawyers also have a proliferating array of options to address their legal needs, including hiring of non-US global law firms, legal process outsourcing with operations in India and other low-cost countries, non-lawyer companies and consultants, and mechanized legal advice or products delivered through sophisticated software as pre-

by hiring more associates than the firm can effectively screen and monitor. .. Lawyers who are personally liable for their firms’ debts have an incentive to try to rehabilitate a declining firm so that it can pay the creditors rather than risk being jointly and severally liable for the firm’s unpaid debts. By contrast, lawyers with limited liability can jump ship without worrying that the firm’s liabilities will follow them.

Ribstein, The Death of Big Law, supra note 3, at 775 (noting that “these firms in effect are buying business by expanding and hiring rainmakers”). For a discussion of how over-eager partnerships make “exit” much more likely than “voice” in resolving internal strife within the firm, see Marc S. Galanter & William D. Henderson, The Change Agenda: Tournament Without End, Am. Law, December 1, 2008).

Ribstein, The Death of Big Law, supra note 3, at 759–760 (describing the dynamic as a potential prisonner’s dilemma); see also John C. Coffee Jr., Gatekeepers: The Professions And Corporate Governance 227 (2006) (reporting the “decline in law firm stability as ‘star attorneys increasingly practice in a free agent market’.”

Ribstein, The Death of Big Law, supra note 3, at 754 & 777 (“The devolution of law firms recognizes that large law firms that do not conform to the traditional Cravath-type reputational capital business model cannot generate significant profits at the firm level and become aggregations of individual lawyers.”).

Ribstein, The Death of Big Law, supra note 3, at 759–760.

See Ribstein, The Death of Big Law, supra note 3, at 765 (“Clients may come to wonder why they should pay large fees to sustain Big Law’s profits, and thereby its fragile financial structure, when they can spend less to hire equally skilled lawyers in other countries” and citing rising fortunes of foreign firms in London, Singapore and Hong Kong).

Ribstein, The Death of Big Law, supra note 3, at 766 (“Shifting work from Big Law associates working in large US cities to India could threaten the traditional Big Law model of leveraging substantial associate hourly billing into partner profits.”).

Ribstein, The Death of Big Law, supra note 3, at 768 (citing Tanina Rostain, The Emergence of “Law Consultants,” 75 Fordham L. Rev. 1397 (2006)).

21 See Ribstein, The Death of Big Law, supra note 3, at 768 (citing Larry E. Ribstein, Lawyers as Lawmakers: A Theory of Lawyer Licensing, 69 Mo. L. Rev. 299, 324 (2004) (discussing the shifting boundaries of unauthorized practice, particularly as a result of technological innovations)); Ribstein, The Death of Big Law, supra note 3, at 780–781 (describing potentially disruptive technologies that cut into services traditionally provided by law firms (citing Richard Susskind, The End of Lawyers? 100–103 (2006))).

22 The conference event, titled “Law Firm Evolution: Brave New World or Business as Usual?” was hosted by the Georgetown Center for the Study of the Legal Profession. It took place on March 21–23, 2010. A draft of Larry’s paper was posted on SSRN during the fall of 2009.

23 See, e.g., Jeff Jeffrey, Panelists Predict Changes to, Not Death of, Big Law, The BLT: The Blog of the Legal Times, March 22, 2010, online at http://legaltimes.typepad.com/blt/2010/03/panelists-predict-changes-to-not-death-of-big-law-.html (reporting on comments by William Perlstein, chair of Wilmer Hale, that Ribstein’s predictions were overstated but conceding that the 2000–2007 Big Law growth boom was “not normal”; by Jeffrey Haidet, chair of McKenna Long, that firms had gotten “fat, dumb, and happy” during prior decades but that a “new model for law firms is coming” and that “Big Law survives, though with significant changes”; and Bernie Burke, chair of litigation at Howard Rice, conceding the undisciplined expansion of headcount has to end).

24 The average Am. Law 100 law firm had 820 lawyers in 2008. The number dropped to 806 in 2009 and then increased to 835 in 2010 and 863 in 2011.

25 See Clayton M. Christensen, The Innovator’s Dilemma (1997) (describing a recurring business cycle in which incumbent industry rarely can create, anticipate or adapt to new “disruptive” technologies that service their core market in a new way).

26 See generally Marc Galanter & Thomas Palay, Tournament Of Lawyers: The Transformation Of The Big Law Firm 99–102 (1991) (discussing the dramatic increase in growth rates in major law firms beginning in 1970); Henderson & Bierman, supra note 10, at 1396 (reporting that since 1978, the average NLJ 250 law firm had increases in size by 525%).


$325,000 to $1.48 million—an increase of 35.5%.30 During the same period, the Consumer Price Index climbed 205% while the nation’s GDP increased by 235%.31 By any standard, this is a tremendous economic run.

Yet, despite the higher profitability, the large law firm sector appears to have hit a wall on fee increases. As shown in Fig. 1, the steady rise in revenue per lawyer hit a high water mark in 2007 ($828,000 per lawyer) before settling into an unprecedented five year plateau.

As of the date of this writing, the companies that track the financials of large law firms are reporting continued flat demand for corporate legal services.32 The flattening of demand is probably attributable to multiple factors, including more work being done in-house by corporate legal departments,33 greater inroads made by legal process outsourcers,34 migration of work to lower-priced regional firms,35 greater utilization of staff attorneys and contract lawyers rather than (pricey) associates,36 and bigger volume discounts given by large firms in order to hang onto market share.37

Regardless of the cause of the flattening demand, the lack of growth upsets many of the established conventions held within large law firms. Growth creates a sense of vitality and abundance among the firm’s lawyers and staff. Excellent work and sacrifice can be rewarded with partnership. Profitability can be sustained through hiring rather than firing.38 Lack of growth is especially worrisome to law firm managers because it sows doubt among the firm’s most successful partners. Partners with portable books of business have options. And the touchstone of a modern law firm failure is a rapid loss of partners to other large law firms. 

In the face of flagging market demand, which Larry Ribstein predicted, law firms appear to be adapting in a way that is seemingly counter to The Death of Big Law thesis: They are getting bigger.39 Yet, unlike in prior years, this growth is not occurring through hiring of entry level associates. Indeed, the proportion of entry level law graduates beginning their careers in law firms of 250 lawyers or more has declined from 6100 in 2007 to 3500 for the class of 2011.40 One of the primary reasons for the decline in entry level hiring is that clients are increasingly reluctant to pay the rate of high-priced junior associates.41 In contrast, the volume of lateral associate hiring has increased over 60% for each of the last two years,42 which is remarkable considering the smaller pool of midlevel associates due to the shrinkage of entry level classes.

Rather than the traditional promotion to partnership tournament, Big Law appears to be turning to other sources of growth. One source is “off track” lawyers positions. Between 2010 and 2011, the total lawyer headcount for firms in the NLJ 250 (a ranking of total number of lawyers for US-based law firms) increased from 124,161 to 126,293, which reflected an overall growth rate of 1.7%.43 Yet, total associate headcount dropped 1.3% (from 60,377 to 59,574) while the “other” attorney category grew an astounding 17.2% (from 11,376 to 13,322). Presumably, this alternative source of leverage has the potential, at least in the short to medium term, to retain market share while at least holding profitability constant. A second source of growth is merger. In 2011, Squire Sanders combined with UK-based Hammonds (approximately 500 lawyers) to create a combined 1275 lawyer firm. Later in the year, it absorbed Mintzer Ellison, an 80-lawyer Australian firm based in Perth.44 Similarly, DLA Piper expanded by over 600 lawyers with the acquisition of the Australian firm, Phillips Fox.45 Likewise, there is also a steady

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30 See William D. Henderson, Rise and Fall, Am. Law, June 2012 (analyzing trends during the first 25 years of the Am. Law 100).
31 See William D. Henderson, Rise and Fall, supra note 30.
32 See, e.g. Peer Monitor Index, Q2 2012 Executive Report, July 27, 2012 (reporting that “since mid-2011, demand has basically been flat” and “[t]he market will continue its sluggish, largely flat trajectory with occasional upward or downward variations. Continued client pricing pressures are a near certainty for the foreseeable future”). Citi Private Bank Law Watch, Quarterly Flash, 2012: YTD through First Half, Aug. 2012 (reporting sluggish overall demand, with decreases for global and international law firms but modest increases for national and regional law firms).
33 See Melissa Maleske, Legal Department Hiring on the Rise, Inside Counsel, March 1, 2011 (reporting increase in in-house hiring and providing an example of a company that expanded its legal department to reduce outside spending on litigation).
34 As discussed in Section 2.2 infra, the US legal press has been slow to examine the burgeoning LPO sector. But in India, thanks to the growth of US and UK-based companies, LPOs have become a large, attractive source of jobs for recent law grads. See Aesha Datta, Fresh Law Grad Finds Yet Another Avenue in Legal Process Outsourcers, The Hindu Business Line, May 11, 2012, online at http://www.thehindubusinessline.com/industry-and-economy/article3408024.ece?ref=wl_opinion.
35 Ashley Post, 4 Tips for Working for Regional Law Firms, Inside Counsel, March 2, 2012, online at http://www.insidecounsel.com/2012/03/01/4-tips-for-working-with-regional-law-firms (reporting that nearly one-half of corporate legal departments are attempting to control their legal budgets by “increasing their use of regional or boutique law firms” and reporting substantial success by many companies).
36 See Catherine Rampell, At Well-Paying Law Firms, a Low-Paid Corner, N.Y. Times, May 23, 2011, online at http://www.nytimes.com/2011/05/24/business/24lawyers.html (reporting on the growth in major law firms, such as O’Melveny, Wachtel Hale, and McDermott Will & Emery, of nonpartner track associates handling the work of traditional law firms associates, but at a much lower salary and typically outside of the major legal markets).
38 See Henderson, Rise and Fall, supra note 30.
40 Comparing NALP Class of 2001 National Summary Report with NALP Class of 2007 Summary Report, online at http://www.nalp.org/recentgraduates; see also Judith H. Collins, Class of 2011 Has the Lowest Employment Rate Since Class of 1994, NALP Bulletin, July 2012, at 12–13 (among entry level jobs in private practice, reporting the proportion of jobs in firms of 101 lawyers or more decreasing from 42.3% in 2007 to 27.7% in 2011).
41 See Ashby Jones & Joseph Palazzolo, What’s A First-Year Lawyer Worth?, Wall St. J., October 17, 2011 (reporting that 20% of corporate legal departments are now refusing to pay for the work for first- and second-year attorneys).
42 See Laterale Hiring on the Rise After Two Years of Decline, NALP Bulletin, April 2011 (reporting 61% increase of associates hiring over 2009); Laterale Hiring Up for the Second Year in a Row, NALP Bulletin, April 2012 (reporting 63% increase between 2011 and 2010).
44 See Purzycki, NLJ 250, supra note 43.
45 See Purzycki, NLJ 250, supra note 43.
pace of mergers among regional and national firms. In 2011, Kilpatrick Stockton (ranked #103 on the 2011 NLJ 250) merged with Townsend and Townsend and Crew (ranked #227); and Edward Angell Palmer & Dodge (ranked #75) merged with Wildman Harrold (#248). According to the Hildebrandt Institute MergerWatch report, the nation’s large firms also continue to make strategic acquisitions of small, freestanding regional law firms that “solidify an existing footprint.”46

If Big Law is dead or dying, why is Big Law continuing to grow? This is a question that puzzled Larry Ribstein.47 One answer is that law firm managers are attempting to grow their organizations to the point where they are “too big to fail”, or more precisely, “too big to fail quickly.” The benefit of larger size is not the potential for a government bailout similar to the Wall Street banks, but the benefit of a larger cushion of revenue to shield the firm against a large defection of partners. Simply stated, a loss of 30 partners from a 300-lawyer firm is a much larger blow than 30 partners at a 900-lawyer firm. A defection of similar proportions at the larger law firm (90 partners, or 10%) is less likely to occur as a coordinated event because of the large number of lawyers involved. Thus, what could be a fatal blow in a “small” large firm is effectively an early warning sign in a megafirm. So the primary attraction of growing a firm, at least from management’s perspective, may be the additional maneuvering room it provides to grow the firm’s profits.

The “too big to fail” theory has empirical support. Since the publication of the first Am Law 100 list in 1987 (ranking of gross revenues of US-based law firms), only 58 law firms remain on the list with their names intact. Of the remaining 42, 11 have collapsed, 2 have undergone a merger that resulted in a change to the name of the firm, and 13 dropped out of the Am Law 100. Of the eleven deceased law firms, only one firm had an Am Law ranking higher than 40 in 1987 (Finley Kumble, a house of cards built on star lateral partners that dissolved by the end of 1987).48 When comparing the 58 intact Am Law 100 to the remaining 42 firms that earlier collapsed, merged and dropped in the league tables, we observe the following statistics:

- **Higher Gross Revenues.** The 58 intact firms had, in fiscal year 1986, higher revenue ($83 million versus $57 million [+45%]);
- **Larger Headcount.** The 58 intact firms began the 25-year time period with more lawyers (284 versus 227 lawyers [+25%]);
- **Higher Profitability.** The 58 intact firms were, on average, more profitable ($380,000 versus $248,000 [+53%]).49

Further inspection of the Am Law 100 data from 1986 to 2011 reveals that in 1986, the firms that went on to fail looked virtually identical to firms that would later merge with a competitor.50

The implication for law firm managers is straightforward. Failure is a real possibility, but the largest and most profitable firms rarely fail. If the firm cannot become bigger and more profitable (in a relative rather than absolute sense) through organic growth, then growth should be sought through merger. Failure to keep pace with market growth could cause a firm to fall in the league tables, causing unease within the partnership and a run on the firm’s talent akin to once great firms like Wolf Block, Shea & Gould, andoudert Brothers.51 Although mergers may not immediately increase a firm’s relative profits, the higher revenues and headcounts enable the firm to convey a sense of dynamism by climbing higher in the Am Law 200 and NLJ 250 rankings. The bigger size also provides managers with greater latitude and margin for error in dealing with episodic partner defections.

In summary, the continued growth of Big Law, at least in terms of the number of lawyers, may have very little to do with the needs of clients and much more to do with the need of law firm managers to buttress themselves against the possibility of collapse. In essence, mergers implicitly buy managers the opportunity to experiment with a broader range of strategic options.

Unfortunately, the most conspicuous and common law firm strategies being pursued today by Big Law tend to dissipate rather than grow a firm’s reputational capital. The first is increased reliance on lateral partner hiring. Since 2000, the number of lateral partner moves in the Am Law 200 has increased by over 50% (from 1998 movements in 1998 to 3012 movements in 2011).52 From the perspective of management, the attraction of a lateral partner is that he or she can, in theory, generate revenues sufficient to cover (a) guaranteed income payments to the lateral, (b) any salaries to any associates or staffers the lateral brings with them, (c) a pro rata share of office overhead, and (d) a residual amount of profits that become part of the firm’s total profit pool. The ideal win–win lateral partner move occurs when there is a synergy between a lateral partner’s skills and client base and the new firm’s existing practice groups. This enables the lateral partner to split the higher profits with the new firm.53

According to many large law firm commentators, lateral partner hiring has become the dominant strategy of most large law firms.54 Although careful lateral hiring can, in theory, lead to a collection of superior lawyers who augment a firm’s reputational capital by providing valuable and complementary skill sets, how often does that occur? There is an extensive consulting literature on successful lateral partner integration,55 which is meant to preempt circumstances that could interfere with a lateral partner’s ability to deliver

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47 See supra note 39.

48 These figures exclude Dewey LeBoeuf, the 2007 combination of Dewey Ballantine and LeBoeuf Lamb, which collapsed in the spring of 2012.

49 See generally Rin Isaacs Eisler, Shark Tank: Greed, Politics, and the Collapse of Finley Kumble, One of America’s Largest Law Firms (1990).

50 Each of these differences is statistically significant differences at the p < .01 level.

51 See Henderson, Rise and Fall, supra note 30.

52 See Henderson, Rise and Fall, supra note 30.

53 Data obtained from the Law Firms Working Group through a special license with the American Lawyer Media (ALM, Inc.).

54 See, e.g., Mark Brandon, Focus: Lateral Hiring – Slow But Steady is the Way in Firms’ Quest for Lateral Value, The Lawyer, October 31, 2011, online at http://www.thelawyer.com/1010025.article (providing examples of lateral hiring that produces the desired growth in revenues and profits and examples where the desired growth fails to materialize). Earlier empirical research on the large law firm sector suggests a “separating dynamic may be occurring in the lateral partner market that effectively rationalizes and straitifies firms by practice group and level of expertise.” See Henderson & Bierman, supra note 10, at 1416 (noting that “the relative mix of practice within large law firms is in a state of flux, with more lucrative practice areas generally moving to larger, more profitable, and higher leveraged firms. Conversely, movement of partners in so-called commodity practices areas are generally mixed occurring at lower PPP firms within the Am Law 200 or smaller firms.”); See Galanter & Henderson, supra note 10, at 1904–1906 (examining similar data for the 2000 to 2005 time period and positing the likelihood of a “separating dynamic” among large US law firms).

55 See Jennifer Smith, Law Firms Pursue Growth by Punching in Tough Climate, Wall St. J., (reporting observations of industry experts that acquiring lateral partner talent has become “a preferred path to increasing market share”); Brandon, supra note 54, at (noting that “[lateral hiring remains the primary growth strategy of law firms”);

anticipated business. Further, as Larry Ribstein noted, no matter how talented the lawyer, there is always a risk that a new hire will disrupt or damage a firm’s culture. Indeed, lateral hiring was anathema to the original “Cravath System”, which avoided lateral hiring lest “[y]oung partners and associates are . . . subject to the discouragement of seeing someone come in over them from the outside.”

If law firm managers are turning to the lateral market to solve their most pressing strategic needs, the current environment of flat revenue growth provides a new and very difficult set of challenges. To attract partners who have their own substantial books of business, a firm will want to post very high profits per equity partner (PPP). This will signal that the lateral partner will financially prosper at the firm. Yet, to achieve higher PPP, the firm is more likely to cull the ranks of existing partners who are perceived as unproductive. Since the 2008 recession, the rate of growth of equity partners in the Am Law 100 has slowed to less than .5% per year (from an average of 189 equity per firm in 2008 to 192 in 2011). Part of this slow growth may be the result of partners being asked to leave the firm. This increases the availability of lateral talent, but with a surplus of lawyers who were underperforming at their prior firm. This creates, or heightens, a so-called lemons problem in the market for law firm partners.

This partnership “squeeze play” to prop up profitability may partially explain the peculiar pattern shown below in Fig. 2. This figure shows the average Am Law 200 rank of the firm left versus the firm joined for all lateral partners moves during the 2000 to 2011 time period ($n = 30,000$).

Although the average rank of the firm joined has hovered in the 65–70 range throughout this period, the rank of the firm left has gradually climbed from the 80–85 to the 60–55 range. Indeed, since 2009, the average lateral movement has been from a firm of higher revenues to a firm of lower revenues. This suggests that large law firms are becoming tougher, more unforgiving places to work, at least for the partners.

The second strategy that continues to be is very common and pervasive among law firms today—but also, according to the Ribstein Big Law critique, damaging to a firm’s reputational capital—is increased reliance on leverage in the form of greater proportions of non-partner lawyers. As shown in Fig. 3, since the Am Law 100 first started tracking the number of equity partners in 1994, the ratio of total firm lawyers to equity partners has increased steadily from 2.87 in 1994 to an all-time high water mark of 4.49 in 2011.

The increased reliance on leverage draws into sharp relief the tendency of Big Law to use its existing reputational capital to maximize short-term profits rather than take the steps necessary to build a stronger organization capable of taking market share from competitors. The higher leverage makes it much more difficult to properly screen, monitor, and train lawyers who are capable of building the firm’s reputational capital. Further, when we layer on top the increased pressure to originate business—to either preserve one’s standing in the firm or take advantage of rich payouts available to lateral partners—equity partners lack meaningful financial incentives to invest time in the mentoring of junior lawyers.

This incentive problem, which focuses a lawyer’s attention on the current fiscal year, is evident in a 2012 survey of over 2200 partners at major law firms. The results are summarized in Fig. 4. When asked to assess the importance of various factors that are considered in determining compensation at their firms, origination of business was ranked as the most important factor (74% picking “very important”) followed by revenues generated through that partner’s work for clients (59%). In contrast, management responsibilities was selected as “very important” by only 9% of respondents; and only 10% of respondents reported that good citizenship was
very important.67 When asked what was “most important” in determining compensation, 65% selected origination followed by 21% for working attorney receipts.58

Unfortunately, maximizing this current year’s revenues69 does nothing to build the firm’s reputational capital, nor is it likely to create firm-specific property or processes that hold out the prospect for creating a short-, medium-, or long-term competitive advantage against rival law firms. This tremendous economic waste and misdirected energy is what caused Larry Ribstein to pronounce The Death of Big Law. The source of the confusion is that many lawyers continue to make a handsome living in the Big Law sector. Yet, the Big Law organizational form (as opposed to individual lawyers or teams of lawyers) is conferring little or no direct value to clients. For the large majority of Big Law, the emphasis on large, short-term, distributed profits has placed a substantial stranglehold on innovation.

If we think the current form of Big Law is sustainable over the long run, we are kidding ourselves. Some Big Law lawyers will continue to make handsome living, but the number at the top of the pyramid will shrink and a significant portion of work will flow to lowercost providers with comparable or even higher quality. Indeed, as discussed in Section 2.2, law firms are no longer the only game in town.

2.2. The emergence of non-lawyer legal entrepreneurs

Earlier this year, the director of strategic pricing and analytics for an Am Law 50 law firm reviewed revenue data for the large law firm sector and remarked that “the overall demand has been and continues to be predicted as . . . flat.”67 Yet, at the same time, the analyst wondered whether his data source was capturing the full range of legal expenditures by the corporate law sector. Was it, for example, including the legal process outsourcer (LPO) Pangea3, which has been experiencing growth of 40–60% for the last several years?71 Likewise, was it counting Axiom, the staffing and outsourcing firm started by a Davis Polk associate in 2000 that now employs over 800 lawyers worldwide with $130 million in annual revenues and projected growth of 35% per year?72 The analyst concludes, “The simple math of 50% market growth suggests LPOs are taking market share from firms. And it’s likely other non-traditional providers are doing the same.”

One of the persistent themes in Larry Ribstein’s critique of lawyer regulation was the ethical rules, such as the prohibition on non-lawyer investment in law firms (Model Rule 5.4) and the ban on non-compete agreements (Model Rule 5.6), inhibited the ability of lawyers to adapt to the changing needs of the market.74 The prohibition on nonlawyer investment meant that lawyers had to be the source of finance for any capital intensive innovation or improvement in their law practice. Further, the nonlawyer ban inhibited collaboration and co-venturing with nonlawyer specialists, which stifled the overall pace of innovation. The ban on noncompetes was no less problematic because it dramatically reduced the ability of law partners to lock themselves into business plans with a longer-term time horizon. These ethical rules were ostensibly enacted for the benefit of clients, yet their effect has been to create a highly insular guild of lawyers who are incapable of keeping up with the business needs of their clients.

Through several articles, Ribstein argued vociferously for regulatory changes needed to enable law firms to evolve into new and more flexible business structures. Yet, throughout Ribstein’s long career, the lawyer regulatory landscape throughout the US remained essentially unchanged.75 It was as if we lawyers believed we had the power to define how clients could buy and access solutions to their legal needs. In The Death of Big Law, and Law’s Information Revolution,76 Ribstein began to think through the post-Big Law future in which new types of law firms specialized in legal information products, legal processes, legal service technologies, research and development, and new ways to finance and distribute legal services. They would come into being because of the value they would deliver to clients.

Although there is evidence that Ribstein’s perceptions were changing,78 he may have overestimated the need for regulatory reform to facilitate the entry of nonlawyers (and innovation) in the legal industry. In the year 2012, we are indeed seeing the entry and growth of many companies that offer a wide range of “legal inputs” and “legal products” to highly sophisticated corporate clients—an insight now fully grasped by the Am Law 50 analyst discussed above but few others. If Ribstein underestimated the power of market forces to find ways to get into a highly lucrative but seemingly protected market, he was nonetheless closer to the mark than the rest of the legal academy and virtually all practicing lawyers. This systematic underestimation of the market arguably occurred because we lawyers and law professors can get trapped in our own mental frames. The law belongs to lawyers, we think. And from that, it fol-

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68 See Brown, supra note 5.
69 See Ribstein, Ethical Rules, Agency Costs, supra note 2, at 1721–1725 (discussing unwarranted effects of prohibitions on nonlawyer ownership and noncompetition agreements).
70 The major exceptions here were the Supreme Court’s decision in Bates v. State Bar of Arizona, 433 US 350 (1977), which struck down on First Amendment grounds, the legal profession’s ban on lawyer advertising, and the Court’s decision in Goldfarb v. Virginia State Bar, 421 US 773 (1975), which ended the practice of state bar fee schedules, which sought to establish minimum prices for legal services). Neither one of these decisions, however, treaded on the business interests of large corporate law firms.
71 See supra note 3.
72 See supra note 2.
73 See note 7, supra, and accompanying text.
Susskind’s Paradigm  
of the Future Legal Marketplace

![Chart showing evolution of legal industry]

**Fig. 5.** Richard Susskind’s Evolution of Legal Industry.

In contrast, the top line of **Fig. 6** plots the employment trends in the catch-all “All Other Legal Services” (NAICS 541199), which has steadily grown from 9800 workers in 1998 to 23,504 worker in 2010. Indeed, since the high-water mark for law office employment, the All Other Legal Services group has grown by nearly 8000. The average job in a law office pays $80,000 versus $46,000 in All Other Legal Services. But the most striking feature is the rate of growth, which averages 8.5% a year. In 1998, All Other Legal Services comprised 0.9% of 5411. As of 2010, the percentage had increased 2.2% – and at the time of this writing, these data are 2.5 years old.

The cost structure and growth rates of companies inside the 541199 subsector do not look anything like law firms. Who are these employers? The County Business Patterns data include payroll and headcount information, but they are anonymized and aggregated at a geographic level so as not to reveal company-specific information to industry rivals. As a result, we do not know the identities of these companies. But we do know that seven states have All Other Legal Services employers that employ between 500 and 1000 workers: Delaware, Florida, Georgia, Missouri, New York, Ohio, and Pennsylvania. Likewise, in the 1000- to 5000-employee range, California has eight employers; Florida, Illinois, and Texas have two; and Connecticut, Indiana, Massachusetts, Minnesota, New Jersey, Ohio, and Pennsylvania each have one. The states with the biggest All Other Legal Services payrolls are California ($201 million, 4222 employees, 553 establishments), followed by Florida ($125 million, 2925 employees, 697 establishments) and New York ($113 million, 2501 employees, 297 establishments).

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80 See US Census Bureau, North American Industry Classification System (NAICS), online at http://www.census.gov/eos/www/naics/.
81 The County Business Pattern dataset includes payroll and headcount data for both lawyer and nonlawyer employees, but the trendslines are likely worst for lawyers. Other data from the Bureau of Labor Statistics suggest that lawyer jobs are trailing both paralegals and legal assistants. See BLS Occupational Outlook Handbook, online at http://www.bls.gov/ohi/ (last visited August 26, 2012).
82 Calculations made by author from US County Business Patterns data. I divided total payroll by the number of employees in each subsector.
83 This information is withheld at the county level when it would functionally reveal competitive information on specific employers.
In a 2010 article, Professor Milton Regan and Palmer Heenan described the process of “disaggregation” in which the legal supply chain would be broken down into discrete units and sourced to the most cost-effective provider.\(^8\) I believe the disaggregation process is driving the rapid growth of the All Other Legal Services subsector—yet this subsector is, in all likelihood, owned and controlled by nonlawyers.

For example, contract attorney registry services are strong candidates to fill the disaggregation niche. Because of the proliferation of electronic data, document reviews in large corporation transactions or litigation matters may no longer be cost-effectively reviewed by expensive law firm associates. So this work is allocated to teams of contract attorneys and paralegals assembled by contract registry services. One of the biggest is Robert Half Legal, which has 26 locations throughout the US and Canada.\(^8\) Robert Half Legal is owned by Robert Half International, which is a public company traded on the New York Stock Exchange (NYSE symbol: RHI). The SEC filings do not break out information on their legal services business.

A competitor of Robert Half is Special Counsel, which “places attorneys, paralegals ... and legal support personnel on a temporary, temporary-to-direct hire, and direct hire basis into law firms and corporate legal departments.” Special Counsel now has 36 offices in the United States. It is owned by Adecco Group North America, which is a subsidiary of Adecco Group. Adecco Group is listed on the SIX Swiss Exchange (symbol ADEN). Again, because of the size of the corporate parent, financials for Special Counsel are not disclosed.

In the document review space, contract attorney registry companies are increasingly competing against legal process outsourcers (LPOs), who use foreign lawyers to perform the same work on large scale transactions and litigation matters. Outsourcing creates difficulties in tracking the growth patterns of an industry sector or subsector because only the domestic component of a global supply chain will appear in a dataset like County Business Patterns. So, the actual growth in the All Other Legal Services subsector may actually be a number significantly larger than 14,000 domestic workers.

One of the most well-known LPOs is Pangea3, which was started in 2004 with $1.5 million in venture capital funding.\(^6\) The company was subsequently purchased by Thomson Reuters (NYSE, symbol TRI) in 2010 for a deal rumored to be between $35–40 million.\(^7\) At the time, the company had $25 million in annual revenue, with an electronic discovery reported to be its “biggest piece of business.”\(^8\)

The company’s core operations are in Mumbai, India and additional facilities are located in Delhi and Carrolton, Texas. Its corporate headquarters are in New York City. Since its founding, Pangea3 has reportedly grown between 40 and 60 percent per year. The company reports that it now employs over 850 lawyers worldwide; company management expects this historical growth rate to continue for the next several years.\(^9\)

There are several more relatively large companies operating in the LPO space; and they too are owned and controlled by nonlawyers. For example, Huron Consulting Group, a publicly traded company (NASDAQ, symbol HURN), recently issued a press release announcing a new document review and data operations facility in Gurgaon, India (a booming suburb of India).\(^9\) The press release reads, “The Company offers around-the-clock global discovery support with 1500 seats at nine locations across the US, UK, and India to address client’s complex business needs.”\(^9\) Huron Consulting Group’s revenues have increased from $315.6 million in 2007 to $606.3 million in 2011.\(^9\)

Another LPO is United Lex, which does e-discovery work along with contract and intellectual property portfolio management.\(^9\) United Lex was recently listed on the Inc. magazine’s list of the 500 Fastest Growing Private Companies, with sales growth of 1287% over three years.\(^4\) United Lex has 750 employees, including 650 in India.\(^5\) Similarly, CPA Global is LPO that does work in document review, legal research, patent portfolios, and trademark renewals. It employs 1500 people in 17 locations throughout the world.\(^8\) In early 2012, CPA Global was acquired by Cinven, a European private equity firm.\(^7\)

Within the document review space, “predictive coding” represents a third category of company that is profiting from disaggregation.\(^3\) In essence, predictive coding is machine algorithms partially replacing lawyers in the search for relevant information. In a recent federal court decision, Magistrate Judge Andrew Peck, ruled that a predictive coding algorithm was, on the facts before him, an acceptable substitute for manual review.\(^9\) Judge Peck favorably cited one study that compared two computer algorithms against human review, finding that the two computer searches were at least as accurate as lawyers.\(^10\) Judge Peck also favorably cited another study that found that technology-assisted reviews reduced by a factor of 50 the number of documents requiring human review.\(^10\)

Companies operating in the predictive coding space include Recommind, which specializes in eDiscovery, compliance and information management. It explicitly offers “products” for searching and analyzing large volumes of information. Recommind has

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8 Robert Half's website describes their services: “We place lawyers, paralegals, law clerks and legal support professionals on a temporary, project and full-time basis in high-demand practice areas. We also provide project teams, along with dedicated space and high-tech resources, for a wide range of initiatives including litigation support, M&A review and discovery matters.” Online at http://www.roberthalflegal.com/AboutUs.
8 Anuj Agrawal, In Conservation: Sanjay Kamlani and David Perla, co-CEO’s of Pangea3, Bench & Bar, June 27, 2012 (reporting on growth of LPO from a start-up in 2004 to 850 lawyers currently and projected growth of 40–60% per year). Note: This is an Indian publication.
8 Agrawal, supra note 86.
8 See Press Release, Conven to acquire CPA Global, January 18, 2012 (reporting on size of CPA Global).
8 Press Release, Conven to acquire CPA Global.
8 See Press Release, Cinven to acquire CPA Global.
8 See Da Silva Moore v. Publicis Group & MSL Group, 11 Civ. 1279 (ALC) (AJP) (S.D.N.Y. Fed. 24,2012) (recognizing that “computer-assisted review is an acceptable way to search for relevant ESI in appropriate cases”).
approximately $15 million per year in annual revenues and approximately 100 employees spread over facilities in Massachusetts, California, London, Germany and Australia. Kroll Ontrack is another e-discovery company that offers predictive coding. Kroll Ontrack, which started as a hard disk recovery service, evolved into the e-discovery and information management services. It now employs 1,500 workers in 11 US and 19 foreign locations around the world. In 2010, Kroll Ontrack had revenues of $250 million. Kroll Ontrack is subsidiary of Kroll Inc., which is a global risk consulting firm. Kroll, Inc. was recently acquired by Altegrity, which is a conglomerate that owns a series of companies specializing in information management. Altegrity is owned by the Providence Equity Partners, a private equity fund with over $27 billion under management.

All of the companies discussed above are profiting from the migration away from bespoke legal work. With disaggregation, it is possible that everything up until the courthouse door, or the client counseling moment, is an entry point for a legal service vendor to become part of the global legal industry supply chain. The debate over Model Rule 5.4, which prohibits fee-splitting with nonlawyers, may be largely moot. Rule 5.4 does not appear to be very effective at keeping nonlawyers out of the legal industry. But it may be an effective mental fence that has hindered lawyers and law professors from venturing out and understanding how the world is changing around us.  

3. Lean Law

For the purposes of history, I am willing to side with Professor Larry Ribstein argument that the Big Law model is, in fact, dead. Obviously, many large law firms exist and continue to rake in enormous revenues. But clients have more choices than ever. As a result, the core business practices that catapulted these firms to such size and scale—high partner-associate leverage, annual rate increases, rewarding hardwork with partnership, ever high profits—are on the wane. To survive and thrive in the years to come, firms will increasingly follow Lean Law principles—better, faster, cheaper through collaboration, process engineering and technology—rather than the Big Law model. Let me first describe in simple historical terms the evolutionary progression that produced the Big Law model; then I will attempt to lay out a handful of characteristics that comprise the emerging Lean Law era.

For nearly 100 years, US lawyers working in large law firms prospered because the world was becoming more complex and regulated. Specialized lawyers with deep technical expertise were in short supply. By combining into a firm, lawyers could specialize in specific areas of law, handle bigger and more complex matters, and otherwise coordinate their efforts to better serve clients. Indeed, in anticipation of growing client demand, the most successful firms constructed a partner-associate training model designed to keep pace with the growth. Firms with a large client base and a well-run partner-associate training model generally prospered during the Postwar era.

As evidence of this claim, consider the fact that the average name partner of an Am Law 100 firm (a list of firms based on gross revenues) was born in 1895 and died in 1964—yet the growth has marched on for another half century. This is the reputational capital that Larry Ribstein rightly highlighted as key to a large law firm’s financial fortunes. The period of greatest financial success has occurred during the last three decades. Between 1978 and 2003, total US legal expenses as a percentage of GDP increased from 4% to 1.8%. From this growing pie, large firm lawyers were getting the biggest slice. By the mid-2000s, the profit share of the average partner in an Am Law 100 firm was over $1 million per year. This tremendous prosperity was driven, in part, by an imbalance between the supply of sophisticated, specialized business lawyers (too few) and the legal needs, or demand, of corporate clients thriving in an era of globalization (very high).

Because complexity and regulation continue to grow unabated, large corporate clients continue to have enormous legal needs. Yet, two key economic factors have changed.

(1) Big Law has significant excess capacity. Between 1978 and 2008, the average size of a firm listed in the NJ 250 (the largest firms based on attorney headcount) increased by a factor of five, growing from 102 to 535 attorneys. This enables general counsel to deal with internal cost constraints by pitting large law firms against one another in search of lower prices. Thus, large law firms are increasingly locked into a battle over market share.

(2) New entrants into legal supply chain. As discussed in Section 2.2, a new generation of legal vendors has emerged who appear to be profiting from the disaggregation process, shrinking the volume of work that has traditionally flowed to large law firms.

The upshot of excess capacity and entry of new tech-driven vendors is that corporate law is poised to become dramatically more competitive.

In practical terms, the biggest challenge facing Big Law, and perhaps the entire US legal profession, is that the artisan model of lawyering (or Bespoke work) has reach its high-water mark and is now on the decline. The traditional legal services market is now confronted with a productivity imperative. To cope with globalization, corporate clients need better, faster, and cheaper legal output. This productivity imperative is experienced as stress inside Big Law, as the less productive partners are de-entitled and asked to leave. In contrast, for the new legal entrepreneurs, it is an enormous profit-making opportunity, as their entire business model

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well-suited for the systemized-productized sweet spot identified by Susskind.\textsuperscript{113}

Yet, as the legal market transitions into the new Lean era, the legacy reputation of the Big Law era still will continue to carry weight. Several years ago, a well-known law firm consultant and commentator famously observed that “Nobody ever got fired for hiring Skadden.”\textsuperscript{114} An in-house lawyer may get fired for exceeding his or her legal budget; a termination may happen if the same in-house lawyer presides over an important legal matter or transaction that, against the expectations of management, goes awry. But that outcome is less likely when the firm is highly profitable and perceived as a first-tier firm. These two crosscurrents suggest that corporate legal departments will continue to source work to new legal entrepreneurs when the risk profile is sufficiently low. This enables these vendors to build their reputations and begin the process of targeting and obtaining additional, more valuable legal work for the client. Conversely, because so many large law firms have excess capacity, in-house counsel have the market power to negotiate lower hourly rates or alternative fee arrangements that shift some of the risk of price unpredictability back onto the law firm. So both sectors obtain work, but the allocation is far from stable over the longer term.

The conundrum here for Big Law is that work processes and product offerings of many of the new entrants may be in the early stages of “disruptive innovation.”\textsuperscript{115} Specifically, many of the new entrants discussed in Section 2.2 are entering the market at a lower part of the legal services value chain, such as document review traditionally performed by junior lawyers. When faced with price pressure from clients unhappy with rapidly escalating costs (due, in part, to the advent of digital data), the traditional law firms have often been unable or unwilling to make the investments necessary to compete with new entrants. So this market is gradually being ceded to contract attorney registries services, LPOs, and companies using predictive coding technologies and products. But it does not stop there. Allied products and services, which are not particularly lucrative for law firms but are amenable to process and technology solutions, include intellectual property registrations and renewals, regulatory research and monitoring, contract management, and performing routine, annual corporate filings for companies doing business in multiple jurisdictions.

Will these new entrants begin to climb the value curve? \textsuperscript{116} Fig. 7 presents Clayton Christiansen’s Disruptive Innovation framework, including a plausible timeline for the legal industry. The challenges that confront Big Law go to the very heart of the innovator’s dilemma. Past success has conditioned Big Law to pay their work in particular ways according to particular reward structures. This makes it very difficult for individual lawyers to obtain the resources and support they need to meet the productivity imperative—that is, create legal solutions for clients that are better, faster and/or cheaper.

To illustrate, consider Firm X, which has clients with differing appetites for innovation depending upon cost pressures and norms within their industries. Partner A in practice group Y may have a client who is demanding more cost-effective handling of his regulatory matters. Partner B, in contrast, has a similar practice but with clients in another industry that is experiencing fewer costs pressures. Will Partner B want the firm to retain profits to subsidize Partner A’s solution? The problem becomes more complex if there is a significant age difference between Partner A and Partner B, thus producing different time horizons. The problem becomes still more complex if they work in different offices and, because of lateral movement, lack any shared history or personal connections.\textsuperscript{116}

In this scenario, Partner A will probably be given the latitude to offer the client discounted fees and, accordingly, make less money for himself. In the short-term, it means that Partner B is less likely to leave the firm, which props up the firm’s profits. But in the longer run, both Partner A and Firm X remain vulnerable because neither has made any progress toward addressing the productivity imperative. Conversely, the new legal entrepreneurs, whose stock in trade is learning how to learn,\textsuperscript{117} are delivering true innovation and obtaining the credibility to pitch the client for higher value work—work that might be currently handled by yet another Firm X partner. Thus, the power of the brand name firm, though clearly attractive for a risk-adverse in-house lawyer, is not a permanent shield against the new entrants.

In my conversations with law firm insiders, the bleakest metaphor I have encountered is that large US law firms have become The Hunger Games, a popular young adult novel centered on a tournament in which participants must vanquish one another; the sole prize is survival. As managers increasingly focus on revenues for the current fiscal year,\textsuperscript{118} the metaphor might apply both across firms and within them. If The Hunger Games captures some of the dynamics now taking hold in the large law firm sector, these are dynamics set in motion by highly successful law firm partners who are almost impossible to govern because of the large short-term rewards created by lateral market.

The economist might frame the issue this way: “Why invest in the speculative future of your law firm, through retained profits or a realignment of incentives for the longer term, when you can personally profit by focusing on your own client base?” This logic would seem to reflect rational self-interest. Yet, the successful law firm partner may view the issues through a much simpler lens: “I am successful because I have developed valuable talents and I work hard. Our firm’s primary problem is that other lawyers in the firm are not sufficiently talented or hardworking [like me].” Because these lawyers tend to be the least affected by systemic changes in the legal market—through talent or luck, it does not matter which—they are the most likely to discount that the market

\textsuperscript{113} See note 79, supra, & accompanying text.

\textsuperscript{114} See Bruce MacEwen, Nobody Ever Got Fired For Hiring Skadden, Adam Smith, Esq., April 21, 2004, online at http://www.adamsmithesq.com/2004/04/nobody, ever_got/.

\textsuperscript{115} See Clayton M. Christensen, The Innovator’s Dilemma (1997) (presenting framework in which incumbent industries often lack the ability to develop and exploit technologies that would replace their core products, leaving them vulnerable to disruptive innovations by new market entrants).

\textsuperscript{116} See Galanter & Henderson, The Elastic Tournament, supra note 10, at 122–133.

\textsuperscript{117} See Christiansen, supra note 115, at 268 (“Failure and iterative learning are . . . intrinsic to the search for success with a disruptive technology”).

\textsuperscript{118} See note 69, supra, and accompanying text.

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is indeed undergoing structural change. Most probably have not read, or even heard of, Richard Susskind.\(^{119}\) By virtue of their large, portable client base, these lawyers generally control the management of the firm, and they generally favor a strategy in which firm lawyers are asked to work harder [as hard as them]. This perspective fuels both the de-equitization of partners and the heavy emphasis on the lateral market.\(^{120}\)

That said, I want to be careful to not paint the future with too broad a brush. If a law firm, by dint of effective leadership and a farsighted partnership, were investing for the future, these plans are unlikely to be reported in the legal press or shared with an inquiring law professor. In my ongoing field research, I visited the annual meeting of the Electronic Discovery Reference Model (EDRM), which is an industry consortium comprised of law firms, major corporations, and legal vendors attempting to set standards around methods of conducting electronic discovery.\(^{121}\) Until just a decade ago, lawyers and law firms handled virtually every aspect of the discovery phase of litigation. With the advent of electronically stored information (ESI), a myriad of vendors have moved into this market. To what extent is Big Law interested in hanging on to this segment of market? Those who understand the standards—or better yet, participated in setting them—will probably be in a better position to adapt to the changing market. Out of 84 organizations involved in the long-term EDRM projects, many are the new legal entrepreneurs discussed in Section 2.2. But roughly a dozen are Am Law 200 law firms.\(^{122}\)

Twenty years from now, we may observe many familiar law firm brands, but the organization and substance of their work may be dramatically different.

### 4. Conclusion

The purpose of this Essay was to re-evaluate Larry Ribstein’s seminal 2009 article, *The Death of Big Law*, with the benefit of three years of additional market data. The evidence suggests that the Big Law model is no longer viable. That is, there is insufficient client demand to support the perennial organic growth of large law firms. In search of growth, law firm managers are wading deeper into the lateral market and enriching lawyers whom they believe have large, portable books of business. Likewise, to preserve profitability, law firm managers are also axing lawyers who are unable to build and maintain their own client base, either internally within the firm (by being a highly skilled specialist) or externally (by being a rainmaker). Profitability is also being pursued through ever-higher amounts of leverage, albeit staff attorneys and non-equity partners appear to be supplanting traditional law firm associates.

None of these strategies make a law firm more attractive in the eyes of the clients—or, in Larry Ribstein’s terminology, these strategies do not build a firm’s reputational capital. Rather, most large law firms seem to be managed for the short-term benefit of individual rainmaking partners. To shield the firm against the defection of a large group of lateral lawyers, law firm managers are gravitating toward rapid lateral expansion and mergers—so, ironically, Big Law continues to grow. The resulting collection of lawyers may produce little or no synergistic value for clients, but it may create internal perceptions of firm vitality and growth and buy managers more time to deal with the vicissitudes of the lateral market. In this sense, Big Law is creating its own peculiar version of “Too Big to Fail.” In the short term, the maintenance of relatively high profitability within these firms will convince stakeholders to stay the course—that is, to continue to pay out large profits and not invest too heavily in efforts to retool the underlying business model. These are the seeds of destruction.

Meanwhile, as discussed in this Essay, a new generation of legal entrepreneurs is beginning to occupy a portion of legal work traditionally performed by large law firms. Many of these companies are owned and controlled by nonlawyers. Further, they are establishing their own relationships with large corporate clients, thus positioning themselves for ascension up the value curve.\(^{123}\) Larry Ribstein was a strong proponent of market forces and private ordering to simulate innovation. He thus favored the reform of ethics rules that would permit nonlawyer investment and the enforcement of noncompete agreements among lawyers. Yet, in the year 2012 and without the benefit of regulatory reform, he might have been surprised by the rapid rate of growth of legal vendors owned and controlled by nonlawyer investors. Attracted by the large profit margins of a profession strongly wedded to its artisanal modes of production, these new legal entrepreneurs are likely to compete for every portion of the legal supply chain that does not involve either direct client counseling or representation before a tribunal.

In the long-run, I suspect that many Big Law brand names will survive, but a large number will also perish. Yet, even if a firm survives, its internal operations are destined to change. The owners may still make a handsome living, but the owners themselves will be either (a) fewer in number but more financially invested, akin to a closely held corporation with many employees, or (b) an employee-owned company in which each lawyer is carefully vetted at hiring and is expected to think and behave like an owner. With the emergence of more stable organizational forms that foster longer time horizons, we will witness a new era in which reputational capital—based on some variation of better, faster, cheaper—is built up rather than spent down.

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\(^{119}\) In my travels to talk with law firm partners, I have encountered very few who study their own industry. A small minority has read any work by Richard Susskind.

\(^{120}\) One recently retired partner told me, “Individual lawyers have every incentive to maximize their book of business even though the firm itself is headed into a cement wall.” Cf. Steven Kerr, *On the Folly of Rewarding A, While Hoping for B*, 9 Acad. Mgmt. Exec. 7 (1995) (republishing of an “academic classic” originally published in 1975).

\(^{121}\) See www.edrm.net.

\(^{122}\) See http://www.edrm.net/participants/2012-2013 (providing list of 2012–2013 participants).

\(^{123}\) See Fig. 7, supra.
Three Generations of U.S. Lawyers: Generalists, Specialists, Project Managers

William D. Henderson

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THREE GENERATIONS OF U.S. LAWYERS: GENERALISTS, SPECIALISTS, PROJECT MANAGERS

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As this Essay is being written, the legal services industry is in the midst of a significant economic recession. In response to harsh economic conditions, the nation’s corporate clients have tightened their legal budgets and altered their spending habits. As a result, large law firms, who in recent years hired roughly twenty-five percent of all law school graduates, have dramatically cut the sizes of their incoming associate classes.1 In turn, highly qualified law school graduates have expanded their job searches to markets and to employers that are normally reserved for the broad middle tier of law school graduates. As the downturn cascades through the entire entry-level market, a disturbingly large number of recent law school graduates are either unemployed or underemployed. Although many of us who are middle aged or older can remember prior economic recessions (for example, the early 1980s, the early 1990s, and right after September 11th), there is a palpable sense among legal employers and legal educators that this particular recession feels different.

Does the “Great Legal Recession” that commenced in the fall of 2008 mark the beginning of a true sea change for traditional corporate law firms and, by extension, U.S. law schools? The answer to this question is yes. This short Essay will walk interested readers through some of the essential supporting data. The story follows a relatively simple narrative in which successive generations of U.S. corporate lawyers have evolved from generalists, to specialists, to someday, in the not too distant future, project managers. Further, the story’s analytical lens is primarily one of supply and demand gradually shifting over time.

What I think will surprise readers—particularly legal academics and law firm partners, and less so law students and recent law school

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graduates—is my conclusion that existing hierarchies of legal employers and legal education are vulnerable. The U.S. legal profession is exiting a period of profound economic prosperity. This prosperity was set in motion by a handful of innovations in law firm structure and lawyer training that occurred several decades ago. These simple innovations gave American lawyers the tools and the platform to help create and grow a highly dynamic, regulated global economy.

Unfortunately, those of us who have benefited—senior law firm partners, elite law school graduates, and the professoriate—are prone to attribute our success to a natural ordering that flows primarily from our perceived intelligence and merit. Because we do not understand the history, we underestimate the role of luck and how much we owe to the innovations, risk taking, and sacrifice of others. So, we are the last to see the end of an era. The story fits the old adage, “nothing fails like success.”

I. THE GENERALIST

In the United States circa 1900, the great industrialists and financiers were building empires. At the same time that economies of scope and scale suggested boundless opportunities for expansion and growth, federal and state governments were beginning to grapple with the need for regulation in order to curb some of the unwanted or unintended consequences of the modern industrial state. The world was becoming more complex. Unfortunately, sophisticated business lawyers were in short supply.

For a variety of interconnected reasons, the typical lawyer at the turn of the twentieth century possessed only the skills of the generalist. Sophisticated business lawyering was—and is—largely a product of experience. Until the late nineteenth century, most economic ac-

2. In a recent book, Michael Lewis claims that young people got the most traction out of the opportunities provided by the Internet because they had not yet become invested in their own professional identities. See generally MICHAEL LEWIS, NEXT: THE FUTURE JUST HAPPENED (2002). Lewis suggests that this investment in our own identities makes us blind to the opportunities around us. Id. If true, the young and the disenfranchised will tend to see the possibilities better than the rest of us.

3. I have heard this adage too many times over the years to properly locate its original source. It may have passed into modern parlance through the work of Arnold Toynbee. See 1 ARNOLD J. TOYNBEE, A STUDY OF HISTORY 227 (Oxford Univ. Press 1946) (quoting GERALD HEARD, THE SOURCE OF CIVILIZATION 67 (1935)).

4. See, e.g., Robert L. Rabin, Federal Regulation in Historical Perspective, 38 Stan. L. Rev. 1189, 1218-19 (1986) ("Roosevelt thought that federal regulation of big business was essential in order to maintain a necessary distinction between 'good' and 'bad' trusts. Thus, he strongly advocated governmental monitoring of large-scale enterprise to ensure that industrial growth occurred 'naturally' rather than through predatory practices.")
tivity was small in scale and local in origin, so the opportunities for on-the-job learning were fairly limited. In addition, legal education was making only slow inroads into the informal apprenticeship system. The small number of elite institutions that provided systematic training in legal doctrine made no attempt to go beyond a generalist legal education.\(^5\) Indeed, one of the primary benefits of law school was better preparation for state bar examinations, which tested a broad range of legal knowledge.\(^6\)

When the need for more sophisticated business lawyers presented itself—because businesses were becoming larger, more complex, and more heavily regulated—law firms assumed this responsibility. Yet, before law firms could carry out this specialized training on a large scale, they had to solve a very difficult intrafirm incentive problem: Once the student became the master's equal, how should the profits be divided?

One of the best illustrations of the lawyer mentoring problem was the training of Paul Cravath, the brilliant business lawyer who went on to build the elite New York City law firm of Cravath, Swaine & Moore LLP. Upon graduating from Columbia Law School, Cravath joined the firm of Carter, Hornblower & Byrne.\(^7\) Cravath's mentor at the firm was Walter Carter, a highly accomplished business lawyer who possessed a talent for locating and training great lawyers. During the last three decades of the nineteenth century, many of New York City's most influential lawyers began their careers under the tutelage of Carter.\(^8\) And many, including Cravath, eventually became his partners.\(^9\) Yet, according to one lawyer, Carter "picked his partners as

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\(^5\) See, e.g., Alfred Zantzinger Reed, Training for the Public Profession of the Law 286 & n.1 (1921) ("A line or gap between [the law school’s] work and genuinely practical training is inevitable. . . . It so happens that the schools which have committed themselves most unreservedly to the case method are precisely those schools [the ‘national’ law schools] in which there is the widest gap between the instruction as a whole and the immediate requirements of the local practitioner." (footnote omitted)). Reed’s work was published by The Carnegie Foundation for the Advancement of Teaching and is sometimes referred to as “The Reed Report I.”

\(^6\) See, e.g., id. at 49–50 (reporting on the role of bar examiners in “standardizing” the law school curriculum and explaining how the curricula of “leading” law schools are “copied by other schools throughout the country”).


\(^8\) See generally Otto E. Koegel, Walter S. Carter: Collector of Young Masters (1953) (chronicling the many eminent New York City lawyers whose careers can be traced back to Carter’s law offices).

\(^9\) 1 Swaine, supra note 7, at 588.
Connie Mack picked ball players, usually dropping them when they
demanded or earned as much as he did.”

According to the official history of the Cravath, Swaine & Moore
firm, the “Cravath system” of recruitment and training was based
upon the philosophy of Walter Carter. Carter’s practice was to re-
cruit the top graduates from leading law schools, pay them a salary,
and develop their skills and acumen through a clerkship of several
years. The major innovation of Paul Cravath was to make this train-
ing system scaleable to fit the needs of sprawling industrial and finan-
cial clients. One important part of the Cravath system was an
incentive structure that rewarded lawyers for working together as a
team for the benefit of clients. A second key element was an ad-
vancement system that required lawyers to master the “art of delega-
tion.” A third feature was the emphasis on a structured program of
training, which ensured that lawyers had someone coming up through
the ranks to whom work could be delegated.

During the 1930s, the Cravath firm was dubbed by the press as a
“law factory.” Although the firm was doing a prodigious volume of
legal work, it was also creating sophisticated business lawyers. The
stated purpose of the Cravath system was to create “a better lawyer
faster.” After acquiring those skills, the most remunerative place to
ply those skills was as a partner at the Cravath firm. Yet, if an associate
failed to make partner, the firm’s excellent training opened doors at
other New York City firms. Thus, unlike Carter’s firms, in which fully
trained lawyers typically left to form their own practices, the Cravath

10. KOEGEL, supra note 8, at 91 & n. (noting also that Carter, at the time of his death,
claimed a disproportionate share of the firm’s profits (internal quotation marks omitted)).
11. 1 SWAINE, supra note 7, at 587.
12. See id. (explaining that, after “training them for several years,” Carter encouraged
his clerks to “depart[ ] to practice for themselves”).
CRAVATH FIRM SINCE 1906, at 9 (1948) (“[A]ll the business in the office must be firm busi-
ness. This means that there is no division of fees between the firm and its associates, as
there is in many other offices. The problem of the firm is to do effectively the business
which comes to it; by so doing that business, more comes in. Hence, business-getting abil-
ity is not a factor in the advancement of a man within the office at any level . . .”).
14. Id. at 5–6 (“The art of delegation in the practice of the law is difficult, requiring
nicety of balance which many men with fine minds and excellent judgment are unable to
attain. . . . [The more a firm lawyer can strike the right balance,] the greater his value to
the firm.”).
15. See id. at 7 (noting that the Cravath system involved “keeping a current constantly
moving up in the office”).
(profiling Paul Cravath and referring to his firm as “the factory”).
17. 2 SWAINE, supra note 13, at 4–5.
firm was stable and could continue to grow in response to client demand.\textsuperscript{18} Although it may not be entirely accurate to ascribe the invention of this method of workplace organization to Paul Cravath,\textsuperscript{19} virtually all major business law firms organized themselves along similar principles.\textsuperscript{20}

II. The Specialist

Although the seeds for the specialist era were in place by the mid-twentieth century, in terms of sheer numbers, the legal profession was overwhelmingly comprised of solo practitioners who earned a very modest living. According to a national census of lawyers drawn from the 1949 Martindale-Hubbell directory (estimated to be ninety percent complete at the time), there were 169,489 lawyers working in the United States.\textsuperscript{21} Among the roughly 152,600 working in private practice, 68.6\% were identified as solo practitioners.\textsuperscript{22} Of the lawyers working in law firms, roughly 40,500 were classified as partners and a mere 7,500 (or 4.9\% of the private practice bar) were classified as associates.\textsuperscript{23} The median salary of a lawyer working in private practice was $5,199, which was less than the $5,518 median salary paid to a lawyer employed by a government entity.\textsuperscript{24} In contrast, lawyers working in large law firms of nine or more partners enjoyed median in-

\begin{itemize}
\item \textsuperscript{18} The stability of the Cravath system for all stakeholders is reflected by Professor Charles Reich's characterization of his time at the Cravath firm in the early 1950s: [Once inside the firm, the associates learned that] making partner was not such a big issue after all. We were all told that while few associates could expect to remain permanently at the firm itself, we could all count on well-paid future employment at one of the many corporate legal offices or regional law firms that had ongoing relationships with Cravath. The message was: Excellent work is expected, but the pressure is off. Associates were safely and comfortably on the inside for life. Inclusion was more important than competition. Charles Reich, Cravath Veteran Recalls Law Firm Life of Yesteryear, LAW.COM (Dec. 17, 2007), http://www.law.com/jsp/lit/PubArticleLLF.jsp?id=1197626690782.
\item \textsuperscript{19} My colleague Marc Galanter has suggested that Cravath may have been blessed with the best historian, his partner Robert Swaine. MARC GALANTER & THOMAS PALAY, TOURNAMENT OF LAWYERS: THE TRANSFORMATION OF THE BIG LAW FIRM 10 (1991).
\item \textsuperscript{20} See id. at 9–10 (discussing the creation and influence of the Cravath system); MILTON C. REGAN JR., EAT WHAT YOU KILL: THE FALL OF A WALL STREET LAWYER 20–23 (2004) (discussing the origins and influence of the Cravath firm, which “provided a structure whose influence persists to this day”).
\item \textsuperscript{22} Id. at 372 (author's calculations).
\item \textsuperscript{23} Id. (author's calculations).
\item \textsuperscript{24} William Weinfeld, Bureau of Foreign & Domestic Commerce, U.S. Dep’t of Commerce, Income of Lawyers, 1929–48, SURV. OF CURRENT BUS., Aug. 1949, at 18, 21 tbl.6 & n.1. The median income for a salaried lawyer in a law firm (meaning, an associate) was $4,986. Id. at 21 tbl.6.
\end{itemize}
comes 400% higher. But their numbers were slight, as they comprised less than 1.5% of all lawyers working in private practice. These lawyers had become relatively wealthy because their workplace organization enabled them to become specialists.

During the early post-war period, as the U.S. industrial economy boomed, law firms with an established business clientele were in an excellent position to prosper and grow. Along with unprecedented business opportunities, clients were facing novel legal problems brought about by the scale and breadth of business operations, the need for new methods of finance, and the proliferation of state and federal regulations. Most companies relied upon lawyers from a single outside law firm to handle all the company's burgeoning legal needs. As firms reacted to the clients' need for more specialized services, they were also in a position to train the next generation of sophisticated business lawyers. Because clients were dependent on the expertise of their outside legal counsel, and because the size and scope of the legal issues continued to grow, clients were usually willing to pay for the training of junior lawyers.

Indeed, for much of the post-war period, the larger corporate law firms have had the wind at their backs. According to government statistics, for the last several decades, expenditures on legal services have become an increasingly larger share of our nation's gross domestic product, increasing from roughly 0.4% in 1978 to 1.8% in 2003. Data from the Chicago Lawyers I and II studies, which examined a large random sample of Chicago area lawyers in 1975 and 1995,

25. Id. at 21 tbls.6 & 7 (reporting a median net income of $21,500) (author's calculations).
26. Id. at 21 tbl.7.
27. For a firsthand account of the steady movement toward specialization from the perspective of a business lawyer who began his law career in the 1920s and opined on the importance of associate training sixty years later, see generally THEODORE VOORHEES, ON TRAINING ASSOCIATES 61-70 (1989).
28. In reality, legal specialists are created by law firms and other legal services organizations, including government agencies and nonprofits. Although these opportunities are often meted out by educational credentials, law schools play virtually no role in this process.
29. Cf. Gene Koo, New Skills, New Learning: Legal Education and the Promise of Technology (Berkman Ctr. for Internet & Soc'y at Harv. Univ., Research Pub. No. 2007-4, Mar. 2007), available at http://cyber.law.harvard.edu/events/luncheon/2007/05/koo ("Clients are increasingly unwilling to pay for training of associates, e.g. prohibiting firms from billing for young attorneys' attendance at client-facing meetings. New lawyers' involvement in such meetings has long been an important apprenticeship activity.").
30. Marc Galanter, Planet of the APs: Reflections on the Scale of Law and Its Users, 53 BUFF. L. REV. 1369, 1378 & fig.1 (2006). Professor Marc Galanter also compared the growth of GDP and receipts of legal services industry between 1967 and 2002, finding that legal services grew nearly three times faster than the overall economy. Id. at 1379 & fig.2.
strongly suggest that virtually all the corresponding gains in real income went to lawyers working in large law firms of 100 lawyers or more. The importance of luck and timing in allocating these spoils is evidenced by the fact that among the 100 largest U.S. law firms based on revenues (the Am Law 100), the average "name partner" was born in 1895 and died in 1964. In general, a precondition to being a large firm today is the existence of a business clientele several decades earlier. Thereafter, the advantage compounded over time. Over the last three decades, the 250 largest firms based on size (the National Law Journal 250) have grown by more than 500%.

Despite the longevity and prosperity of these large firms, the background economic conditions have gradually shifted, thus changing the relative payoffs of all participants. With the rise of the general counsel position in the 1970s, in-house lawyers assumed the position of trusted advisors to the company's owners or senior executives while outside law firms were called upon for their specialized skills and technical expertise. The advent of a vibrant legal press, which seemed to come into being immediately after the United States Supreme Court's decision in Bates v. State Bar of Arizona, chronicled the successes of individual lawyers and the accomplishments of firm practice groups.

31. See John P. Heinz & Edward O. Laumann, Chicago Lawyers: The Social Structure of the Bar (1982); John P. Heinz et al., Urban Lawyers: The New Social Structure of the Bar 99 (2005) (reporting that between 1975 and 1995 large law firms were the "clear winner in the market for legal services" as the "income share declined in every practice setting except firms with one hundred or more lawyers").

32. Marc Galanter & William D. Henderson, Understanding Corporate Law Firms by Reading the Shingle (unpublished manuscript presented at the 2010 Law & Society Annual Meeting in Chicago, IL) (on file with authors).

33. Only one firm (Quinn Emanuel Urquhart & Sullivan, LLP) has name partners who are baby boomers. In general, the large, highly profitable young firms have benefited from the rise of the legal press, which could report the successes of their name partners, who have the advantage of being alive.


35. See, e.g., James C. Freund, ABA Section of Bus. Law, Smell Test: Stories and Advice on Lawyering 203 (2008) (observing "the power that inside general counsel started to exercise in the 1970s, especially in terms of such matters as selecting outside counsel" and noting that "[t]his power was greatly expanded in the '80s, '90s, and beyond"); John P. Heinz et al., The Scale of Justice: Observations on the Transformation of Urban Law Practice, 27 Ann. Rev. Soc. 337, 347-48 (2001) (describing how the bureaucratization of the in-house lawyer role reduced the role of outside law over corporate decision making).

36. 433 U.S. 350, 384 (1977) (holding that Arizona's ban on lawyer advertising was a violation of the First Amendment).

With this flood of new information, general counsel increasingly adopted the perspective that they were shopping for individual lawyers rather than law firms. In turn, partners with a strong client base capitalized on this change by demanding a larger share of their billing as they moved laterally among law firms. Partners in marquee practice areas, such as mergers and acquisitions, private equity, venture capital, white collar crime, securities enforcement, and intellectual property litigation, have fared the best.

This vibrant market for specialized lawyers, however, also has consequences for junior career lawyers and recent law school graduates. In reality, the specialized technical skills young lawyers have learned from their large law firm training have gradually lost their “resale value” as the number of associates who fall off the partner track has increased relative to supply. As the size of the corporate bar has expanded over the last several decades, the total volume of technically sophisticated lawyers (specialists) is at an all-time high. This reality strongly reduces the incentive of clients to subsidize the training of entry-level lawyers, particularly at inflated pay scales that are disconnected from the value provided to clients.

also coincided with the rise of the legal press in the late 1970s, which reported on high-profile legal cases and transactions, created a limelight for star lawyers, and facilitated comparisons of law firm size and economic fortunes.

38. See, e.g., Regan, supra note 20, at 33 (noting that “companies are more concerned with retaining individual lawyers than specific firms”); Ronald J. Gilson & Robert H. Mnookin, Sharing Among the Human Capitalists: An Economic Inquiry into the Corporate Law Firm and How Partners Split Profits, 37 STAN. L. REV. 313, 385 (1985) (“The catchphrase now is: ‘Shop for a lawyer, not a law firm.’”).

39. For a detailed discussion of the rise of the lateral marketplace, including a breakdown of movement by practice area and geography, see generally Marc Galanter & William Henderson, The Elastic Tournament: A Second Transformation of the Big Law Firm, 60 STAN. L. REV. 1867 (2008), and Henderson & Bierman, supra note 34.

40. See Paul Hoffman, Lions of the Eighties: The Inside Story of the Powerhouse Law Firms 216–21 (1982) (explaining that specialized legal skills no longer guaranteed employment unless a lawyer was able to use those skills to bring business into a firm in the early 1980s).

41. See Henderson & Bierman, supra note 34, at 1996 (describing the increase in the number of partners and associates in large law firms between 1978 and 2008); see also Kimberly Kirkland, Ethics in Large Law Firms: The Principle of Pragmatism, 95 U. MEM. L. REV. 631, 659–60 & n.157, 690 (2005) (conducting detailed interviews with partners in National Law Journal 250 firms and noting that all “agreed that being a good lawyer is not enough to make equity partner in today’s large firms, and in a number of firms, it is also not enough to make non-equity partner”). Kirkland also commented that “[l]arge firms view good lawyers as expendable. As one equity partner put it, ‘You can’t swing a dead cat in New York without hitting a good lawyer.’” Id. at 690.

42. See, e.g., Attila Berry, Closing in on $200K, LEGAL TIMES, Dec. 24, 2007, at 1, 1 (reporting comments made by Susan Hackett, “senior vice president and general counsel of the Association of Corporate Counsel,” that “many clients see the salary war as having
The end of the specialist era is the flipside of the same dynamic that gave rise to it in the first instance: The relative supply of sophisticated business lawyers has increased relative to demand, thanks to the growth of large law firms and the training they provided over a period of several decades (albeit at the clients' expense). Now, however, the amount of money spent on legal services by large corporate clients is vast. And, this purchasing power is disproportionately centralized among a few hundred general counsel.

Although formally trained as lawyers, these general counsel are effectively senior corporate managers whose goal is to optimize the benefit of a fixed legal budget—indeed, it is typically a key element of their remuneration. The end of the specialist era is marked by general counsel's use of the overcapacity of specialists to drive down overall costs to their corporation. The beginning of the project manager era—which I believe is now dawning—is marked by sophisticated corporate counsel looking for methods of workplace organization and process that will deliver higher quality legal inputs and outputs (a bundle of both services and products) for a predictable fee. Further, as the project manager gains momentum, the legal service market will begin to behave like other sectors of the economy—the cost of these inputs and outputs will decline over time.

III. The Project Manager

It is hard to decipher the end of one era and the dawning of another when all the relevant ideas and data come from books, articles, and a computer screen. I doubt that I would be willing to make this call if I had not wandered outside my office to listen to a wide range of industry participants talk about their businesses. Further, I would be more reluctant to stake out a bold theory of industry change if I personally had not witnessed a transition of similar magnitude. But, I grew up in Cleveland, Ohio during the 1970s and early 1980s, when the U.S. automotive industry peaked and then headed into de-

43. See, e.g., Roy E. Hofer, Reflections on the Legal Profession, Experience, Winter 2008, at 30, 32 (quoting the name partner of a large firm specializing in intellectual property as remarking that “[m]any corporate clients now consider their outside lawyers as a fungible commodity. They pit firms against each other in beauty contests. They assume that the quality of the legal work is equal, and therefore in these contests look for discounts, fixed fees, knowledge of the client's business, [and] how fast phone calls will be returned . . . .”).

44. See generally Susan Helper, Economists and Field Research: "You Can Observe a Lot Just by Watching," Am. Econ. Rev., May 2000, at 228 (discussing the value of fieldwork to economic research).
cline. At the time, it would have been hard to imagine how quickly the industry would unravel. As a region, we believed that things would rebound or stabilize. We were wrong.

In this final Part, I relate two concrete examples of how the traditional pyramidal law firm is being undercut by innovations—one by a client and another by a legal services firm—using innovative technology, project management, and process improvement. These examples reflect modes of problem solving that are completely foreign to the training and socialization of most successful corporate law firm lawyers—and that is why they are so disruptive to established hierarchies. In addition, drawing upon my observations of the automotive industry, I suggest that the supplier relations of the Japanese versus U.S. automakers during the 1980s and 1990s provide law firms with relatively simple, albeit stylized, blueprints for success or failure in the years to come.

My first example comes from the in-house legal department at Cisco Systems, Inc., a Fortune 100 technology company. The company has a relatively large legal budget (approximately $160 million), but the General Counsel, Mark Chandler, is expected to contain costs on par with any other department in the organization. One strategy the legal department has used to contain costs is to bring in-house legal work that is core to the company's competitive advantage (meaning, build rather than buy). As the legal department grew, the General Counsel and his staff wanted to capture the full learning of each matter so that each similar, subsequent matter could build upon it as a starting point. One of the company's licensing attorneys, Steve Harmon, who has an information technology background, was asked to help architect a new legal automation and knowledge management platform. The goal of the project was to better archive information, capture the full context of prior work, facilitate information sharing, develop internal expertise, save time, and obtain better legal outcomes.

45. For a broader theory of how industry leaders fail to adapt to disruptive technology, see CLAYTON M. CHRISTENSEN, THE INNOVATOR'S DILEMMA: WHEN NEW TECHNOLOGIES CAUSE GREAT FIRMS TO FAIL (1997). As law professor and technology expert Richard Susskind has stated: "'It is not easy, of course, to convince a roomful of millionaires that their business model is ultimately misconceived or that their practices face greater threats to prosperity than ever before' . . . . 'They will cling dearly to the old economy until there are overwhelming reasons to do otherwise.'" Mark Voorhees, Tech's Prince of Darkness Strikes, NAT'L L.J., Jan. 22, 2001, at B8.

46. This first example is based on my own experience and conversations with the lawyers in Cisco's legal department.
Most interestingly, Cisco's legal department promises to provide an answer to any legal question asked by any other corporate department “as long as it is asked in the proper form [i.e., inside the tool].” Answering a question via phone may be convenient for a Cisco employee in another department, but working outside the knowledge management tool undercuts the legal department’s ability to generate better, faster, and less expensive answers in the future. One of the most effective ways to improve service to all internal stakeholders is to make sure that company lawyers are not solving the same legal problem multiple times. Further, the work of outside legal counsel gets integrated into the platform. Younger attorneys build their profile in the department by updating and annotating content and serving as ad hoc problem solvers to others in the organization.

By faithfully following this approach, virtually all of the company’s core legal functions are at the fingertips of the company’s entire in-house legal department. The more the tool gets used, the more valuable it becomes. Although the system already has enormous internal network benefits, it requires remarkably little high-level supervision. Its management and updating are diffused through the organization, thus becoming organic to the overall work flow.

When I was walked through this process, several questions came to mind. I asked one of the in-house lawyers whether, after working in this environment, she could ever imagine herself billing 2,000 hours per year in a conventional law firm. “No,” was the reply. She continued, “This place has ruined me for law firms. I now need collaboration and efficiency to be happy in my job.” Hearing the answer to that question, I asked Steve Harmon, the lawyer charged with developing the platform, whether the company considered turning it into a commercial product for other in-house legal departments. His reply surprised me:

I wish I did not have to build tools. They are not core to our business. I would prefer to work on licensing agreements for our company’s core products [his primary area of expertise as a lawyer]. But the law firms are not interested in building tools for us. So we had to build them.47

47. The basic framework developed by Cisco has been turned into a commercial product utilized by other large legal departments. Some of these innovations are discussed and utilized through Legal OnRamp’s online community. See generally Legal OnRamp, http://legalonramp.com/ (last visited Jan. 25, 2011) (describing Legal OnRamp’s “[c]ollaboration system for in-house counsel and invited outside lawyers and third party service providers,” which contains “a rapidly growing collection of content and technology resources”).

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In my opinion, the key takeaway from this exchange is that when legal expenditures become sufficiently large, the company is going to treat them like any other variable expenses—the company will focus on controlling them. Further, if enough money is on the table, even a legal department may be willing to vertically integrate noncore aspects of its business. This will only happen, however, when no supplier steps up to offer the desired product and service. Cisco, not surprisingly, is a pretty demanding client. Mark Chandler expects the company’s outside law firms to help with the goal of doing more with less. Some law firm partners might argue that they would prefer to work for clients who are less demanding and focus less on cost containment. I can understand this sentiment, but it does not belong in any long-term business plan. Like water running downhill, best practices eventually get adopted by companies that want to stay in business.48

My second example of game-changing innovation came to my attention when two principals of Novus Law LLC visited my Project Management class to talk about their business.49 Novus Law, which was started less than five years ago, specializes in reviewing, managing, and analyzing documents for litigation, investigations, and transaction-based due diligence. Prior to that, the principals (who have M.B.A. degrees, not law degrees) led the business process outsourcing practice at PricewaterhouseCoopers. There they spun-off and reengineered the nonstrategic work processes of several Fortune 500 companies, making them much more efficient and profitable using the exact same workers that would have otherwise been laid off. When those spinoffs were eventually sold, the principals looked for another promising business opportunity. After two years of patient evaluation, it took them one day—yes, one day—to commit to using those same reengineering techniques in the legal industry. Why? Because in their review of industry data, never before had they witnessed such an enormous disconnect in perceived value between clients and service providers.

In just a few short years, Novus Law has enjoyed considerable success in partnering with major corporate legal departments and Am

48. Through reading and observation, I have gradually concluded that efficiency is often at odds with comfort and familiarity of settled opinion. Efficiency, however, generally fares better in the long run. Cf. Michael Lewis, Moneyball: The Art of Winning an Unfair Game 88–96 (2003) (documenting in painstaking detail how the ability to win more baseball games through the use of statistics—"sabermetrics"—was summarily ignored by the baseball establishment for nearly twenty years before it became mainstream virtually overnight).

49. This second example is based on the visit of two principals from Novus Law LLC to my own Project Management class.
Law 200 law firms. Their work has been relied upon in complex civil, white-collar criminal, and major class actions and multidistrict litigation in federal courts. What is the value proposition for clients? Sixty percent lower cost than a traditional law firm and near perfect quality—far better than any large law firm with an army of top law school graduates.50

Although a small portion of the cost savings comes from using less expensive lawyers in the United States and abroad, the efficiency and quality is entirely a function of world class project management and process engineering. At Novus Law, reviewing, managing, and analyzing documents has been broken down into nearly 1,000 decision points, which are arrayed in an optimal order and collapsed into a smaller number of highly efficient steps using business practices found in accounting, aviation, healthcare, manufacturing, and other industries. In addition, the lawyers doing the work are given an engineered work environment that is optimized for comfort, efficiency, and mental accuracy. The heavy reliance on process is not just about speed and accuracy—customized knowledge management and intelligence gathering tools enable lawyers to better identify fact patterns that can drive the outcome of a case. Every aspect of cost and quality, including team communication and collaboration, is captured by a system of statistically driven metrics. Lawyers are exposed to a constant feedback loop on their own performance, which enables them to continuously improve. As they progress, they enjoy higher compensation. Remarkably, lawyers with as little as three years of experience have become shareholders in the firm.

With the advent of e-discovery, which has exploded the scope of discoverable information, many large law firms have responded by building out litigation units that rely on either staff or contract attorneys, who are cheaper than the traditional associates paid on the

50. This claim of quality is documented by taking a statistically-based random sample of work product and having a law firm redo it in an effort to identify errors. This firm’s accuracy rate vacillated between 99.8% and 100%, whereas the typical Am Law 100 law firm hit 78% to 91%. E-mail from Ray Bayley, Chief Exec. Officer, Novus Law LLP, to William Henderson, Professor of Law, Ind. Univ. Sch. of Law (Feb. 2, 2011, 5:51 PM) (on file with author) (work product accuracy confirmed in e-mail). Because ethical sanctions often turn on erroneous claims of privilege during discovery, the benefits to the client or the lead outside counsel can be enormous.
$160,000 plus pay scale. From a distance, this BigLaw model looks safer than "sending your documents to India."

If the value proposition is just labor arbitrage, that argument may have staying power until all of the economies of using less expensive labor are realized. But Novus Law's real comparative advantage is a project management and process orientation that dramatically increases quality. Its process, quality, and knowledge management system, which recently won a global InnovAction Award from the College of Law Practice Management, enables its attorneys to collaborate on factual theories at the same time that privilege review is being performed. This one-touch, multifaceted approach to processing information can supply the client with a basis for an early resolution or dismissal, which can further reduce the cost of litigation.

The fact that Novus Law can measure and warrantee quality, and offer price certainty, endears it to large corporate clientele. This model does not require the pay scale of a developing country to be competitive. Yet, the fact that measurable quality is identical between U.S. and overseas attorneys suggests that more work is likely to head overseas in the years to come. These dynamics have enormous implications for traditional law firms, which will reduce the number of entry-level hires. This produces a general "graying" of the corporate bar and a large cohort of lawyers who will be less inclined to reinvent themselves. And this, unfortunately, reminds me of Cleveland.

During my undergraduate days at Case Western Reserve University, I was part of a team of field researchers studying the automotive supply chain in Northeastern Ohio. At the time, the Japanese car companies were building cars in the United States using lean production methods that emphasized teamwork, collaboration, and information sharing to continuously improve process, quality, and efficiency. The evidence was overwhelming that lean methods produced superior results, but adoption was slow and episodic among the

51. See, e.g., Gina Passarella, Outside Shot: In-House Departments, Law Firms Rely More on Project Attorneys, LEGAL INTELLIGENCER (July 6, 2010), http://www.law.com/jsp/pa/PubArticlePA.jsp?id=1202463299917 (discussing how many "corporate law departments" have begun to use "project- or contract-based attorneys to help handle an increased workload on a shrunken budget").

52. See, e.g., Michelle M. Harner, The Value of "Thinking Like a Lawyer," 70 MD. L. REV. 390, 414 (2011) ("[C]lients with a short-term perspective may favor more outsourcing . . . but [that] development[ ] might not be in the long-term best interests of clients. The use of . . . alternative business forms . . . should be guided by the goal of improving both the efficiency and the quality of legal services.").

53. For a comprehensive overview of the lean production methods in the automotive industry, see JAMES P. WOMACK ET AL., THE MACHINE THAT CHANGED THE WORLD (1990).
Big Three automakers. In Northeastern Ohio, virtually all the parts makers supplied Ford, Chrysler, or General Motors.

We started this research with a long list of questions regarding how environmental risks were being allocated between buyer and supplier. We hoped to hear examples of how information sharing produced innovative solutions to difficult problems. Instead, we heard a steady stream of stories in which powerful buyers—starting at the top with the Big Three—imposed annual reductions in the amount they were willing to pay for their automotive components. Because low wages achieved through union busting tactics were often given as the company’s primary competitive advantage, we were not surprised to learn that one of their biggest challenges was finding enough tool and die makers to keep the factories operating smoothly. The low wages and the emphasis on cost control meant that neither the employers nor the unions wanted to bear the cost of training. So, the number of highly skilled tradesmen evaporated, weakening the ability of the entire region to compete on the basis of quality.

I now see the same adversarial dynamics setting in between many large U.S. corporations and their outside counsel. Rather than setting up long-term relationships in which information and the benefits of innovation will be shared between supplier and buyer, many general counsel are pressuring their law firms for discounted fees.54 Clients are also refusing to pay for first- or second-year associates.55 Law firms can attempt to prop up profitability by slashing entry-level hiring and by cutting costs on professional development along with other nones-

54. See, e.g., Amy Kolz, Capitalism’s Next Frontier, AM LAW., Nov. 2010, at 84, 87 (reporting an ex-managing partner’s frustration that “[c]lients were hell-bent on ever-increasing discounts”); Claire Zillman, The New Normal, AM. LAW., Dec. 2010, at 66, 68–69 (noting that almost half of the large corporations surveyed in the Association of Corporate Counsel study reported that ninety-five percent of their legal spending on outside law firms in 2010 will be based on the billable hour, but also noting that eighty-five percent of the corporations reported that more clients are requesting discounted rates); Michael Kozubek, Alternative Fee Arrangements Vary in Effectiveness, Experts Say, INSIDECOUNS., (Apr. 1, 2010), http://www.insidecounsel.com/Issues/2010/April-2010/Pages/Alternative-Fee-Arrangements-Vary-in-Effectiveness-Experts-Say.aspx (quoting John Weber, the general manager of CT TyMetrix, a large e-billing company that analyzes payment to law firms, as stating that “[t]he most widely-used AFA, the volume discount, is not particularly effective in reducing cost” (internal quotation marks omitted)).

55. See, e.g., Nate Raymond, State Bar Launches Task Force to Examine Changes in Profession, N.Y. L.J., June 25, 2010, at 6 (quoting a partner of a large New York firm as stating that “my own clients . . . say they don’t want first- and second-year lawyers on their matters” (internal quotation marks omitted)); Zillman, supra note 54, at 68 (reporting on a recent survey of law firm leaders, in which “nearly 47 percent of respondents said that clients have refused to pay for work done by first- or second-year associates” and noting that this refusal was a “part of clients’ strategy to shift economic risk back to law firms”).
sentential expenses. But in the long run, an organization—or, worst yet, an industry—cannot credibly compete on the basis of quality when it underinvests in its most important asset—legal talent.

A better outcome for the clients and the U.S. legal profession would be a movement toward continuous improvement (meaning, lower costs, faster cycle time, better leveraging of technology, and higher quality).\(^{56}\) Creating the required risk-sharing relationships, however, takes time, ingenuity, and effort. Similar to the U.S. automotive industry, the prosperity of the last several decades makes it extremely difficult for law firms to make this transition. Rather than invest in an uncertain future or change ingrained work habits to embrace tools such as project management and process improvement, the temptation for most law firm partners is to believe that the current downward pressure on fees is merely cyclical. And without the buy-in of partners, law firm leaders are powerless to create a different future.

My analogy to the U.S. automotive industry is meant to suggest that the American legal profession is subject to the same laws of supply and demand (and inertia and complacency) as every other sector of the nation’s economy. It is not difficult to imagine that the opportunities for growth are likely to flow disproportionately to a new generation of legal service organizations. These organizations may look more like vendors than professionals. Moreover, they may not necessarily employ U.S. lawyers. Then, the structural problems that are currently putting stress on U.S. law firms will soon become a threat to the survival of at least some U.S. law schools. Law schools can respond by reinventing themselves to help mitigate the challenges of legal employers. If they can pull it off, they are likely to find themselves at the top of a brand new hierarchy.

IV. CONCLUSION

This Essay has sketched out a simple historical continuum in which the typical U.S. lawyer has transitioned from a generalist working as a solo practitioner to a specialist working in a law firm with other specialists. The law firms themselves created a system of workplace organization that effectively created more specialists in order to service the business needs of their rapidly growing business clients. As the clients grew and prospered throughout the twentieth century, so

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56. Cf. Richard Susskind, The End of Lawyers? Rethinking the Nature of Legal Services 33-39 (2008) (arguing that the natural pull of all markets, including legal services, is toward greater automation and commoditization because companies who are the first to move down this road, or continuously innovate, enjoy enormous profit-making opportunities, thus forcing their competitors to compete to survive).
did U.S. law firms. Yet, because the amount of money flowing to U.S. law firms has become so large and the supply of sophisticated technical lawyers now exceeds the demand, corporate clients are pressuring their outside counsel to do more with less. This requires U.S. lawyers to adopt a more systems- and process-oriented approach to legal problems.

Thus, over the next several years, lawyers working for large corporate clients will increasingly layer the skills of project manager on top of their specialized legal knowledge. To the extent that lawyers resist this gravitational pull, they will lose their seat at the economic table. Amidst the coming economic tumult, we can expect to see many exciting innovations in legal education and in the provision of legal services. At least some of us will figure out how to do more with less. In the process, old hierarchies will fall and new hierarchies will be created. For the alert and ambitious young lawyer, law student, or law professor, the next several years could provide you with your big break. My advice is simple: pay attention, and most importantly, learn to think for yourself.
Is There Such a Thing as an Affordable Lawyer?

By Michael Zuckerman

One of the most perplexing facts about our perplexing legal market is its failure to provide affordable services for just about anyone but rich people and corporations. In a democracy steeped in rule-of-law, justice-for-all platitudes, this lack of access to affordable legal help can feel worse than perplexing—it can feel like an outrage. Slowly, however, the system is evolving.

To think about the problem, consider the case of Ned Henry, the plaintiff in a landlord-tenant dispute that’s commonplace in most ways—and curious in one.

In late 2012, Ned and his partner—recent tenants in an apartment in California’s East Bay—began to feel sick. Ned developed migraines and psoriasis, while his partner suffered headaches and nausea. As the winter progressed—more time inside, windows closed—the symptoms got worse. Eventually, they hit upon an explanation: toxic mold poisoning. They moved out and filed a lawsuit, both to avoid a penalty for breaking their lease, and to recover the costs that the mold and the move had imposed.

Ned and his partner didn’t have a lot of money—and the move had depleted their assets—but they weren’t exactly poor, either, so they looked into hiring a lawyer. They couldn’t, however, find anyone within their budget who would take their case. “It was definitely more than we could afford,” he told me over the phone last week. “Big range, depending on who we called, but at least $3,000-$5,000 on the low end, to start out.”

Priced out of the market for a representative, Ned and his partner decided to represent themselves in small-claims court, a less formal venue for legal disputes where attorneys are generally prohibited. After more than a year of legal wrangling, they finally brought their landlord to court this February and won. (The case is now on appeal; even if the judgment is upheld, it will likely take them years—perhaps even until the landlord dies—to collect.)

It’s within that year of legal wrangling that Ned’s story diverges from the norm. Ned, unlike most Americans, has a B.A. from Harvard and a doctorate in physics from the University of California at Berkeley. Those facts aren’t relevant simply because they make him an educated guy with experience wading through complex jargon. They’re also relevant because they granted Ned access to friends and acquaintances with legal expertise who could give him advice throughout the process—as he communicated with his landlord and the court, assembled evidence, and crafted his arguments.

These advantages helped Ned achieve justice, at least for the time being. He notes, however, that,
because of his own background and the counsel of his friends, he was much better prepared for court than the average citizen. “Everyone else had big piles of papers that they had to dig through,” he recalls of other plaintiffs in court, “and no one else got their evidence considered because the judge wasn’t going to dig through all that.”

In contrast, Ned was able to navigate the court’s bureaucratic maze of paperwork, jargon, deadlines, and locations (even small-claims court can be Byzantine). “It was confusing for me even with lawyers to give me advice and my own education,” he recalls. “If I hadn’t had those things, I would not have been able to figure out what the hell they were talking about half the time.”

The implication that you might need multiple degrees to represent yourself in a basic civil dispute seems unfair in and of itself. But a lack of access to affordable legal representation—coupled with the obstacles facing anyone who wants to self-represent—imposes knock-on costs that ripple throughout society.

Ned, for example, was a victim of the system before he was a participant in it. After digging into his landlord’s past, he learned that she had already dealt with mold issues and failed to disclose them on the lease he signed, and that a dozen or more previous tenants had attempted to hold her accountable for abuses over the past decade. These attempts, he learned, tended to result in failure: “Somewhere along the small claims process the tenant just gives up and stops doing it because it’s a huge pain in the ass.” And the frustrations of the process are only exacerbated by the broader chaotic situation that prompts the disputes. “It’s at a time when it’s already hard,” Ned reflects. “Nobody is suing somebody at a time when they’re not already dealing with hard shit.”

Lack of access to legal help, in other words, serves as a shield for neglectful landlords and all sorts of other bad actors—abusive husbands, predatory lenders, corrupt employers. Because it took someone with Ned’s advantages to hold her accountable, his landlord was free to fleece tenants for years.

An Imperfect Market

Ned’s experience is not unique. As a recent law review article notes, “The typical legal services consumer in the U.S. makes approximately $25 per hour, and is priced out of the services lawyers provide even at low attorney rates of $125-$150 an hour.” Those rates are well below the standard rates shown in the 2013 Laffey Matrix—a set of fee guidelines compiled within the U.S. Department of Justice—which start at $245 for a greenhorn associate.

The access problem looms large for legal-services attorneys, who receive funding to provide free legal help to people near or below the poverty line, but often find the income cut-offs arbitrary and counterproductive. Steven Eppler-Epstein, executive director of Connecticut Legal Services, points out that, alongside all the deserving poor people he has to turn away because of inadequate funding, it can be equally frustrating to have to turn away so many who are near poor or even middle class. (There is no right to counsel in civil cases—only criminal—and a 2009 Legal Services Corporation report found that “for every client served by an LSC-funded program, one person who seeks help is turned down because of insufficient resources.”) Eppler-Epstein notes the high percentage of people in family court without legal representation—surveys across states have put the number around 80 percent—and the high price of law. “[These people] may be over income for us,” he explains, “but they still can’t afford a lawyer because a lawyer says, ‘Well, if I’m going to get involved in this case and it’s going to go on for a
year and a half … you’ve got to pay me $10,000 up front.’ And who’s got $10,000?”

Ned’s story is also—unlike most of the cases that legal-aid lawyers like Eppler-Epstein deal with—not off-the-charts heartrending. And that’s the point. Ned is a well-educated guy, roughly 30 years old, with a small (if not enormous) amount of disposable income—he’s exactly the kind of person for whom the free market has historically been great at cheaply packaging desired goods and services. Even for complicated services, like income tax preparation, the market has largely succeeded. Why has law lagged?

One compelling set of answers comes from University of Southern California law professor Gillian Hadfield, who explored the imperfections of the legal market in a February 2000 law review article.

Legal services have a lot of qualities, Hadfield argues, that give lawyers leverage to charge high rates. Perhaps the largest is the complexity of law, which does not just require that lawyers receive expensive schooling and certification, but also necessitates specialization within the profession and obscures how much help—and which specific strategies—are necessary to win. Moreover, because winning is based on drawing “distinctions and/or similarities that were not previously recognized” but which then become part of the body of law for settling future disputes, the complexity of the law is constantly expanding. There is, in Hadfield’s words, “a natural entropy” to legal complexity.

Because of its complexity, Hadfield points out, legal help is what economists call a “credence good”—a good “provided by an expert who also determines a buyer’s needs” because the buyer is “unable to assess how much of the good or service they need; nor can they assess whether or not the service was performed or how well.” The classic examples are auto repair and dentistry, but most legal services qualify, too. Just as the average consumer is unable to verify how many cavities he has or how many auto parts he needs replaced, he’s often unable to question a lawyer on just how many hours of lawyering will be sufficient to resolve his problem. The effect is a pernicious lack of transparency “about the actual value of a lawyer.” And since the costs are sunk in the event of a loss, there’s a strong incentive for already-paying clients not to skimp.

The legal profession also operates, Hadfield notes, within what is essentially a “monopoly on coercive dispute resolution”: If you have a legal issue you don’t really much choice about where to go. You have to deal with a system controlled by lawyers, all of whom have come up through the system.

The cost here, Hadfield argues, “is not so much the moral hazard or exploitation of market power for private gain by the profession, as it is the inertia and unresponsiveness of an insulated service provider”—a system that doesn’t readily transform itself. “Innovations in dispute resolution—be they addressed to considerations of justice or cost—are muted and limited,” Hadfield writes, “to what will occur to a group of people who share, by virtue of their professional training and tutored identity, a largely common set of ideas, perceptions, and norms about dispute resolution.”

This monopoly—and the fact that it is controlled by creatures of the monopoly—chills disruptions that might otherwise shake up the market. And there are plenty of disruptions to be had: Hadfield and other thinkers have pointed toward a number, including allowing a greater ambit for paralegals to provide legal help in appropriate circumstances (Hadfield notes in a 2010 Washington Post op-ed that “In England, Australia and the Netherlands...a wide variety of professionals and experts can provide legal assistance”); allowing non-lawyer-owned companies to sell legal services (as the British
supermarket chain The Co-op has recently begun to do); and embracing technological change. On this third point, Hadfield observes:

The legal equivalent of TurboTax is probably just around the corner, if not already on British computer screens. Meanwhile, in the United States, the bar is filing class-action lawsuits against fledgling online legal providers such as LegalZoom and shutting down alternative providers who threaten local lawyers’ markets and offend lawyerly sensibilities. Many American judges and lawyers continue to insist that the only model for legal services is one-on-one advice with an attorney. No corporations, no venture-capital-backed entrepreneurs, no intelligent software to complete legal documents, no community groups or nonprofits.

Here Hadfield gestures at one academically popular explanation for why the legal market hasn’t liberalized enough to lower prices: that the organized bar doesn’t want it to. The Economist recently called this problem “the restrictive guild-like ownership structure of the business”; citing “parochial anxieties about ceding turf to nonlawyer competitors,” Stanford Law professor Deborah Rhode has suggested the bar’s policies amount, ultimately, to “economic protectionism.”

While there’s no doubt the bar is guilty of foot-dragging, the full critique doesn’t quite wash. The bar’s most persuasive alibi is that it has every interest in getting more consumers to purchase legal help—and the current price of legal help keeps an enormous number of consumers on the sidelines. As Hadfield points out in her Post op-ed, 30 to 40 percent of Americans with legal problems report, across surveys, doing nothing to address them; in Britain, that number is just five percent. This group is part of what legal futurist Richard Susskind calls the “latent legal market”:

the innumerable situations, in the domestic and working lives of all non-lawyers, in which they need and would benefit from legal guidance (or earlier, more timely, or empowering insight) but obtaining that legal input today seems to be too costly, excessively time consuming, too cumbersome and convoluted, or just plain scary.

In time, Susskind predicted in his 2008 book The End of the Lawyers?, this latent demand would be unlocked. The good news: He was right.

Moore’s Law

Hadfield wrote about the “legal equivalent of TurboTax” being “just around the corner,” but even that phrasing understates its proximity, when it’s been in her next sentence the whole time. LegalZoom—which Hadfield castigates the bar for fighting—basically is the legal equivalent of TurboTax: a largely do-it-yourself legal warehouse that allows users to generate (and, in some cases, file) legal forms through sophisticated online software. For an added monthly fee starting around $10, people can now also get advice (and “attorney-drafted letters on your behalf”) from a lawyer through the website.

One of the turnoffs with do-it-yourself law—and which seems to account for the organized bar’s issues with LegalZoom—is the degree to which it cuts lawyers out of the equation. The complexity of law makes DIY feel perilous, the same way it’s a scary proposition to rewire your house if you’re not a trained electrician, regardless of whether Home Depot will sell you all the supplies you need. Most people sense this risk; my friend Luke Palder, a small-business owner who runs a proofreading service,
mentioned the other day that he’s wary of do-it-yourself legal services, even though he’s sensitive to price. “I’m willing to pay a little bit more for a lawyer's oversight,” he told me, “even if I’m doing most of the heavy lifting.”

Perhaps the most interesting model to enter the space—between largely unaffordable brick-and-mortar law and the heavy-DIY of a Legal Zoom—is Rocket Lawyer. Founded by Charley Moore in 2008, funded by Google Ventures, and now boasting a team of nearly 200 employees, plus a network of 450 on-call attorneys—Rocket Lawyer has, in effect, scaffolded the do-it-yourself model with more support from actual lawyers. Like LegalZoom, Rocket Lawyer offers customers the tools to create and file documents on their own electronically, but they also build the ability to consult with an attorney into their core product. Moreover, if a dispute arises—“and this is where it becomes incredibly valuable to people,” Moore says—customers can hire a lawyer to represent them from within the company’s legal network for 40 percent of the lawyer’s published rate.

Moore, a former Naval officer and Gulf War veteran, recalls the dichotomy between the legal help he received in the military and the legal system he encountered as a civilian. He recalls getting into a car accident that wasn’t his fault—another driver had run a right light—and being able to go to the Judge Advocate General at the Naval Academy for assistance. “It was actually very easy to get a lawyer to help me out, to at least understand the issues and potential claims,” he recalls. “And often it’s that very first place to start—to really take advantage of and be protected by the legal system—that even middle-class people in the civilian world can’t afford.”

Moore’s site now clocks 1.6 million visitors per month. Beyond its use of technology to lower costs, what’s most striking about the Rocket Lawyer model is the way it disrupts the market imperfections noted by Hadfield to make legal help more affordable.

First, the model helps neutralize the credence good problem by bringing transparency to the market. Rocket Lawyer was the first company at scale, Moore asserts, to bring legal pricing into the open. “Five years ago, if you wanted to know in New York City or Memphis, Tennessee, what a lawyer charged for estate planning or to do a simple divorce, you couldn’t find that out,” he points out. “They didn’t put their fees in the Yellow Pages.”

Perhaps more significantly, the model brings transparency to the quality of legal help offered. Beyond the 40 percent discount, Moore notes, customers know that “they’re going to get a lawyer who’s already been vetted”—not just that they’re a member of the bar in good standing, but that “they’re all—like Uber drivers—reviewed and rated by the users in the system.” And, Moore adds, "we do remove lawyers from the system who get poor reviews after their representation."

In this sense, Rocket Lawyer is a bit like a buyers’ club. “Like Costco,” as Moore puts it, but also a little bit like the American Automobile Association (AAA) or even the now-Hollywood-famous Dallas Buyers Club, two older solutions to classic credence-good problems.

Rocket Lawyer is, likewise, as Moore points out, a market-maker, and that’s likely why Rocket Lawyer has been able to sidestep the bar opposition that has nagged LegalZoom: It’s more a pipeline for customers to find legal aid and less a replacement for that aid. “Most people cannot do this stuff on their own,” Moore insists. “They need professional assistance. And I really equate it to: You can take over-the-counter medicine when you have a certain type of headache, but at a certain point, if you need
brain surgery, you’re going to need a neurosurgeon to do that. It’s the same thing in the law. We can help you to understand when you need to talk to a lawyer, but then you’re going to need somebody to represent you in pretty much any substantive legal matter.”

With prices as low as a $250 flat-rate fee for a no-fault divorce, the model has certainly unlocked demand. “It’s sort of like in 1971,” Moore suggests. “Nobody thought that regular folks wanted to fly, and then, voila—when Herb Kelleher and the folks at Southwest Airlines produced a $49 plane ticket, all of a sudden we went from Mad Men, where you were in a suit and tie on Pan Am, to regular folks flying and not taking the bus anymore from Dallas to Albuquerque.”

“We know,” he continues, “that well over half—the vast majority of people who’ve used Rocket Lawyer for legal advice—have never consulted with an attorney before in their life, and that includes small business people. So we are really the on-ramp now for first-time purchasers of legal advice.”

“It doesn’t require a physical tramp over to a lawyer’s office and thousands of dollars,” says Moore. “You can do it on your phone for free.”

How Much Lawyer Can You Afford?

Despite its progress in increasing access to legal help, Rocket Lawyer—like its heavier-DIY counterpart, LegalZoom—is not without critics. One of the most compelling critiques comes from Luz Herrera, a professor at Thomas Jefferson School of Law in San Diego, who is skeptical of the “invisible, never-see-the-attorney model” and prefers local, brick-and-mortar community law offices.

Herrera knows the brick-and-mortar model well. After graduating from Harvard Law School, Herrera hung her own shingle in Compton, California, in 2002. She charged “peanuts” at the beginning—$75 for consultations, and $150 hourly—barely scratching together enough to get by. “It really went back to the reasons that I went to law school,” she recalls, “because I went to law school to represent people that were in my family or my community that had legal needs and didn’t understand how to navigate the system. What happened then is that I then got overwhelmed by the people who needed my services and the lack of other affordable options for them. And I could only take what I could take, so there was no way I could help everybody who called.” The experience led Herrera to found a nonprofit, called Community Lawyers, to help “create a pipeline of attorneys that would work in these underserved communities.”

On-the-ground community law matters, Herrera contends, for several reasons.

First, she maintains, having a lawyer is a part of the economic infrastructure of a community—not having one is like “not having a supermarket or church ... it’s a component to a healthy community.”

Second, Herrera explains, in-person contact is important to many clients. “I think [online help] works for some people,” she admits. “It works for the new generation of consumers, people who are plugged in. I don’t necessarily think it works for everybody. I think it depends on how comfortable you are with technology. ... The client base that I had [in Compton] wanted to meet individually. People want to develop that relationship.”

Herrera, instead, sees technology as enabling a new viability for the community-law-office model—a way to bring down overhead and allow the middle-class model pioneered by Jacoby & Meyers and
Hyatt Legal Services in the 1970s and 1980s to return to dominance. She points out a service called DirectLaw, founded by Richard Granat, which allows smaller firms to integrate technological innovations onto their personal firm websites. “They provide the infrastructure to be able to compete with LegalZoom,” she says.

Even so, the scale problems of brick-and-mortar are formidable. Like a face-to-face LegalZoom, Community Lawyers charges below-market rates for document assistance, but demand overwhelms supply: “There’s a lot more need than there are resources,” Herrera explains, “so we’re only helping a fraction of people who need help.”

Despite Herrera’s critiques, her and Moore’s similarities come across as greater than their differences. Both are looking to increase access to lawyers, and both are ultimately endorsing a model that relies on healthy doses of both technology and client effort.

Community Lawyers, for example, is very much a “collaboration,” as Herrera puts it, between the organization and its clients: “we bring in attorneys who provide pro bono consultations, but the consumer of legal services goes and files the documents—we don’t do any of that,” she explains.

“I think that’s what limited-scope representation is about,” she continues, citing Sue Talia, a family law specialist and expert on limited-scope legal representation. “Talia writes about the ability to form a partnership with the client, and that the attorney and the client have to have a conversation about what you can do, what can’t you do—‘If you only have a thousand bucks, is it better for me to fill out the form, or is it better for me to just review it and go with you to the hearing?’”

“Full-service representation is no longer the primary model,” Herrera states plainly. “The primary model is ‘Let’s see how much lawyer we can afford.’”

**Lawyer as Friend**

Involving clients in their own legal help is, interestingly, less a new idea than a resurrected one. John Tobin, the longstanding executive director of New Hampshire Legal Assistance (NHLA), recalls that the approach of enlisting the client was much discussed in the early days of legal aid, when the War on Poverty was still a heady new idea. “When legal aid first started having paralegals,” he recalls, “the notion was to have community people, not bright college students.” Thirty years ago, Tobin notes, these discussions yielded mixed results, but more recent experience is encouraging. He reports:

> We have had people who helped us a lot on their own cases, and who help us on some of our bigger cases—help us organize other clients, help us understand the system, be part of the litigation team. It makes a big difference. And these days, we are asking more of our clients—we’re asking them to do more of the gathering information and pulling together evidence and getting the documents and all those things. Because we don’t have the resources.

The model certainly would have worked for Ned Henry, who did all of his own legwork anyway, coached in part by his lawyer friends.

But the echo from the history of legal aid that Tobin notes raises an important question about access: Does the end of full-service representation mean an even bigger hurdle for the poor—especially those, like Herrera’s clients, without ready access to (or comfort with) technology, or people who are
hampered by mental health problems or intellectual disabilities?

It shouldn’t. If technology and new models like Herrera’s and Moore’s are able to bring costs down and expand access for a large number of people, the access problem for the smaller number of hardest cases should be easier to solve. For one, by drawing more clients into the paying market, firms like Rocket Lawyer may free up much-needed bandwidth in legal aid, where firms are already forced, as Tobin puts it, to make excruciating “Sophie’s Choice decisions about which cases to take.” Second, the march of technology can cascade into legal aid, improving access there, too. Just a few years back, New Hampshire’s Legal Advice & Referral Center (NHLA’s sister organization) installed new phone- and web-based systems that brought its case production numbers to some of the highest in the country.

Moore, for his part, recognizes that, as his company grows, legal help for those who can’t swing even Rocket Lawyer’s rates will be an issue he’ll need to address. “Right now,” he admits, “we do steer people to legal-aid societies if they do not have any ability to pay, but I would be the first to say that we can do more ... and I fully intend to do more in terms of supporting pro bono legal services by our lawyer network.”

In the meantime, the slow rise of Moore or Herrera’s hybrid model—part lawyer, part layman, part computer, in varying ratios—offers hope for a legal market in which the non-rich can afford to buy, though they may have to invest some sweat equity in the purchase. And in that sense, the legal market—perhaps because of its complexity, or perhaps because, as Herrera notes, lawyers simply “aren’t trained to be entrepreneurs”—is just catching up with other new-economy markets for the middle class. After all, TurboTax and H&R Block offer us affordable tax preparation services, so long as we’re willing to serve as the clerks to our electronic CPA. Travelocity and Kayak offer us more affordable travel, so long as we’re willing to serve as our own electronic travel agents. For most of us—tenants with sleazy landlords, small business owners, people in bad marriages—these sweat-equity options represent progress. And so long as they don’t harm—and instead help—the worst off, these options are progress.

As this new legal model slowly gains footing, it’s worth pausing to consider the new, partial-service attorney—less a sovereign champion and more a supervisory ally. Taking up this latter role, the limited-scope lawyer resonates with Harvard law professor Charles Fried’s decades-old idea of the lawyer, like the doctor, as “special purpose friend.” Fried, in his essay, was arguing for the lawyer’s moral legitimacy in preferring his or her client’s interests to others’ (even if it means harming those others’ interests), but the simile has expressive power beyond Fried’s philosophical mission—it conjures To Kill a Mockingbird’s Atticus Finch more than Chicago’s Billy Flynn. Fried conceived of the legal relationship as one in which the “friendship systematically runs all one way,” but the collaboration entailed by the limited-scope model renders the relationship a two-way street. In a marketplace that’s felt closed off to most non-rich Americans, it sounds, if not perfect, like a fair deal.

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